

Basic Research on the Applicability of the Crime of Picking Quarrels and Provoking Troubles to Regulating Cyber rumors

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Abstract

Current theoretical debates concerning the application of the crime of picking quarrels and provoking troubles to regulate Cyber rumor crimes primarily revolve around three propositions: "whether cyberspace order constitutes public order," "whether public places include cyberspace," and "whether online rumormongering and rumorspreading can be recognized as 'stir up trouble'." This paper argues that cyberspace order possesses independent significance for protection, and its value should be defined as "a state of freedom and order of expression," taking into account the specific characteristics of the cyberspace. Cyberspace is a public places, justified by Foucault's spatial theory of "heterotopia," which abandoning the physical appearance of "place," emphasis is placed on grasping the practical aspects of "place". Defining "stir up trouble" from a typological perspective provides a viable solution for classifying online rumormongering and rumorspreading as such conduct.

Keywords

Crime of Picking Quarrels and Provoking Troubles; Cyber Rumors; Public Order; Stir up trouble; Public Places.

1. Introduction

The rapid development of internet technology has endowed cyber rumors with characteristics of faster dissemination and wider reach compared to traditional rumors. Consequently, cyber rumors have increasingly become a primary form of speech-related crime. As the traditional legal system of speech offenses struggles to comprehensively assess the social harm of cyber rumors, the Supreme People's Court and the Supreme People's Procuratorate issued the "Interpretation on Several Legal Issues Concerning the Application of Law in Handling Criminal Cases of Defamation and Other Offenses Committed through Information Networks" (hereinafter referred to as the "Judicial Interpretation on Online Defamation") in 2013. This judicial interpretation attempted to leverage the "broad applicability" (often termed the "pocket offense" nature) of the crime of picking quarrels and provoking troubles to fill the punitive gap regarding cyber rumors. This attempt by the judicial interpretation sparked intense debate within theoretical circles, focusing on two main aspects: the protected legal interest of the crime and the constitutive requirement. Regarding the protected legal interest, scholars primarily debated whether cyberspace order constitutes public order. Concerning the conformity of constitutive elements, analysis centered on whether cyberspace qualifies as a "public place" and whether online rumor-mongering and spreading can be evaluated as "stir up trouble."

This paper contends that resolving the controversy over applying the crime of picking quarrels and provoking troubles to cyber rumors requires a return to theoretical exploration concerning the order of expression within cyberspace. It necessitates clarifying the new connotations of "public place" in the internet context and reshaping typological thinking in the identification of

"stir up trouble," thereby establishing a solid foundation for applying this crime to Cyber rumor cases.

2. Controversies Surrounding the Regulation of Cyber rumors by the Crime of Picking Quarrels and Provoking Troubles

The breakthrough made by the "Judicial Interpretation on Online Defamation" in the criminal law regulation of cyber rumors undoubtedly caused a significant stir in theoretical circles. Research on "online-type crimes of picking quarrels and provoking troubles" flourished. Broadly, current academic debates on "whether the crime of picking quarrels and provoking troubles can regulate cyber rumors" can be divided into two trends based on the domain where the legal interests occurred. One trend insists that cyberspace order is a legally interest that can be infringed, thereby affirming the rationality of applying the crime within cyberspace. The other trend emphasizes that infringement of online order is not criminally punishable; the punishability of Cyber rumor crimes hinges on the harm possessing actual dangerousness.[1] This view essentially negates the applicability of the crime within cyberspace. It is evident that the legitimacy of judicial application of the crime in cyberspace significantly influences the assessment of the punishability of Cyber rumor crimes. In other words, understanding and interpreting the substantive normative elements within the crime that serve a defining function—such as "public order" as the legal interest, and "stir up trouble" and "public place" which highlight the behavioral structure—within the context of cyberspace, constitutes a critical issue that cannot be avoided when reviewing whether Cyber rumor crimes qualify as the crime of picking quarrels and provoking troubles. The following sections elaborate in detail:

(1) Theoretical Debates on the Legal Interest of Network Public Order

The prevailing view holds that the legal interest protected by the crime of picking quarrels and provoking troubles is social public order. [2] Consequently, the existence of the legal interest of public order determines the possibility of applying this crime to Cyber rumor cases. Therefore, whether public order exists within cyberspace is a fundamental question. Scholarly discussions have unfolded around three related propositions: First, the connotation of the "public order" legal interest itself as the subject of examination. Traditional theory generally defines public order as the state of orderly social public life conducted according to common rules of living, encompassing both order in public places and order formed by adherence to public life rules in non-public places. [3] This view reveals a latent logic: norms are the core and actual content of order. Proponents of the "rights protection theory" criticize this as upholding "order-centrism." [4] Conversely, the "rights protection theory" aims to reduce collective legal interests to individual legal interests, defining the value connotation of public order legal interest from the perspective of the stable and peaceful state of public life. [5] 13Second, the tool attributes and spatial attributes of the Internet as the prerequisite for examination. Determining whether the internet is primarily a tool or a space affects the necessity of recognizing cyberspace itself as a bearer of legal interests, laying the logical foundation for subsequent discussions on the cyberspace order. Proponents of the "instrumental theory" argue that the information network is merely a carrier for human activities, lacking the characteristics of traditional physical space, thus possessing only instrumental attributes. Proponents of the "spatial theory" contend that cyberspace has distinct social characteristics; the online world reflects the real world, and consequently, the laws and order of the real world also exist within the online world, making cyberspace a legal space in this sense.[6] Third, the fundamental nature of cyberspace order as the object of examination. Scholars adhering to the "instrumental theory," citing the virtual nature of cyberspace, do not recognize the existence of internet public order, acknowledging only digitally constructed network order, i.e., internet service order. [5][7] Scholars defining the internet as a "public space" can be further divided: one view, while acknowledging the

spatial attribute, sees it only as a "virtual space," where order lacks practical significance; [1] the other view affirms the value of cyberspace order, summarizing internet public order as "information network order," manifested as "network security management order" and "information network activity order," with new types of cybercrime being a collection of behaviors infringing upon these network activity orders. [8]

It is apparent that academia has produced numerous research findings concerning "public order" and its value within cyberspace. However, much of this research focuses on justifying its existence, often neglecting the specific value connotations unique to "network public order." Particularly in the current social context where information networks are increasingly becoming the primary domain for new types of crime, recognizing the distinct value of network public order compared to real-world public order holds significant theoretical and practical importance.

(2) Analysis of the Constitutive Elements of the Crime of Picking Quarrels and Provoking Troubles in the Online Context

1) Whether Cyberspace Qualifies as a "Public Place"

Debates surrounding whether cyberspace constitutes a public place primarily involve two aspects. First, the reality of cyberspace. Public places are undoubtedly public spaces with strong reality, traditionally manifested in physical accessibility. [9] Cyberspace, lacking this characteristic, faces skepticism regarding its reality. For instance, some scholars point out that cyberspace is essentially an "absent" space, a fluid virtual space constituted by information flow, symbolic expression, linguistic communication, and meaning transmission. [10] Although some social platforms, due to low barriers to entry, allow users to freely enter and participate in activities like chatting, this only indicates that cyberspace possesses some basic functions of public places and should not be inferred as constituting a public place itself. [11] However, other scholars argue, citing examples like "online casinos" as a special type of public place, that public places need not be defined by "physical accessibility"; they can refer to places where people connect via networks to participate in public activities. [12] Second, whether interpreting cyberspace as a public place violates the systematicity and coherence of criminal law norms. Some scholars, referencing the legislative enumeration of "public places" in the crime of gathering a crowd to disturb order in public places, argue that interpreting cyberspace as a public place clearly exceeds the original meaning of "public place" and constitutes analogical interpretation. [7] Conversely, other scholars contend that, unlike the emphasis on physical space in the crime of gathering a crowd to disturb public order, the statutory description of "stir up trouble in a public place" within the crime of picking quarrels and provoking troubles imposes no such normative limitation, thus providing an interpretative pathway for recognizing cyberspace as a public place. [13]

2) Whether Online Rumor-Mongering and Spreading Can Be Recognized as "Stir up trouble"

Theoretical debates on whether "stir up trouble" can comprehensively evaluate online rumor-mongering and spreading primarily focus on two aspects: the internal structure of "stir up trouble" and the legitimacy of the judicial interpretation's provisions. First, regarding the fit between the internal structure of "stir up trouble" and online rumor-mongering/spreading, some scholars argue that Cyber rumor activities lack the "stirring up" nature characteristic of stir up trouble. They also lack immediacy and direct confrontation, and the connection between the act and public disorder lacks simultaneity and co-presence, making it difficult to classify as "stir up trouble." [14]282 Second, these scholars also emphasize that if criminal law implicitly regulates a certain behavior, judicial interpretation criminalizing it does not violate the principle of legality (*nulla poena sine lege*). However, the statutory provision on "stir up trouble" within the crime of picking quarrels and provoking troubles clearly does not constitute an implicit regulation for online rumor-mongering/spreading. Therefore, criminalizing it via

judicial interpretation breaches the principle of legality and amounts to premature legislation. [14] Opponents counter that the judicial interpretation did not attempt to classify online rumor-mongering/spreading directly under the statutory constitutive element of "stir up trouble." [15] In other words, the intended effect of the interpretation is that online rumor-mongering/spreading alone is insufficient to constitute the crime; it must also reach the level of punishability associated with "stir up trouble" to be punishable under this crime.

Evidently, theoretical disagreements regarding the applicability of the crime of picking quarrels and provoking troubles in cyberspace are significant and have spawned numerous fundamental questions demanding resolution. Based on this, the following sections will proceed from the two branches of protected legal interest and constitutive elements to argue in detail the applicability of this crime to Cyber rumor cases.

3. The Realistic Basis and Value Connotation of the Legal Interest of Network Public Order

Defining the connotation and extension of a concept cannot rely solely on its textual meaning; it must also consider the concept's historical context, the policy objectives it serves, and the social values it embodies. Regarding cybercrime, the concept of the legal interest of network public order holds crucial theoretical and practical significance. It plays a vital role in determining the constitutive elements of related crimes, assessing the punishability of Cyber rumor crimes, and establishing the applicability of the crime of picking quarrels and provoking troubles in cyberspace. Therefore, this section first explains the realistic basis for criminal law protection of the network public order legal interest, then explores its value orientation.

(1) Realistic Basis for Protecting the Legal Interest of Network Public Order

In the Web 3.0 era, information networks have evolved into a unique space for crime. As cyberspace emerges as a primary domain for new types of crime, network public order becomes critically important for safeguarding national security, maintaining social public order, and protecting citizens' individual rights. The interest in network public order deserves unprecedented attention from both theory and practice. [11] Recognizing the independent protective value of the network public order legal interest is not only a practical necessity for the state to address the growing risks of cybercrime but also further demonstrates the resolve of criminal law to combat online speech crimes.

Firstly, recognizing the network public order legal interest is a practical need for protecting individual rights in the internet age. In the Web 3.0 era, information network technology has evolved from a traditional tool for crime to a new spatial domain for crime. Network crimes targeting computer information systems are gradually being replaced by online speech crimes exploiting the diffuse and virtual characteristics of cyberspace. In this context, what requires strengthened legal protection is not only individual personality rights like privacy and reputation but, more importantly, the internal order of cyberspace that underpins them. Specifically, the "dualistic theory of legal interests" emphasizes the systemic, institutional, and preemptive protection that collective legal interests provide for individual legal interests. It advocates for preventive risk control, the primacy of criminal law as a tool, and an expanded scope of punishability, enabling criminal law to proactively prevent new crimes and adequately respond to the additional risks to legal interests brought by technological progress and social development. [16] The widespread penetration of information network technology in daily life has constructed a network public order distinct from real-world spatial order. The orderliness of public activities online is the realistic foundation for guaranteeing users' freedom and lawful exercise of their right to expression. Once network public order is severely disrupted, citizens' individual rights will inevitably be infringed. Just as online violence crimes targeting individual personality rights severely harm victims' personal interests by randomly selecting targets and

deliberately creating public opinion effects, they also disrupt the free, autonomous, and orderly online discourse environment. In such cases, if criminal law focuses only on the infringement of personality rights while ignoring the severe harm to the public order legal interest, it would hinder the restoration and reconstruction of network public order, inevitably affecting the holistic protection of individual rights by criminal law. Therefore, there exists a hierarchical relationship and purposive connection between individual freedom of speech and collective order legal interests. Utilizing criminal penalties to regulate network public order and safeguard its interests not only helps build a self-disciplined and orderly online speech ecosystem but also enables preemptive, systematic, and continuous protection of individual legal interests, directly aligning with the preventive orientation of modern criminal law.

Secondly, the reality of cyberspace demands that the state construct a legal normative system with equivalent force to that governing real space. Some argue that cyberspace is a virtual space, and the social relations formed within it only acquire significance for legal adjustment when they materialize in real space. If confined to the virtual realm, virtual relations and order arising from online activities should be governed only by virtual rules (e.g., game rules in online games). [17] Others view cyberspace as a multi-dimensional "mental space" or "cyberspace," constructing a "psychological order," "emotional order," or "imaginary order" that is inherently difficult to evaluate as an infringing legal interest. [10] This paper contends that such views, treating cyberspace as a "conceptual space," represent a one-sided interpretation of its functional positioning, neglecting the fundamental shaping of cyberspace's reality by various online activities. As President Xi Jinping stated at the opening ceremony of the Second World Internet Conference, "Cyberspace is not a lawless land." Cyberspace is virtual, but the subjects using it are real. Everyone should abide by the law, clarifying rights and obligations. [18] This statement reveals the dialectical relationship between the virtuality and reality of cyberspace, thereby demonstrating its social nature. Cyberspace exists in the form of electronic information and data, giving it a distinct virtual character. Simultaneously, activities within cyberspace are conducted by real human actors, endowing it with a realistic character. Specifically, on the one hand, unlike early online social interactions, social interactions in the current internet era are no longer detached virtual activities or limited to individual actions by a few netizens. They have evolved into group social interactions involving political, economic, and cultural life. These online interactions are no longer mere reflections or simulations of real-world interactions but are becoming the interactions themselves. In the foreseeable future, the boundary between cyberspace and real space will further blur, and cyberspace is destined to become part of real space, undertaking the basic functions of daily life to the greatest extent. [19] On the other hand, typical expressive activities in cyberspace are not merely subjective expressions of consciousness but objective actions taken relying on new media technology. Participating in topic discussions, sharing life details via platforms like WeChat and Weibo are all objective, real factual behaviors that manifest subjective expressive intent. Furthermore, the content transmitted between users consists of flowing information about life—views, values, and life pursuits that users, grounded in social reality, wish to express. In this sense, cyberspace is closer to reality; indeed, it is social reality itself. [20] Additionally, trends like de-anonymization in online society and the normalization and signification of offline actions in daily life further deepen the reality of cyberspace, narrowing the gap between online and offline spaces. It can be said that the dialectical relationship between virtuality and reality is the epistemological premise for understanding cyberspace and its governance, forming the foundational theory for comprehending other categories of cyberspace and constructing cyberspace thinking and governance strategies. [21] Based on this, the factual structure subject to legal adjustment has undergone fundamental changes. The evaluative scope of the "public order" concept should undergo an appropriate purposive expansion to resolve the tension between the evolution of

the normative environment and the traditional normative content of the provision, thereby fulfilling the legislative purpose of criminal law to maintain real public order. [22]

Thirdly, in judicial practice, some cases implicitly acknowledge that cyber rumors can disrupt network public order and use this underlying logic as a criterion for criminalizing cyber rumors. For example, in Qin's Case of Picking Quarrels and Provoking Troubles, the judicial authorities determined that the Cyber rumor constituted the crime based on the reasoning that the actor fabricated false information, caused a disturbance, which was read and forwarded by a large number of netizens, leading to further dissemination of the false information, causing disorder in the online order, provoking widespread public suspicion, and ultimately resulting in public disorder. The judicial authorities also stated, "Cyberspace is not a lawless land. National law protects normal and lawful speech and information exchange activities within information networks and combats crimes that use information networks to undermine social public order and market economic order."

Fourthly, the current criminal law regulatory system for cybercrime demonstrates the legislature's recognition of the legal interest of cyberspace order. Current legislation has added several new offenses targeting cybercrime. Among them, the establishment of the crime of fabricating or intentionally disseminating false information particularly emphasizes achieving the legislative effect of rectifying the chaos of false information online and regulating information network activity order. Other offenses, such as the crime of refusing to perform information network security management obligations, aim to warn network service providers to strengthen supervision; the crime of illegal use of information networks emphasizes the close connection between information network security and citizens' personal rights, social public safety, and national security; the crime of assisting information network criminal activities focuses on curbing the spread of harm from cyber black and gray industries. All three reflect criminal law's maintenance of information network security management order. [11] It is evident that by adding these four offenses, the legislature has comprehensively constructed the current regulatory system for cybercrime, covering three types of cybercrime: targeting information networks as the object, as the tool, and as the domain. This signifies criminal law's close attention to and emphasis on maintaining information network management order and ensuring information network security, laying a normative foundation for the theoretical shaping of the network public order legal interest. [23]

As noted, "Punishment is not only the state's response to the declaration made by the actor through his crime, but also the state's declaration to the general public for the future." [24] The development of information network technology has fundamentally transformed human society and life, inevitably demanding revolutionary changes in criminal law thinking to meet the urgent needs of crime prevention, human rights protection, and social stability maintenance.

(2) Value Connotation of the Network Public Order Legal Interest

1) The Basic Connotation of the Public Order Legal Interest

The theoretical justification for the reality of cyberspace partially refutes the argument that network order only manifests as internet service order. However, grasping the normative content of the internal order within cyberspace requires further discussion based on the fundamental nature of network order. First, it is essential to clarify: what is the public order legal interest? As mentioned earlier, criminal law theory generally defines public order as the orderly state of operation formed by the public based on general public rules. This view clearly links the understanding of the public order legal interest to the means used to maintain it—the operation of norms—and in some contexts, directly infers the disruption of public order from the violation of norms. As criticized by the "rights protection theory," this view implicitly harbors an "order-centrism" ideology. Once the fundamental demand for individual rights protection within the order legal interest is abandoned, order maintenance can easily become

a tool for authoritarian rule under state power. Therefore, given the fundamental task of human rights protection, the value connotation of the public order legal interest should emphasize the protection of citizens' fundamental rights. "The stable and peaceful state of public life" is an appropriate interpretation reflecting this value orientation. On the one hand, "the stable and peaceful state of public life" inherently embodies the basic value of public security. In criminal law theory, some scholars inject the concept of "public tranquility" into the substantive interpretation of the public security legal interest. For instance, Japanese scholar Makino Eiichi believed that "causing a sense of insecurity among the general public" harms public security; Kiyoshi Ono similarly stated that social legal interests are the interests of universal common life transcending individuals. For public danger offenses like arson, "public tranquility (serenity)" should be the protected legal interest. [25] Chinese scholar Zhang Mingkai holds the same view, emphasizing that public security should include the stable and peaceful state of public life. [25] Indeed, "order" and "security" are interconnected and complementary; they are closely related. Maintaining order aims to achieve security, and the realization of a secure state necessarily accompanies orderliness. On the other hand, "the stable and peaceful state of public life" signifies individuals' predictability regarding the general behavior of others, aligning with the fundamental state the public order legal interest aims to achieve. In his dual theory of social order rules, Hayek defined order as a state of affairs, arguing that the prerequisite for effectively pursuing goals is formulating plans based on expectations of others' actions, and that these expectations correspond to what others actually do. "This correspondence between the intentions and expectations that determine the actions of different individuals is precisely the form in which order manifests itself in social life." [26] In short, when individuals' basic predictions about others' actions before acting align with reality, the existence of order can be affirmed. Therefore, in a sense, order signifies individuals' "predictability" before acting. The object of this prediction includes not only the actions others might take in response to different factual situations but also the general consequences that might arise when such reactions feedback onto oneself. This aligns with criminal law's emphasis on "citizens' predictability." As Professor Li Long stated: "Law establishes, confirms, and maintains social public order... safeguards people's rights and freedoms, protects private living spaces, and promotes harmony, tranquility, and stability in interpersonal relationships." [27] The root purpose of criminal law protecting the public order legal interest is to ensure that people's public and private lives remain stable, tranquil, and free, facilitating the orderly exercise of fundamental individual rights.

It is important to clarify that "the stable and peaceful state of public life" is not equivalent to "public sense of security." Professor Zhang Mingkai has elucidated this point: legal interests must satisfy the requirements of empirical reality and their relationship to human beings. The stable and peaceful state of public life is indeed an objective state possessing empirical reality. However, public sense of security is overly subjective and abstract, difficult to define, and lacks necessary reality. [25] Other scholars point out that treating public sense of security as a protected legal interest complicates establishing causation between unlawful acts and infringement of legal interests. This is because damage to public sense of security depends not only on the actor's objective harmful conduct but also on numerous subjective and random factors. Elements like cultural background, social information transparency, the rationality of group emotional responses, and the cognitive level of the group can all influence the stability of public sense of security. [10] In this sense, attributing damage to public sense of security directly to the actor's objective conduct is difficult. Therefore, this paper disagrees that "public sense of security" falls within the basic scope of "public order." The connotation of "public order" should be limited to "the stable and peaceful state of public life."

2) Exploring the Value of the Network Public Order Legal Interest

Having clarified the basic connotation of the public order legal interest, the next question is: what is the specific content of public order within cyberspace? This paper argues that within cyberspace, where interpersonal interaction primarily involves speech acts, the content of public order directly manifests as a state of freedom and order in speech expression.

Freedom of speech is a fundamental constitutional right, and safeguarding it is crucial. The inherent limitation on fundamental rights is the prohibition of abuse of rights. [28] Within cyberspace, the "absence of physical presence" shapes a new power structure, providing fertile ground for the abuse of freedom of speech. Maintaining freedom and order in speech expression within this overall structure is a crucial task for criminal law in protecting the network public order legal interest. Specifically, a defining feature of traditional social space is "presence," meaning people engage in physical spaces through bodily actions, real group interactions, and other organizational forms. [29] However, the electronic presentation of cyberspace blocks physical "entry," making it a "space of absence" in physical terms. This space of absence is essentially a space of information flow, characterized by verbal interaction and information transmission. [29] Yet, speech itself possesses immense social power. Using speech expression and information transmission as primary modes of interaction allows discursive power, information power, and popular recognition to grow significantly within cyberspace, breaking through traditional social power structures and producing major power effects that influence social action and order. During the dissemination of cyber rumors, massive numbers of users maintain a broad online presence through simultaneous logins and browsing, greatly expanding the speed and scope of information dissemination. This easily creates a scale of public opinion characterized by widespread participation, real-time tracking, and rapid information sharing—a unique phenomenon unmatched by real-world public activities. Furthermore, the indiscriminate retention of information by internet platforms, combined with the rapid dissemination mechanisms of open social media, allows users to receive information published instantly by others. Even if some users are offline and cannot access the information immediately, the permanent memory characteristic of the internet ensures the real-time searchability of that information, constructing a "persistent online" state difficult to sustain in physical space. Under these conditions, the vast and frequent interactions among massive users make private events easily transform into public issues of mass concern, forming uncontrollable public opinion scales. Within such scales, groups holding discursive dominance can form overwhelming power suppression, stifling the expression of opposing or even neutral viewpoints through abuse, reporting, and other improper means, leading to a "one-sided" chaotic situation. In such instances, the free and orderly state of speech expression is severely impacted, network public order is seriously disrupted, and criminal law should rationally intervene. However, it is undeniable that "the legitimacy of restricting freedom of speech on grounds of order lies in safeguarding the foundational conditions for societal functioning to ensure the realization of other fundamental rights." Therefore, criminal law crackdowns on online rumor-mongering and spreading under the banner of maintaining speech public order should be approached with judicial caution. The focus should be on examining whether the unlawfulness of the conduct seriously threatens the realization of other netizens' freedom of speech. If the severity has not reached the level of disrupting the speech public order, punishability should be denied.

It is noteworthy that some views hold that cyberspace order resides within information order. In the information age, information is a vital life resource, and a safe, healthy information order naturally constitutes a key focus of criminal law protection. In a network society built by strangers, lacking close interpersonal foundations, trust relies primarily on individuals' grasp of complex information. Here, the authenticity of information content directly impacts people's peaceful living and society's benign development. [30] Undoubtedly, with vast amounts of information flooding cyberspace, individuals struggle to discern truth from falsehood alone.

The authenticity of information, especially concerning public interests, is crucial for the stable and orderly state of public life. Establishing sound mechanisms for reviewing and blocking false information and maintaining online information order holds significant practical importance. However, law should not excessively erode individual freedom for the sake of maintaining order legal interests. Under the current situation of generalized social risks, criminal punishment, as an important tool of social governance, inevitably prioritizes risk control and prevention. The spiritualization, abstraction, and functionalization of the legal interest concept become a necessary concession for criminal law to address social risks. But as German scholar Dieter Grimm stated, "Preventive state action finds itself in a dilemma. In the process of protecting freedom from individual dangers, it also weakens the liberal quality of the social order as a whole." [31] According to the rule of law principle, the original task of criminal law is to protect individual legal interests from infringement. However, the rise of preventive criminal law constantly shifts the standard of punishability forward. Criminal law intervenes even before individual legal interests are infringed, essentially meaning that members of society trade freedom for a secure social life. [32] The order theory centered on the authenticity of information reflects precisely this pursuit of information order stability at the cost of infringing individual freedom of speech. On the one hand, factually, speech expression in cyberspace is not strictly bound by content authenticity. For instance, the threshold for the crime of fabricating or intentionally disseminating false information in Chinese criminal law does not require punishing all such acts; it is limited by the condition of "seriously disturbing public order." Therefore, speech acts not prohibited by law should not face improper restrictions. On the other hand, assigning the responsibility of verifying speech authenticity to network service providers significantly increases operational costs, and the authenticity of much information is inherently unverifiable, lacking operability. Furthermore, individuals participating in online interactions possess basic abilities to discern truth from falsehood. For false information easily misjudged, its falsity itself is often difficult to conclusively prove. Therefore, defining network public order as an information order centered on the authenticity of network information seems problematic.

4. Interpretation of the Constitutive Elements of the Crime of Picking Quarrels and Provoking Troubles in the Online Context

(1) Value Basis for Evaluating Cyberspace as a "Public Place"

Based on current theoretical controversies, opponents often negate cyberspace's status as a public place by arguing it lacks the fundamental feature of "physical accessibility" deemed essential for public places. However, the theoretical origin of requiring "physical accessibility" as a defining standard for public places is rarely mentioned. In other words, incorporating "physical accessibility" into the definition of "public place" is essentially an empirical summary, a generalization of the common characteristics of all public places in physical space, not necessarily reflecting the essential attributes of the concept. This paper argues that while public places are traditionally understood as tangible, physical spaces, with the widespread penetration of information networks into daily life, the understanding of "public place" should shift from emphasizing external form back to grasping its essential attributes.

Foucault's spatial theory of "heterotopia" somewhat deconstructs the interpretative basis requiring "place" to have a physical form. He stated, "In all cultures, all civilizations, there may also be real places... these places are completely different from all the places they reflect and discuss, so in contrast to utopias, I call them heterotopias." In other words, within all cultures or civilizations, there exist places that appear "non-places" but are actually real and effective places, realized within real places. [33] The existence of "heterotopia" space indicates that within our familiar daily spaces, different "other domains" actually exist. These spaces,

seemingly conflicting with real space, simultaneously possess dual attributes of illusion and reality. Therefore, in this sense, "heterotopia" is a phenomenon and result constructed in the process of human fantasy, pursuit, and effort to realize utopia—it is both a "beyond-place" and a "real-place." [34] Furthermore, Foucault believed that space is not an empty container or stage where events, people, or even time are placed within a fixed framework, but is closely related to human activities—it is the concrete space of human practice. [35] Traditional definitions of the "place" concept often tend to treat place as a fixed, independent space, observing and summarizing its physical form while neglecting the concrete human practices and relationship-building within it. Foucault's spatial theory actually calls for a shift from a one-sided focus on the appearance of place to an examination of the relationship between place and practical activities. This research paradigm is significant for explaining the place attribute of cyberspace. That is, understanding cyberspace should be based on its specific functions and human practical activities and social relations conducted within it. It should not be viewed merely as a carrier or tool for daily life but should be grasped through the concrete practices and relationships people engage in.

Some scholars point out that public places are relative spaces designated by their owners, possessors, or users for public activities. [36] They should possess characteristics such as relative openness, orderliness, shared usage, functional specificity, and public nature. [7] In fact, cyberspace already exhibits these features and functions in contemporary society. First, the convenience and ease of use of information networks lower the barrier to public access, allowing ordinary people to easily go online and participate in public activities, demonstrating relative openness. Second, basic activities like web browsing, speech publishing, and online shopping follow relatively fixed operational procedures. Moreover, China has enacted numerous regulations governing online conduct, assigning legal liability, and clarifying legal consequences, such as the Cybersecurity Law of the People's Republic of China, the Administrative Measures for Internet Information Services, and the Provisions on the Ecological Governance of Online Information Content. These laws and administrative regulations normatively affirm the orderliness of cyberspace. Third, many public domains are now covered by information network technology. Sectors involving basic public life, such as healthcare, finance, transportation, education, and entertainment, are equipped with online apps, websites, and social media to connect offline activities. Public activities like legal education lectures and public health training also utilize information networks for cross-regional communication, providing ample opportunities for citizen participation and demonstrating the shared, specialized, and public nature of cyberspace. Therefore, cyberspace fully meets the basic characteristics of public places, possesses the conditions and functions for organizing public activities, aligns with the social positioning of public places, and can be evaluated as a "public place."

(2) Theoretical Justification for Recognizing Online Rumor-Mongering and Spreading as "Stir up trouble"

1) "Stir up trouble" Should Be Grasped as a "Type"

As discussed, current theoretical debates on whether online rumor-mongering/spreading can be recognized as "stir up trouble" primarily involve comparing their behavioral natures to examine the fit between fact and norm. Specifically, the prevailing view centers on behavior, interpreting the main characteristics of the "stir up trouble" concept. For example, Zhang Mingkai emphasizes the objective manifestations of stir up trouble: incitement, contagion, and escalation. [37] Chen Xingliang further explains: incitement highlights the external feature, using language as a medium to agitate unspecified persons; contagion indicates the behavior's spread and potential impact are difficult for the actor to control, easily causing wider dissemination; escalation means the harm caused may far exceed the direct victim, leading to more serious social disorder. [14]

This paper argues that "stir up trouble" is not a concept defined by enumerating all its characteristics but rather a "type". The distinction between "concept" and "type" is a crucial methodological framework in legal studies. German scholar Karl Larenz, in his book *Methodology of Legal Science*, states that a "concept" in the strict sense requires all characteristic elements to be clearly and completely defined. An object can only be subsumed under the category described by the concept if it possesses all these features. [38] Traditional theoretical interpretations of the elements of "stir up trouble" typically extract all externally observable characteristics to determine whether factual conduct can be subsumed under this category. However, as some scholars note, attempting to encompass all describable objects within the scope of a concept necessitates overly inclusive and generalized language, inevitably leading to conceptual abstraction. [39] The "typological thinking" addresses these limitations. Karl Larenz argues that "the characteristics listed to describe a type need not all be present; they can be given to varying degrees -- 'more or less'". [38] In other words, the significance of each characteristic lies in how they combine in specific contexts based on their quantity and intensity, determining whether the case facts align with the overall "appearance" of the type. [38] Approaching "stir up trouble" as a "type" helps avoid the pitfalls of conceptual abstraction and overgeneralization, preventing its application in crime determination from becoming hollow or esoteric. Second, in practice, the three characteristics used to describe "stir up trouble" need not all be fully satisfied. Their intensity varies across contexts rather than being fixed. For example, conduct such as organizing groups to stalk, secretly photograph, or harass others in person -- even without verbal incitement -- should still fall under "stir up trouble". Conversely, in online public spaces, incitement and contagion are often more pronounced than escalation, whereas in physical public spaces, incitement may be less common. Thus, the decisive factor for qualification is how these characteristics interact with different types of public spaces, not whether all three elements are present. Third, when assessing the fit between case facts and the type, the focus shifts to the overall "appearance" of "causing a disturbance" rather than individual characteristics. This "appearance" is rooted in empirical experience, and since "causing a disturbance" in criminal law evolves from everyday language with strong practical and experiential foundations, interpreting it as a "type" is more appropriate.

When an element in criminal law is treated as a "type," its definition depends not only on empirical "appearance" but also on the normative purpose it aims to achieve. Here, empirical and normative factors are equally significant. [38] As Larenz notes, "Typological thinking maintains a connection to dominant value concepts when describing categories of cases, as all examined characteristics revolve around this value as the unifying center". [38] Therefore, whether "causing a disturbance" can adequately evaluate online rumor-mongering and spreading depends on: 1. The intensity of alignment between the conduct and the "appearance" of "causing a disturbance"; 2. The relevance of the conduct's criminal nature to the protective purpose of the crime of picking quarrels and provoking troubles.

2) Theoretical Justification for Identifying Online Rumor-Mongering and Spreading as "stir up trouble"

This paper argues that online rumor-mongering and spreading satisfy the typological description of "causing a disturbance" both in their empirical "appearance" and their normative link to public order.

First, as noted, "causing a disturbance" exhibits three features: incitement, contagion, and escalation. Online rumor-mongering and spreading align closely with these traits: First, online rumor-mongering and spreading belong to speech crimes; once the perpetrator makes the intended audience trust the statement, the incitement of the speech is achieved. In cyberspace, the vast amount of information produced by various platforms is boundless and unverifiable, significantly increasing the objective requirement for the public to discern the truthfulness of information. If a statement posted on a social platform appears "well-reasoned and evidenced,"

it is extremely easy for the public to believe it to be true, thereby producing an inciting effect. Especially when certain malicious spreaders use exaggerated, emotional expressions regarding public-interest topics, the incitement of the speech itself intensifies. Taking the "Guo Moumou Case of Picking Quarrels and Provoking Troubles" as an example, the perpetrator fabricated information on a WeChat public account claiming that the Weibo blogger "Lin Xi's Doll Room" was suspected of illegal activities. The article stated that girls, including minors, were imprisoned in mannequins and sold and sexually assaulted as "real inflatable dolls." This rumor, using a highly inflammatory headline, led netizens to believe it was true, not only triggering a large amount of abuse and complaints against the victim and her Taobao store but also causing public panic about abuse incidents and concerns about local public security. Its inciting nature is self-evident. Second, contagion manifests specifically as the individual spread of online rumors, combined with the strong interactivity and high refresh rate characteristics of information network technology, enabling online rumors to be quickly viewed, commented on, and reposted by other netizens within a short period. Page views and topic discussion escalate at an unimaginable and uncontrollable rate, making it extremely easy for an online rumor event originally confined to a small scope to evolve into a mass public incident. [40] In online rumor cases adjudicated by judicial authorities, in many cases, page views can reach hundreds of millions and reposts tens of thousands, demonstrating its contagion index. Third, escalation means that the widespread diffusion of online rumors on network platforms causes the actual consequences of rumor-mongering and spreading to far exceed the original scope of individual rights infringement. [41] The infringement of legal interests produces spillover and diffusion effects, ultimately spreading to social or public legal interests. For instance, in the aforementioned case, the perpetrator's rumor-mongering and spreading targeting a specific individual acquired a public attribute due to involving public interest, causing the deterrent power and scope of the rumor to extend to the daily lives of the public. The unease and worry generated by the public towards the rumor, and even their adjustment of daily life rhythms and methods based on it, directly reflect the trend of legal interest infringement expanding towards public legal interests. Thus, incitement, contagion, and escalation are precisely the normal appearance of online rumor-mongering and spreading behavior. From an empirical dimension, it clearly falls within the evaluative scope of "causing a disturbance."

Second, these external characteristics essentially reflect the intrinsic connection between online rumor-mongering and spreading behavior and the order of network public spaces. As discussed above, the core value of network public order lies in the state of freedom and orderliness of speech expression. Network public space order, as a subordinate concept of public order, often encompasses both the freedom and orderliness of speech expression as general characteristics, while also possessing distinct spatial differences. This paper intends to use the general characteristics as the defining standard to examine the normative relevance between online rumor-mongering/spreading and the freedom and orderly state of speech expression. In fact, the prerequisite for realizing the right to freedom of speech expression is that all participating parties have equal opportunities for expression, meaning that the expression of one party's speech does not infringe upon the freedom of expression of another party. However, looking at the more common online rumor cases in practice, they often manifest as the rumor-spreading group somewhat suppressing the freedom of expression of the debunking group, or mainstream opinions achieving an overwhelming victory over minority views, presenting a "one-sided" tilt in discursive power. In this process, although the expressive rights of marginalized speech publishers have not been deprived, because they are in the disadvantaged position within an obvious discursive power structure, their speech may be directly ignored, lacking the opportunity to be "seen," or it may face numerous insults and even deletion of comments, severely infringing upon the freedom and smoothness of their speech expression. In this sense, the freedom and orderly state of online speech expression are

severely disrupted. Therefore, the scale of public opinion constructed by online rumor-mongering and spreading behavior forms a unique discursive power structure, and this structure itself inherently contains a close connection with public space order.

5. Conclusion

To sum up, the crime of picking quarrels and provoking troubles has a broad basis for application in regulating the crime of online rumors. Exploring the path of criminal punishment and punishment for online rumors also helps to confirm the fact that the regulation of cyber crimes developed from traditional crimes does not require the criminal law to add new crimes in a targeted manner, and many of the crimes stipulated in the current criminal law can be properly standardized and evaluated. Focusing on the effective governance of online rumors, criminal sanctions are obviously only the most severe and lagging governance measures, and the more important thing is to build a diversified, holistic and preventive modern governance model. Therefore, this paper is only one of the aspects of the governance of online rumors, and the core governance path of online rumors needs to be further studied by the theoretical community.

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