

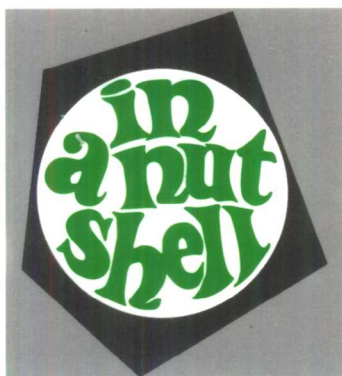


West Nutshell Series
美国法精要·影印本

THOMSON
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Jurisprudence: Legal Philosophy

法理学：法律哲学



Surya Prakash Sinha

【美】瑟亚·P·辛哈 著



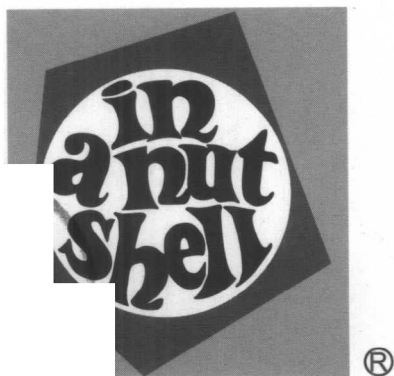
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总序

许传玺*

在美国法律教育界与律师实务界,这套“美国法精要”(Nutshell Series)是颇具特色的一套丛书。这套书最突出的特点当推它们的简捷明快、深入浅出。每种书均由富有教学经验的法学教授执笔,在三、四百页的篇幅内介绍某一法律部门的基本原理、主要法规和重点案例。

由于这些特点,这套丛书受到了无数美国读者的欢迎和喜爱。众多法学院的学生将这套书作为课外的辅助教材,由此掌握美国各主要部门法的精义。执业律师也经常借助这套书,以迅速了解自己尚未熟习的某些部门法,或者温习过去曾经学过的某些课程。

相信这套丛书也能赢得国内读者的欢迎。无论是法律专业的本科生、研究生,还是执业律师或其他人士,都能从这套丛书中获得有关美国法律的大量知识,对自己的学习和工作有所助益。此外,通过阅读原汁原味的英文来学习美国法律也应能提高读者的法律英语水平,促进与美国同行的直接对话与交流。

* 美国哈佛大学法博士(J. D.);耶鲁大学社会文化人类学博士;现任中国政法大学中美法学院院长、教授。

应原出版者的要求,这套丛书的国内版增加了中文前言,以介绍美国各部门法的概况、每种书的内容及原书作者等等。这些前言作者都是在美国受过专业教育或从事专门研究的法律学者甚或专家。相信他们的介绍会对读者有所帮助。

Happy reading!

1999年4月
于哈佛法学院

前 言

郑 强*

在英美法学中,法理学与法律哲学意旨相同,均是就法律现象的基本问题提出疑问并试图加以解答的理论努力。

法理学根源于人类生活对秩序的基本需求,滥觞于人类对正义问题的哲学探索。概因人们文化传统、经济条件、政治地位、社会心理等诸多因素的各不相同,对正义和秩序等问题的认识也就千差万别,甚至大相径庭。伴随着认识的差别,各类法理学的观点、理论和著述也便应运而生。

法理学之与法律学习和法学研究,恰如地基之与大厦、灵魂之与身体,重要性自不待言。它可以使我们摆脱关于法律现象的种种偏见,包括由常识、时代和民族的习见以及主观上未经深思熟虑而滋长的自信所形成的偏见。它还可以使我们避免部门法人为划分的狭隘限制,继而形成对法律世界的全面关照,为思想和行动开启广阔的空间。

当代中国,经济、社会和文化都处在急剧变化的历史时期,法律结构也面临巨大的调整。如何在国内外纷繁复杂的条件下,重新调整中国的法律、社会结构,成为当下中国

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法律和法学界的首要问题。他山之石，可以攻玉。全面充分地了解外国的、特别是西方国家的法律思想无疑是我们做出正确选择的一个必要条件。

呈现在读者诸君面前的，是一本内容全面、深入浅出、在英语世界极受欢迎的法理学入门读物。全书内容分为三大部分：第一部分，形而上学认识论中的法律理论。介绍和评论宗教和神启的法律理论、自然法理论。第二部分，唯心主义认识论中的法律理论。介绍和评论康德、黑格尔、施塔姆勒、威奇奥的法律思想。第三部分，经验主义认识论中的法律理论。介绍和评论实证主义法律理论、历史主义法律理论、社会学法律理论、心理学法律理论、美国现实主义法律理论、斯堪的纳维亚现实主义法律理论、现象学法律理论和批判法学运动。

本书第十四章表现作者的基本观点，并且曾掀起过一场称之为“法律多中心性”的新法理学运动。

本书作者美国当代法理学家瑟亚·P·辛哈，美国派斯大学法学院荣誉退休教授，哥伦比亚大学和平问题思想库重要成员，著述颇丰，广泛涉及法理学、国际法、侵权法、比较法、法律经济学和法律教育等领域。其著作在当今世界享有较高声誉并且被国际法院在正式文件中引用。

2004年1月

To
Jessica and Sonya

In fond memory of
Wolfgang Friedmann and Ernest Nagel

*

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CHAPTER 1

INTRODUCTION

Jurisprudence has two meanings. In the civil law tradition of Europe it means the collectivity of decisions of a particular court. In the common law tradition of England, United States, and other common law countries it means legal philosophy.

Philosophy consists in raising fundamental questions and seeking the truth. Thus, in philosophy of science we ask what are patterns of scientific explanation, what is accidental and nomic universality in the character of scientific laws, what are major components in theories, such as the logical skeleton of the explanatory system, its empirical content, and its conceptual or visualizable material, what is the cognitive status of theories, and so on. Or, in moral philosophy we ask such questions as what is it that people do when they engage into a moral discourse. In legal philosophy we raise such questions as what is law, what is justice, what is an offense, what is punishment, what are rights, and the like.

This book examines the central question about the nature of law. What is law? How is to be defined? What are its essential aspects? To that end, it examines various theories that have been