

立法效益研究

LIFA XIAOYI YANJIU

——以当代中国立法为视角

汪全胜 / 著

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让效益理念衍生繁茂的立法绿洲

周旺生

立法效益论题正在进入中国学人的研究视域。近年来探求和阐明立法效益的文字已可屡见于法学论坛。汪全胜博士这篇二十多万言的《立法效益研究》，是其中惶惶然集大成者。从全胜以立法效益为主题构思博士论文开始，到开题再到调查研究和开掘诠释，一直到完成论文、通过答辩和获取北京大学博士学位，他不仅走过了许多青年学者所期望着经历的高规格的学术道路；而且，因着他所提供給学界和立法实际生活的学术成果，是一篇在理论和实践方面都属于阐释重大主题并有显豁收获的产品，他自己快乐，我作为指导老师亦欣然，尽管我知道关于立法效益这种题材的深入研究现在还仅仅是开端。

在论文付梓之际，全胜照眼下的通例，向老师索要一篇序言。我对立法效益问题关切久已，痛感中国迄今在立法方面基本不讲效益之弊，希望着学界有人投入地研究立法效益，更希望着立法效益理念能够打通进入立法实践的通路，与立法实际生活相融合，结出硕大的果实。于是便乐为此事。我想写一篇大而长的序文，藉此抒我之立法效益观。我想说明，在我们这个国度，过去是不懂效益也不讲效益的，在何必曰利的数千年旧有传统熏陶下，在一切为中心工作服务的新环境下，凡事斤斤计较于效益，不仅不入生活的主流，而且甚至是许多人所不耻的，更何况在立法这样的国家大策建置方面，所要关注的主要应是该不该做，焉能讲求什么效益。而此等观念和做法，是何等落后，又是何等贻

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误国之大计、何等阻隔社会进步。我想说明，这样的落后情形在中国经济生活较快地向好的方向转变多年之后，已随之逐渐离去，如今在经济生活和许多社会生活领域，何必曰利之类，已成迂腐可笑之资，讲求效益的习惯和理念，已悄然进入人们的脑际和主宰人们的经济生活。可是在包括立法在内的国家生活方面，效益理念还位于遥远的彼岸，在立法领域生活作息的人们，还少有形成效益理念并以其指导立法实践的，有效益愿望的人们一般也未能形成简明而系统、科学而实用的先进效益观念和知识体系，因而他们正处于一种边缘状态，他们需要有人为其提供像样的立法效益理念资讯和高质量的立法效益理论和知识。我当然更想研究和阐明：究竟什么是科学而实用的立法效益理念和知识，国外先进立法效益知识和经验中有哪些是现时我们所特别需要借鉴移植的，我们何以获取它们，更何以应用它们于立法实际生活，在获取立法效益理念和知识、应用它们于立法实践方面，有哪些好的方法和哪些较大的阻力，如此等等。所憾的是，因为要写长文，而我此间的教学、学术、项目和立法实践方面的任务又使我难有集中时间连贯作文，只好是或作或辍，即便有了“非典”这样难得的可以潜心向学的时机，我也还是未能如愿完稿。如今书稿呼之欲出，安能再三延误。只好聊为小文。吾之钝矣！

好在全胜已经做了很好的工作。我继续希望着，他在离开北京大学的日子，还能在学术方面探索不已；希望着全胜和所有勇猛精进的青年学者用功不已的努力，可以结出立法效益论题的更多更新致的理论知识果实；并且，将这种果实栽种在中国法治现代化的田园里，衍生出繁茂的立法实际生活的绿洲。

2003年6月19日于北京大学蓝旗营寓所

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