

ENGLISH LANGUAGE OF LAW

法律英语

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序

依法治国是中国现代化建设的主要目标之一。为了实现依法治国，中国有必要培养和造就一大批法律专业人才。何谓“法律专业人才”呢？依愚见，他们应为在高等法律院校经过专门学习和训练的人才，他们除了应具有良好的职业品德，依法进行国家和社会管理的能力以及法律专业知识外，还应具有较高的语言文字表达和交流水平。这里讲的具有较高的语言文字表达和交流水平当然至少应包括能用某一门外语进行表达和交流的能力。因此，在法律院校学习的学生，除了学好法律，至少还应学好一门外语。这不仅是他们适应中国对外开放的需要，也是他们毕业以后从事法律职业的需要。

众所周知，英语是目前世界上最通行的国际交流语言，也是中国人首选学习的外国语。据我所知，今日中国绝大多数法律院校的学生学习的一外也是英语。一般来说，到了高年级，法律院校的学生大多有相当的英语水平，他们已有条件，也有必要阅读一些法律专业的英文论文和书籍。于是，有的法律院校为高年级学生开设了“法律英语”课，让他们有机会在法律专业和英文俱佳的老师的指导下直接从英文文献中了解外国的法律及其学术状况，掌握部分英文法律专业术语以及特殊的表达方式。广东商学院法律系于志宏先生主编的这本《法律英语》就是在这种情况下应运而生的。

于志宏先生早先毕业于西南政法大学，获法学学士学位，后又考入武汉大学师从中国著名法学家姚梅镇教授攻读硕士学位，

先后在广西大学法律系和广东商学院法律系任教。我同他结识于武汉大学，曾密切交往于珞珈山下，东湖之滨。尽管他在取得硕士学位后离开了武汉大学，先后在南宁和广州工作，但咱们仍鸿书频传，交流不断。在长期的交往中，我不得不于志宏先生是一位勤奋好学，不断进取的学者。最近，于志宏先生来函嘱为其《法律英语》新编作序，余欣然命笔，匆成数语，向读者推荐这本编著。

黄 进

一九九七年三月十八日于澳门南湾

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Part I

Text

Lesson 1

The Nature of Law

There exists in the law, a separate discipline designed to investigate the nature of law, its guiding ideas and social goals, and the general character of the methods and techniques employed for the effectuation of its ends. This discipline is known as "Jurisprudence". This subject, in most of its ramifications, is dealt with in a separate course in many law schools. the subject cannot in its full scope be taught to students who have not as yet acquired a background in the positive rules, sources, and methodology of the law. And yet beginning students who have decided to launch upon a legal career ought to engage at least in some initial and preliminary reflection upon the meaning of the institution to the service of which they intend to devote their life and best energies.

Such reflection, unfortunately, is rendered difficult by the fact that there is no general agreement among jurists and other legal thinkers as to what the goals and purposes of legal regulation are of ought to be. There does exist a large measure of consensus as to the minimum objectives which the institution of law is designed to serve. But when we turn from the minimum and most elementary goals of legal control to the broader ends and ideals for the attainment of which the law can be used by men, we shall

encounter a perplexing multitude and variety of viewpoints. Let us set out a number of definitions of law which may be considered representative and which have influenced the course of legal development:

Cicero—— “Law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite.”

St. Thomas Aquinas—— “Law is an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”

Hobbes—— “Civil law is to every Subject, those Rules, which the Commonwealth hath commanded him, by Word, Writing, of other sufficient Sign of the Will, to make use of for the Distinction of Right and Wrong; that is to say, of what is contrary, and what is not contrary to the Rule.”

Austin—— “Every positive law ... is set by a sovereign person, of a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme. Or (changing the expression) it is set by a monarch or sovereign member to a person or persons in a state of subjection to its author.”

Locke—— “The end of law is not to abolish or restrain, but to preserve and enlarge freedom.”

Jhering—— “Law is the sum of the conditions of social life in the widest sense of the term, as secured by the power of the State through the means of external compulsion.”

Carter—— “Law is not a command or body of commands, but consists of rules springing from the social standard of justice or from

the habits and customs from which that standard has itself been derived.”

Recasens-Siches——“Law was not born into human life by reason of the desire to render tribute or homage to the idea of justice, but to fulfil an inescapable urgency for security and certainty in social life. The question of why and wherefore men make law is not answered in the structure of the idea of justice, nor in the suite of outstanding values which accompany it as presupposed by it, but in a subordinate value——security——corresponding to a human need.”

The definitions of law set forth above are heterogeneous but not necessarily contradictory. Each of them accentuates an element or ingredient in social control through law which may be considered indispensable or at least desirable for the effective operation of a sound legal system. As you re-read the above definitions, ask yourself what each author perceives to be the role of law in human affairs.

Words

1. discipline n. 学科, 科目
2. jurisprudence n. 法理学
3. law school 法学院
4. jurists n. 法学家
5. effectuation n. 实现, 实行, 完成
6. ramification n. 分支, 支流, 细节
7. launch vt. 出发, 开始, 愿意

- 8.engage vt. 允诺, 答应
- 9.methodology n. 方法学, 研究法
- 10.initial a. 开始的, 起初的
- 11.preliminary a. 初步的, 开始的
- 12.reflection n. 反映, 体会, 考虑, 思想
- 13.institution n. 设立, 制定, 法律制度
- 14.energy n. 精力, 能力, 活力
- 15.render vt. 呈现, 提供, 致使
- 16.regulation n. 管理, 调整, 调节
- 17.a large measure of 大半, 大部分
- 18.consensus n. 共同一致意见
- 19.elementary a. 初步的, 基本的, 简单的
- 20.attainment n. 达到, 得到
- 21.perlexing n. 困惑, 迷惑
- 22.reason n. 理智, 理性
- 23.opposite a. 相反的
- ✓ 24.ordinance n. 法令, 条令
- 25.promulgate v. 公布
- 26.civil law 市民法; 民法; 国内法
- ✓ 27.commonwealth n. 联邦; 共和体; 共同体
- 28.hath = have
- ✓ 29.positive law 实在法
- 30.sov^{er}ign a. 主权的; 君主的; 独立的
- 31.subjection to 服从, 隶属
- 32.compulsion n. 强迫
- 33.derive vt. 源出, 起源
- 34.tribute n. 尊敬, 赞美

- ✓ 35. homage n. 尊敬, 敬意
- 36. suite of 一组, 一套
- ✓ 37. monarch n. 君主
- 38. justice n. 正义, 公正; 司法审判, 法制
- 39. accentuate vt. 强调
- 40. ingredient n. (混合物的) 成分
- 41. perceive vt. 感觉, 觉察

Notes

1. There exists in the law, a separate discipline designed to investigate the nature of law, its guiding ideas and social goals, and the general character of the methods and techniques employed for the effectuation of its ends.

design to do sth 打算做某事, 在此做应用于……

the effectuation of its ends 其目的之实现

2. And yet beginning students who have decided to launch upon a legal career ought to engage at least in some initial and preliminary reflection upon the meaning of the institution to the service of which they intend to devote their life and best energies.

beginning students 同 beginner 初学者

a legal career 以法律工作为终身职业

engage in 从事于, 在此做了解、领会讲

3. But when we turn from the minimum and most elementary goals of legal control to the broader ends and ideals for the attainment of which the law can be used by men, we shall encounter a perplexing multitude and variety of viewpoints.

不过，我们从法律管理之最低限度的、最初步的目标转向人们能利用法律去实现的更广泛的目的和理想时，就要面临许许多多各种各样的观点而茫然若失了。

4. Hobbes——“Civil law is to every Subject, those Rules, which the Commonwealth hath commanded him, by Word, Writing, of other sufficient Sign of the Will, to make use of for the Distinction of Right and Wrong; that is to say, of what is contrary, and what is not contrary to the Rule.”

Hobbes 郝勃慈，英国著名哲学家

the Distinction of Right and Wrong 是非界限

5. Carter——“Law is not a command or body of commands, but consists of rules springing from the social standard of justice or from the habits and customs from which that standard has itself been derived.”

body 指整体、总和 body of commands 命令的总和

6. Each of them accentuates an element or ingredient in social control through law which may be considered indispensable or at least desirable for the effective operation of a sound legal system.

be considered indispensable 被认为是必需的

a sound legal system 一个健全的法律体系

Exercises

I. Translate the following into English:

- | | | |
|-------|-----------|---------|
| 1. 法学 | 2. 法学基础理论 | 3. 法治 |
| 4. 法制 | 5. 法的本质属性 | 6. 法律体系 |
| 7. 法典 | 8. 法系 | 9. 法律权利 |