

改革开放30年

刑法学研究精品集锦

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# 前言

时光荏苒，岁月如流。当代中国改革开放至今已届 30 周年。纪念改革开放 30 周年，是我们党和国家政治生活中的一件大事，也是全面贯彻党的十七大精神、实践科学发展观的重要举措。为此，中共中央向全党发出了隆重纪念改革开放 30 周年的通知。30 年来，伴随着国家的昌盛和民族的振兴，我国的法治事业也取得了辉煌的成就。中国法学会因此也发出了关于纪念改革开放 30 周年活动的通知，号召各法学研究团体和法学会以各种形式在法治和法学领域纪念改革开放 30 周年。中共中央和中国法学会的通知理当贯彻落实于我国刑法学领域。30 年间，我国广大刑法理论和实务工作者，紧紧围绕社会主义法治建设的主题，发表了大量的学术论文，繁荣深化了我国的刑法学研究，有力地推动了社会主义刑事法治事业的进步。对这些学术成果进行全面、系统的总结并择优结集出版，既是对这些优秀论文及其作者的表彰和纪念，也可以为后来者留下一份有代表性的刑法学研究资料。为此，中国法学会刑法学研究会与北京师范大学刑事法律科学研究院经协商，决定合作编辑出版大型纪念文集——《改革开放 30 年刑法学研究精品集锦》。为了保证文集所载论文的质量和及时出版，我们特别成立了文集评审委员会和编辑部。评审委员会由中国法学会刑法学研究会两位德高望重的名誉会长高铭暄教授和马克昌教授担任顾问，会长赵秉志教授担任主任，副会长张军大法官、朱孝清大检察官和陈兴良教授担任副主任，委员由刑法学研究会各副会长、秘书长、部分常务理事及部分顾问担任。评审委员会负责文集的组织、策划以及论文的选定工作。编辑部由中国法学会刑法学研究会副秘书长刘志伟教授担任主任，成员包括北京师范大学刑事法律科学研究院讲师袁彬博士（中国法学会刑法学研究会学术秘书）、黄晓亮博士（中国法学会刑法学研究会秘书处学术秘书）、张磊博士和蒋娜博士。编辑部负责文集编辑与出版的具体事宜，其中蒋娜博士承担了文集目录的英文翻译工作。

评审委员会对论文的选取采取“选人”和“选文”相结合的方法。“选人”即以人选文，由 30 年来在我国刑法学研究领域作出较为突出贡献并有代表性著论的刑法学者（包括已经过世的）预选 1 至 3 篇代表性论文作为备选论文，然后由评审委员会审议定稿；“选文”即以质取文，主要由评审委员会在自由投稿的基础上选取有重要理论创新和应用价值并在刑法学界产生一定影响的代表性论文。两种选取方式相互结合、相互补充，力图保证文集所载论文的质量。为了保证论文的代表性，评审委员会在选取论文时还特别遵循了以下几个原则：第一，兼顾不同时代。改革开放 30 年来，以 1997 年刑法典的颁布实施为界，我国刑法学研究也大体上可以分为两个阶段。在这两个阶段中，都有一系列代表性论文问世。因此，在选择代表性论文时适当考虑了时间跨度和论文发表的具体时代背景，对于 1997 年刑法典颁行前后的代表性论文均有所选取。第二，兼顾理论与实

务。改革开放 30 年来发表的有代表性的刑法学论文，既有偏重基础理论研究的，也有偏重司法实践应用的，两者有机结合，共同促进了我国刑法学研究的繁荣和刑事法治事业的进步。因此，在论文选取上，我们还同时兼顾了理论性与实务性论文。第三，以中国刑法学（包括国际刑法学）为主，适当兼顾比较刑法学等。新中国刑法学是在不断比较、借鉴外国刑法学的基础上发展起来的。因此，评审委员会特别选取了一些有影响的中外刑法比较方面的论文。但是，考虑到刑法学的分支学科较多，如果各个学科都予以选取，文集的篇幅将过大，为此，对于单纯的研究外国刑法、国际刑法方面的论文以及犯罪学、刑事执行法学、监狱学方面的论文基本上没有选取。第四，以法学类核心期刊为主，适当选取年会优秀论文。优秀论文的选择是以目前法学类核心期刊为主要线索，并适当考虑历年刑法学年会论文尤其是刑法学研究会年会获奖论文，仅有个别论文是发表在报纸上的。

经过对备选论文的认真筛选，最后确定本文集收录 143 位专家学者的 133 篇论文。在这些入选专家学者中，既有德高望重的刑法学界老前辈，又有诸多有着深厚学术造诣和广泛学术影响的中年学者，还有不少学界新秀；既有从事刑法学理论研究的学者，又有从事刑事立法、刑事司法实务工作的专家。由于篇幅所限，文集对每位专家学者只限收录一篇论文。论文分别涵括了改革开放 30 年来刑法改革、刑法基础理论、犯罪总论、刑罚总论和刑法各论等方面的问题。在此基础上，文集分为了“刑法改革问题研究”、“刑法基础理论研究”、“犯罪总论问题研究”、“刑罚总论问题研究”和“刑法各论问题研究”等五编。每编分别收录了 1997 年刑法修订前后的论文若干，并按照我国刑法学的理论体系对论文予以编排。

当然，改革开放 30 年来，我国刑法学研究从恢复到发展再到繁荣，学术论文可谓汗牛充栋，同时，在论文的收集过程中，有部分学者因为联系不上而没有相关论文被收集到，也有部分学者出于谦虚而没有提交有关论文，因此要以有限的 133 篇论文汇集我国刑法学研究的所有优秀论文，显然不可能做到全面。但是，“管中窥豹，可见一斑。”我们相信，这本文集的出版，对于我们更加深入地了解改革开放 30 年来我国刑法学研究的发展，更加全面地认识改革开放 30 年来我国社会主义刑事法治建设所取得的巨大成就，更好地把握我国刑事立法和刑事司法的未来发展方向，一定会有所裨益。

本文集的出版，不仅得到了全国广大刑法专家学者的鼎力支持，也得到了中国法制出版社的热情相助，同时还得到了长期致力于促进我国刑法学学术事业发展的“高铭暄刑法学发展基金”的慷慨资助。正是方方面面的关心和支持，才使本文集得以及时而精美地出版。为此，我们衷心地向所有关心、支持本文集出版的专家学者们和相关机构及同仁们表示诚挚的感谢和崇高的敬意！  
中国法学会刑法学研究会会长  
北京师范大学刑事法律科学研究院院长  
赵秉志教授 谨识

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