



CONTEMPORARY WESTERN JURISPRUDENCE

现代西方法理学



吕建高 编著

法律出版社 LAW PRESS • CHINA

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图书在版编目(CIP)数据

现代西方法理学 = Contemporary Western
Jurisprudence: 英文 / 吕建高编著. —北京: 法律出
版社, 2013. 8

ISBN 978 - 7 - 5118 - 5299 - 1

I. ①现… II. ①吕… III. ①法理学—西方国家—现
代—英文 IV. ①D90

中国版本图书馆 CIP 数据核字(2013)第 200565 号

Contemporary Western Jurisprudence

吕建高 编著

责任编辑 董 飞
装帧设计 马 帅

© 法律出版社·中国

开本 720 毫米×960 毫米 1/16

版本 2013 年 9 月第 1 版

出版 法律出版社

总发行 中国法律图书有限公司

印刷 北京北苑印刷有限责任公司

印张 34.5 字数 651 千

印次 2013 年 9 月第 1 次印刷

编辑统筹 学术·对外出版分社

经销 新华书店

责任印制 陶 松

法律出版社/北京市丰台区莲花池西里 7 号(100073)

电子邮件/info@lawpress.com.cn

网址/www.lawpress.com.cn

销售热线/010-63939792/9779

咨询电话/010-63939796

中国法律图书有限公司/北京市丰台区莲花池西里 7 号(100073)

全国各地中法图分、子公司电话:

第一法律书店/010-63939781/9782

重庆公司/023-65382816/2908

北京分公司/010-62534456

西安分公司/029-85388843

上海公司/021-62071010/1636

深圳公司/0755-83072995

书号:ISBN 978 - 7 - 5118 - 5299 - 1

定价:50.00 元

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To
XIE Ping
and
LYU Yijiu

Preface

As is well known, legal teaching in bilingual languages plays an increasingly important role during the process of China's rule of law. When I began to organize my teaching *Western Jurisprudence* in bilingual languages several years ago, I did find it difficult in many aspects, among which the lack of corresponding textbook is undoubtedly the most obvious one. I deeply know that the problem of textbook has become the bottle-neck to limit the bilingual teaching of law. Under such circumstances, I made up my mind to write an English textbook for students, especially postgraduates, in law, legal philosophy, political philosophy, sociology and sometimes ethics to use.

However, when I began my writing, I immediately felt that it was such a huge and difficult task that I almost gave up halfway. Someone may even claim that it is totally unnecessary to write a textbook of this kind, because we can directly introduce the original one from other countries. I don't agree to this claim at all. On the contrary, I think we should be careful when we make such a decision. It is true that for some courses, such as those concerning WTO legal system, international economic law, the introduction of original textbook is a good choice. But for a course of jurisprudence, the direct introduction may not be suitable for our students. Actually, to compare with the introduction of original textbook of jurisprudence, writing a bilingual textbook more suitable for our own teaching should be a better choice.

The fundamental aims to write such a book are as follows: firstly, such a book can ease the pressure of the lack of textbook in jurisprudential bilingual teaching; secondly, such a book totally organized in English helps students better understand some basic concepts and ideas. During my teaching experience in the last seven years, I deeply feel that the explanation of some concepts and ideas in the original language by the author are more understandable than the one in Chinese. I was asked many times by the students to explain some concepts which were translated into Chinese. According to the feedback from the students, they usually found it

easier to understand them in English than in Chinese translation. Lastly, such a book helps improve the students' reading ability and extend their international perspectives.

My book is composed of twenty chapters, covering the main legal schools in the west, such as legal positivism, natural law school, utilitarianism, sociology of law, legal realism, historical jurisprudence, economic analysis of law, critical legal studies movement, feminist legal theory, etc. In addition to these different schools themselves, I also arrange the chapters with the famous representatives of different schools. For example, in explaining legal positivism, not only do I have an overview of the main idea of this school, I also introduce the representatives and their basic theoretical claims in different stages, such as John Austin, H. L. A. Hart, Hans Kelsen, Joseph Raz, and Jules Coleman.

Concretely speaking, Chapter One generally touches legal theory and legal methodology, in which I introduce the definition of jurisprudence, the reason for jurisprudence study and controversy over legal methods. Chapter Two is an overview of legal positivism with the purpose of making students grasp the main idea of this school. Chapter three is about Jeremy Bentham and utilitarian jurisprudence, especially Bentham's principle of utility and theory of law. The reason for putting Jeremy Bentham here is that his idea has a great effect upon John Austin and legal positivism. And we can even say that it is Bentham, not Austin, who is the real father of legal positivism. Chapter Four to Chapter Eight introduce the representatives of legal positivism and their theoretical claims respectively, from John Austin, H. L. A. Hart, Hans Kelsen, Joseph Raz, to Jules Coleman. Chapter Nine is an overview of natural law school designed to ask the students to know the evolution, definition, basic positions as well as some objections of natural law. The next two chapters — Chapter Ten and Chapter Eleven — mainly touch John Finnis and his new natural law theory and Lon Fuller and the morality of law. Chapter Twelve focuses on Ronald Dworkin and law as integrity. Chapter Thirteen introduces John Rawls and his theory of justice. Chapter Fourteen touches Robert Nozick and the theory of entitlement. Chapter Fifteen is about Richard Posner and economic analysis of law. It should be noted that all these four chapters are not isolated and they are closely connected. The figure in one chapter usually put forward their claims on the basis of criticizing the one in the other chapter. For example, Robert Nozick sharply criticized John Rawls and his theory of justice while claiming his theory of entitlement. Chapter Sixteen introduces sociology of law, a very important school of law in the western

legal theories, in which Rudolf von Jhering, Roscoe Pound, Eugen Ehrlich, Emile Durkheim, Max Weber, Karl Marx, Niklas Luhmann, and Jurgen Habermas are covered. Chapter Seventeen is about legal realism, including American legal realism and Scandinavian legal realism. Chapter Eighteen touches historical jurisprudence with the main representatives of Friedrich Carl von Savigny from Germany, Sir Henry Maine from Britain and James Coolidge Carter from America. Chapter Nineteen is about critical legal studies and its representative Robert Unger. Chapter Twenty introduces feminist legal theory.

It should be emphasized that the writing of this textbook has two obvious features. One is that all these twenty chapters are not totally independent or isolated. On the contrary, they are closely connected. They reflect the development of jurisprudence in contemporary western legal theories. The other is that I prepare ten review questions in the end of each chapter, helping students further understand the main idea of this chapter.

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