QK2144786

法学家

THE JURIST

RENMIN UNIVERSITY OF CHINA
1937
中国人民大学

6
2021
国家社科基金资助期刊

万方数据

法学家

2021 年第 6 期（总第 189 期）　　2021 年 11 月出版

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ABSTRACTS

On the Highlights, Characteristics and Application of Personal Information Protection Law
WANG Liming, DING Xiaodong · 1 ·

The promulgation of the Personal Information Protection Law reflects the people-centered development idea, meets the new needs and aspirations of the people in the new era, and contributes to the "China solution" for the international digital rule of law. The Personal Information Protection Law further expands the protection scope of personal information, comprehensively stipulates the rights of individuals in information processing, strengthens the protection obligations of personal information processors, constructs strict protection rules for sensitive personal information, standardizes the personal information processing behavior of state organs, and improves the legal remedies for personal information. All these constitute the highlight of legislation. The law highlights the characteristics of the times, localization and practicality, responds to the personal information processing in the digital age, absorbs the world's advanced experience, condenses Chinese wisdom, and is closer to China's reality and local background. The Civil Code is the basic law of the Personal Information Protection Law. The application of the Personal Information Protection Law should be combined with the implementation of the Civil Code to jointly build a legal defense line for personal information protection.

Key Words Personal Information Protection; Personal Information Rights and Interests; Civil Code

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On Liability of Processors in the Joint Processing of Personal Information *CHENG Xiao · 17 ·*

China Personal Information Protection Law (PIPL) does not need to distinguish between controllers and processors. The concept of personal information processor should be used to cover the participants of personal information activities. Processor refers to the organization or individual who decides the purpose and method of personal information processing. Joint processors mean that multiple processors who jointly determine the purpose and method of personal information processing. They reach an agreement on the purpose and method of handling or have a connection of intention. In case of damage caused by the infringement of personal information rights and interests by the joint processing act, the joint processors shall be held joint and several liability according to law, that is, they shall be held joint and several liability or share liability according to the provisions of articles 1168 to 1172 of the Civil Code.

Key Words Personal Information; Processor; Controller; Joint Processing; Joint and Several Liability

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Can Legal Sociology Deal with Normative Problems? Under the Perspective of the Role of Legal Sociology in Chinese Jurisprudence *YANG Fan · 30 ·*

Whether legal sociology can deal with the normative problems serves as the "meta-problem" in jurisprudence. The study of various academic discourse in terms of sociology of knowledge is helpful to clarify the normative position of legal sociology. The viewpoint of binary opposition between fact and norm is contextual-

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ized in the West, and has been broken to some extent by modern philosophy of language. The experience-oriented legal sociology can get involved by describing "difference making facts" and "social norms", while the theoretical legal sociology can also assume the function of seeking normative foundation for the legal system by constructing normative goals. The normativity that legal sociology can provide is relatively situational and fluid, but it is still indispensable in modern society. The important task of contemporary jurisprudence in China is to explore the legitimate basis for law in social practice and theories. As an approach with natural advantages, legal sociology should play an important role in it.

Key Words Legal Sociology; Normativity; Problems of Fact; Law and Social Theory; Jurisprudence in China

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How the Social Sciences of Law are Possible *GUO Dong · 45 ·*

When comes to the academic topic that how the social sciences of law are possible, there are many competing propositions, but much of these arguments is not based on the point of view that jurisprudence is a normative science, so they are not complete. Unlike legal dogmatic, which uses legal norms to ascertain facts, to subsume facts, and to evaluate facts, the social sciences of law are devoted to describing facts, explaining facts, and predicting facts. The empirical facts concerned with the social sciences of law are divided into empirical facts about the law and laws as empirical facts. The study of these two empirical facts provides knowledge supply and fills the gaps in legal doctrine in the significance of knowledge and research methods respectively. There are three main reasons explanining legal dogmatic's objection to social sciences of law: the superseding theory, the overstep theory, and the reduction theory. The substitute theory is an unfounded assumption, the overstep theory misreads the relationship between is and ought, and the criticism of the reduction theory ignores the explanatoryism tradition of social sciences. All these three misunderstandings are the result of criticism for criticism's sake.

Key Words Social Sciences of Law; Legal Dogmatic; Normative Science; Social Facts about Law; Law as Social Facts

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Big Data Technology as a Method of Legal Research *ZHOU Xiang · 60 ·*

What does big data technology mean in terms of methodology for legal research? It is still a specious question. The most relevant method is the legal empirical research which is based on statistics. In Chinese legal circles, the specific methods of legal empirical research are still limited to several regression models, the data collection depends on the social resources of the researchers, and the sample size stops at hundreds of thousands. These above-mentioned shortcomings are expected to be partially improved by big data technology. The basic steps of the application of big data technology are corpus acquisition, corpus translation into data, and data cleaning and analysis. Big data technology has many advantages such as more data acquisition channels, larger data scale, richer analysis tools, etc. Meanwhile, it also some has some disadvantages such as not taking care of individual cases, high technical thresholds, and poor model interpretation. However, the advantages of using big data technology in legal research generally overweigh the disadvantages of it. Specifically, big data technology is a relay relationship for legal empirical research, which can expand the internet

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channels for data acquisition, improve the ability of empirical research to describe and analyze, and enrich the argumentation in important research topics such as the rule of law in China. Big data technology serves as an aid to the study of legal norms. With the use of big data technology, not only the interpretation theory can be more based on the real problems of judicial practice, but the actual effect of the legislative theory research can be measured more accurately.

Key Words Legal Big Data; Big Data Technology; Legal Empirical Research; Digital Law; Method of Legal Research

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On the Construction of Data Property Right *QIAN Ziyu* · 75 ·

In the era of digital economy, as a basic factor of production, data plays an extremely important role in social production, and therefore becomes a property of high value. The Data Security Law and The Personal Information Protection Law issued in 2021 respectively regulate related issues from the perspective of national security and personality rights, but the protection of data property rights is still insufficient. The data property right is a new kind of intangible property right, and the owner of the right has the right of direct control and relative exclusivity to the specific data. The object of data property right is symbolic data, which is clearly distinguished from information and material carrier. The acquisition method is original acquisition based on legal collection behavior. Prior rights related to data, such as the personal information right, restrict the capacity of data property right, but they do not directly dominate the data. Prior rights and data property right are parallel rights, rather than the same right. The abandonment and transfer of prior rights are manifested as the reduction of restrictions of prior rights and the expansion of data property right capacity. This paper analyzes and constructs the basic framework of data right and puts forward relevant suggestions to the establishment and improvement of data property right system.

Key Words Data; Information; Data Protection; Data Property Right; Right Construction

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On the Policyoriented Development of the Criminal Procedure Norms *WANG Yinglong* · 92 ·

Modern criminal procedure has the trend of diversified development and increasingly meets the needs of social reality. The trend of criminal policy of procedure norms is a theoretical summary of the development of criminal procedure from a social perspective. As the systematic expression of social needs, criminal policy acts as a medium between society and the law, instilling rational purpose into the construction and application of the criminal procedure norm system. The influence of criminal policy on criminal procedure norm system has gone through three stages: criminal politics, separation of policy and law, and the trend of criminal policy. It has gradually developed from an external substantive influence to an internal purpose and value guide, making the norm system increasingly functionalistic. The trend of criminal policy of procedure norms means that political forces are no longer irrationally imposed on the law but used as the internal structural parameter of the logical development of criminal procedure norms, which is reflected in the legislation of criminal policy and purposeful guidance for legal interpretation. However, the utilitarian orientation and purposeful logics of criminal policy are still liable to harm individual freedom. Therefore, political forces should be effec-

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tively disciplined by the legal system. It is necessary to construct a dual discipline mechanism of criminal procedure internal norms and constitutional external control to ensure that political forces follow legal logic to exert influence.

Key Words Criminal Policy; Diversification of litigation Procedures; Functionalism; Dogmatic of Law

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Cognitive Bias and Institutional Improvements of Fair Competition Review *HOU Liyang · 106 ·*

Although both anti-monopoly law and fair competition review aim to protect market economy, they are not identical. Anti-monopoly law safeguards the long-term mechanism of market economy. In comparison, fair competition review pertains to the intermediate process to establishing market economy. The two goes in conflict in pursuing long-term effects and balancing short-term effects. When promoting economic efficiency enshrined by anti-monopoly law, fair competition review must face many factors that cannot be considered by the latter. Therefore, the effective enforcement of fair competition review, though should be based on anti-monopoly law, must not be limited by anti-monopoly law. The key is to allow some room for appropriate government intervention for the purpose of increasing total social welfare. Consequently, in the future fair competition review should be accompanied by measures of enforcement based on economy-developing levels, improving the official promotion mechanism based on multiple factors, selecting priorities in reforming monopolized industries, and establishing exemptions for state aid that promotes vertical spill-over effects.

Key Words Fair Competition Review; Ani-monopoly Law; Regional Barriers; Industrial Monopoly; Governmental Subsidy

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The Subjective Public Right of Individual to Claim Supra-personal Interests and Its boundaries

WANG Shijie · 120 ·

For the purpose of guaranteeing complete freedom, both individual interests and supra-personal interests represented by public interests and collective interests should be protected. In China, the implementation of laws by administrative organs and administrative public interest litigation by procuratorial organs constitute the main mechanism for the protection of supra-personal interests. However, the existing interest protection mechanism cannot adequately protect public interests and collective interests, so it is necessary to include individuals into the subjects of protection of supra-personal interests. In the absence of a breakthrough in the current law, the subjective public right can be expanded to recognize individual's claims of supra-personal interests. To this end, not only the elements of public interest can be incorporated into subjective public right, but also formal subjective public right independent of substantive right can be created by legislators. In order to ensure the liberal connotation of subjective public right and to avoid complete engulfment of the individual by the political order, it is necessary to recognize the subjective public right to claim supra-personal interests only in areas where the protection of supra-personal interests is inadequate, and it should be fully related to individuals and must be exercised autonomously by the subject of subjective public rights.

Key Words Subjective Public Right; Supra-personal Interest; Functional Subjective Public Right; Theory of Protective Norm

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"Cold" Thoughts on the Hot Spot of Personal Insolvency System: Focusing on the Consideration of Legislative Conditions *ZHANG Shanbin, QIAN Ning · 135 ·*

The social demand for centralized liquidation of personal debts, the influence of religious forces on public legal consciousness, the full supply of legal talents and the effective support of system supply constitute the legislative conditions of extraterritorial personal insolvency system. In China, the political orientation, economic demand and judicial situation at this stage have determined the realistic basis for the construction of personal insolvency system in China. However, considering China's existing practical experience and social reality, the conditions of personal insolvency legislation are still difficult to be considered mature. Its bottleneck is that the local exploration for the construction of personal insolvency system is not sufficient, the public legal consciousness has not been completely transformed, and the professional team is too weak. Institutional innovation requires the joint efforts of social elites and group organizations, and the construction of personal insolvency system will inevitably face many obstacles. In terms of China's current conditions, before the formal introduction of the unified "personal insolvency law", it is necessary to strengthen the construction and implementation of personal insolvency supporting system and the construction of personal debt liquidation mechanism to cultivate the public's awareness of legal trust and improve the training mechanism of insolvency practical talents, so as to consolidate the legislative basis of individual insolvency system.

Key Words Personal Insolvency; Cancellation of Remaining Debts; Credit Risk; Enforcement Difficulty; Personal Credit Investigation

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On the Problems of Face to Face Crimes in Chinese Context: The Promotion of Substance Theory *CHEN Hongbing · 149 ·*

The problem is whether the party who is not punished can be punished as an accomplice of the party who is punished. There are mainly five theories about the basis of punishment of face-to-face offenders: the theory of no punishment, the theory of legislator's intention, the theory of substance, the theory of combination and the theory of punishable standard purpose. The theory of substance is reasonable because it accords with the entity of crime-illegality and responsibility. In order to coordinate with the punishment of the third party who abets and helps the punished party, as long as the facing party is not the legal interest acceptor, there is no lack of the possibility of expectation, and once there is the substantive illegality worthy of punishment, the establishment of accomplice can not be ruled out in principle. As long as the users of public funds participate in the act of "withdrawing" public funds, they will be accomplices in the crime of misappropriating public funds. The act of purchasing drugs on behalf of others is an accomplice in the crime of drug trafficking. The behavior of purchasing invoices other than special VAT invoices, if the number of invoices purchased is huge, may be an accomplice in the crime of selling invoices. Requiring and abetting financial workers to issue loans to them illegally can be an accomplice in the crime of granting loans illegally.

Key Words Face to Face Crime; Accomplice; Essence Theory; Wrong; Responsibility

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On the Normative Purpose and Scope of the Crime of Illegally Absorbing Public Deposits

HU Zongjin · 161 ·

With respect to the regulation scope of the crime of illegally absorbing public deposits (hereafter as "Crime"), there are still divided opinions from an academic approach and judicial approach. In order to settle a rational scope as to the meaning of the Crime, the normative purpose of the Crime should be analyzed. There are flaws in almost all the existing theories (i. e., deposit management order, financial management order, access order and deposit security) as to the understanding of this Crime. The inherent purpose of legislators to prohibit the illegal absorption of public deposits is to mitigate the risk of bank runs and bad debt exposure. The theory of financial risk prevention is not only reasonable from theoretical perspective, but also syncs with legislative practice since this theory is in line with the regulatory measures of P2P online lending platform. Due to the following factors, it is believed that the theory of financial risk prevention can serve as an effective tool to properly define the regulatory scope of the Crime: (i) banking financial institutions may become the subject of the Crime, (ii) the "deposit" in the constitutive elements of the Crime refers to debt financing only, as opposed to any equity financing, (iii) the "public" in the constitutive elements of the Crime refers to the specific objects that are not specific or exceed a certain number of objects, and the public cognition may serve as a ground to some extent for justifying private lending, (iv) The purpose of fund-raising is not the standard to distinguish guilty from non-guilty, so the absorbing of public deposits for the purpose of production and operation should also be recognized as committing this Crime.

Key Words Crime of Illegally Absorbing Public Deposits; Normative Purpose; Financial Risk; Concrete Explanation

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Comments on Article 1184 of the Civil Code (Calculation of Property Damage Caused by Infringement of Property)

LI Chengliang · 174 ·

Article 1184 of the Civil Code does not provide general provisions on the civil liability for property infringement, but only provides for the compensation liability for property damage caused by infringement of property rights. For the direct damage caused by the infringement of property rights, this provision is mainly applicable to discount compensation which converting the damage into a loss of value, and does not apply to compensation for restoration fees which filling the damage itself. The basic calculation method stipulated in this article is only applicable to the calculation of direct damage and cannot be used to deny the compensability of indirect loss. It is meaningless to distinguish between restoration and value compensation when compensating for indirect loss. The indirect loss is not a reduction in the value of the infringed property, so it can only be calculated in other reasonable ways. While insisting on calculating the direct damage in accordance with the time standard of the basic method, the loss suffered by the infringed party due to the price increase may be calculated separately as indirect loss.

Key Words Value Compensation; Discount Compensation; Market Price; Direct Damage; Indirect Loss

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THE JURIST

（双月刊）

2021/6 总第189期

国际标准刊号：ISSN1005-0221
国内统一刊号：CN11-3212/D
定价：40.00元

微信公众号
faxuejiazz

ISSN 1005-0221

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