

论文

儒家美德法理学论纲

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摘要:

儒家的道德思想可解读为一种温和的美德伦理学,既强调行为准则礼,又将个人品质作为道德评价的根本标准。儒家美德法理学是受儒家道德思想启发而发展出来的当代法律理论,以礼、正名、义和仁四个儒家根本理念为基础。在规范理论方面,儒家美德法理学将和谐(社会层面的协调性和谐与个人层面的自治性和谐)看做是法律的重要价值之一。法律应当提供一个制度性框架以促进公民美德的发展。在实在理论方面,儒家美德法理学从功能论的角度解释了法律如何指引公民的行为,并对评价性概念的适用和法律指引人们行为的机制进行了理论上的阐释。以此为前提,儒家美德法理学要求法律中的评价性概念和法律的内容能够被具有“义”美德的公民所内化,以令法治得以良好运行。

关键词: 儒家美德伦理学 儒家美德法理学 浊法律概念 法律指引功能 协调性和谐 自治性和谐

A Sketch of Confucian Virtue Jurisprudence

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Abstract:

Confucian moral thought could be read as a moderate version of virtue ethics. It takes the innate dispositions (virtues) of agents as the fundamental source of moral worth while still emphasizes the value of external rules of conduct (*Li*). Confucian virtue jurisprudence is a contemporary theory of law that is inspired by the ancient moral thought of Confucian thinkers. It is constituted by four basic ideas in Confucian moral theory: *Li*, Correcting Names, *Yi* and *Ren*. As a normative theory, Confucian virtue jurisprudence views harmony (coordinative harmony and autonomous harmony) as one of the fundamental aims law should achieve by providing an institutional framework that enables and facilitates the development of citizens' virtues. As a positive theory, it explains how law could fulfill its essential function of guiding people's actions and provides an account of the mechanism through which thick concepts enable this guidance function of law. Based on these ideas, Confucian virtue jurisprudence makes a further claim that, to achieve a well functioning system of Rule of Law, thick legal concepts and the content of law should be internalized by citizens who possess the virtue of *Yi*.

Keywords: Confucian virtue ethics Confucian virtue jurisprudence thick legal concepts

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