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ON THE INTERNET CONFIRMABILITY OF CRIME OF PICKING QUARRELS AND PROVOKING TROUBLES

Criminal law is an instrument of the state, which protects the interests of society from criminal encroachments, and also prevents crimes. The formulation and interpretation of the criminal law must follow the principle of modesty and adhere to the inherent spirit of the criminal law, which is insurmountable. In the criminal law amendment (nine), the crime of “provoking troubles with the Internet” has caused great controversy in academic circles. Dogmatics of law not only explain the specification of norms, and need to criticize and guide the legislation, criminal law protection has positive value entity, and it can not be completely separated from the value category, it explores the standard value of the guide itself. This paper, from the four layers of legislation, value, social and political philosophy, dealing with the crime of provoking troubles and picking quarrels, aiming at exploring the potential presupposition of “provoking troubles” applied on internet that causes disputes in academical circles. Eventually come to conclusion that “provoking troubles crime” used on internet needs not to be abolished, but must be used with caution.

Key words: legal interest, free of speech, modern crisis, provoking troubles and picking quarrels.

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Интернеттегі жанжал тудыру және арандату мәселелерін қылмыс ретінде мойындау

Қылмыстық құқық – қоғам мүдделерін қылмыстық қол сұғушылықтардан қорғайтын, сонымен қатар қылмыстың алдын алатын мемлекет құралы болып табылады. Қылмыстық құқықтың тұжырымдамасы мен түсіндірмесі ұстамдылық принципін ұстануы және қылмыстық құқыққа тән еңсерілмейтін рухта болуы тиіс. Қылмыстық заңға енгізілген түзетуде (тоғыз) «Интернеттегі мәселелерді қоздыру» қылмысы академиялық қоғамдастықта үлкен пікірталастар тудырды. Құқық догмасы нормалардың ерекшеліктерін түсіндіріп қана қоймайды, сонымен бірге заңнаманы басшылыққа алуды және сынға алуды қажет етеді, қылмыстық-құқықтық қорғаудың оң мәні бар, оны құндылық категориясынан толығымен ажыратуға болмайды, ол басшылықтың өзінің нормативтік мәнін зерттейді. Берілген мақала төрт құраушы тұрғысынан қарастырылады: заңнама, құндылық, әлеуметтік және саяси философия. Мақаланың мақсаты интернетте қолданылатын «арандатушылық мәселелердің» ықтимал алғышарттарын зерттеу болып табылатын және пікірталастар тудырушы жанжал шығарудан және арандатудан болатын қылмыс түрлері қарастырылады. Қорытындылай келе, автор Интернетте қолданылатын «арандатушылықты» жоюға болмайды, бірақ оны сақтықпен қолдану керек деген ұйғарымға келеді. Интернетте «арандату қылмысы» анықталуы либералдар тарапынан қатты сынға алынды. Либералдарды сынаудың себептері Қытайдың дәстүрлі мәдениетіне терең бойлап, терең әлеуметтік тамырларға ие.

Түйін сөздер: заңды қызығушылық, сөз бостандығы, қазіргі дағдарыс, жанжал тудыру, арандату.

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Признание преступлением разжигание ссоры и провокации проблем в интернете

Уголовное право является орудием государства, которым оно защищает интересы общества от преступных посягательств, а также предупреждает преступления. Формулировка и толкование уголовного права должны следовать принципу сдержанности и соответствовать присущему уголовному праву духу, который является непреодолимым. В поправке к Уголовному закону (девять) преступление «провоцирование проблем с Интернетом» вызвало большие споры в академических кругах. Догматика права не только объясняет спецификацию норм, но и нуждается в критике и руководстве законодательством, уголовно-правовая защита имеет позитивную ценностную сущность, и ее нельзя полностью отделить от ценностной категории, она исследует нормативную ценность самого руководства. Данная статья рассмотрена с точки зрения четырех составляющих: законодательства, ценности, социальной и политической философии; рассматривается преступление провоцирования неприятностей и разжигание ссор, целью которого является изучение потенциальной предпосылки «провоцирующих неприятностей», применяемых в интернете, что вызывает споры. В заключении автор приходит к выводу, что «провоцирование преступлений» в Интернете не должно быть отменено, а должно использоваться с осторожностью. Выявление «преступления провокации» в Интернете вызвало резкую критику со стороны либералов. Причины критики либералов глубоко укоренились в китайской традиционной культуре и имеют глубокие социальные корни.

Ключевые слова: законный интерес, свобода слова, современный кризис, провоцирование проблем, разжигание ссоры.

Introduction

Liberalists believe that dogmatic law has the function of leading and helping legislation. «If a law is to have a strong vitality, then the legislator must carefully consider and balance the relationship of life to be regulated, the whole of existing and future norms, and even the impact of the norm on other fields. In this process, the help of law is indispensable, but only concern. People who neglect similar and adjacent disciplines will also have limitations on the development of this discipline. So dogmatics, if it is merely a literal treatment of legal norms and does not delve into the concepts underlying them, or is closely related to sociology, would, as Kirschmann lampooned, «those fallacious, outdated, or random things in the law of reality... We should not be afraid to use all our intelligence and knowledge to defend ignorance.»

From the liberal point of view, the logical premise of the dogmatic analysis is to find out the object category, that is, the former problem. That is to say, we need to find the problem, here, we have to resort to Husserl's phenomenological philosophy. The test of legal justice must refer to the value of its former problematic nature (Husserl, 2012). Restricting dogmatics within the norm can not reveal all the attributes contained in the norm itself profoundly, because the norm itself can not explain the norm, we should find out the former problems

through phenomenology to verify whether the norm is in conformity with the norm. Reason. What is the former problem, that is, the rational existence of human beings, or the natural law. Natural law is the ultimate goal pursued by legal norms. The dialectical relationship between natural law and real law weaves the whole legal history. The goal of human beings is to infinitely approach rational real law. Politics is prior to the state, so political nature as the most fundamental characteristic has a deeper meaning than law, so this article will eventually refute the liberals' accusation of this crime through political analysis. The criticisms of liberals on the crime of provocation are mainly manifested in the following aspects.

Methodology of research

This research paper relies mainly on the qualitative method of data analysis in identifying the different variables of the study from the related literature review. The same method was also used in the data collection, where the descriptive method has been utilized mainly in order to describe the variables of the study, while holding a comparison between such variables. The qualitative method functions mainly as means of analyzing the different information that are represented in the literature review, while highlighting the researcher's personal opinion to the topic of interest.

In addition, special research methods were used in the work: comparative legal and statistical methods, including detailed analysis of the existing practice of developed countries with a reorientation of the main conclusions to the legal system of China, as well as concrete sociological and formal legal methods.

Chapter 1 Specification Dimensions Of Crime Of Picking Quarrels And Provoking Troubles

1.1. Legal interest criticism of picking quarrels and provoking troubles

Most liberal scholars believe that the crime of “provocation and trouble” is located in the crime of impairing the order of social management, so the legal interests it protects are “public order” or “social order”. “However, public order and social order are very abstract concepts, and the abstraction of the protection of legal interests will inevitably lead to the lack of substantive restrictions on the interpretation of the constituent elements, so that the constituent elements lose their due functions”. Therefore, we should understand the specific connotation of “social order” from the specific legal interests of the clause. In the first paragraph of Article 283 of the Criminal Law, beating others at will and pursuing, intercepting, abusing and threatening others in the second paragraph are all violations of personal rights. The third paragraph is the infringement of property rights, and the fourth paragraph is the infringement of public order, the general object of the crime. The protection of legal interests here has a mixed type, “public order” is obviously the first protection as a general legal interest. However, in the network platform, the body is often difficult to be infringed, in judicial practice, the network quarrel is always in the form of “speech”, so the legal interests of the real law need to be achieved by controlling speech.

Firstly, the essence of the crime of provocation and trouble is to maintain the stability of order, so its legal interest is one of the basic values of law - “order”. The basic function of criminal law is to maintain order and protect human rights, and the relationship between order and human rights protection is dialectical. Without a stable order, human rights will be impossible to implement, but human rights are the ultimate goal, order control only has instrumental value, because without the protection of human rights, then human beings will inevitably lose the momentum of development, order control will not be talked about. Therefore, the protection of order legal interests is based on the protection of human rights. Freedom of speech is the most basic human right. Article 35 of the

Constitution stipulates that citizens have the right to freedom of speech. Therefore, we need to find out the boundaries between freedom of speech and crime of speech. Only in this way can we test whether the legal interests of the crime of “cyber aggression” in the positive law are in the critical legal interests of the crime of “cyber aggression”.

Secondly, liberals believe that the protection of the legal interests of the crime of cyber aggression is a public order, and the specific legal norms must be set with the surface rigor and certainty of the critical legal interests themselves. Public order is a limited concept, must be “public” order, public must be open, accessible, and must be a public place. To interpret the “public place” stipulated in the “crime of cyber-aggression”, we may resort to the provisions of Article 291 of the Criminal Law on “public place”: stations, wharfs, civil aviation stations, shopping malls, parks, cinemas and theatres, exhibitions, stadiums or other public places. In the system interpretation of the Criminal Law, there is no virtual one. Network public space. Therefore, judicial interpretation of cyberspace into public space is not consistent with the interpretation of the system itself, because a concept in the criminal law system should have consistency, otherwise the public will be at a loss. So this kind of legal interest is lacking in certainty on the surface.

Thirdly, the mode adopted by the crime of provocation to protect legal interests is to punish speech, but is speech an act? Can it constitute a crime? Speech is the most important way of expression and communication of human thought and emotion, but it belongs to subjective category in content and is not regulated by criminal law. However, speech act will have a certain impact on the external society after the implementation, so speech act is a subjective and objective behavior. Because the simple expression of ideas is not regulated by the criminal law, only after the speech is published to the public and has a certain impact on society, that is, speech has been published behavior, is considered to be the criminal law to adjust the “act”. Therefore, liberals believe that speech itself is not an act, speech act is an act, is the object of criminal law adjustment.

However, in combination with daily activities, speech is generally the same or similar, such as daily communication belongs to this mode of behavior. So as Mill said, “Freedom of speech can only be applied if it is morally punishable when it infringes upon the rights of others” (Mill, 1957). How to define whether to infringe on the rights of others, it points to the “clear and present danger” proposed by Justice Holmes.

1.2. Critique of the purpose of criminal law

The purpose of criminal law is to formulate the objective effect of criminal law, if the specific norms of criminal law can not serve the purpose of criminal law itself, there is a danger of being abolished. There is a controversy between “monism” and “dualism” in the academic circles about the purpose of penalty. The “monism” can be divided into “preventive theory” and “disciplinary theory”. There is a subjective misunderstanding in the theory of prevention that the definition of criminal acts is advanced, while the theory of punishment lags behind in the punishment of criminal acts. However, in the dualism, there still exists a dispute between “prevention” or “punishment”.

“Prevention” as the center of the “dualism” criminal law purposes as the name implies there is a “actor’s law” characteristics. The criminal law of the perpetrator must be centered on “prevention”. It is not based on the punishment of the consequence of the crime, but on the analysis of the personality of the perpetrator, judging whether the perpetrator has the personality characteristics of a bad person, focusing on the defense of society and the fight against crime. Therefore, the freedom of the perpetrator’s law. It’s much smaller than the code of conduct, as Roxin says: “A legal system based on the fundamental principles of a free, rule-of-law state is always inclined to the code of conduct”. Liberals, in the “perpetrator’s criminal law” centered on prevention, the realistic purpose of criminal law has been more fully realized, but its ultimate purpose has been undermined.

Firstly, the legal interests that the crime of cyber-aggression should protect as well as the crime of aggression are the “public order” infringed by the crime. Public order includes social order and management order. Of course, management order includes state management order, so it is necessary to maintain national peace and unity. However, the act of instigating secession means that the perpetrator instigates others by means of language, words and images, with the intention of making them accept or believe what is instigated or to carry out the act of instigating secession. The content of the act must be false and is aimed at “separating the country”. Under the subjective state. Whether it is the crime of “Internet provocation” or “split state crime” is a behavior crime. Behavior crime is limited to the result of causing objective material damage. New school scholars believe that “giving priority to general prevention will hinder the realization of special prevention, but giving priority to special

prevention will not exclude the effect of general prevention, at most it will only weaken its impact in an unmeasurable way, while minor penalties will be the same. With general preventive effect”.

Secondly, liberals point out that social harmfulness is the essence of crime, and social harmfulness is determined by all kinds of factors, which leads to a comprehensive and holistic judgment of social harmfulness. And our country’s crime constitution system does not take “illegal” and “responsible” as the pillar of the crime constitution system as the world’s common standards, but classifies the elements of the constitution system by “subjective” and “objective” classification. However, social harmfulness is composed of objective harmfulness and subjective malignancy, so long as the objective harmfulness and the subjective harmfulness reach the level of social harmfulness, then it naturally constitutes a crime. The most typical is that when the objective elements can not be determined or do not conform to the conditions of the constituent elements, we must consider whether the actor in the “intentional, negligent” and other subjective aspects of the absence, if in line with the subjective constituent elements, that is to say, the objective elements are also there, which is also the crime theory system “subjectivity” The reflection. There is a danger of “subjective imputation” in the constitutional system of the theory of crime in our country, supplemented by the purpose of the new “prevention center” with “personal danger” as the core, then the boundaries between crime and non-crime will be blurred.

To sum up, liberals believe that under the Chinese criminal theory system, prevention as the center is not advisable, should be “sanctions” as the center, in order to be able to guarantee people’s freedom at the actual level of the most expanded.

1.3. Pocket crime policy dependence criticism

“The best legal language is precise, succinct, cold and unaffected by every passionate act”. Therefore, the definiteness of the principle of legality is the highest protection for human rights. However, due to various reasons in reality, there are some accusations in the criminal law of China, such as the crime of causing trouble, the crime of endangering public security by dangerous means, and the crime of illegal business operation. The reason why it is called “pocket crime” is mainly due to the following two reasons: first, the impact of legislative centralism, in the cultural aspect of our country by the impact of severe punishment

doctrine, advocating authoritarian flames; secondly, China's specific provisions on charges are not clear.

Since the establishment of the criminal law in China, it has always been guided by the idea of "repression and leniency". However, in our country's criminal constitution system, the core element of the constituent elements is social harmfulness, and then results in such a result. As long as the result of the act is worthless, it can be invoked as illegal and convicted. This is obviously a result-based retrograde law, which negates the homogeneity of behavior and persists in pursuing the homogeneity of behavior results. The theoretical path of pocket crime coincides with this, but also from the results, and then traced back to the perpetrator.

The appearance of "pocket crime" is contrary to the doctrine of "legally prescribed punishment for a specified crime", but the deeper reason is that it reflects the connotation of legislative authoritarianism. In the process of the game between the state's right to punish and the individual freedom of citizens, criminal law can be divided into nationalist criminal law or civil rights criminal law because it tends to one side. State power centralism emphasizes the protection of the country's social stability and order; on the contrary, civil rights-centered law emphasizes the protection of human rights. One of the three theoretical pillars of the legality of crime and punishment is human rights, while the clause of pocket crime itself is relatively unclear, which is contrary to the legality of crime and punishment.

Chapter 2 Value dimension Of Crime Of Picking Quarrels And Provoking Troubles

2.1. Violation of natural law

As an unwritten law discovered by human reason, natural law is an ideal order close to human nature, so any definite law must follow the origin of natural law.

Criminal jurisprudence is bound to be accompanied by its political and moral attributes, presupposing the form of national political system and the permanent operation of power, as well as the legitimacy of the state's appeal to citizens. Liberals like to resort to reason. Thomas Aquinas pointed out in *The Summa Theologica* that "Eternal law is the eternal law in God's mind controlling the universe, which is the basis of all the order existing in the real world, and the order in this sense existing in the world is the natural law". Kant thinks that natural law is rational law. In today's society where law and morality belong to different classes, natural law does constitute a common factor of law and morality.

Natural law is a universal rationality, and our actual law must follow the guidance of this rationality, and the core of this rationality is freedom, including moral, justice, fairness and other values.

Liberalists believe that the reason why man's will is free is that his nature is rational. Freedom is included in reason, and the realization of reason needs freedom. Therefore, the law of fact which guarantees freedom tends to be natural law infinitely. However, the establishment of the crime of cyber-provocation violates the natural law in essence and is an irrational legislation, which is embodied in the following aspects.

First of all, the establishment of the crime of Internet provocation is against the natural law at the level of free value. "Freedom is the sole and original right of everyone according to their human nature". The information conveyed by expression is good or bad, and it can not affect the choice of freedom of will. For "a mind under the control of the will, a mind possessing virtue, cannot be made a slave to excessive desire by what is equal to or superior to it, for what is equal to or superior to it is just. Nor can it be turned into slaves by something inferior to it, because something inferior to it will be too weak. There is only one possibility left - only its own will and free choice can make the soul a greedy companion. Therefore, it is totally unnecessary for the national legislature to restrict the essence of freedom of speech in the name of protecting others' freedom of hearing information from the perspective of external coercion.

Secondly, the establishment of the crime of Internet provocation is against the natural law at the level of justice. The massive application of the crime of Internet provocation and suppression has suppressed the exercise of citizens' right to freedom of expression. A man's purpose, or one set by an eternal command of reason, rather than by a vague and temporary desire, is to develop his abilities to the fullest and most coordinated degree, and ultimately to become a complete and consistent whole, to which every man must constantly strive to approach, and for which he must have That is freedom of speech. "Internet provocation" will be a large number of freedom of speech acts as a crime, not only with the general human feelings and values of the position against, but also the law itself to negate their own values!

2.2. The criticism of utilitarian punishment

Liberals argue that the constitutional right of citizens to freedom of speech, a slightly

improper form of freedom of speech, is subject to imprisonment. This penalty system is not a moral punishment, because retributive punishment is entirely crime-bound, and there is no penalty other than crime, and it is unreasonable to regard innocence as a crime on the basis of utilitarianism. Talk. The purpose of utilitarianism is not whether the crime, responsibility and punishment can be fully adapted, but whether it can play a positive role in crime prevention. The state's imprisonment for individuals is entirely due to the state's ability to reap the corresponding benefits. Even though Beccaria points out that crime prevention is better than punishment, this is the main purpose of all good legislation.

However, such an excessively preventive criminal law would put people at risk of acquittal and passive punishment, and it would also be contrary to Beccaria's subjective will to measure the happiness and disasters of life in an all-round way. Legislation is an art that guides people to enjoy the greatest happiness, or to say, the greatest happiness. Minimize the misfortunes people may encounter.

The basis of the utilitarian punishment is not the crime, but whether it is beneficial to the government. The crime of causing trouble is described as follows: more than 50 persons or more than 500 times of forwarding, the standard of the crime amount is reached. In the age of the Internet, such standards impose extreme stringency on national behaviour, which, in the eyes of liberals, is tantamount to deprivation of liberty. Therefore, "as a possible victim and protector, a criminal law based on danger, the possibility of recidivism, and the purpose of safeguarding the society means to everyone that although the victim is innocent or light punishment, it is unfair rather than protection". At the same time, there may also be excessive punishment, which seriously damages the basic rights of citizens.

Liberals believe that the emergence of the crime of cyber-aggression, in view of its own norms of ambiguity is more convenient for the judiciary, for example, in reality there is such a situation - citizens use the Internet to prosecute illegal acts of government officials, government officials in order to protect their "image" instead of the prosecutor. Showing its authority on the charge of "provoking trouble" completely ignores the basic rights granted to citizens by the

Constitution, which is quite different from the original purpose of utilitarianism itself to safeguard the "maximization of human happiness".

Chapter 3. Social dimension Of Crime Of Picking Quarrels And Provoking Troubles

The study of law has its natural limitations, which can not reasonably explain the full meaning of social behavior. Marx Weber holds that "people's social action tends to some practical norms, including customs, habits, conventions and laws. The boundaries between these social norms are very vague, and they can It's hard to tell which of them leads to a particular order when they coexist and work together. Therefore, he put forward the concept of Sociology of law, and the law will be discussed in sociology. Any crime phenomenon is determined by social existence. "The positivist school is not satisfied with supporting the society against the individual because it seeks to balance individual and social rights. It also supports the individual against the society". Supported by this idea, the sociology of crime believes that punishing offenders is to defend society, and the purpose of criminal law is to prevent crime. Therefore, it is of decisive significance to find out the social root of crime for crime prevention. As Philip said: "Every society has its own crime, these crimes are caused by natural and social conditions, the quality and quantity of which is adapted to the development of each social collective". Therefore, for example, the establishment of the legislation on the crime of cyber aggression has deep social roots in the eyes of liberals, mainly in the following aspects:

3.1. Irrational legal and cultural forms

Formal rationality means that all litigants must follow strict procedures, as long as there are slight errors, it will lead to adverse consequences. From Weber's extreme formalism standpoint, we can see that he attaches great importance to formal rationality. Although there is an inevitable contradiction between abstract formalism of legal logic and the need to satisfy substantive requirements by law, it seems to liberals that formal rationality is in the comparison between formal rationality and substantive rationality. Or occupy a relatively important position.

Liberals point out that Chinese history has always been known as "rule of man", lacking the corresponding tradition of rule of law, so there is no legal logic of thinking. The most superficial defect of the crime of "network provocation and trouble" is the lack of clarity required by the rule of law. First of all, can we see whether cyberspace can be equated with real society? There are two

kinds of viewpoints in the academic circles of our country. The first one is an analogical explanation, represented by Professor Zhang Mingkai (Zhang Mingkai, 2014a), which regards the network society as the same as the real society. The second one is the opposition represented by Chen Xingliang (Chen Xingliang, 1998a), but the first one is the mainstream. Whether this interpretation is extended or analogical, liberals point out that the analogical interpretation of Chinese traditional legal culture is a widely applicable system, which is a tradition.

3.2. Lack of respect for civil rights

Liberals reveal the spiritual roots of pocket crime in legal norms from the perspective of faith reverence. They point out that Chinese traditional culture has a very different view of nature from that of other countries in the world. In essence, it is a kind of reverence, just as in ancient times people did not understand the thunder, lightning, wind, rain and other gods.

The formal sublime nature of this god, human beings continue to explore to discover, so the real discovery of human itself, the Renaissance and the industrial revolution of later generations. "But the Chinese religion is just the opposite. It does not oppose man and God, this shore and the other shore like most of the world's religions. It elevates God by belittling man and denying man's value, man's real character and the interests of real life". This humanistic tendency never regards nature as a pure guest. The physical world of view, nature is not a pure world for the Chinese people to understand, it is entirely related to human survival and its living goals. Chinese religion is essentially human rather than God based. Complete humanism tends to overlook the existence of the omnipotent "God" above man, so the Chinese people do not fear spiritually, and do not fear or even care about the world after death, so greed and perversion of the law is inevitable. The opposition between the government and the people has existed for a long time in history. However, without the active participation of the people in the constitution-making and its implementation, the Constitution can not be transformed into constitutionalism. Therefore, the basic form of democracy can not be realized or realized in such a state.

Liberalists point out that establishing a rational belief requires a correct religion. Faith is the spiritual reflection of religion. "Religion is the reason why I think and admit (Beherrschung und Bekenntung)". Feuerbach believed that religion originated

from man's fear of nature. It was man's fear of the unknown that led to his fear of the unknown. Thus the fear of ignorance gradually formed a ritual, which was a subjective desire to request. Only by faith can we have reverence and awe. Therefore, Mr. Hu Shi said: "To solve the spiritual problems of the Chinese people, the most important thing is to find a good religion for the Chinese people to believe in!" For legislators, the absence of faith means that they can freely stifle the freedom of citizens without guilt, and for the judiciary, it means that they can be free of scruple and bullying.

The legal interests of the crime of cyberprovocation and trouble-making are fundamentally the revival of "nationalism". As the executors of state power, legislators and judiciaries are bound to strive to safeguard state power, which is human nature.

China's traditional culture of humanism is divided into strong, any foreign religion will become local characteristics sooner or later. However, this humanistic religion, together with democracy and human rights, is like a flower on the other side, so establish a good religion, especially for legislators and judiciaries in the spirit of reverence, in the belief of good doctrine. In this way, the violation of "human rights" for the sake of "national rights" can be spiritually avoided.

Chapter 4. Political dimension Of Crime Of Picking Quarrels And Provoking Troubles

"Politics is more fundamental than law, and it is the source of all laws. There is no law, and therefore no constitution is the basic political fact, because all laws depend on man. Law should be chosen, maintained and executed by people.

Is philosophy or political philosophy the guide of legal theory research? There are few discussions in the legal field. According to the world, philosophy is the foundation of all human subjects. In the author's opinion, political philosophy, not philosophy, is more closely related to the emergence of law and subsequent research. Because philosophy is a purely intellectual activity of private nature, enjoying full and complete spiritual freedom, and escaping from secular ethics, philosophy is incompatible with society. It ruthlessly mocks all fetters to consolidate its freedom. Therefore, philosophy, as a purely intellectual pursuit, is bound to be dangerous to any political society. Subversive. But the first and central issue of political philosophy is to examine the relationship between philosophy and political society, so political philosophy is also called

“sociology of philosophy”. The political philosophy descends the philosophy detached posture to the free person, closely relates with the political society, therefore in the author’s view, the political philosophy and the jurisprudence contact is closer than the philosophy.

4.1. Crisis of modernization of legal interest

Chen Xingliang listed Article 6 of the 1922 Soviet Criminal Code in his *Theory of Social Harmfulness - A Reflective Review*: “All acts or omissions that threaten the basis of the Soviet system and the legal procedures established by the workers and peasants regimes during the transition to the Communist system are considered crimes”. And to borrow Bibtov: “The bourgeois criminal code formally defines crime as an act prohibited and punishable by law when it is committed. Soviet legislation is different from this, it is from the substance, that is, from the damage to the legal order, harm to the definition of crime “to prove that the substantive characteristics of social harmfulness led to the class nature of the concept of crime, and eventually to the trend of legal nihilism. So Professor Chen Xingliang put forward the concept of “legal interest” on this basis to save the danger of human rights infringement caused by the substantive concept of “social harmfulness”. Professor Chen Xingliang’s first criticism of social harmfulness - that is, overemphasis on substantive will lead to excessive class division.

The common will must come from everyone before it can be applied to everyone. The common will that can not decide special things or make special decisions is no longer universal. “The social contract formed among citizens guarantees equality of rights and conditions”. As Kant said, “Your human nature should at all times regard the human nature of your own person, and that of others, as an end, and never as a means alone” (Kant, 2013). Rousseau pointed out in *On Inequality* that property was the ultimate cause of all inequalities, so the proletariat stabilized their dominant position through a more harmonious means, thus forming the law. “This is, or this may be the origin of society and law. They put new shackles on the weak, new powers on the rich, irreversible violations of natural liberties and permanent establishment of laws of ownership and inequality”. (Rousseau, 1967). In *On Inequality*, Rousseau, proceeding from the natural state and on the basis of different natural endowments, gradually evolved into property inequality. In order to safeguard property and life

security (avoid state of war) and establish a state by contract, Rousseau ingeniously discovered that laws that only safeguarded the interests of the ruling class could not be enforced. Therefore, the ruling class and the ruling class can reconcile, and finally merge into the will of the ruling class to achieve a perfect state of law, but this substantive inequality is finally established in the form of national will.

The author refers to the “crisis of modernization” as “liberalism” arising from the rebellion of modern political philosophy against classical political philosophy. Modern and contemporary political philosophers believe that “human natural freedom is not bound by any superior power in the world, not bound by the will or legislative power of man”. Here the “Natural Right” has gradually changed from the original “natural justice” to “natural rights” and tried to emphasize one thing as much as possible - “the priority of right over good”. As Falding pointed out: “A basic evolution of Western moral and political theory since modern times The trajectory is from the so-called natural law to natural rights, and after the depreciation of the word nature, the so-called natural rights become human rights, that is, the so-called human rights today (Zhang Mingkai, 2014b). Liberals emphasize that rights take precedence over good. The root of this lies in the tradition of natural rights, which denies the essential meaning of “natural right” - natural justice or natural correctness. “Modern political philosophy, starting with Machiavelli, subordinates virtue to politics (as if it were only politically useful virtue), and makes philosophy a means of serving the needs of human reality, reducing the possibility of human beings”.

Secondly, liberalism almost inevitably moves towards legalism, because the law can exclude all external equal treatment, and liberalism claims that its purpose is to treat all cultures, races and other public things equally, but the result is that all races and cultures become private spheres of affairs, not any more. Meaning has become a dispensable thing. We can see that liberalism’s pursuit of rights inevitably leads to nihilism, and as Strauss said, “the more respect for human rational status, the more equal the pursuit of equality, the more it reduces itself to the status of livestock”.

Professor Chen Xingliang pointed out in his article “*The Theory of Social Harmfulness - A Reflective Review*”: “In the concept of a crime with unified formal and substantive characteristics, how to deal with the relationship between the substantive characteristics of a crime - social harmfulness and the formal characteristics of a crime - criminal illegality has become a major

question. The question. “ (Chen Xingliang, 1998b) and that the existence of social harmfulness in the criminal law will inevitably lead to two standards of conviction, will affect the complete realization of the legality of crime and punishment. Professor Chen Xingliang confessed the irreconcilable conflict between formal rationality and substantive rationality, and eventually established the priority of formal rationality - legally prescribed punishment for a crime (no law is expressly not guilty, no law is expressly not punished) - in order to protect human freedom.

4.2. Critique of modernity crisis

Classical political philosophy is to pursue the most perfect political system and the happiest life. It recognizes the state of human inequality, while modernism recognizes rationality. It holds that man can perfect his rationality through experience, elevate man to the status of the same God and advocate equality for all. The greatest irony of this view is that man is equal to God. It is in the more we cultivate reason, the more we cultivate nihilism, the less are we able to be loyal members of society. The basic motive force or logic of modernity revealed by Koyev is struggle for recognition, that is, the prevailing “politics of recognition” or that the inherent logic or moral justification of modernity lies in “slaves” - all oppressed and enslaved people strive for self-liberation and “recognized” as equal freedom. In the end, this history will point to what Koyev calls the universal and homogeneous state. In this undifferentiated country, it meant that there was no distinction between nobility and lowliness, intelligence and stupidity, that everything was flattened, and that eventually Nietzsche’s so-called “the last man”. This “low but solid” basis of modernity is bound to lead to the greatest paradox - that modernity was originally intended to elevate man to the status of God, but ultimately to reduce man to the status of animals. Classical political philosophy starts from the political understanding of “pre-science”, that is, from the understanding of politics by citizens and politicians. This is the fundamental difference between classical political philosophy and modern political philosophy.

Plato explained the most perfect regime in the Republic as “Everyone does his duty”. However, he chose the “wise and moral noble” philosopher in the choice of national political leadership; we have to rethink why he chose not equal elections, but aristocracy, because officially He believes that the environment and self-cultivation and grasp of

natural justice are superior to ordinary people, so they can better guide people to find a happier life.

Socrates was searching all over Athens for the “wisest” man, but found that the whole of Athens was boastful. God told Socrates that he was the wisest because he knew he was not wise. From this we can see why Socrates knew he was not wise. Wasn’t it because he was wiser than others? Is this not enough to prove that Socrates is superior to wisdom? So he led the search for knowledge in Athens, telling people how to seek justice, how to lead a happier “spiritual” life. Justice is not something that may be prescribed by a foolish law, but something that is good for others. But not everyone knows what is good for people in general, and what is good for everyone in particular.

4.3. Free and equal against the rule of law

“Rule of law” often means “equality and freedom” for all. In a democratic country, public opinion is not only the only guide to individual reason, but also has unlimited power greater than any other country. In democracies, each is equal and free, so no one has to rely on or trust others, but “this similarity can give people almost unlimited confidence in public judgment” 578, because in democracies, everyone feels that they are autonomous and equal in front of their fellow citizens. And so he isolated himself, then he could not resist most actions.

Tocqueville clearly pointed out: “The two tendencies of equality: one is to make everyone’s spirit tend to new ideas; the other is to make it easy not to think. I can also see that, under certain legal systems, democratic social conditions promote the freedom of intellectual activity, which can also be abolished by democracy, so that freedom of intellectual activity will be tightly bound by the general will of the majority of the people after shattering the fetters imposed on it by a certain class or some people before. Nietzsche has pointed out that the common will formed by opinions limits noble qualities, and that an abolitionist, by appealing to the natural rights of wisdom, caters to the mediocre and vulgar desires of the masses and induces them to believe in his rights, which, as a result, seems to have more boundless prospects for tyranny than for wisdom. However, on the basis of social contracts, consent between equal sovereigns takes precedence over wisdom, so it is inevitable that wisdom is bound by the rule of law and may even lead to tyranny. Classicism is from the opposite point of view, and wisdom is prior to consent. So for the Classicist, “the best way is for a wise legislator

to make a code that citizens are willing to adopt on the basis of good will". He goes beyond the ordinary existence, because he is wise and the code that he makes should be as constant as possible, so in the view of the Classicist, "The best political system is the absolute rule of the wise; the best practical system is the rule of the noble under the law or the mixed system". Under this practicable system, noble nobles have a good upbringing and a public spirit. They make laws and abide by them, and their society gives them social characteristics in turn. Therefore, there is no need for democracy under freedom equality, or freedom of speech.

However, under the dual influence of liberal theory of natural rights and biblical beliefs, the political nature of natural rights has become vague, or is no longer the original essence of the pursuit of the best system, people live a happy life.

The second level of freedom against the rule of law is the frequent change of law. In *On Democracy in the United States*, Tocqueville pointed out: "It is not always feasible to call on people to make laws, whether directly or indirectly. But there is no denying that when it is possible to do so, the law will have enormous authority. So once the law is enforced, there are only two ways to subvert it - to try to change public opinion across the country, or to trample on the will of the people. But we have learned that a single will cannot confront public will in a democratic society, so a separate will must follow public opinion. But we can also see the importance of public opinion to the law, that is, as long as the common will changes, then the change of law is taken for granted.

At the same time, the common will, based on contractual democracy, can cause riots among the majority, as Tocqueville put it, if you admit that a person with wireless authority can abuse his power against his opponent, why not admit that the majority can do the same? Because all things are treated equally, the society is either brewing revolution or about to collapse.

The social contract enjoys supreme rights, and this infinite authority is a very dangerous thing. There is no authority in the world that has inviolable power over others. Extreme democracy is not terrible. The

terrible thing is that this supreme authority has so little to do with tyranny.

Conclusion

The identification of the "offence of provocation" on the Internet has aroused intense criticism from liberals. The reasons for the criticism of liberals are deeply rooted in Chinese traditional culture and have profound social roots. The proposals put forward by the Liberals should be fully considered by legislators, judiciaries and citizens. The primary purpose of legislators in enacting laws is to maximize the interests of the happiest society. However, unless at special political moments, citizens' basic human rights can not be curtailed or even ignored, no pocket charges or "phenomenal legislation" should be set up, and the legislators should enact any law or any other law. The amendment of any article must be guided by the purpose of the criminal law. Article 2 of the criminal law must be branded in the legislator's mind. All the specific legal norms must be based on the existing legal principles. The state is certainly a sign of political existence, and the law also exists in the political connotation. However, the law is bound to play a guiding and protective role in the regular time, so the humanitarianism of the law is bound to be an indispensable inherent requirement. A kind of legal expression of politics is criminal policy, so the purpose of criminal law also reflects the political appeal, "rule is a test, just as any life is an experiment. Every month, we must place our fate on the foresight of the future, which must be based on imperfect knowledge. Now that this experiment is part of our system, we should always be vigilant against trying to control what we hate and deem fatal unless they are so urgent to interfere with pressing legitimate goals that they require immediate control to save the country. Based on classicism, although the goal of the state is for the benefit of society, we must not blindly reduce the happiness of people's lives. Judiciary should maintain a rigorous attitude when applying the law. Criminal law is the weapon of the law. A little carelessness will result in irreversible consequences.

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