

Research on the Reform and Selection of Criminal Law Textbooks in Undergraduate Teaching*

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Abstract—Selection of criminal law textbooks is the first step in the teaching of criminal law. It is related to the establishment of students' entire knowledge system and basic theories. In the selection of textbooks, both theoretical value and practical value should be focused on, and students' acceptance ability and curriculum setting should also be taken into consideration. Only in consideration of the students' point of view, can students' enthusiasm be motivated and the good results in criminal law teaching be achieved.

Keywords—textbook; judicial examination; legal education

I. INTRODUCTION

In teaching process, the importance of the selection of criminal law textbooks is obvious, but it hasn't been taken seriously in teaching. Teachers usually pay more attention to case study and the improvement of teaching methods in legal clinics and moot courts. Which are certainly important, but without a good textbook for guidance, any other teaching reforms will be less effective.

In fact, with the influence of continuous enrollment of law majors, many regional colleges and universities have opened law major under the immature condition, thus the quality of teachers is not high enough. In this condition, the role of textbooks is particularly prominent. To some extent, good textbooks can eliminate the negative influence of problem about teachers. In addition, legal education in recent years has not been well-developed, and the employment rate of law majors is extremely low. Students are lost and weary of studying. What's worse, if the textbooks are boring, things will be worse and worse with time going on. Thus, this is the importance of choosing good textbooks.

The current condition is that the option of textbooks is in the hands of teachers and teaching staff of criminal law. In addition, teachers from most universities have published their own textbooks, and when choosing textbooks, they prefer textbooks from their own university, instead of considering the need of students and textbook value and system. This has greatly affected the initiative and effectiveness of student

criminal law learning.

Based on the textbooks on criminal law both at home and abroad that have been published in recent years, we can find that criminal law industry in mainland China has strengthened the introduction of German and Japanese criminal law knowledge, a large number of German and Japanese criminal law textbooks have been translated and published here, so it is with those monograph from Taiwan, half of which are textbooks. At the same time, great scholars in China have also actively edited textbooks, ranging from editorial style by following that from Soviet Union to personal writing which is advocated today. Scholars like Zhang Mingyao, Zhou Guangquan, Lin Yagang, Li Hong, and others have all published their own criminal law textbooks. The kinds of criminal law textbooks are becoming more and more, which makes it difficult to choose textbooks. This paper will discuss the selection of criminal law textbooks from the following aspects.

II. OVERALL CONSIDERATION OF THEORETICAL DOCTRINE SHOULD BE TAKEN INTO CONSIDERATION IN THE SELECTION OF CRIMINAL LAW TEXTBOOKS

"Textbook is a carrier of academic achievements, which is different from thesis and monograph. Its function is to narrate the basic principles systematically, so it can help to show the academic level of a scholar." [1] Thus, systematic feature should be the most important in selecting textbooks. A good textbook of criminal law should be logical, self-consistent and systematic. In this way, it can provide students with a framework of knowledge and lay a solid foundation for their further study. Judging from the system construction of various types of criminal law textbooks, there are still many views diametrically opposing in the theoretical circle. The typical example is theory of crime. A group of scholars, such as Chen Xingliang and Zhang Mingzhao, strongly advocate the introduction of third-tier theory of the civil law system and its reform, which is not in line with the traditional four-element theory system that has been used in China. The difference is obviously reflected in the system of textbooks. In this way, the selection of criminal law textbooks will be difficult. I am holding the view that though the theories should be different with a large variety, the selection of textbooks should be based on practical condition and conducted by traditional system. As

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this difficult theoretical debate can be studied at graduate school, students are not easily puzzled by difficult theories.

Second, the biggest difference between criminal law and other law theories is that there are many points of view in the theory of criminal law and many opinions which cannot be justified. It is an important issue to deal with such a complex doctrine in textbooks. In this regard, Mr. Lin Shantian had a brilliant exposition: "There are still many disputes in the judgment of criminal law and crime. For these controversies, the practitioners are often at a loss and they think that they are suffering. In the process of studying criminal law, it is easy to be lost because of public opinion, which affects the interest in learning the criminal law, as well as the ability to judge and evaluate crimes. The practitioners are trapped in puzzles of the various academic arguments, and they are at a loss. As for the statements other than the general ones, they are pointed out in this article or in the footnotes respectively, so that those who wish to deepen their research may have traces." [2] This kind of textbook system is a more appropriate approach. It takes the function of theoretical system and actual learning ability and time schedule of undergraduate students into account.

Then, the systematic nature brings about the requirement of uniformity. It requires that all theories in textbooks confirmed with each other. Otherwise, things will not be dealt easily. What should be explained here is that it is not the situation that textbooks being edited will easily be not committed. Even if it is written by one person, it can have such problem, because of his knowledge limitation, or because of the lack of revising, the problem can get even worse. Therefore, in order to ensure the unity of content, excellent criminal law textbooks should clearly indicate their own theories in the book in a clear and unambiguous manner, and consistent with it, readers can have a good grasp of knowledge in the book, and they can also test and verify their viewpoints. Japanese criminal law textbooks can be served as a good reference. For example, Japanese scholar Atsushi Yamaguchi, stated in the foreword of his textbook that the basic position of the book is to regard the protection of legal interests as the task of criminal law while basing on the principles of liberalism, which is called result non-axiology. The attitude is clear, as well as its position, which make it easy to read.

Last, stability is also an important condition in theoretical value of textbooks. It includes the vitality of theories. In the current social science research, researchers focus on innovation, many people do not consider the maturity of their viewpoints, but rather create certain academic influence to get resources. As a result, it is easily ruined by academic criticism and historical trials and students could be misled either. Textbooks are different from general academic writings. Innovation is not the first consideration. Stereotyped content shouldn't be pursued for sure. Many criminal law textbooks disappeared after one edition, as they cannot unify academy and stability. In sharp contrast to this, many Japanese scholars publish their criminal law textbooks over the age of 50. After all, a textbook represents the crystallization of the scholar's own ideas in this field. Such textbooks are really worth studying. Like the German scholar Liszt's had his 26th edition of textbooks, the Taiwan scholar Lin Shantian's General Principles of Criminal Law has the 10th edition until now.

Their theories have supported criminal theoretical and practical development. This is a model of real textbooks.

III. THE SELECTION OF CRIMINAL LAW TEXTBOOKS SHOULD BE CONNECTED WITH LEGAL QUALIFICATION EXAM

Undoubtedly, after the implementation of unified judicial examination was launched since 2002 and the national unified legal professional qualification examination from 2018, challenges are faced by China's traditional legal education. Some scholars have pointed out that although the traditional law teaching can help students grasp the basic knowledge of the framework and system in a short period of time, it leads to the lack of ability to connect theory with practice, and the lack of initiative, positivity and creativity in learning legal knowledge. The legal qualification examination has influenced legal education greatly, and the controversy about it is continuing. However, it is certain that the legal qualification exam exposes many irritating areas in the teaching of criminal law in China and offers a reflection on the traditional teaching method. Just think, if many students begin to have a systematic and deeper understanding on criminal law only after they prepared legal qualification examination, the textbooks of our current undergraduate education should be blamed in this way.

In this case, how to make the undergraduate textbooks connected with practical issues and cases from those examinations is what we should consider now. Thereby, open and interactive legal thinking of students can be cultivated, and the goal of undergraduate education in law can be achieved in the end.

Although the Criminal Law of the Peking University and Higher Education editions had been regarded as a model of textbooks, from its academic value and application value, it was still filled with traditional teaching method, full of textual explanations, without charts and few cases, let alone the training of legal thinking. Professor Lin Dongmao even said that his Criminal Law was used as an examination book. It can be seen that the convergence with the judicial examination is a real need. Because of this, Lin Yu-Hsiung put hundreds of cases in General Criminal Law to help readers understand its content. The Japanese criminal law textbooks are basically assembly of lectures, so cases can be found easily. This is also the same in Germany. In the preface of *Strafrecht Allgemeiner Teil I---Die Straftat* by German criminal law scholars Günter Strenwerth and Kuhlen, it is written that I hope this textbook will become the rule for law students to prepare examination. And in the introduction of Hans Heinrich Jescheck's *Lehrbuch Des Strafrechts*, written that this textbook follows the traditional theoretical approach of partial explanation theory. However, it tried to clarify pure jurisprudence with a large number of practical cases, which are from legal precedents.

It is certain that in selecting textbooks, we are supposed to consider the needs of legal qualification examinations, but we cannot only take as a blueprint. Otherwise, studies without theory will only cultivate a group of examination masters rather than legal talents. Moreover, the judicial examination is not enough for cultivating talents. "The examination topic is often not to test the basic legal knowledge and ability that a legal person should have. While instead, it highlights their

unique thinking. Therefore, the current judicial examination system is not good. Questioning and marking methods will only lead to mainstream professors in the examination market. However, if students judge their level by grade, mainstream professors will be excellent by the way.” As they rely too much on legal qualification examination, they will choose books written by someone who gives questions on test paper.” This is also a misunderstanding.

IV. CURRICULUM ARRANGEMENT SHOULD BE TAKEN INTO CONSIDERATION IN CHOOSING TEXTBOOKS

We all agree that undergraduate students must extensively study academic books and improve their academic perspective. And a list of required reading is provided to them. However, judging from the current result of criminal law teaching, it is not suitable for undergraduate education. It is misleading students instead. In a short period of one year or even a semester, it is difficult to master a system and knowledge from a textbook. It is not easy to read a textbook that is too complicated and unsystematic, which will result in bad law knowledge.

Therefore, the selection of textbooks must be connected with the setting of curriculum. In some colleges, lectures are on Thursdays, some on Wednesdays, and in some colleges general principles specific provisions are taught separately, while some are taught together. Thus, this is the practical background for choosing appropriate textbooks. Textbooks are chosen according to class arrangement. For example, the 5th edition of Criminal Law by Professor Zhang Mingkai with a number of characters of 5,000,000 in a thousand pages cannot be textbooks. As different students' learning ability should be taken into consideration.

V. CONCLUSION

In summary, selection of criminal law textbooks is not an unessential problem. Choosing textbooks carefully can help raise the effectiveness of learning both in class and off it. It is also the logical starting point for improving the quality of criminal law education in colleges and universities.

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