

Affirmative Theory of the Status of the Constituent Element of "Hooligan Motive" in the Crime of Provoking Nuisances

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Abstract: The revision of the Criminal Law in 1997 split the offence of hooliganism into the crime of provoking nuisances and the crime of indecent assault on women and children, etc. Disputes have arisen in theoretical circles as to whether 'hooligan motive' is a subjective element of the crime of provoking nuisances. Firstly, the basic knowledge of legal logic is used to analyse the logical errors of the denial doctrine and the problems of practical implementation, thereby refuting its validity. Secondly, the affirmative doctrine is proved by showing the significance of 'hooligan motive' in limiting the scope of the establishment of the crime, distinguishing this crime from the other, and preventing the abuse of objective imputation and the underpinning clause. The affirmation of the elemental status of 'hooliganism' is a conclusion derived from the systematic interpretation of criminal law norms, and is a requirement of the principle of subjective-objective unity. The affirmative doctrine establishes scientific and reasonable criteria for the determination, ensuring the accuracy of justice and avoiding unfairness in the conviction and sentencing of specific cases.

Keywords: the crime of provoking nuisances; hooligan motive; legal logic; elements of subjective elements

Introduction

When the Criminal Law was revised in 1997, the offence of hooliganism was divided into specific offenses such as the crime of provoking nuisances and the crime of indecent assault on women and children, and the crime of provoking nuisances was set up independently, i.e., article 293 of the Criminal Law stipulates that: “Anyone who disrupts the social order by committing one of the following provocative acts shall be sentenced to not more than five years’ fixed-term imprisonment, detention, or control: (1) anyone who randomly beats another person under aggravating circumstance; (2) chasing, intercepting, abusing or intimidating another person under aggravating circumstances; (3) forcibly taking or demanding, or arbitrarily damaging, or occupying public or private property under aggravating circumstances; (4) creating a disturbance in a public place, causing serious disorder in the public place. Anyone who gathers others to repeatedly commit the acts in the preceding paragraph and seriously disrupts the social order shall be sentenced to fixed-term imprisonment of not less than five years and not more than ten years, and may be fined as well.” In recent years, the legal academic community has sparked controversy over whether “hooligan motive” is a subjective element of the crime of provoking nuisances. Some scholars are against the hooligan motive as the subjective elements of the crime. Judicial practice by the influence of the knowledge of the negative, the judicial determination of the crime of provoking nuisances is improper expansion or even generalization trend. This paper uses the legal logic knowledge of “hooligan motive” negative viewpoints to critique, for the affirmative argument, revealing its logical status and practical value in the provocation of the offence of determination.

1. The controversial focus of “hooligan motive” in the crime of provoking nuisances

According to Article 293 of the Criminal Law, the crime of provoking nuisances refers to the act of fabricating disputes without cause, causing unreasonable disturbances, inciting public disorder, wantonly provoking, or assaulting and harming innocent people, motivated by a desire to flaunt dominance, seek amusement, or pursue mental stimulation. Under the classification criteria for misdemeanors and felonies, the maximum statutory penalty for this crime is five years imprisonment, so it does not fall under a pure minor crime. From the perspective of constitutive element of crime, the object of this crime is the state’s public management order. The objective elements are manifested in the above four types of behaviors. The subject of the crime requires individuals aged 16 or older with normal mental capacity. And the subjective element is criminal intent. Among them, the most controversial issue is whether the subjective element requires the element of “hooligan motive”.

1.1 The dispute over the status of the elements of “rogue motives”

The crime of provoking nuisances was separated from the crime of hooliganism in the Criminal Law of 1979. In traditional legal interpretation, “hooligan motive” has been regarded as one of the subjective elements of this crime. This means that the perpetrator must have such a hooligan motive to constitute this crime, such as venting emotions, seeking mental stimulation, showing off strength and arrogance, or other abnormal psychological impulses to constitute the crime of provoking nuisances. This kind of motivation is often manifested as blatant contempt for national laws and regulations as well as social morality, and by provoking trouble to disrupt social order in order to achieve a sense of psychological satisfaction. Since the implementation of the revised 1997 Criminal Law, the theory of criminal law in our country has generally held a positive position. For instance, “when a perpetrator under the influence of motives such as seeking mental stimulation, venting negative emotions, showing off power, and creating trouble without cause, the hooligan motive serves as a key factor distinguishing this crime from others.”¹

However, in recent years, some scholars have opposed taking the criminal motive as an element of the subjective elements of this crime². Influenced by the denial theory, judicial practice also disregards the criminal constitutive status of “hooligan motive”, leading to the generalization of the determination of the crime of provoking nuisances.

1.2 The evidence for the denial theory

A variety of arguments have been put forward to establish the negation theory, attempting to negate the necessity of “hooligan motive” as the subjective element of the crime of provoking nuisances. The main reasons include: (1) The hooligan motive are ambiguous. The so-called motives of hooligan, such as seeking stimulation, venting emotions, and showing off strength and arrogance, are mental states without specific meanings and are hard to be recognized by others. They contain ambiguous and unclear content. Taking it as a culpability element of the crime of provoking nuisances does not have the significance of limiting the scope of the crime. (2) Infringement of legal interests is independent. Even acts without hooligan motive may seriously violate the legal interests of this crime. (3) Objective conviction is feasible. It is entirely possible to determine whether a certain behavior constitutes the act of provoking trouble based on objective criteria without take the hooligan motive as an element of responsibility for this crime. (4) Neither taking the hooligan motive as the subjective element of this crime nor improperly expanding the scope of punishment for this crime. (5) Not requiring the perpetrator to have a hooligan motive subjectively does not mean that the perpetrator does not have an intention subjectively. The prosecution must still prove the perpetrator’s intentionality. (6) Requiring the perpetrator to have a hooligan motive subjectively might be to distinguish this crime from others. However, this crime is not in opposition to crimes such as intentional injury, intentional destruction of property, extortion, or robbery. Proper application of

¹ Zuofu Wang (Ed.): Practical Research on the Specific Provisions of Criminal Law (Part II), China Fangzheng Publishing House, 2003, 1441

² Mingkai Zhang: Criminal Law (Part II) (Fifth Edition), Law Press, 2016, 1068-1069

the doctrine of imaginative concurrence of offenses can resolve overlaps without relying on motive. (7) The requirement that the actor is subjectively motivated by hooligan motive may stem from the induction of objective facts. However, criminal law is a normative study rather than a factual one. No one can guarantee that the crime of provoking nuisances that is not motivated by hooliganism will not occur.

Faced with the forceful challenges posed by the denial theory, recent editions of authoritative legal textbooks have adopted a more ambiguous stance toward the role of criminal motive in this offense: “The motives for this crime may be diverse. Some aim to stir up trouble to gain mental stimulation, some seek pleasure by causing wanton disturbances, some strive to show off their abilities by making a commotion, and some do so to prove their ‘capabilities’ and ‘courage’, etc.”³

2. The denial theory not only contradicts legal logic but also has poor practical effects

2.1 Legal-logical rebuttal to the fallacies of the denial theory

The arguments of the denial theory are riddled with logical fallacies and fail to persuade. Proponents of this theory present a torrent of reasons, with a lot of evidence and fluent speech. It seemed to be progressive and solid, but in fact, it couldn't stand up to scrutiny. Because if it either shifts concepts, changes the topic, or is ambiguous and vague. Analyze them one by one as follows:

i. “The so-called hooligan motives, such as seeking excitement, venting emotions, and showing off strength and arrogance, are mental states without specific meanings and hard to be recognized by others. They contain ambiguous and unclear content. Taking them as the responsibility elements of the crime of provoking nuisances does not have the significance of limiting the scope of the crime.” Here, commentators accuse the “hooligan motive” of being ambiguous and having no specific meaning. The question is: Is the “hooligan motive” truly devoid of concrete meaning, and is it genuinely unmanageable in judicial practice? During the decades from the entry into force of China’s first Criminal Law on January 1, 1980 to its expiration on September 30, 1997, judicial practice identified the crime of hooliganism, far more than hundreds and thousands cases. If the motive of hooliganism has no specific meaning and cannot be identified, it would be equivalent to saying that the crimes of hooliganism previously determined by judicial authorities were all confused and even all wrong cases — for how could a crime be justly adjudicated if it is determined based on an uncertain condition for the establishment of the crime? But such a misinterpretation of judicial practice over the past decade or so will surely not be tolerated by our country's judicial authorities.

³ Mingxuan Gao and Kechang Ma (eds.) : Criminal Law (7th Edition), Higher Education Press, Peking University Press, 2016, 543

ii. “Even acts without hooligan motives may seriously infringe upon the legal interest of this crime”. This reason contradicts the first argument. As mentioned earlier, the hooligan motive is something that is difficult to grasp and has no specific content. Here, it is certain that the “hooligan motive” is something that can be clearly defined, but the legal interest protected by this crime can still be violated without such a motive. The question is: Is the hooligan motive really a real “existence” ? The theory vacillates, first denying its definability and then tacitly affirming its relevance, which is a blatant self-contradiction. Furthermore, can the same legal interest be infringed upon by only one act? Not at all! For instance, property rights may be infringed by robbery, theft, or fraud. The theorist holds a dual attitude towards the existence of “hooligan motive”, both denying their existence and acknowledging their potential impact on legal interests. There is a mistake that the judgment they make does not conform to logical laws in terms of the relationship between the connotations of the logical antecedent and consequent terms.

iii. “Without taking the hooligan motive as the element of responsibility for this crime, it is also entirely possible to objectively determine whether a certain behavior constitutes the act of provoking nuisances. After determining the fact that the perpetrator assault others without cause (at will), what needs to be further judged is whether the objective circumstances are bad, rather than whether it was motivated by hooliganism subjectively.” Please note that if one does not rely on the hooligan motive, how can the fact that the perpetrator has “beaten others for no reason (at will)” be determined? Here, the arguer “engage in semantic subterfuge”, which means that they actually use rogue motives while explicitly denying its status as a constitutive element. Besides, unlike the concept of “circumstances” of criminal law in Germany and Japan, the term “circumstances” encompasses multidimensional meaning in China: “whether the nature of the social relationship violated by the harmful act is significant”, “whether the objective harmful result produced by the act or the danger of the act causing harm is serious”, subjective personality conditions such as “whether the actor has a more condemnable identity”, the perpetrator’s subjective mental state (including criminal intent, criminal negligence, the moral baseness of motives, and specific criminal purposes). However, the criminal laws of Germany and Japan merely limit “circumstances” to objective harm.

iv. The claim that “excluding the hooligan motive as a subjective element of this crime does not unduly expand its scope of punishment” is untenable. Logic tells us that the richer a concept’s connotation, the narrower its extension. Conversely, reducing a concept’s connotation inevitably broadens its extension. If the connotation of “the crime of provoking nuisances” is added - that is, the restrictions on the conditions for establishment are increased, its extension would shrink. Conversely, reducing the constituent elements necessarily expand the scope of the establishment of this crime. This is an unbreakable logical rule. The denial theory blatantly violates this irrefutable logical principle. As the analysis made by the author as an example of

assaulting others also proves that without the restriction of criminal motive, the criteria for establishing the basic offense of provoking nuisances would fully overlap with those of intentional injury.

v. The assertion that “the actor is not required to have a hooligan motive subjectively does not mean that the actor is not required to have an intention subjectively and be objectively convicted” commits the logical fallacy of shifting the debate’s focus. The arguer made a logical mistake of changing the topic here. Objective liability refers to the determination of guilt based solely on objective elements without considering subjective elements. In China, no one claims that the crime of provoking nuisances is a negligent crime, regardless of the understanding of the status of the hooligan's motive. The hooligan motive is a further limitation of the subjective elements of the crime of provoking nuisances on the basis of acknowledging that it is an intentional crime. That is to say, whether or not it is claimed that the hooligan motive is a subjective constituent element, it does not affect the attribute of this crime as an intentional crime and both require the significance of criminal intent in the conviction of this crime. Therefore, whether it is the negation theory of the hooligan motive or the affirmation theory of the hooligan motive, it does not advocate that conviction can be made merely based on objective elements.

vi. “Requiring the perpetrator to be subjectively motivated by hooliganism might be to distinguish this crime from others. However, this crime is not in opposition to crimes such as intentional injury, intentional destruction of property, extortion, and robbery. At the very least, by skillfully applying the the doctrine of imaginative concurrence, the issue of conviction can be reasonably resolved”. Here, the arguer uses the ambiguous word “might” . When we say “A” might be “B”, it subtly implies that “A” is not necessarily “B”. The author emphasizes the hooligan motive in the subjective aspect of the crime of provoking nuisances, which stems from the inherent nature of the crime itself. This element, of course, helps to distinguish the crime of provoking nuisances from other similar crimes, not merely a tool for distinguishing it from similar offenses.

vii. “The requirement that the actor is subjectively motivated by rogue motives might stem from the induction of objective facts. However, criminal law is the study of norms rather than facts. No one can guarantee that the crime of provoking nuisances will ever occur without a hooligan motive”. The arguer once again used the word “might” to make an ambiguous statement.

After the above analysis, it can be seen that the viewpoints of the denial theory lack convincing arguments. These arguments have logical flaws, such as violating the rules of the relationship between the connotation and denotation of concepts, substituting concepts in arguments, and being ambiguous in the definition and use of concepts and judgments. Consequently, logically speaking, the denial theory is untenable.

2.2 The misleading impact of the denial theory on judicial practice

The denial theory's proposition that the "hooligan motive" does not need to be regarded as a subjective constituent element of the crime of provoking trouble has raised some problems in judicial practice.

i. The negation theory has led to an overbroad application of the crime of provoking nuisances. The objective behavioral patterns and constituent elements of this crime overlap with those of other crimes. By disregarding the "hooligan motive", judicial officers may base convictions solely on superficial behavioral manifestations, while neglecting the perpetrator's subjective culpability, thereby arbitrarily determining this crime and inappropriately expanding the scope of application of this crime. The denial theory would lead to the wrongful determination of harmful acts such as provoking nuisances as crimes like intentional injury and intentional destruction of property. Because it ignores the "hooligan motive" behind the behavior and fails to reflect the evaluation of the subjective malignancy of the perpetrator, thus the evaluation of the case facts is not comprehensive.

For instance, the inability to effectively distinguish the crime of provoking trouble from other crimes and the crime of intentional injury: The "random beating of others" in the crime of provoking nuisances and the "intentional injury to others" in the crime of intentional injury are similar in objective behavior, but the crime of provoking nuisances requires the perpetrator to have the hooligan motive of "creating trouble for no reason" or "showing off strength and arrogance". Disregarding this motive blurs the boundary between the two crimes. For instance again, the distinction from the crime of intentional destruction of property: The "arbitrary destruction of property" in the crime of provoking nuisances overlaps with the crime of intentional destruction of property in terms of objective behavior. The negative theory may lead to an inability to accurately distinguish between the two crimes, as the object of the crime of provoking nuisances is random, while the object of the crime of intentional destruction of property is usually specific. Another example is the distinction from the crime of extortion: The act of "forcibly taking" in the crime of provoking nuisances may be objectively similar to that in the crime of extortion, but the perpetrator of the crime of provoking nuisances usually has a rogue motive of "showing off strength and being competitive", while the perpetrator of the crime of extortion aims to illegally possess others' property. Ultimately, the denial theory may lead to the crime of provoking nuisances becoming a "catch-all crime", incorporating acts that originally did not have criminal punishable nature into the criminal circle, which violates the principle of legality.

ii. The denial theory leads to improper sentencing in specific cases. The legal penalties for the crime of provoking nuisances differ significantly from those of offenses like intentional injury. For instance, the maximum statutory sentence for the basic offense of "provoking nuisances" is 5 years imprisonment, whereas intentional injury (resulting in minor harm) carries a maximum sentence of 3 years imprisonment.

If the “hooligan motive” is not taken into account and the case of intentional injury is determined as the crime of provoking nuisances, it will lead to the perpetrator facing a heavier sentence due to the incorrect determination of the charge, thereby causing injustice in the sentencing. On the other hand, if the “hooligan motive” is ignored and cases of provoking nuisances are wrongly identified as crimes such as intentional injury, it will lead to a relatively lenient sentence, and the result will be the indulgence of the offender.

The above analysis clearly demonstrates that the denial theory leads to the generalization of the application of charges and the unfairness of conviction and sentencing in judicial practice, failing to effectively distinguish the crime of provoking nuisances from other crimes. Therefore, emphasizing the “hooligan motive” as a subjective element of this crime is not only a theoretical necessity but also an inevitable requirement in judicial practice.

3. The justification of the affirmation theory on the “hooligan motive”

3.1 Deriving the affirmation theory: a systematic interpretation of criminal law provisions

To determine whether this crime requires a “hooligan motive” subjectively, it is essential to comprehensively consider in terms of the object elements, objective behavioral elements and the statutory sentencing framework of this crime. At the same time, it should also be compared horizontally with other similar crimes such as the crime of intentional injury and the crime of intentional destruction of property. A systematic interpretation of the criminal law norms for the crime of provoking nuisances leads to an affirmative conclusion.

Article 2 of the Judicial Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Provoking Nuisances (Judicial Interpretation No. 18 of 2013)⁴ indicated that the act of arbitrarily assaulting others and disrupting social order shall be deemed as “circumstances of a severe nature” under Item 1, Paragraph 1, Article 293 of the Criminal Law if it meets any of the following conditions: “(1) Causing minor injuries to one or more persons or slight injuries to two or more persons; (2) Causing serious consequences such as mental breakdown or suicide of the victim; (3) Beating others at will on multiple occasions; (4) Assaulting others arbitrarily with a weapon; (5) Arbitrarily assaulting mentally ill people, the disabled,

⁴ the Judicial Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Provoking Nuisances (Adopted at the 1,579th Meeting of the Judicial Committee of the Supreme People’s Court on May 27, 2013 and at the Fifth Meeting of the 12th Procuratorial Committee of the Supreme People’s Procuratorate on April 28, 2013) (Judicial Interpretation [2013] No. 18)

vagrants and beggars, the elderly, pregnant women and minors, causing significant negative social impact; (6) Arbitrarily assaulting others in public places, resulting in severe disruption of public order; (7) Other circumstances of serious nature.

Taking Item 1 of this Article as an example, “assaulting others and causing minor injuries to one person or slight injuries to two or more persons” qualifies as “assault under severe circumstances”, and may constitute the crime of provoking nuisances. If the denial theory which rejects the necessity of a “hooligan motive” were applied, the act of “assaulting others and causing minor injuries to one person” under provoking nuisances would share identical elements with the crime of intentional injury in cases of minor harm. However, according to the provisions of China’s Criminal Law, the maximum statutory sentence for the basic offender of the crime of intentional injury⁵ is three years of fixed-term imprisonment. The maximum statutory sentence for the basic offense of the crime of provoking nuisances is five years of fixed-term imprisonment.⁶ In both cases, although the four elements of the crime are exactly the same and there is no difference at all, the sentencing results will vary greatly. For specific cases, once a judge determines it as the crime of intentional injury, the maximum sentence can be three years in prison. Once a judge determines a specific case as the crime of provoking nuisances, the maximum sentence can be five years in prison. In such circumstances, if the “hooligan motive” is not emphasized, it will lead to the arbitrary determination of charges in judicial practice, resulting in the phenomenon of “inconsistent adjudication of similar cases”. It can be seen that the conclusion obtained by insisting on the denial theory is unfair and unreasonable.

If the denial theory is adopted and the motive of the hooligan is not taken into account, “assaulting others and causing slight injuries to two or more people” can still constitute the crime of provoking nuisances, such cases would be punishable by up to five years imprisonment. However, causing slight injuries to two persons does not meet the threshold for the crime of intentional injury. This demonstrates that the hooligan motive must be regarded as a subjective element in order to reasonably balance the legislative setting of the statutory penalties for the crime of provoking nuisances and the crime of intentional injury (minor injury).

⁵ Article 234 of the Criminal Law: “Whoever intentionally injures another person’s body shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance. Whoever commits the crime mentioned in the preceding paragraph and causes serious injury to the victim shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years. Whoever causes the death of the victim or causes the victim to suffer serious disability by extremely cruel means shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death penalty. Where there are other provisions in this Law, such provisions shall prevail.”

⁶ Article 293 of the Criminal Law: “Whoever commits any of the following acts of provoking nuisances and undermines public order shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance: (1) Beating others at will and the circumstances are flagrant; (2) Chasing, intercepting, abusing or intimidating others and the circumstances are flagrant; (3) Forcefully taking or seizing, wantonly damaging, occupying public or private property and the circumstances are serious; (4) Creating a disturbance in a public place and causing serious chaos in the order of the public place. Whoever assembles a crowd to repeatedly commit the acts mentioned in the preceding paragraph and seriously undermines public order shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and may also be fined.”

3.2 The affirmation theory: a requirement of the subjective-objective unity principle in criminal liability

The subjective-objective unity principle is one of the fundamental principles of China's criminal law. It requires that when determining a crime, both specific subjective elements and corresponding objective elements must be present simultaneously and be unified. This principle demands that convictions should not be made merely based on the mode of the act or the objective consequences of the act, while ignoring the subjective mindset of the perpetrator. Taking “hooligan motive” as the subjective element is a concrete manifestation of this principle in the crime of provoking nuisances. It not only reflects the subjective malignancy of the perpetrator but also limits the nature of their behavior, thereby effectively distinguishing the social harmfulness of the behavior. Logically speaking, motivation is the internal driving force of behavior and determines the degree of social harmfulness of the behavior. For instance, the same act of assaulting others, if driven by a “hooligan motive”, should be considered to inflict greater social harm than ordinary disputes. Therefore, the “hooligan motive” serves as a concrete manifestation of the principle of subjective-objective unity within the crime of provoking nuisances.

The unity of the subjective and the objective is the unity of “specific subjective elements” and “corresponding objective elements”. Objective attribution of guilt refers to the determination of a crime solely based on the objective consequences or harmful acts of the behavior, while ignoring the subjective mindset of the perpetrator, which may lead to the abuse of the charge. In the crime of provoking nuisances, if the “hooligan motive” is not emphasized, it may lead to confusion between the crime of provoking nuisances and similar crimes such as the crime of intentional injury and intentional destruction of property. These criminal offenses may be similar to the crime of provoking nuisances in the objective aspect, but their subjective motives are different, and the social harmfulness of the behaviors taken as a whole also varies. If subjective motives are not taken into account, due to the different understandings of judicial personnel, the determination of the charges may be made arbitrarily based on individual judgments, resulting in the phenomenon of different judgments for the same case. Therefore, emphasizing “hooligan motive” helps to prevent objective attribution and the phenomenon of different judgments for the same case, ensuring the fairness and consistency of the judiciary.

3.3 To distinguish the crime of provoking nuisances from other crimes, the affirmative view is necessary

The crime of provoking nuisances is separated from the crime of hooliganism, which is a “catch-all crime”. Nowadays, if the necessity of the “hooligan motive” is rejected, the crime of provoking nuisances will once again embark on the path of becoming a “catch-all crime”. The catch-all clause of the crime of provoking nuisances is prone to be abused in practice, leading to some ordinary disputes being wrongly identified as crimes. To prevent such abuse, it is necessary to clarify the necessity of the “hooligan motive” as a subjective element, and further clarify its connotation, narrow the extension of the crime of provoking nuisances, which could avoid the abuse of this

crime. According to the the Judicial Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Provoking Nuisances, the crime of provoking nuisances is only constituted when the perpetrator "creates trouble for no reason" or "creates trouble under pretext". This interpretation emphasizes the significance of "hooligan motive" in distinguishing the crime of provoking nuisances from other crimes. Therefore, the difference between ordinary disputes and provoking nuisances lies in that an ordinary dispute is usually triggered by specific matters, and the actor has no motive to "stir up trouble for no reason", while the act of provoking nuisances is often driven by hooligan motives such as "seeking excitement" and "venting emotions", and the behavior is groundless. By clarifying the "hooligan motive", the abuse of the cat-all clause could be effectively avoided, ensuring a clear boundary between ordinary disputes and the crime of provoking nuisances. This is a key element in distinguishing between crime and non-crime, as well as between this crime and that crime.

3.4 The judicial interpretation also holds the stand of the affirmative view

Article 1 of the above-mentioned "Judicial Interpretation" clearly stipulates: "Where an actor, for the purpose of seeking excitement, venting emotions, showing off strength and being domineering, etc., creates trouble for no reason and commits the acts stipulated in Article 293 of the Criminal Law, it shall be recognized as 'provoking nuisances'. Where an actor, due to occasional conflicts or disputes in daily life, pretexts to stir up trouble and commits the acts stipulated in Article 293 of the Criminal Law, it shall be recognized as 'provoking nuisances', except where the conflict is intentionally triggered by the victim or the victim bears the main responsibility for the intensification of the conflict. Where an actor, due to disputes over marriage and love, family, neighborhood, debts, etc., commits acts such as beating, abusing, intimidating others, or damaging or occupying others' property, it is generally not recognized as 'provoking nuisances', except where, after being criticized, stopped or punished by relevant departments, the actor continues to commit such acts and disrupts social order". In the author's view, this Article is actually a detailed explanation of the hooligan motives, such as "seeking excitement, venting emotions, showing off strength and and arrogance, and creating trouble for no reason", that is, it specifies under what specific circumstances the actor could be determined to have hooligan motives.

The above analysis demonstrates the necessity of "hooligan motive" in the crime of provoking nuisances, as well as its indispensable role in preventing objective attribution, clarifying the boundaries between crime and non-crime, and differentiating this crime from others crimes.

4. Conclusion

The most controversial issue in the understanding and application of the crime of provoking nuisances is whether the “hooligan motive” should be regarded as a subjective element. The author comprehensively refutes the existing problems of the negative view from both theoretical analysis and practical implementation, and then demonstrates the scientific nature of hooligan motives as an element of the subjective constituent. The “hooligan motive” is the conclusion derived from the systematic interpretation of criminal law norms, the requirement of the principle of unity of the subjective and the objective, and the key to distinguishing the crime of provoking nuisances from other crimes. The affirmative view can establish scientific and reasonable determination standards to prevent judicial arbitrariness, ensure the reasonable application of this crime, and provide a solid theoretical support for maintaining social order and protecting citizens’ rights and interests.