

The Analysis of the Traditional Law and Judiciary from the Perspective of Function: A Case Study of the Sacred Land

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Abstract

By positive analysis on fifty cases about sacred land, the main sources of judicial are reason sense and customs about sacred land; the judge don't apply the provision of law even once, family law are applied only occasionally. This can be compatible with official harmony, but the ultimate cause is the universal idea of the law and judicial in traditional society. To understand the idea exactly, we must emphasize the function of the law and judicial: deterring and moralizing. Differing the idea in west, the law in traditional China isn't a economy system of rules, the emphasis of judicatory isn't looking for the suitable rule in current case. The law and judicatory submit the effectiveness of the deterring and moralizing function. So in this point, the questions can be reply by a new style of setting problem, such as why the civil law in traditional China couldn't be developed, the judgment is lack of determinacy.

Keywords : Traditional China; Sacred land; Reason sense;
Detering and moralizing.