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人文关怀的法律与法学话语

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摘要: 法的人文关怀是通过人权的规范保护来实现的。旧有的人性善恶假定作为其深层语法, 存在着逻辑缺陷也面临着现实困顿。为此, 我们必须超越人权论, 将人权保障的宏大叙事转化为具体的权利话语; 超越善恶论, 重建法的人文关怀的深层语法; 超越功利论, 谋求法学对人文社会科学的理论贡献, 以实现法的人文关怀话语系统的优化。

关键字: 人文关怀; 人权保护; 法益机制

On the legal discourse of humanism solicitude

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Abstract: The humanism solicitude of law is realized through the normative protection of human rights. The traditional presupposition that human nature is good or evil is the deep-seated foundation of humanism solicitude, but it is defective in logic and meets with troubles in reality. Therefore, we should transcend simple theory of human right and transform it into material discourse of legal rights, on the basis of which, the science of law can pursue new contribution to humanities and social science.

KeyWords: humanism solicitude; protection of human rights; mechanism of legal interests