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查尔斯·狄更斯《荒凉山庄》中的法治

On the Rule of Law in Charles Dickens's *Bleak House*

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Abstract

Bleak House by Charles Dickens is a legal text with Chancery Court as its focus. It enjoys a significant status in the discipline of law and literature and has aroused the interests of both the literary and legal scholars. Previous criticisms concerning *Bleak House* are mainly about how the evil of Chancery practice is revealed by Dickens. However, with attention drawn solely to the operation of Chancery Court, the depth of the novel, particularly its legal significance of the rule of law, is not fully explored.

This thesis aims to interpret the legal descriptions in *Bleak House* from the viewpoint of the “rule of law”. By checking the guiding principles of the Chancery Court against the “substantial goodness” of the rule of law, its ossification, delay and expensiveness against the “formal goodness” of the rule of law, and by checking major characters’ attitudes toward the law against the “actual obedience” of the rule of law, this thesis intends to shed a different light on *Bleak House*, regarding the novel as a perfect reflection of the principles of the rule of law, a fine tradition of England.

This thesis comprises three parts: Introduction, four chapters and Conclusion.

In the Introduction, a brief account of Charles Dickens and his works is given. Dickens is fascinated with law issues and *Bleak House* is the most typical legal novel of his somewhat dozen legal works. He is extremely popular among scholars active in the law and literature movement. Those scholars, together with the earlier critics, have responded enthusiastically to *Bleak House*. Yet their focus is mainly on the operation of rules.

The Main body is composed of four chapters. The first chapter presents Charles Dickens as a legal historian. Dickens’s personal experience has enabled him to know well the legal industry. Nonetheless, the deficiency of his education has disabled him to explore more deeply into the essence of Chancery law. This feature is shown in the legal text of *Bleak House*. The novel has unfolded a vivid picture of the rule of law in the 19th century England with the various suitors, lawyers as well as the Chancery

Court. However, the concern is limited to the Chancery operations, while other features of the Chancery Court are neglected. This provides the author of this thesis with an opportunity in the pursuit of a more complete comprehension of Chancery using the principles of the “rule of law”.

The second chapter deals with the “rule of law”—the general standard of law. After researching into the theories proposed by scholars from as early as Ancient Greece to modern times, a descriptive definition of the rule of law and a comparatively comprehensive one is given. According to the definition, the rule of law mainly has two parts: one is the law’s own goodness, and the other is people’s actual obedience. The first part can be sub-divided into the substantial and the formal goodness. The substantial goodness refers to the universally applicable values embodied in the law, such as justice, reason, equality, freedom, the general goodness in people, and so on. The formal goodness refers to the legislative and judicial procedures which ensure the achievement of those values mentioned above. With regard to legal rules, generality, promulgation, clarity, feasibility, congruence and constancy are involved, while for the enforcement of law, authority, independence, impartiality and accessibility are concerned. Besides, a general introduction to the rule of law in England is given. It follows that, of all the core elements concerning the substantial goodness of law, Englishmen cherish their individual rights most. As far as the formal goodness of law is concerned, they are careful, yet not timid, about judicial reforms. With regard to actual obedience, they are highly law-abiding.

The third chapter checks the values and procedures of Chancery to see whether the Chancery meets the requirements of the goodness of the rule of law. In the substantial aspect, Chancery is qualified since its guiding principles, first conscience and then equity, are coherent with those values of the rule of law and are meant to bring well-being to its objects. While in the formal aspect, though there is a strong hint in the novel that the Chancery fails to reach the standard of relative constancy, it is invalid once a contrast is made between the real world and the fictitious world. The judicial reform which started ahead of the publication of *Bleak House* defends the flexibility of Chancery rules. The accessibility of the Chancery is impaired by its

delay and expensiveness. Generally speaking, there exists both goodness and evilness in the formal aspect of the rule of law in *Bleak House*.

The fourth chapter deals with the actual obedience of the rule of law in the novel. In this section, representatives of diverse stratum are quoted in order to exemplify the authoritative power of Chancery. Among the general public, there is Miss Flite from the lowest class, Grandfather Smallweed standing for the propertied, and the Dedlock family on behalf of the aristocracy. All of them are accustomed to turning to law in problem solving. For the law-givers, both the Lord Chancellor and the solicitors who attend the Chancery Courts frequently, for example, Mr. Tulkinghorn, Mr. Vholes and Mr. Kenge, are cautious not to go beyond the boundary of law when enforcing it. Here an attitude of legality is obvious.

In conclusion, *Bleak House* is far from being a nightmare of the British legal system. Instead, after the introduction of the rule of law and the investigation into both the Chancery's intrinsic and extrinsic qualities as well as the public response toward these qualities, it can be claimed to have reflected the fine tradition of England to a great extent, namely, the rule of law.

Key Words: Chancery; the rule of law; goodness of law; actual obedience

摘要

查尔斯·狄更斯的《荒凉山庄》是一部聚焦于大法官庭的法律文本，在法律与文学这一领域享有重要地位。鉴于此，《荒凉山庄》成功地吸引了文学家以及法学家的注意力，这些评论家普遍认为狄更斯创作这部小说意在揭露大法官庭程序的腐败。然而，也正是由于评论主要集中在大法官庭的程序滥用，《荒凉山庄》作为法律文本的深度没有得到全方位的挖掘。

本文致力于从“法治”角度剖析《荒凉山庄》中的法律描写。通过将文本中大法官庭的指导原则与法治的“实质良好”进行对照，将小说中大法官庭的僵化、迁延以及昂贵与法治的“形式良好”进行对照，以及将小说中主要角色之于法律的态度与法治的“普遍遵从”进行对照，本文试图从全新的角度解读《荒凉山庄》，认为该小说很好地体现了英国优良的法治传统。

本文由绪论、主体和结论三个部分组成。

绪论部分首先简要介绍了查尔斯·狄更斯的生平以及作品。他对法律十分感兴趣，笔下的十来部小说都涉及到了这一主题，其中，《荒凉山庄》是最典型的一部。狄更斯对法律的关注使得他在参与了法律与文学这一运动的学者当中十分受欢迎。这些学者，以及早年的评论家，都对《荒凉山庄》做出了热烈的回应。他们主要关注法律的执行。

主体部分分为四个章节。第一章首先介绍了狄更斯法律史学家的身份。狄更斯的个人经历使得他对法律行业有较多的了解，然而他的教育背景却没能促进他对法律本质的探求。这一特点也体现在《荒凉山庄》这一法律文本之中。尽管狄更斯通过该小说生动地展现了 19 世纪英国法律的面貌，但是他的关注点全然在于大法官庭的程序运作，而忽略了其他方面。以此为契机，本文引进“法治”原则，试图更全面的理解该小说的法律描写。

第二章介绍法治这一度量法律好坏的标准。通过总结历代哲学家以及法学家提出的法治理论，一个相对全面的、描述性的法治概念得以定义。根据这一定义，法治包含两个方面：一是“法律本身的良好”，二是人们对于法律的“普遍遵从”。前者又可进一步细分为“实质良法”和“形式良法”。实质良法指的是蕴含在法

律当中的普遍使用的价值观，如公平、理性、平等、自由以及人类的善良等。形式良法指的是用以保证法律的内在价值得以实现而所设计的立法及司法程序。就法律条文而言，需要考虑他们的普遍性、公开性、明晰性、可行性、一致性以及稳定性。就法律的执行而言，需要考虑到权威性、独立性、公正性以及可及性。此外，本章还介绍了狄更斯所处的英国的法治。研究表明，在构成法治实质良法的若干要素中，英国人极为重视个人权利。在形式良法方面，他们在司法改革方面体现出既谨慎又不畏怯的特点。就普遍遵从而言，他们具有高度的崇法意识。

第三章考察了大法官庭的信条以及程序，以此确定大法官庭是否符合法治概念下良法的要求。结果表明，实质上，大法官庭先后以良心和衡平为原则，这与法治所宣扬的价值是一致的。它旨在给它的受众带来福祉。形式上，尽管小说似乎有一种强烈的暗示，即大法官庭没能到达法治的相对稳定性标准，然而，一旦将虚拟的小说与现实的世界进行对照，人们会发现上述论断是不成立的。因为，司法改革早先于小说出版一二十年就开始了。这一事实捍卫了大法官庭的灵活性。但是，由于迁延和昂贵现象严重，大法官庭的可及性受到了损害。总的说来，《荒凉山庄》所展现的法律在形式上既有良法的一面，也有恶法的一面。

第四章主要考查小说中来自不同阶级的人物对法治的普遍遵从，以此说明大法官庭在民众心目中的权威性。就法律受众而言，弗莱德小姐代表底层人民，斯墨尔维德老爷爷代表有产阶级，而德洛克家族则代表贵族。他们都已经养成凡有纷争则诉诸法律的习惯。就专业法律人士而已，无论是大法官还是经常出入于大法官庭的律师们，如图金霍恩、霍尔和肯吉，都对自身的行为十分谨慎，绝不逾越法律的界限。由此可见，遵法守法的态度已经深入人心。

结论部分再次申明主题。《荒凉山庄》绝不是英国法律制度的梦魇。相反，通过引入法治这一概念，考察大法官庭的内在和外在价值以及民众之于法律的反馈，我们可以得出结论，《荒凉山庄》在极大程度上体现了英国的优良法治传统。

关键词：大法官庭 法治 良法 普遍遵从

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