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论我国刑法的法律特性及其对刑法品格的塑造——以刑法法益结构为分析视角

(青海民族学院 法学院, 青海 西宁 810007)

On the Legal Character of Criminal Law and Its Shaping on the Character of Criminal Law—— Analysis from the Perspective of the Structure of Interest of Criminal Law

(Faculty of Law, Qinghai College for the Nationalities, Xining, Qinghai 810007, China)

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摘要 传统刑法法益由国家法益、社会法益和个人法益组成,并且刑法以保护国家法益为其最重要的任务。在这种法益结构影响下,人们往往将刑法的法律特性归结为刑法是公法,虽然有学者很早就提出了刑法是保障法的论断,但至今仍未超出刑法是公法的羁绊,这与刑法的发展趋势是不相符合的。在刑事法治视域中,刑法法益除了国家法益、社会法益和个人法益之外,还应当包括生态法益,而且其中个人法益具有优先性,社会法益和生态法益具有基础性,国家法益具有保障性。在这种刑法法益结构的影响下,刑法的法律特性应当归结为刑法只能是保障法,这一论断,不仅表明了刑法的法律特性,还意味着对刑法法律品格的重新塑造。

关键词: 刑法 法益结构 法律特性 保障法 法律品格

Abstract: Traditional legitimate interests of criminal law are composed of state's legitimate interest, social legitimate interest and individual legitimate interest, in which the most important duty of criminal law is to protect state's legitimate interest. Under this structure of legitimate interests, scholars often think that criminal law belongs to public law. Although some jurists have put forward that criminal law is the law which guarantees the implementation of other laws many long ago, the opinion that criminal law belongs to public laws is not changed yet, which does not conform to the developing tendency of criminal law. In the view of rule-of-law in criminal, legitimate interests of criminal law should include state's legitimate interest, social legitimate interest, individual legitimate interest, and ecological legitimate interest. Furthermore, individual legitimate interest is preferential legitimate interest, social legitimate interest and ecological legitimate interest are fundamental legitimate interests, state's legitimate interest is guaranteeing legitimate interest. Under this structure of legitimate interests of criminal law, peculiarity of criminal law ought to be defined that criminal law is only the law which guarantees implementation of other laws. This conclusion not only discloses legal peculiarity of criminal law, but also molds legal character of criminal law again.

Key words: criminal law structure of legal interest legal peculiarity guaranty law legal character

作者简介: 苏永生 (1973-), 宁夏固原人, 青海民族学院法学院副教授, 中南财经政法大学刑法学博士研究生。

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通讯地址:湖南省吉首市人民南路120号《吉首大学学报》编辑部 邮编:416000

电话传真:0743-8563684 E-mail: jsdxxb@qq.com 办公QQ: 44134225

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