



京师刑事法学博士文库 (1)

# 罪犯改造论

——罪犯改造的犯因性差异理论初探

A Theory of Offender Rehabilitation:  
A Criminogenic Difference Theory  
of Offender Rehabilitation

吴宗宪 著



中国人民公安大学出版社

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# 京师刑事法学博士文库

## 序 言

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。

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。

所谓躬逢其势,乃指文库诞生之时,恰逢中国法律改革和法治现代化运动如火如荼地展开,方兴未艾,文库有幸见证并参与到这一国家与民族法治振兴的大业之中。

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,不成大气。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，在北京师范大学法律系的基础上，北京师范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。

“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”的作品虽属阳春白雪之作，却能洞明世事，传递俗理；虽属曲高之作，却不至于合者甚寡。同时特别申明：文库的范围不仅限于博士学位论文，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学术精品，均可列入此文库见诸世间。愿同仁闻弦歌而知雅意，愿我等奏流水而遇知音。

“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。

北京师范大学刑事法律科学研究院  
京师刑事法学博士文库编委会  
二零零七年三月三日

## Doctorial Series of books of Metropolitan Criminal Law Science

### Preface

After carefully planned 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 July 26, 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.

"If we are strict with ourselves, others will surely respect us". 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 Criminal Law Science” to support young law doctors and postal doctors to 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 Criminal Law Science” .

“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 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

# 序

王 牧\*

吴宗宪博士在博士论文基础上完成的专著《罪犯改造论——罪犯改造的犯因性差异理论初探》即将出版，这是一件有意义的事情，也是一项有价值的成果。

几十年来，新中国的罪犯改造工作，特别是改造战犯的工作，取得了举世瞩目的成就。根据我国社会发展变化的新情况，在总结既往经验的基础上，继续探讨并发展罪犯改造理论，指导罪犯改造工作向着更加科学、更加有效的方向发展，提高罪犯改造质量，是理论工作者义不容辞的职责。吴宗宪在长期积累和深入思考的基础上，进行了这方面的尝试。作为他的博士生指导教师，我感到由衷的高兴，热忱祝贺这项成果的问世。

吴宗宪博士自1992年到司法部预防犯罪研究所之后，一直从事监狱方面的研究工作，熟悉国内外监狱制度及其运行情况，对罪犯改造问题进行了长期研究，发表了不少成果。同时，他也熟悉犯罪学理论，并长期研究犯罪心理学等相关学科理论，为他深入探讨罪犯改造理论做了多方面的准备，奠定了良好的基础。现在完成的这部成果表明，他在过去进行的多方面的研究准备，是有成效的，也

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\* 中国政法大学教授，中国犯罪学研究会会长。

得到了很好的体现。

通观这部书稿，我感到它具有下列特色：

第一，内容新颖。尽管罪犯改造问题并不是一个新的课题，人们已经进行了较多研究，但是，本书论述的内容却很新颖。首先，作者在书中结合我国罪犯改造的实际，详细而深入地阐述了“罪犯改造的犯因性差异理论”。这种理论的基本观点认为，犯罪是犯罪人存在犯因性差异的结果。犯因性差异不仅存在于静态的因素或特征方面，更存在于动态的因素或特征方面，特别是存在于动态的相互作用（互动）方面。犯因性差异既是个人犯罪的重要原因，也是对罪犯进行改造的重要基础，表明了罪犯改造的方向，指示了罪犯改造的具体对象。从社会、道德和法律的标准来看，体现犯因性差异的因素都是有缺陷的，它们构成了犯因性缺陷。因此，改造罪犯实际上就是努力缩小和消除犯因性差异或者犯因性缺陷的活动。其次，在书中提出了一系列新颖的概念和观点。例如，以“犯因性”开头的很多概念以及“亲社会相似性”、“改造单元”等概念，对它们进行了界定。又如，提出了改造罪犯的合理目标、改造罪犯的重点、改造罪犯的层次、改造罪犯的具体对象、改造活动的优先顺序、罪犯改造中的目标取向等观点。这些概念和观点丰富了罪犯改造理论乃至犯罪学理论的内容，值得进一步探讨和运用。

第二，论证充分。本书在阐述罪犯改造的犯因性差异理论及其应用的过程中，进行了充分的论证。首先，论著中使用的概念清晰。作者在进行理论观点的阐述之前，都明确界定了所使用的概念的含义，为进一步论述奠定了必



要的基础。其次，论著的结构完整。作者在阐述罪犯改造的犯因性差异理论及其应有的过程中，严格遵循一般的逻辑结构，首先论述犯罪原因论，为下一步探讨罪犯改造的理论提供了坚实的理论基础。接着，阐述了罪犯改造理论的基本原理。最后，详细论述了犯因性改造理论的具体运用。这样，就使整个书稿内容完整，结构合理，层次清楚，逻辑性强，具有很强的理论说服力。再次，重视应用国内外的资料进行论证。在论述某方面的观点时，往往都能够充分运用国内外的资料作为论据，支持自己的论点，进行了有力的论证。最后，重视以科学的态度对待别人的研究成果。对于以往研究成果的评价，能够采取辩证的态度，肯定优点，指出不足，而且在表达自己的态度和评价时，都能够阐述理由，以理服人。

第三，注重应用。本书重视理论应用。作者在阐述了罪犯改造的犯因性差异理论的基本观点之后，并没有就此止步，而是接着详细论述了如何通过罪犯改造实践改变罪犯的犯因性差异或者犯因性缺陷的问题，归纳和提出了改造犯因性缺陷的一系列原则、方法和措施，为这种理论的实践运用做了充分的准备，从而使实务工作者更有可能将这种理论应用于改造罪犯的具体实践。同时，作者还运用犯因性差异理论分析了目前我国罪犯改造工作中存在的种种误区，提出了如何认识和纠正这类误区的见解。此外，作者还就如何应用这种理论改造罪犯的不同犯因性差异或者犯因性缺陷，如何改进罪犯改造活动的效果等，提出了很多具体的建议和看法，这些都有利于完善中国的监狱制度和罪犯改造工作，有利于增强犯因性差异理论的实效。