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民法的关系探究——一种基于法律渊源视角



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关闭

The Research on the Relationship between Folk Law and State Law—A Study Based on the Perspective of Sources of Law

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中文关键词: [法律渊源](#) [民间法](#) [国家法](#) [关系样态](#) [文化土壤](#) [理性把握](#)

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中文摘要:

通过法律渊源之视角,发现国家法与民间法的关系尤为密切。近代以前,不少国家的成文法典完全就是民间法的汇编;近代以后,虽然立法技术不断提高,立法群体专业化、组织化水平不断改进,但国家法中还是予以民间法一定的认可。民间法与国家法共生、共长于同质的文化土壤,二者有着共同的对于和谐秩序的价值诉求。因此,只有理性把握好二者的关系,才能更好地服务于中国的立法、司法实践。

English Summary:

Through the perspective of the sources of law, we find that the relationship between the state law and the folk law is particularly close. Before modern times, the state law in many countries was entirely a collection of folk laws. Since modern times, although legislative techniques, levels of specialization, organization of the legislative body have been improving all the time, folk law is still recognized by state law to a certain degree. The state law and folk law have coexisted in homogeneous and symbiotic culture soils. They share the common value in the pursuit of harmonious social orders. Therefore, only if we have a rational understanding of their relationship, can we serve China's legislation and judicial practices better.