

# 甘肃政法学院学报

2011年第3期目次

(总第116期)

## • 学术视点

### 【“法益与规范”专题探讨(3篇)】(主持人:刘远教授)

规范 vs 法益:基于《刑法》第13条的司法逻辑分析 ..... 刘远(1)

为什么是法益侵害说—元论

——以法益的生成与理论机能为视角 ..... 刘军(10)

法益侵害论与规范违反论的后传统社会回应

——以 Roxin 与 Jakobs 的理论为样本分析 ..... 贾健,朱冰洁(18)

## • 民间法·民族习惯法(主持人:谢晖教授)

【主持人手记(三十三)】..... (25)

无需文字的法律秩序

——读《原生的法:黔东南苗族侗族地区的法人类学调查》有感 ..... 黄金兰(26)

民间规则与司法中法律的外部发现 ..... 李永莉(33)

## • 法学论坛

从《四时月令》诏令看汉代的农业经济立法 ..... 冯卓慧(39)

生态法基本范畴论纲 ..... 刘国(47)

论注意义务的判断基准 ..... 高巍(54)

论民法典的保守性 ..... 魏磊杰(59)

从“范跑跑事件”看权利的限度 ..... 郭映芬(68)

本期责任编辑:张建军 辛春霞 高成军 潘丽萍 郭占川

执行编辑:辛春霞

编辑部地址:甘肃省兰州市安宁西路6号甘肃政法学院学报编辑部 邮编 730070

英文编辑:张晓梅

注重问题意识 追求卓越质量  
倡导学术创新 维护学术尊严  
弘扬人文精神 推动法治进步

## • 法律与实践

- 论不认罪案件量刑程序的合理构建 ..... 艾 明(73)  
能动司法视角下马锡五审判方式的再审视 ..... 任尔昕,宋 鹏(80)  
律师伪证罪构成的几种特殊情况分析 ..... 王永杰(87)  
行政首长应急能力问题研究  
——以群体性事件的处置为视角 ..... 杨 红(93)  
江苏沿海地区淡水资源开发利用的思路与法律对策 ..... 王建文,张 宇(99)

## • 探索争鸣

- 脑死亡的法律解读及刑事法效应探究 ..... 莫洪宪,杨文博(104)  
网络服务提供者侵权责任限制问题探析 ..... 邓社民(111)

## • 域外法学

- 西方国家“刑法的刑事政策化”趋势的实践考察 ..... 柳忠卫(118)  
国际劳动关系在转型期的不同变化及其对中国的启示 ..... 吴君槐(125)  
美国公司补偿制度及其对我国的启示 ..... 孙宏涛(132)

## • 青年法苑

- 人身危险性与责任主义 ..... 文 姬(137)  
着手理论的规范学定位与功能 ..... 王 强,胡 娜(144)  
论行政规范性文件的缺陷及其矫治 ..... 宋晓玲,刘一雅(152)

刊名题字：书法家 秦理斌

编辑部网址：<http://GSZF.chinajournal.net.cn>

电子邮箱：[gszlxxyxb@163.com](mailto:gszlxxyxb@163.com) [gszlxxyxb@yahoo.com](mailto:gszlxxyxb@yahoo.com)

[期刊基本参数]CN62-1129/D·1985·B·A4·160·ZH·P·¥15.00·2000·23·2011-03

**Journal of Gansu Institute of  
Political Science and Law**  
**(Bimonthly)**  
**General No. 116**  
**Number. 3 2011**

**Editor-in-chief Shi Yucheng**  
**Deputy Editor-in-Chief**  
**Wang Hongying**  
**Zhang Jianjun**  
**Published on May. 30, 2011**

---

## MAIN CONTENTS

---

Code vs. Legal Interest: A Judicial Logical Analysis Based on Article 13 of Criminal Law .....	LIU Yuan(1)
Why Legal Interests Infringed Theory is Monism	
—A Perspective of Formation and Theoretical Function of Legal Interests .....	LIU Jun(10)
Post—Traditional Social Response on Legal Interests Infringed Theory and Norms Violated Theory	
—A Sample Analysis on Roxin and Jakob's Theory .....	JIA Jian, ZHU Bing-jie(18)
Legal Order Without Words	
—Thoughts after Reading The Original Law: Investigation on Legal Anthropology	
of Miao and Dong Minority Area in Southeast Guizhou .....	HUANG Jin-lan(26)
Folk Rules and External Discovery of Law in Judicial Practice .....	LI Yong-li(33)
On Agricultural Economic Legislation in Han Dynasty Based on the Imperial Edict in Sishi Yueting .....	
.....	FENG Zhuo-hui(39)
On the Outline of the Basic Categories of Ecological Law .....	LIU Guo(47)
On the Judgment Standard of Duty of Care .....	GAO Wei(54)
On the Conservatism of Civil Law Codification .....	WEI Lei-jie(59)
On the Responsibility Limitation of Rights .....	GUO Ying-fen(68)
On Reasonable Construction of Sentencing Procedures Concerning the Cases with Non—guilty Plea .....	
.....	AI Ming(73)
Review on "Ma Xiwu Trial Form" from Active Judicial Perspective .....	REN Er-xin, SONG Peng(80)
Analysis on Special Cases of Perjury Committed by Lawyers .....	WANG Yong-jie(87)
Research on Emergency Capability of Chief Administrator	
—A Discussion on Disposal of Group Events .....	YANG Hong(93)
Thoughts and Countermeasures to the Exploitation and Utilization of Freshwater Resources	
in the Coastal Area of Jiangsu Province .....	WANG Jian-wen, ZHANG Yu(99)
A Legal Interpretation of Brain Death and Its Criminal Law Effect .....	
.....	MO Hong-xian, YANG Wen-bo(104)
Study on the Limitation of Tort Liability of Internet Service Provider	
—Concurrently Talk about Amendment of Article 36 in Tort Liability Act .....	DENG She-min(111)
Practical Study on the Tendency of "Turning Criminal Law into Criminal Policy" in Western Countries .....	
.....	LIU Zhong-wei(118)
The Different Changes of International Labor Relations in Transitional Period and its Revelations to China .....	
.....	WU Jun-huai(125)
The American Corporate Indemnification System and Its Enlightenment to China .....	SUN Hong-tao(132)
The Personal Danger and the Principle of Responsibility .....	WEN Ji(137)
Commencement of Perpetrating Act: The Beginning of Perpetrating Act?	
—On the Function and Norm Position of the Perpetrating Act Theory .....	WANG Qiang, HU Na(144)
Defects in Administrative Normative Documents and Its Correction .....	SONG Xiao-ling, LIU Yi-ya(152)