

QK1850341

# 政治与法律

POLITICAL SCIENCE AND LAW



10 2018

上海社会科学院法学研究所主办

# 政治与法律 (月刊)

10月5日出版

2018年第10期(总第281期)

=====

## 主题研讨 —— 我国民法典物权编的编纂研究

- 论我国民法典物权编立法中的外部体系协调 ..... 房绍坤 / 2
- 我国民法典物权编所有权规则立法研究 ..... 陈华彬 / 13
- 论物权法文本中“应当”的多重语境 ..... 王 轶 / 24

## 经济刑法

- 金融诈骗罪非法占有目的的功能性重构  
——以最高人民法院指导案例第40号为中心 ..... 徐凌波 / 31
- 法益视角下证券内幕交易罪主体范围的规范构造 ..... 赵姗姗 / 43

## 专 论

- 合规律性与合目的性:科学立法原则的法理基础 ..... 裴洪辉 / 57
- 走向司法审查:行政解释的困境与出路 ..... 彭 霞 / 71
- 从环保督察问题反思环境法治中的利益配置 ..... 李 丹 / 80
- 象征性刑法概念辨析 ..... 郭 玮 / 91

## 争鸣园地

- 论基本权利对社会公权力主体的直接效力 ..... 李海平 / 109
- 故意概念的再定位  
——中国语境下“盖然性说”的展开 ..... 李世阳 / 124

## 实务研究

- 我国大数据法律定位的学说论争、司法立场与立法规范 ..... 张玉洁 胡振吉 / 141
- 论辩护权法律关系的冲突与协调  
——以杭州保姆放火案辩护律师退庭事件为切入 ..... 王永杰 / 153

# POLITICAL SCIENCE AND LAW

(Monthly)

Edited by the Institute of Law  
Shanghai Academy of Social Sciences

No.10, 2018(Total No.281)  
October 5

- 
- 2 On the Coordination of External Systems in the Legislation of Real Right Section  
of the Civil Code of China ..... Fang Shaokun
- 13 A Study on the Legislation on Ownership Rules in Real Right Section  
of the Civil Code of China ..... Chen Huabin
- 24 On the Multiple Contexts of “Should” in Real Right Law of China ..... Wang Yi
- 31 Functional Reconstruction of the Purpose of Illegal Possession of the Crime of Financial Fraud  
— Centered on the No. 40 Instructive Case of the Supreme People’s Procuratorate  
..... Xu Lingbo
- 43 The Normative Construction of the Subject Scope of the Crime of Securities  
Insider Trading from the Perspective of Legal Interest ..... Zhao ShanShan
- 57 Conformity of Law and Conformity of Aim: The Jurisprudential Basis  
of the Principle of Scientific Legislation ..... Pei Honghui
- 71 Towards Judicial Review: The Predicament and Outlet of Administrative Interpretation in China  
..... Peng Xia
- 80 The Reflection on Interest Distribution in the Environmental Rule of Law  
from the Perspective of Environmental Supervision ..... Li Dan
- 91 Debate on the Concept of Symbolic Criminal Law ..... Guo Wei
- 109 On the Direct Effectiveness of Fundamental Rights on Social Public Power Subjects ... Li Haiping
- 124 Redefining the Concept of Intent  
—On Basis of the “Probability Theory” in Chinese Context ..... Li Shiyang
- 141 The Theoretical Argumentation, Judicial Position and Legislative Norms  
on the Legal Nature of Big Data in China ..... Zhang Yujie, Hu Zhenji
- 153 On the Conflict and Coordination of the Legal Relationship of the Right of Defense  
— Based on the Analysis of the Incident of the Lawyer’s Withdrawal  
from Court of Hangzhou Nanny Arson Case ..... Wang Yongjie
- 

政治与法律

2018年第10期  
(总第281期)

出版单位 《政治与法律》编辑部  
(上海市淮海中路622弄7号)  
(邮政编码:200020)(电话:021-33165351)

ISSN 1005-9512



定价:20元

# POLITICAL SCIENCE AND LAW

(Monthly)

Edited by the Institute of Law  
Shanghai Academy of Social Sciences

No.10, 2018(Total No.281)  
October 5

- 
- 2 On the Coordination of External Systems in the Legislation of Real Right Section  
of the Civil Code of China ..... Fang Shaokun
- 13 A Study on the Legislation on Ownership Rules in Real Right Section  
of the Civil Code of China ..... Chen Huabin
- 24 On the Multiple Contexts of “Should” in Real Right Law of China ..... Wang Yi
- 31 Functional Reconstruction of the Purpose of Illegal Possession of the Crime of Financial Fraud  
— Centered on the No. 40 Instructive Case of the Supreme People’s Procuratorate  
..... Xu Lingbo
- 43 The Normative Construction of the Subject Scope of the Crime of Securities  
Insider Trading from the Perspective of Legal Interest ..... Zhao ShanShan
- 57 Conformity of Law and Conformity of Aim: The Jurisprudential Basis  
of the Principle of Scientific Legislation ..... Pei Honghui
- 71 Towards Judicial Review: The Predicament and Outlet of Administrative Interpretation in China  
..... Peng Xia
- 80 The Reflection on Interest Distribution in the Environmental Rule of Law  
from the Perspective of Environmental Supervision ..... Li Dan
- 91 Debate on the Concept of Symbolic Criminal Law ..... Guo Wei
- 109 On the Direct Effectiveness of Fundamental Rights on Social Public Power Subjects ... Li Haiping
- 124 Redefining the Concept of Intent  
—On Basis of the “Probability Theory” in Chinese Context ..... Li Shiyang
- 141 The Theoretical Argumentation, Judicial Position and Legislative Norms  
on the Legal Nature of Big Data in China ..... Zhang Yujie, Hu Zhenji
- 153 On the Conflict and Coordination of the Legal Relationship of the Right of Defense  
— Based on the Analysis of the Incident of the Lawyer’s Withdrawal  
from Court of Hangzhou Nanny Arson Case ..... Wang Yongjie
- 

政治与法律

2018年第10期  
(总第281期)

出版单位 《政治与法律》编辑部  
(上海市淮海中路622弄7号)  
(邮政编码:200020)(电话:021-33165351)

ISSN 1005-9512



定价:20元