刑法的心理学分析

The Psychological Analysis of Criminal Law

克 彬著



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京师刑事法学博士文库

经过精心筹划,"京师刑事法学博士文库"在北京师范大学这 所拥有百年历史的著名高等学府面世。该文库在今日之北师大创 办,可谓生逢其时,躬逢其势,恰逢其地。

000 所谓生逢其时, 乃指文库诞生于中国刑事法学理论研究进入精耕细作阶段。这是一个需要并且能够产生精深的刑事法学理论专著的时代, 文库的内容恰好迎合了这种时代的需要。

所谓恰逢其地,乃指北京师范大学为文库的茁壮成长提供了良好的环境和肥沃的土壤。众所周知,北京师范大学是我国极少数目前即拥有百余年历史的著名高校之一。她发端于1902年的京师大学堂师范馆。经过百余年的历史积淀,她不仅有着深厚的文化底蕴与优良的人文环境,而且在诸多人文社会学科领域达到了国内或者世界一流的水平,培养了大批国家栋梁之材。长期办学实践形成的厚重稳健的办学风格和"学为人师、行为世范"的办学理念,为法学这一逻辑严谨、内容深邃、价值超凡的社会科学在北师大的发展提供了得天独厚的条件。古人云:"源不深而望在北师大的发展提供了得天独厚的条件。古人云:"源不深而望流之远,根不固而求木之长,德不厚而思国之安",犹如"伐根以求木茂,塞源而欲流长"。没有深厚的人文底蕴与长期的学术积淀作为基础,要想在法学领域有所建树,即便费尽一时之心力,亦难免流于肤浅,不成大器。在北师大创办刑事法学博士文

库,自始避免了先天不足。

毋庸讳言,与众多成熟并稳步前进的学科相比较,北京师范大 学的法学学科还是非常年轻的学科。由于种种原因,不管是学术人 才的培养和引进,还是学术理论的创新和发展,法学学科都要比其 他社会学科逊色。这不仅使得京师法学在20世纪90年代错失发展 的良机, 而且与北京师范大学闻名遐迩的国内与国际地位极不相 称。令人欣慰的是,这种情况自2005年有了重大改观。在北京师 范大学校领导的大力支持下,以著名中年法学家赵秉志教授为院长 的北京师范大学刑事法律科学研究院于2005年8月18日在北京隆 重成立,成为中国国内刑事法学领域中首家且目前唯一的、专门从 事刑事法学研究与人才培养的独立性、综合性学术研究机构。2006 年4月26日,在北京师苏大学法律系的基础上,北京师苏大学又 正式成立了法学院。两院相继成立并得以迅速和良性的发展、标志 着北京师范大学法学学科全面繁荣的新时代的到来。"人事有代 谢,往来成古今。江山留胜迹,我辈复登临。"随着法学科学建设 在北师大的全面展开, 我们完全有信心经过若干年的努力, 让北师 大法学研究跻身于中国乃至世界法学强者之林。量其最合置的

"桃李不言,下自成蹊"。北京师范大学以其深厚的学术底蕴与宽松、自由的教育环境,吸引着国内外的青年学人慕名而来,追求精神的提升与文化的发展。"千里之行,始于足下",任何宏大的事业都必须从一点一滴做起。北京师范大学刑事法律科学研究院深知,"百年之计,莫如树人",十分重视刑事法学学科的人才建设,在建院不长的时间里,不仅引进了多位学术功底深厚、科研能力突出、在国内外有一定学术影响的中青年法学学者,而且招聘了一批毕业于国内外著名法学院、综合素质优秀、学术功底扎实的青年才俊。为了培育新人,使其在学术上不断推陈出新,北京师范大学刑事法律科学研究院凭借学校坚实宽广的学术综合实力与浓郁深厚的人文氛围,决定建立"京师刑事法学博士文库",支持年轻的法学博士和博士后将其博士学位论文、博士后出站报告以学术专著

的形式付梓出版,以此作为促进京师刑事法学发展的重大举措之一。由北京师范大学刑事法律科学研究院的资深学者组成的编委会负责"京师刑事法学博士文库"的运作。

"京师刑事法学博士文库"主要面向北京师范大学刑事法律科学研究院所培养的法学博士、博士后以及引进的具有法学博士学位的教学科研人员。鉴于目前刑事法律科学研究院已经初步形成学历层次高、年龄结构年轻化、专业知识结构合理、团结和谐、奋发向上的学术研究梯队,本文库将同时兼顾实体法学与程序法学,以多学科、多维度的精神兼容并蓄,以开放的态度欢迎跨学科方面的研究成果,使其具有视野宽广、包容性强的时代特征。简言之,"京师刑事法学博士文库"将以质取文,唯质取材,但凡有所创新、质量上乘的著作,均可入选。

"京师刑事法学博士文库"编委会将主动联系新加盟的北京师范大学刑事法律科学研究院的法学博士和研究院毕业的博士生,了解其博士学位论文的选题、内容及结构等,以宁缺毋滥、铸造精品的原则及严谨、踏实、创新的学术态度从中谨慎选择优秀之作,并认真审读,提供切实的修改补充建议,供作者修正参考,并负责联系出版,虚心接受国内外刑事法学同行和社会读者的批评指正。我们希望"京师刑事法学博士文库"的作品虽不不管,对能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属曲高之作,却能洞明世事,传递俗理;虽属由高之作,却不管,只要是加盟刑事法律科学研究院的法学博士同仁创作出的原、只要是加盟刑事法律科学研究院的法学博士同仁创作出。愿

"泰山不拒细壤,故能成其高;江海不择细流,故能就其深"。 学术事业的发展与壮大依赖于理论的点滴积累。"京师刑事法学博 士文库"在目前也许只是我国刑事法学学术事业中刚刚吐青的新 芽,但是我们相信,它会在"京师刑事法学博士文库"编委会、 加盟刑事法律科学研究院的诸位博士以及国内外方家学者和同行的 精心培育之下,逐步成长为国内外瞩目的参天大树,从而为繁荣、深化我国刑事法学学术研究,推动国内外刑事法学思想交流与学术合作,促进社会主义法治建设,作出有益的贡献。

"京师刑事法学博士文库"编委会将主动联系新加盟的北京师范大学刑事法律科学研究院的法学博士和研究院毕业的博士等,了解其博士学位论文的选题、内容及结构等,以宁缺毋滥、務遗精品的原则及严谨、踏实、创新的学术态度从中谨慎选择优秀、并认真审读,提供切实的修政补定建议,供作者修正参考、并负责联系出版、虚心接受国内外刑事法学同行和社会读者的批评增正。我们希望"京师刑事法学博士文库"的作品员属阳春白雪之作,却能漏明世事,传递俗理;虽属曲高之作、却不至春台雪之作,却能漏明世事,传递俗理;虽属曲高之作、却不至于合者甚享。同时特别申明;文库的范围不仅限于博士学位论大合者表示,对可列入此文库见诸世间。愿同仁闻弦歌而知雅意、思求等表流水而遇知音。

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Doctorial Series of books of Metropolitan Criminal Law Science of graduate and based of graduate and description of metropolitan Criminal Law Science

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After carefully planed and prepared, "Doctorial Series of books of Metropolitan Criminal Law Science" has been established in this distinguished University with over a century history. We can well say that the establishment of "the Series" is on a proper occasion, in a proper situation and at a proper place.

Being on a proper occasion means "the Series" was established in the exquisite stage of China's criminal law scientific theory. This is a stage which needs and may produce profound masterpieces of criminal law scientific theory. The content of "the Series" is just right catering for the requirements of this era.

Being in a proper situation means while "the Series" being established, China's law reform and modernization are experiencing her development in the ascendant, just like a raging fire. "The Series" is lucky to witness and participate in the development of this great cause.

Being at a proper place means Beijing Normal University has facilitated "the Series" with healthy environment and fertile soil. It's well known, Beijing Normal University is one of the few distinguished Universities with over one century's history. She grew out of the Faculty of Education of Metropolitan University founded in 1902. After a century of development, through a century of accumulation, she not only holds deep-seated cultural foundation and good environment of the humanities, but also her disciplines of the humanities and social science have reached to the world standard or at the level of First Class in China. She

has cultivated large numbers of National Talents. Firm and steady style and the conception of "studying to teach and acting to example" of running a school has provided the unique condition for the development of law science which requires rigorous logic, deep content and high value. Our ancestors said: "Fountainhead being not deep enough but hoping the water can flow farther, the root being not solid but hoping the trees can grow big, morality being not high but thinking about the safe of our State" is just as "cutting the wood in order for the exuberant trees, blocking up the fountainhead in order for the water flowing far". Without deep-seated cultural foundation and long term academic accumulation as its base, it seems a bit superficial and ne'er-do-well to get major attainments in the field of law science, even though momentary mental and physical efforts have been used. The establishment of "Doctorial Series of books of Metropolitan Criminal Law Science" avoided the congenital deficiency from the very beginning.

No need for reticence, compared with the many ripe and steadily developed disciplines, the Law Science for Beijing Normal University is still very young. For the varieties of reasons, discipline of law science seems inferior to other social sciences, either in the cultivation and introduction of talents or in the innovation and development of academic theories. It not only made the Law Science of Beijing Normal University lost the chance of development in 1990s, but it is not matching with her famous international and national status as well. To be relieved, things have changed dramatically since 2005. With the support of the leaders of Beijing Normal University, College for Criminal Law Science of Beijing Normal University was solemnly founded in Beijing on August 18, with the noted jurist Professor Zhao bingzhi as the Dean She has become the only independent and comprehensive academic unit in the criminal law scientific field specializing in taking on the criminal research and the tal-

ents cultivation. Based on the Faculty of Beijing Normal University, Law School of Beijing Normal University was formally founded on July26, 2006. Successive founding and rapidly well developing of these two schools signifies the prosperous new era is coming. "Human and nature have their own metabolization, old events have passed by The world left wonders and interests, our generations step up". With the construction of Law Science of Beijing Normal University opening comprehensively, we believe absolutely we can enable Law Science of Beijing Normal University to rank among the world's most advanced influential universities nationally or even globally.

With deep-seated cultural foundation and free educational environment, Beijing Normal University has attracted young learners out of admiration home and abroad to pursue for spiritual promotion and cultural development. "A thousand-li journey is started by taking the first step". Any great cause should be done bit by bit College for Criminal Law Science of Beijing Normal University knows deeply" as to a project of vital and lasting importance, human should be cultivated first". So she strongly emphasizes the construction of talents. Not long before the establishment of the college, she not only has absorbed many middle and young law experts who hold deep-seated academic foundation, good scientific research ability and academic influence home and abroad, but also has engaged a number of young talents who graduated from the famous universities home and abroad and hold good comprehensive qualities and solid academic foundations. In order to cultivate new talents and gradually make them weed through the old to bring forth the new and depend on her solid and wide comprehensive academic ability and strong and deep environment of the humanities, College for Criminal Law Science of Beijing Normal University decides to establish "Doctorial Series of books of Metropolitan

put their fruits to be published in the form of academic books, as one of the great measures of promoting law science of College for Criminal Law Science of Beijing Normal University, Noted Editorial board organized by College for Criminal Law Science of Beijing Normal University is responsible for the management of "Doctorial Series of books of Metropolitan of Law Science of Beijing Normal University oper sone of Baijing Normal University oper sone of Beijing Normal University oper sone oper sone of Beijing Normal University oper sone oper sone of Beijing Normal University oper sone oper -in U "Doctorial Series of books of Metropolitan Criminal Law Science" is designed to face the young law doctors and postal doctors cultivated by College for Criminal Law Science of Beijing Normal University and the teaching and researching staff who have doctor degrees in law introduced by the College Because College for Criminal Law Science of Beijing Normal University has preliminarily formed her united and harmonious academic research group with high record of formal schooling and reasonable specialized knowledge of structure, "the Series" will give considerations to both substantial and procedural law science and welcome multiple disciplines' academic fruits with her open minded attitude and her spirit of multiple disciplines and sides. Thus she will hold her strongly magnanimous character of era with her wide vision. In brief, "Doctorial Series of books of Metropolitan Criminal Law Science" will choose the fruits merely according to its high quality. If the works are creative and is of high quality, it can be chosen. "Editorial board of Doctorial Series of books of Metropolitan Criminal Law Science" will positively contact the new doctors graduated from College for Criminal Law Science of Beijing Normal University, getting to know the topic content and structure of their essays. We will abide by the principle of putting quality before quantity and producing fine works and strict and steady and innovative academic attitude, choose the excellent works from them and carefully read and check, provide practical supplementary suggestions of amendments for the

Criminal Law Science" to support young law doctors and postal doctors to

authors to amend as a reference. We will be responsible for contacting publishing house, listen to criticisms with an open mind from our fellow scholars and social readers. We hope the works of Editorial board of Doctorial Series of books of Metropolitan Criminal Law Science can find and know affairs of human lives, communicate common saying, even though they belong to the spring snow works; They are welcomed by many, even though they belong to the elegant works. Meantime we declare particularly the scope of "the Series" is not restricted in the field of doctorial degree essays, all the fine works or articles from the fellow law doctors in law are welcome. These articles and works can be listed in "the Series" and can be published throughout the world. May our fellow researchers know the real meaning while listening to the music; May we can meet our bosom friends while playing the flowing water.

"Mountain Taishan accepts small soils, so it can become high; Rivers and seas accept small streams, so they can become large". The development and expanding of academic causes depends on theoretical accumulation bit by bit. "Editorial board of Doctorial Series of books of Metropolitan Criminal Law Science" may be the heading sprouts in the process of academic causes of our State's Criminal Law Science. But we believe that she can gradually become towering tree, attracting the attention home and abroad. It can make beneficial contributions for making our state's academic research of Criminal Law Science, promoting exchange and cooperation of Criminal Law Scientific thinking home and abroad, and accelerating rule of law's construction of our Socialism.

College for Criminal Law Science of Beijing Normal University
Editorial board of Doctorial Series of books of
Metropolitan Criminal Law Science
March 3rd, 2007

察法。调查法等,也有定性的研究方法,包括文献考察法

等。刑法更缺的是定量的秘干方法

袁彬的《刑法的心理学分析》是在其同名博士论文的 基础上修改而成的、主要塞剧武建学的主要理论分析刑

法律特别是刑事法与心理学的结合是我多年来一直关 注的问题。较早的时候, 我就对侦查、证据等方面的心理 学问题颇感兴趣,并且做了一些尝试和探索,早先有《侦 察心理学》、《证人心理学》等、晚近有《法律心理学》 等。从学科分支的角度,侦查心理学、证人心理学、审判 心理学、犯罪心理学等都属于法律心理学的范畴,而法律 心理学又是社会心理学的一支。

刑法的心理学分析是用心理学理论分析刑法问题,由 于它的研究是在刑法的框架体系内进行。因此它仍属刑法 学的范畴。当然随着研究的深入和理论体系的成熟, 刑法 的心理学分析有可能发展为一个独立的学科——刑法心理 学,成为法律心理学的又一支。一般来说,刑法的心理学 分析可以从两个方面展开:一是运用心理学已有的研究成 果,包括已经被心理学实验证实的各种理论、学说,分析 刑法中的各种相关问题。这要求研究者既要熟悉心理学的 相关理论,又要熟悉刑法的相关知识。二是运用心理学的 研究方法对刑法中涉及的相关心理问题进行分析、研究。

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心理学的研究方法既有定量的研究方法,包括实验法、观察法、调查法等,也有定性的研究方法,包括文献考察法等。刑法更缺的是定量的研究方法。

表彬的《刑法的心理学分析》是在其同名博士论文的基础上修改而成的,主要是运用心理学的主要理论分析刑法中的相关问题,内容涉及罪刑法定原则、犯罪、刑罚和刑法分则等方面。这是一个很大的题目。我历来是主张博士论文应当小题大做的,但是考虑到当前我国用心理学分析这种系统的研究,大题目也有做的必要,因此就同意论分析到这个选题。不过,从表彬所提交的论文来看,该论文结构严密、体系合理,对刑法中的相关问题分析得致致而深入,在论文的答辩过程中获得了答辩委员会的分好评。可以说,表彬的《刑法的心理学分析》,是对刑法与心理学结合的一种有益探索,也是对传统刑法学研究的一种突破。相信该书对我国从心理学的角度研究刑法会起到积极的推动作用。

袁彬是我在中国政法大学带的第一批博士,也是我国首届刑法学专业犯罪心理学方向的博士。袁彬本科阶段的专业是教育学,硕士研究生阶段的专业是刑法学,由于教育学与心理学有着天然的联系,因此袁彬的教育背景比较适合做刑法学与心理学的跨学科研究。在攻读博士学位期间,袁彬学习刻苦,十分注重知识的积累,广泛涉猎了心理学、刑法学等学科的专业知识,为论文的写作积累了丰富的写作素材,也为论文的写作打下了扎实的基础。这也是袁彬论文写作获得成功的一个很重要的方面。

我历来鼓励博士生在攻读博士学位期间多写、多练,这样既可以系统地梳理自己所学得的某一方面的知识,还可以锻炼自己的思维能力和写作能力。袁彬在攻读博士学位期间十分重视论文的写作,发表了许多学术论文。我相信,这对他以后的科学研究是会起到积极的帮助作用的。

攻读博士学位期间是人生的一个重要转折点,也是以后开展学术研究的基础。但是,人生的成长是一个长期渐进的过程。学术研究更是如此,它必须有一个积累沉淀的过程。相比较而言,踏实稳健、锐意进取、甘于寂寞、独享思维快乐的学术品格对学术研究更为重要。希望袁彬能够在以后的学术研究中,刻苦努力,多出优秀学术成果。

值此博士论文出版之际, 聊述数语。是为序。

2008年5月8日谨识于天津寓所