

图书基本信息

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## 内容概要

《法哲学与法社会学论丛·2011年第1期（总第十六期）》这本书内容包括：法律确定性的谬误：为什么模糊的法律标准也许更适合资本主义和自由主义；自由、价值和实践理性：奥卡姆与圣托马斯之差异的当代相关性等。

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本辑作者名录  
引证体例

章节摘录

版权页：插图：Here is one last objection: it may indeed be the case that the "external evidence" rule or the "explicit verbal consent" rule may produce less certainty than their vaguer alternatives; but those who believe that clear and unambiguous rules produce more certainty and predictability than vague standards need not think that any clear rule does so. The claim pertains only to well-crafted rules, not to ill-conceived ones; and the "external evidence" rule, or the rule of "explicit verbal consent", may be simply ill-conceived. The proper comparison is therefore between well-crafted and strictly-followed clear and unambiguous rules and well-crafted vague standards: it is here that bright-line rules are bound to perform better predictability-wise. A few responses are in order. First, a good many jurists consider the "external evidence" rule and the suggestion of "explicit verbal consent" perfectly well-conceived. Indeed these rules are not figments of my imagination: they are the real-life suggestions of those who seek better certainty and predictability in these areas of the law. More fundamentally, the objection assumes that there always is a clear and determinate bright-line alternative that would perform better, predictability-wise, than a vague standard. But what could support that assumption. Indeed my argument is that in many areas of the law (including contracts or rape) bright-line rules would never produce more predictability than alternative nebulous standards. The problem with the "external evidence" rule or with "explicit verbal consent" is not that they are ill-conceived, but that they seek to reduce the irreducible.

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