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## ABSTRACTS

### *On Contract Right of Rural Land under the View of “Three-Right Separation” of Rural Land*

GAO Shengping · 1 ·

The “Three-Right Separation” of rural land should be reflected in the following structure in the law: on the ownership of rural land, the collective sets up the right to the contracted management of land for farmers and the farmers set up the management rights of land for other business entities on the right to the contracted management of land. The policy term “Contract Right of Rural Land” actually is the right to the contracted management of land in our laws. But under the “Three-Right Separation” of rural land, contract right of rural land is obviously with identity attribute, available only for the farmers of the collective. Whereas, the right to the contracted management of land includes the land use rights acquired by other contracting methods. A reconstruction is inevitable. To stabilize and maintain the land contracting relationship means that the land contract management rights should have a longer period in the law, and make sure the right to the contracted management of land belongs to the farmers of the collective by the registration of real estate. Under the policy guidance of improving the power of land contracting rights, when revising the existing law, it shall make clear that the contracting farmers can use dispose the contract right of rural land for such as lease, share, transfer and mortgage and so on.

**Key Words** “Three-Right Separation” of Rural Land; The Right to The Contracted Management of Land; The Contract Right of Rural Land; The Management Right of Rural Land

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### *Legal Reflection on and Institutional Response to Rural Land Management Right in the Reform of “Three-Right Separation” of Rural Land*

GENG Zhuo · 13 ·

The core of the reform policy of “Three-Right Separation” of rural land is to set up management right of rural land separated from contractual management right of rural land, so the original intention and motivation of the reform policy need to be comprehensively clarified. The functions of management right of rural land in general can be summed up as keeping stable expectation, circulation of land contract and management rights freely, and meeting the demand for mortgage financing to expand its production; meanwhile, protecting the original holder of contractual management right of rural land still to retain, control and gain. Taking the management right of rural land as the reform goal, “Three-Right Separation” of rural land should pass through the three check: the first is the value orientation check; the second is the systematization check; the third is the practice check. It is found that this system design can not successfully go through the three check. Theorists need to uphold the pragmatic attitude and innovative theory, and improve the rural land contract management rules.

**Key Words** Three-Right Separation; Management Right of Rural Land; Contractual Management Right of Rural Land; Contractual Right of Land

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*The Legal Expression of Rural Land Ownership under the View of  
“Three-Right Separation” of Rural Land*

JIANG Hongli · 25 ·

The “Three-Right Separation” policy is designed to clarify the functional division between the different rural land systems, rather than to deny the “contracting right of land management”. In order to prevent the rural land non-agriculture, non-food and excessive concentration, binding the rural land ownership within the collective and restriction on transfer could provide effective means of governance for grassroots organizations, realizing the economic development of the state and society. The system of collective ownership is aimed to protect the object rather than to the subject’s free will. The collective land proprietary right both in the constitution law and civil law is a form of ownership against the state power. The collective land proprietary right in constitution law is a right with institutional guarantee. The powers of collective land proprietary right in civil law include possession, use, usufruct and disposition in a given context by reference to the theory of traditional ownership power.

**Key Words** “Three-Right Separation”; Collective Land Proprietary Right; Collective Ownership; Collective Economic Organization; Powers of Collective Land Proprietary Right

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*Societal Constitutionalism: A Deliberation on Constitutional Control of  
Criminal Law*

LIU Tao · 34 ·

In modern society, the constitutional control of criminal law does not refer to restrictions on political power (legislation) by the positive constitution, but also focuses on the transcendence of the dual-structure of state-society (politics-law) by observing standards of criminalization and sentencing in different social spheres. Societal constitutionalism is the structural coupling of social subsystems and law (economy and law, media and law, etc. ). Societal constitutionalism is an important supplement to positive constitution under the functional differentiation of modern society. It is also the standard for judicial judgment of the substantive content of the principle of “legality” beyond the scope of politics-law relationship. Under the societal constitutionalism, the function of fundamental rights has transformed from restriction on political power to prevention on the over-production of social subsystem. The operation of the criminal law must recognize the principle of different societal constitutionalism and the emergent fundamental rights in different social spheres. For example, in economic system, criminal law needs to be restrained on its interpretation, while respecting the self-reflexive mechanism of the system; in the privacy protection, however, criminal has a more positive role to play. It should protect the substantive contents of the right to privacy which have the function of connecting social systems and individuals. The right to privacy is fundamental right to strengthen the freedom of individual communication. It is also the structural coupling under societal constitutionalism to restrict the infinite growth of social systems.

**Key Words** Societal Constitutionalism; Criminal Punishment; Constitutional Control; Systems Theory; Structural Coupling

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***The Normative Protection Purpose of Constitution and Norm Limitation of  
Negligent Crime's Consequence Unlawfulness***

LI Bo · 48 ·

In the objective imputation theory, the scope of validity of constitution is not necessary to be an independent class. The core element for determining the scope of validity of constitution is the protective purpose of constitution, which is the governing principle of the risk realization class. The results imputation of negligent offense must keep full interest balance based on the protective purpose of constitution. The Empirical judgment provided by the possibility rules of the results forecasting is not enough. The constraint framework of the consequence without value indicates that the theory of protective purpose of constitution is prior to the behavior theory of legitimate replacement. The latter functions only when the former couldn't get effective conclusion. Because the norm is effective in principle, the protective scope of the specification should be judged firstly, and then, the normative validity would be judged only in specific situation. In addition, the protective purpose of constitution plays an important role in the behavior of legitimate replacement, the abnormal causal process, perceived risk of others, the third party liability and so on.

**Key Words** Normative Protection Purpose; The Protective Purpose of Constitution; Negligent Crime; Consequence Unlawfulness

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***Legalist Theory and the Sinicization Construction of Chinese Social Science***

YU Zhong · 62 ·

The humanities in contemporary China have obvious Chinese characteristics, and Confucianism is the main resource for Sinicization of Chinese humanities. However, the theoretical premise and theoretical paradigm of contemporary Chinese social science originated from the West and have not yet been completed Sinicization construction. In order to complete the sinicization construction of Chinese social science, the most valuable traditional resource is Legalist doctrine. In the pre Qin period, the Confucianism and Legalist doctrine were the two major ideology. After the Han Dynasty, Confucianism and Legalist doctrine were combined to construct a Confucian-Legalist country extending into the Qing dynasty. Confucianism has nourished the humanities in contemporary China, and Legalism, as a classical Chinese social science, can nourish the social sciences of contemporary China. Whether it is jurisprudence, politics or economics, we can find its theoretical source in Legalist theory. China's social sciences should be integrated with the legalist doctrine, and the Sinicization construction of the Chinese social science should be carried out through the Legalist doctrine.

**Key Words** Legalist Doctrine; Social Science; Sinicization; Cross Study of Jurisprudence; Rule of Law

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***A Research on the Term "Criminal Charge" in the Code of Tang Dynasty:***

***Language, Core, and Purpose of Legislation***

LIU Xiaolin · 78 ·

The "criminal charge" as one of legislative phrases in Ancient Chinese Criminal Law appeared massively and systematically in Tang dynasty. Its meaning was to give examples of the legal provisions on the criminal acts and conviction and sentence to certain criminal charges. Two kinds of criminal charge involved

in Code of Tang dynasty, they are specific criminal charge and non-specific criminal charge. The former is such a kind charge that the criminal acts and conviction and sentence are mentioned in law, however, the latter's not. But Code of Tang dynasty still stipulated respectively legal application for the two. Certain description of criminal charges also existed in code of Ming and Qing dynasties, which follows the criminal elements of Tang, but more precise. The criminal charges in Tang is not the definition of criminal behavior, its nature, and the characteristics, which was based on Legislative System and Development Trend of Criminal Law, or this general title would never exist. The meaning and content of "criminal charge" reveals the core Chinese ancient criminal law is the relationship between crime and punishment, and legislation focuses on the core issues of intention to achieve the aims of balance between crime and punishment.

**Key Words** Code of Tang Dynasty; Criminal Charges; Conviction and Sentence; The Correlation of Crime and Punishment; Balance between Crime and Punishment

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***How to Prevent the Justified Defense from Becoming Zombie Clause Criminal Law Doctrinal:***

***Analysis on the Judgement of Yu Huan Case of Intentional Injury***

CHEN Xingliang · 89 ·

Justified defense is the action taken by ordinary citizens to defend their rights, which is protected by criminal law. Article 20, para 1 of Criminal Law provides that there should be no criminal liability for justified defense. In judicial practice, it is quite complex to differentiate justified defense, excessive defense and ordinary crime. The judgement of the first instance trial of Yu Huan Case did not accept the justified defense and even rejected the excessive defense, based on which Yu Huan was sentenced to life imprisonment. After being reported by the media, Yu Huan Case attracted the attention from the general public and also triggered the reflection and discussions of criminal law scholars. This article makes doctrinal analysis of justified defense from the perspectives of fact and law and reflects the misunderstanding of Chinese judiciary on the issue of justified defense by referring to the judgement of the first instance trial of Yu Huan Case. The judgement of the second instance trial of Yu Huan Case concluded that the defense of Yu Huan was excessive. Though the judgement of the second instance trial is better than the first judgement in term of the circumstances of justified defense, it still failed to distinguish the justified defense and excessive defense.

**Key Words** Justified Defense; Excessive Defense; Defense without Limitation

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***The Rules about the Link Clauses of Special Regulations of Civil Law in***

***General Principle of Civil Code***

YANG Lixin · 105 ·

The rules about the link clauses of special regulations of civil law in General Principle of Civil Code integrate special provisions into the civil law to make them comply with the general civil law and constitute the general clauses and special clauses in the system of civil law. As for its legal function, first of all, it emphasizes the private nature of special regulations of civil law. Secondly, it emphasizes the special status of the civil subject protected by the special regulations of civil law. Further-more, it emphasizes the private law's protective policy on the special subject of civil law. Finally, it emphasizes linking the clauses to the special tort law to realize the integration of the system of civil law. The purpose of the regulations of link clause in General Principles of Civil Code is to determine the prior effect of the special regulations of civil law.

**Key Words** Special Regulations of Civil Law; Common Regulations of Civil Law; Link Clause; Function; Effectiveness

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***Corroboration and Inference to the Best Explanation :***

***Diversification of the Mode of Criminal Proof***

LUO Weipeng · 117 ·

Corroboration has been accepted as Chinese mode of criminal proof by scholars and practitioners, but some current researches have questioned the validity of this model. The problem of definition, effect and method are the main defects of corroboration. To solve the above problems, we should put aside the unnecessary notional disputes at first, and improve the system environment for running corroboration mode better, and then explore a new mode of proof. The essential task is to explore the new mode of proof so as to complement the defects of corroboration. Inference to the best explanation has the function of testing the effect of corroboration, explaining the meaning of isolated evidence and enhancing the accuracy of verification of evidence, so it can be introduced into the judicial field as a kind of new mode of proof.

**Key Words** Criminal proof; Corroboration; Inference to the Best Explanation

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***The Practice Application of Objective Interpretation in Criminal Judgments***

SHI Juhang · 131 ·

The criminal judgments suggests that obvious differences exist between criminal law theory and judicial practice. The use of subjective interpretation and objective interpretation depends on the specific situation of the judicial practice. The objective interpretation isn't the definitive interpretation methods. Interpretation methods between rates of sex don't exist. Objective interpretation can be used to support system of direct interpretation and explanation to the conclusion to restrict the broadness of direct interpretation conclusions. Similarly, the systematic interpretation can also be used to support objective interpretation conclusions. The use of the interpretations in judgment has diversified characteristics. In the process of constructing the judiciary rule of objective interpretation, it is unfavorable to explain as directly according to the nature of the decision behavior in criminal judgment. The criminal judgment should state identification method of objective interpretation, and through a reverse proof to check the conclusion of the objective interpretation.

**Key Words** Objective Interpretation; The Criminal Judgment; Direct Interpretation; System Interpretation; Legal-crime

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***A Study on Distinguishing between Formal and Simplified Versions of Criminal Judgement Documents***

WANG Xinqing · 144 ·

It is a reform task provided in The Summary of the Fourth Five-Year Reform of People's Court to distinguish the formal and simplified versions of criminal judgement documents. The underlying reason is that, increasingly, homogenized criminal judgement documents cannot match the diversified criminal procedures,

which results in an improper simplification or complication of criminal judgement documents and a waste of judicial resources. To set the standard for distinguishing criminal judgement documents, the types of cases and the corresponding criminal procedure should be taken into account. The degree of confrontation between the plaintiff and defendant should be the determining factor in distinguishing between the different versions of criminal judgements and criminal trial procedures. The type of criminal trial procedure should be the immediate standard for the use of criminal judgement documents in simplified or formal version. Formal criminal judgement documents are applicable to the adversary litigation mode, where sufficient reasons need to be given. Therefore, formal criminal judgements should be rendered in a formal style and contain all the relevant factors of criminal judgements. On the other hand, a simplified form of criminal judgement documents is applicable to trials where prosecution and defendant reach agreement. In the simplified form of criminal judgement documents, the reasons for the judgements do not need to be given in exhaustive detail, and should rather be recorded with the pertinent facts duly noted, in particular the agreements of plea bargaining and the facts of leniency based on peccavi, which should be deemed the reasons for, or basis of, the given judgements.

**Key Words** Judgement Documents; Distinguishing between Formal and Simplified Versions of Criminal Judgement Documents; Formal Judgement Documents; Simplified Judgement Documents

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#### ***Comments on Article 114 of Contract Law***

***(Agreed Payment for Breach of Contract)***

YAO Mingbin · 154 ·

As agreed liability for breach of contract, agreed payment for breach of contract in Article 114 of Contract Law can be expressed as a definitized amount or a calculation method. It works with bi-function character (compensation function and press function) in transaction. The payability of agreed payment for breach of contract requires a valid agreement concerning the payment, as well as the corresponding breach of contract. Agreed payment stipulated for the form of defaults other than delay in performance, in principle, estimates the total amount of compensation for the total damage caused by the corresponding breach, which is the key to deal with the relationship between agreed payment and statutory liabilities for breach of contract. Agreed payment for breach of contract may be applied in parallel with the termination of contract and shall not follow the rules for the commencement of limitation for indefinite debts. The “actual loss” for the judicial modification for agreed payment for breach of contract in Article 28, Article 29 of Interpretation of the Supreme People’s Court on Several Issues Concerning Application of the Contract Law of the People’s Republic of China (2) shall be understood as compensable damage, including loss actually suffered and lost profit. The judicial increase of agreed payment for breach of contract, which runs as a mechanism of intervention with judicial discretion, is different from the approach of “agreed payment plus damages compensation”.

**Key Words** Agreed Payment for Breach of Contract; Payability; Bi-function; Damages; Judicial Modification

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