

Shortcomings of China's Legal Literature

Yi Dan

Public Affairs Department, Guangdong Police College
Guangzhou, China
mmmkk@21cn.com

Abstract—This paper intends to explore why there are no classical works in legal literature. A comprehensive analysis has found that the main problems existing in the legal literature are: deficient knowledge and unconformity with legal norms; inappropriate methods and writing literature with news style; too much emphasis on privacy but insufficient exposure of human nature; abundant sentiment but insipid thought. The conclusions reached in this paper will have certain positive effect on improving the quality of China's legal literature.

Keywords—China; legal literature; shortcoming

Law and crime are the main narrative contents of legal literature. Since crimes are featured by suddenness, antagonism and confidentiality, legal literature enjoys a higher immersive ambiance and realness than other forms of literature. However, most legal literature takes the real cases as the prototypes with strong feelings and moral orientation incorporated by the author. Once the narrating goes beyond the legitimate bottom line, it would damage the literary image and affect the quality of works. Furthermore, it would also bring serious legal issues and social problems that can not be neglected.

I. DEFICIENT KNOWLEDGE AND UNCONFORMITY WITH LEGAL NORMS

Since 1984, when the magazines such as "Woodpecker", "Journal of Selected Legal Literature", "China's Legal Literature", "Blue Shield" and "Sword and Shield" started their publication, the subject and content of legal literature become more broad, diversified and profound. Artistic skills are more mature, literary forms and artistic expression display a greater diversity, the legal knowledge of writers are greatly enhanced and common mistakes in legal works are gradually reduced. However, investigating cases, litigation and trial, and execution of punishment are after all very professional actions of law enforcement. It entails specialized training and long-term law enforcement practice, which can not be handled by merely reading some legal provisions. Some authors, who are not equipped with sufficient legal awareness and legal knowledge, make up the stories at their own will on the basis of partial legal information in writing legal works, which will inevitably lead to the contradiction or unconformity with the laws. Even the policeman who has been serving in the grassroots positions for years may also misrepresent in their works due to the limitation of professional work. For example, Zhu Weijian is a policeman with years' experiences of working in the grassroots post and his works of public security have been awarded the "Golden Shield Award" by the Ministry of Public Security for more than once. *Deep Darkness* published by China Writers Publishing House in

January 2011 is his new work. This novel tells about a touching story of Yan Zhongxin, Director General of Public Security Bureau, who gives up his leisure and cozy life after retirement and devotes himself to fight against the vicious power. *Deep Darkness* has a breathtaking plot with the police getting beaten as the start: many cars are stuck in traffic by the blocked road with the blare of continuous horn. The noise of fight, scream and bawl can be clearly heard: "Beat that policeman! Beat you damned policeman to death! ..." "What the big deal of being a cop? Policeman is exactly what we are beating up!" "Well done! They deserve it!" In no time, *Deep Darkness* reveals the following thought-provoking scenarios: "The case files are sent back by the Procuratorate. I get very angry in the first place but become speechless and calm down when I get to know the underlying reasons: Li Yanping without formal police identity is not qualified to initiate a lawsuit; thereby this incident can not be convicted as "Interfering Public Affairs with violence". *Deep Darkness* reflects the unjustness of the public security force and the hostile environment for law enforcement, which evokes readers to have a further thinking of these problems. However, the description of "Interfering Public Affairs with violence" is not that precise and rigorous.

"Interfering Public Affairs with violence" refers to use violence or threats to interfere the government staff, NPC representatives and the Red Cross workers under certain conditions to fulfill their duties according to law; take illegal actions apart from violence and threats to hinder the National Security Agency or public security agencies from performing duties concerning national security and cause serious consequences. In accordance with Criminal Law Article 277, in addition to the representatives of National People's Congress at different levels and Red Cross workers, the violated targets of "Interfering Public Affairs with Violence" are confined to the scope of "government staff". However, in juridical practice, there are a great many cases in which the violated targets are assistant police officers or joint defense forces hired by public security agency and are on duty with the police. Whether those people can be identified as "government staff" will have a direct impact on the verdict of different crimes. Chapter 9 in the *Interpretations on the Subject Application of Misconduct In Office in the Criminal Law of the People's Republic of China* passed in the 9th NPC Standing Committee Session 31 on December 28, 2002 stipulates that official staff working in an organization with national public administration abiding by laws and regulations, or working in an organization entrusted by the state agencies, or an employee working in a state agency without being included in the state personnel system, once they commit a misconduct in office and constitute a crime while performing the power on

behalf of state agencies, they will be published with criminal sanctions in accordance with the provisions in the Criminal Law. Although the explanation is about “the subject of misconduct in office”, all the provisions adopt the concept of “government staff”. Thereby, the above legislative interpretation can be regarded as specific to “government staff”. This explanation incorporates the working staff without “official government staff status” into the category of subjects, which also demonstrates the essence of emphasis on public affairs and regardless of status when it comes to identify “government staff”. Finally, in terms of judicial practice, there are a large number of cases in which hired staff has been working in the law enforcement posts in the real life. If jeopardizing the authorized personnel from fulfilling public duties is not constituted as “Crime of Interfering Public Affairs”, it will bring passive impact on the proper management of state administrative agencies from the perspective of social effect. Thereby, it can be seen that neither official police identity nor qualification for law enforcement serves as the necessary requirement for constituting the “Crime of Interfering Public Affairs”.

Here, we are not requiring writers to be a master of law, but an excellent literary works of law should not first of all find it inconsistent or contradict with laws and regulations in the case narration, investigation process and trial. This is the most basic requirements; otherwise can it still be called literary works of law?

II. INAPPROPRIATE METHODS AND WRITING LITERATURE IN NEWS STYLE

The reason why detective fictions have become a unique category that enjoys a wide popularity in world literature is that in readers’ mind, they successfully create a great many legendary detectives with wisdom and wonder. The protagonists in detective novels are equipped with extraordinary ability of reasoning and judgment, and they usually advocate science, pursue truth, prefer techniques to force, respect legal system, and are skilled in battle of wits. For instance, Sherlock Holmes in the detective stories written by Conan Doylein, is a hero who verifies clues with careful experiments, proposes incisive analysis and conducts reasoning like a falcon. His strong sense of justice demonstrates the virtue of an excellent detective and his brave actions to conduct investigation manifest the social justice and moral criterion. Meanwhile, these expert detectives serve as the incarnations of ideal detectives, which reveal people’s expectation of the real law enforcement officers.

In the 1980s, the policemen in the literary works of law are all stereotyped with positive images. The righteous policemen are always exceptionally brave and resourceful to fight against the enemies like a superhero. Some characters even use the real names for pursuit of truthfulness. Nowadays, to stir up sensational marketing effects, a few works art up the detail of a case, portray police as the wicked forces against the society, write literature of law in a news style while report news with literary expression. For instance: X Express Newspaper published a novel entitled “Deputy Director of Ministry of Public Security Took office with Armed Forces” on December 4, 2007. As quoted in this book, to crack down on evil forces, Ministry of Public Security “took action to dismiss Jiang XX,

Director General of Public Security Bureau of Yangjiang”. A series of content in this novel are made up by the author to produce “sensational plots” for attracting more readers. After its publication, this works aroused public concerns and the situation got complicated and serious. According to incomplete statistics, 19 newspapers and journals have reposted and commented this book, accusing Jiang xx of colluding with the evil forces and protecting the criminal gangs. The Internet also launched a speculation on this news. Countless discussions and comments were targeted on this incident, condemning Jiang xx and criticizing Guangdong public security bureau for conniving with criminal forces, which greatly damages the images and reputation of both Jiang xx and Guangdong Public Security Bureau. Afterwards, Guangdong Public Security Bureau lodged serious declaration to this incident. X Express Newspaper acknowledged their serious mistakes and the two sides finally reached a settlement. On February 14, 2008, X Express Newspaper published a formal apology, clarifying the truth and apologized to Jiang xx and Guangdong Public Security Bureau for the passive influence it has caused.

In legal literature, the necessary elements to intrigue readers’ interest and imagination are a plot full of twists and turns, mysterious characters and the investigation process with suspicion and tension. To launch criticism against social corruption and hideous phenomena with the utilization of literary works is without any dispute and shouldn’t get blamed. However, the targets criticized and exposed in literary works should be fictional with no specific or concrete referent, that is, readers can not gain a clear clue of the exact identity of the characters in the works. If readers can at once see through the characters or plots in the works, it shall be deemed to have specific referents even without a definite mentioning of that person’s real name. In other words, once the narrative method in the legal literature is similar to that of news reporting, it probably will be confronted with legal liability issues. Exaggeration, substituting one thing with another, writing legal literature with news and making up stories with speculation will not only damage the aesthetic value of literary works, but throw legal literature into the vicious cycle of excessive entertainment and vulgarization.

III. TOO MUCH EMPHASIS ON PRIVACY BUT INSUFFICIENT EXPOSURE OF HUMAN NATURE

The eternal theme of literature is the real and vivid revelation of human nature. The writing perspective of detective fictions that can stir up people’s mind is exposing the dark side of human nature. In detective fictions, money turns into a demon that subverts the social norms, and wealth takes on a huge temptation to disorganize all the normal ethical order. Morality, law, family affection and ethics have become so worthless in front of money. People turn against each other and the hidden evil nature of human beings begins to emerge when it comes to making money. However, what detective fictions present are various crimes. They are not meant to display cruelty or bloodiness, but to conduct a full-scale observation of mankind through revealing “the evil human nature”, which has the social values of self-reflection and self-denouncement. It doesn’t aim to maliciously discredit mankind or society, but present certain darkness and evil as

the known facts. It shifts the public attention from manifesting the true, the good and the beautiful to revealing phoniness, evilness and ugliness, which will be of great value and significance to help people get a full understanding of human nature and tell the good from the evil; enhance their ability to discriminate beauty and ugliness and guide them to gain a true understanding of social reality and true human nature. Moreover, detective novels have vivid pictures and fascinating scenes filled with wisdom, resourcefulness and charm.

The source of creative writing lies in “whether there is a story there”, and description of personal character, life style and retelling events are the necessary means in literature of law. The constitutional basis of privacy right and academic freedom as well as many other emerging rights is the freedom of speech. Privacy serves as the spiritual element of a civilized person, thus, inviolability of privacy is actually a basic need of man and privacy protection is the need of protecting human rights. It is meant to protect individual liberty and dignity, promote the harmonious development of society, and is the inevitable requirement of social civilization. Reflecting the real social life, castigating the social evils and providing different opinions with the utilization of legal literature should enjoy the legal protection and support. Law is the depicted object of legal literature, but the literary activity as one of the social and cultural behaviors is the regulating object of law. There is boundary to any right, and legal literature is also restrained by law and should adjust and regulate its own behavior in accordance with law. The law protects the civic right of reputation, which also applies to people in fault or who have committed crimes. Some literary works in China are shoddy in quality and vulgar in style. The cases in the book “lay particular stress on rape, murder, robbery” with the supplemented description of anecdotal love affairs, which has encroached on personal privacy and deviated from the mainstream social values.

IV. ABUNDANT SENTIMENT BUT INSIPID THOUGHT

There have been some influential works in the legal literature, such as the novels: *The Undercover Policeman* (Hai Yan), *Rough Experience of A Policewoman* (Zhang Weihua, Zhang Ce), *Detective Shan Liren* (Wang Shuo), *Difficult Lawsuit* (Zhan GaoEr); reportage such as *The Return of Law, Sha Jing Tian* and etc. It seems that these works are great in telling stories with rich feelings, while few can be regarded as thought-provoking works. Emotion is indeed an important element in literary writing. Moreover, the appropriate rendering and the writing techniques of argumentation and embodying scenes with sentiment contribute to striking a chord between the author and the readers. The realization of the society governed by law entails not only the wisdom and calmness of thinkers, but also the regulation and scientific design of social governance. Since legal literature relates to the issues with great public concern, a serious and rigorous attitude should be adopted in narration to enlighten readers’ profound thinking and deep consideration. In particular, when it comes to the underlying social problems, using emotional expression instead of rational thinking in legal writing should be avoided. Some writers have neglected the rationality in legal system and impart their personal perceptions into the works in the blind pursuit of overwhelming effects. They set themselves in a commanding moral position to judge other literary works, while dump their hasty and superficial feelings to readers without any profoundness of thought.

REFERENCES

- [1] Wallace Martin. *Contemporary Narratology*. Beijing: Peking University Press, 1990, p. 159.
- [2] See “The Compilation of Safeguarding Rights Documents in 2008 & 2009”, Guangdong Public Security Bureau.
- [3] Robert Harriman (edited). *Popular Trials*. Tuscaloosa: The University of Alabama Press, 1990, p131.
- [4] New York Times Co.v.Sullivan, Supreme Court Of the United States,1964,376U.S 254,84 S.Ct. 710,11 L.E.d.2d 686
- [5] Liu Weimin. *Comments and Analysis of Detective Novels*. Nanjing: Southeast University Press, 2011-03.