

论文

以法治实践培育公共理性----兼论中国法治实践学派的现实意义

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摘要:

公共理性是一种公共化的思维方式和合作共治的公民能力,对于转型期社会具有重大意义。公共理性是理性的公共化,是一种使“理性”步入“合理性”的观念,其基本要素包含主体的平等性和目标的公共性。对于法治的建设与发展,公共理性是其必然内涵和重要基础,因为公共理性可以测量法治社会的水平,公共理性与法治社会密不可分。公共理性的形成在实践上说就是一个公权与私权不断沟通的过程,而司法透明指数、电子政府发展指数和余杭法治指数等一系列法治实践在公权与私权层面对公共理性的培育都具有现实作用。因而,中国法治实践学派的提出初衷和重要任务之一就是要着眼于转型的中国社会,经由法治实践培育出普遍的公共理性,整合力量以共建法治社会。

关键词: 公共理性 法治实践 中国法治实践学派

Cultivating the Public Reason with the Practice of the Rule of Law: The Realistic Significance of China Practical School of Rule of Law

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Abstract:

Public reason is a public-oriented way of thinking and the citizens' capacity of cooperative and shared governance, which is of great significance for a transitional society. Public reason is the publicity of rationality: a concept of turning rationality into reasonableness. The basic elements of public reason contain the equality of subjects and the publicity of goals, from which we can derive three criteria of public reason: whether the public power taking itself only as one part of shared governance, whether the civil society taking itself as the subject of shared governance, and whether the shared governance of public power and civil society share common social goals. Public reason is an inevitable connotation and important foundation for the construction and development of the rule of law, because public reason could measure the level of the rule of law of the society. In other words, a society of the rule of law can't exist without public reason; meanwhile, public reason is an indication of the maturity of the rule of law in a society. The forming of public reason is in practice a process of constant communication between public powers and private rights. A series of "Index" programs organized by the China practical school of rule of law will definitely affect the cultivation of public reason on both public and private aspects. For the public powers, the rule of law means the integration of power and responsibility: powers rational, and responsibility reasonable, constituting the public reason of public powers. The dynamic monitoring index in Judicial Transparency Index is mainly used to evaluate and supervise the public reason of courts and judges, promoting their consciousness to take the initiative in fulfilling the responsibilities and interacting well with the public. China E-Government Development Index is to evaluate and push forward government's awareness in public service and shared governance, showing an open, transparent and public oriented mode of governance. The actual data of Yuhang Index of Rule of Law over the years also reflects the introspection of public power towards a more modest and equal-to-the-public self-positioning. For the private rights, public reason aims to turn every individual from civilian to citizen in essence. The polls index in Judicial Transparency Index could enhance people's self-cognition in social development of the rule of law, looking at the society from the perspective of judges or other imaginary public roles. E-government and its index is a bridge for the communication between government and the public, and a channel of democracy for public participation and shared governance. The human capital index in China E-Government Development Index mainly evaluates the level of education of the public, which is an important foundation of public

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reason. And the data of Yuhang Index of Rule of Law in the past five years shows that the public's expectation of public power is increasing year by year, mirroring the growing public reason in the civil society. China practical school of rule of law is the product of a series of legal practices, one original purpose and mission of which is to focus on the transitional society in China, through the practice-oriented researches and legal practices, cultivating the general public reason, bringing about communication between public powers and private rights, interlinking the two parts together to build a society of the rule of law.

Keywords: public reason the practice of the rule of law China practical school of rule of law

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