

<<英美法导读>>

图书基本信息

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前言

本教材是根据我在烟台大学法学院的授课内容编写的，是对第一版的修正和更新。

其中部分内容参考了相关问题的一些著作，参考文献在本书最后列出。

书中其他内容是本人的观点和研究成果，这些在大多数英美法书籍中是没有涉及的，但我相信它们是英美法整体中密不可分的一部分。

本书的研究对象主要是美国法和美国法律制度，这是因为美国不仅沿用了与大陆法系国家成文法系统相对的普通法体系，并且美国拥有世界上最丰富和最有影响力的法律和法律制度，它的国际影响是前所未有、无法逾越的。

目前大多数以普通法为内容的英美法专著在一定程度上说是缺乏系统性的，因而实际仅仅是对英美法的简介，其行文没有组织结构，内容很大程度上是一堆相关材料的堆集和罗列，全无有意义的体系构建和前后联结。

这些书可谓只见树木，不见森林。

可以说，这样的书之所以不成功主要是由于没有对法律整体以及英美法做适当的概念界定。

另一个问题在于这些作者误认为法律渊源是真正的法律，同时，他们也忽视了探寻诉讼中的法律所最终呈现出最具意味的权威有效的动态裁判过程。

此外，早期专著没有正确地在政治和道德层面上剖析法律的本质与精英权力之间的互动关系。

本教材中的内容着力于英美法的构成和特征，书中许多地方都表现了这一点，而实体法的内容尤其是私法方面没有涉及。

因此，书中几乎没有这方面的讨论，当谈到私法命题时，更多的是从法律制度这一宏观的角度来探讨的。

相反，本教材的重点放在了现实发生的热点问题上，比如司法判例或更广泛领域的一些案例，其中包括正在发生的经济衰退、金融危机以及监管方案、紧急援助计划和国有化与救市计划。

这些焦点和问题囊括了各种对立概念的激烈交锋，如大政府与小政府、自由主义与保守主义、控制监管导向与自由放任的资本主义市场经济、国家权力与社会力量、公共权威与私人力量之间的关系和相互作用等。

这些研究也强调了立法、裁判执行和司法消极性的基础性地位，最主要的是我们通过现实在国家权力和参与社会参与两方面阐述了精英权力的本质和影响，以及权力和效力的关系和区别。

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内容概要

《英美法导读（第2版）》主要以美国的法律和法律体系为阐述对象，采用体系化的研究方法，在体例及内容上力求构建一个有机的英美法体系。

《英美法导读（第2版）》力图强调英美法体系的组成部分、整体面貌及其个性特征。为正确理解英美法，《英美法导读（第2版）》以专题形式从诉讼、法律推理、法律研究、法律资源等方面来阐述美国法，向读者展现一个良好法律体系的构建过程。

《英美法导读（第2版）》浓墨重彩之处在于法律制定、废除、修改的过程及具体操作，阐明了判决如何确定，判决制订者如何相互作用，以及法律规则如何最终形成等。

《英美法导读（第2版）》系导读性著作，但又有一定的深度，作者采用英文写作，语言简练易懂，可读性强，为读者创造了一个良好的英关法语境。

《英美法导读（第2版）》可供大学师生学习英美法使用，也可供科研人员、法律实务人员参考。

作者简介

李国利，教授，男，1935年生于山东烟台，1959年毕业于台湾大学法律系。1963离开台湾赴加拿大深造，在麦吉尔大学空间法研究所、图书馆信息科学院攻读，并于1968年分别取得这两个专业的硕士学位。此后在麦吉尔大学空间法研究所、麦吉尔大学法学院执教，直到2010年退休。李国利教授对空间法、国际法和法哲学都有浓厚的兴趣。在这些领域发表了很多文章，并著有最全面的多卷本世界空间法百科全书。

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章节摘录

Comparative legal study for the purpose of seeking out persuasive authority in foreign law usually flourishes on the bedrock of shared history and tradition, especially in countries with similar social, political, and economic conditions, and institutions, and with commonly cherished value systems. However, fidelity to legal tradition is purely due to the impulse of blind obedience to the founding constitutive moment, a formal authoritarianism (独裁主义). This is increasingly evident as the founding text has been subject to ceaseless, constant and multiple bombardments and changes in its home country and has long lost its originality, and its present face and content are formed and transformed by the contemporary and changing conditions of a social, political, and economic nature in the home country. Thus, to require fidelity to a legal tradition for an adopting country with a completely different conditions and circumstances becomes even more untenable. The only rational thing to do is to regard legal tradition as authority of reason like any other authority informed primarily by its substantive content. From the perspective that law reflects the value quality and conditions embodied in authoritative and effective decisions, it would seem reasonable and natural that the law of some of the most successful and powerful countries in the political, social, economic, military, environmental, or human rights field should be chosen. The assumption is simply that countries that excel in most of these important areas of human dignity values would most likely enjoy a more just and effective legal system and a healthy corpus of good laws.

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