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Study on Ecotype Consumption Law

秦鹏 著



法律出版社
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序

环境问题是上个世纪以来最为引人注目的话题。与对工业革命以来发展道路的总结相呼应,是理论界为解构新的文明形态——生态文明形态的意义支撑和实践途径的重要努力。这个重要努力的目的就是为了能够使人类摆脱环境问题的困扰,以生态文明形态有效地支配人类社会生活的各个领域,实现人与自然、人与社会以及人与自身的和谐发展。

环境问题就其被导致的行为来看主要在于生产和消费,因此,倡导合理的生产方式和消费模式就成为新的文明形态的内在要求。除了道德的、经济的、科技的手段外,作为人类社会活动实践准则的法律对于克服环境问题,塑造良好的生产方式和消费模式无疑具有极其重要的作用。但是纵观既往的法学研究 and 法律运行的实践,有两种偏向值得注意。一种是过多地关注生产领域的法律调节与规则导向,生产领域的行为控制似乎成为解决环境问题的纯粹的对策性方案,而对于消费领域的行为控制几近空白,一些倡导公众参与的解决思路又显得空洞玄虚、缺乏实效,致使相关领域的法学研究与法律导向流于偏颇。另一种则走向反面,游离于对消费行为的人文导引和法律规制之外,过分强调对消费者权利的保护而忽视对消费者社会责任的培育,致使不良消费模式成为社会生活中难以消除的痼疾。如何有效地克服这两种偏向?应当说,秦鹏的《生态消费法研究》在这个方面不仅寻找到了恰当的切入点,而且做出了具有开拓性和创新性的理论探索。

事实上,从我国环境问题的实际状况来看,由于缺乏与生态文明相适应的健全的消费观念,国人的不良消费模式可谓是导致环境破坏和资源危机乃至不良社会风气的一个重要缘由。尤其当前我国正处于全

面步入现代化正轨的关键时期,社会转型与理念转型同向共进,在这一重大的转型时期,理论的导向作用与实践的探索本身休戚相关。理论面临着实践的挑战,实践指引着理论的创新。因此,关乎人类基本存在的消费行为及其相关理论,需要在社会实践中形成自身的变革理念。在对消费问题的研究中,法学理当承担起提炼国人消费模式变革观念的重任,以对社会公众良好消费行为的塑造提供理论依据和意义支撑。秦鹏在《生态消费法研究》一书中确实提出了一些学术创新观点。比如他重新分析和认定了环境资源问题形成的根本原因,认为消费问题是环境资源问题的核心,解决消费问题的根本之道在于改变不良消费行为,塑造生态消费模式。同时对生态消费概念与业已存在的绿色消费、可持续消费概念进行了理论辨析。比如他阐释了生态消费法的界定方式,论证和建构了生态消费法的基本原理和理论支撑体系,从消费者社会义务的确立、消费税收调控制度等多个层面和角度建构了生态消费法的法律规范体系。这些观点在论文答辩和其后所发表的一些论文中得到许多专家好评。尽管其中的一些学术观点尚待考量和商榷,但我以为,他能够着眼于社会生活的现实问题并在尊重实践需求的前提下做出大胆的探索,提出独特的见解,是值得鼓励和肯定的。

秦鹏是我所指导的重庆大学法学院的首届博士生,也是重庆大学首批法学博士学位的获得者。本书是其在对博士论文改进深化的基础上形成的,现在得以公开出版,我由衷地感到高兴。当然,由于本书涉及的问题非常新颖,作者探索也只能说是尝试性的,有些观点不一定正确,一些主张论证也不一定充分,在体系的完整性和内容的安排等方面也可能需要进一步推敲。在此,希望秦鹏在今后的学术研究中对生态消费法的有关问题能够进一步追问下去,在生态消费法这块法学的新领地中经营出更丰硕的成果。

许明月

2007年元月于重庆大学法学院

内 容 摘 要

人类与自然界的关系,从某种意义上就是人类消费行为、消费方式与对自然的开发、利用或破坏的关系。尽管我们不能绝对地说自然生态的变化均因人类消费所为,但是,面对目前全球积重难返的资源危机和环境危机,毋庸置疑,人类消费扮演了极其重要的角色。正是近现代社会以来人类不良消费模式所带来的消费问题很大程度地改变了我们的生态环境,并严重地腐蚀和影响着我们的社会风气。不受限制的消费欲望在逻辑与现实必然造成人与自然的对峙,并进而导致生态危机和资源枯竭问题。为此,必须改变传统消费模式,建立一种符合生态规律要求的、生态化的消费模式——生态消费模式。

本书正是基于对转变人类消费模式的极大关注而提出了运用法律进行生态消费保障的主张和思考。生态消费对于传统消费方式的超越和变革,决定了它不是一般意义上的问题,而是关系到人类活动的重大社会问题,这也决定了生态消费当属法律保护和调整的范畴。因此,本书力图在环境与资源保护法学的体系范围之内,探讨和建立一套在消费领域发挥作用,规范人们在消费活动中按照生态规律进行消费的法律规范体系,这套法律规范体系就是本文所称的生态消费法。

本书在对消费问题、生态消费内涵等进行阐释的基础上,论证了法律保障生态消费的应然与实然,对生态消费法的一般原理进行了研究,就生态消费法中的作为法律主体的人的特性、生态消费法的伦理观和生态消费法的价值取向进行了研究,并在前述理论研究的基础上,从产品环境标志法律制度、消费者社会义务的确立、政府绿色采购制度以及消费税收调控制度等多个层面和角度,对生态消费法律规范体系的构建内容进行了深入研究。

第一章,关于生态消费的认识。该章认为消费问题乃是人类消费行为出现了问题,消费问题的最大特征就是消费大大超过了人类自身的实际需要,诸如高消费、过度消费、炫耀性消费等消费行为进入了大众的生活认知和心理层次,使得人类在追求永远不可满足的消费欲望中,把自然资源挥霍无度,使生态环境损害殆尽。因此,消费问题是环境问题的核心,环境问题的深刻根源就隐藏在消费行为当中。而消费问题缘于对消费者主权观片面曲解下的消费至上主义,消费者主权表面上是给消费者至高无上的地位,其不过是人类中心主义的别名,它不仅给极权主义者谋取私利披上合法的外衣,而且助长了人类对自然的骄横,使其生活方式在大自然面前变得大胆、放肆和无所顾忌,使社会进步在一种片面、畸形的价值选择中实现,使人与自然的关系日益紧张。基于对消费问题根源和消费行为的伦理审视,笔者展开对生态消费的理论思考,认为生态消费是一种生态化的消费模式,是既符合社会生产力的发展水平,又符合人与自然的和谐、协调,既能满足人的消费需求,又不对生态环境造成危害的消费行为。其核心内容就是适度消费、公正消费、责任消费。该章还对生态消费与绿色消费、可持续消费概念进行了辨析,论证了用生态消费用语代替绿色消费、可持续消费的合理性和科学性。

第二章,生态消费法律保障的应然与实然。该章论证了运用法律保障生态消费的理论原理,这种理论支撑来源于三个方面。首先,现代法律开始对个体利益加以限制,通过法哲学维度对社会利益与个体利益关系的考察,面对社会利益理念对法律的影响,生态消费法律的确立将获得自己不可替代的存在根据。其次,伴随着义务观念的拓展和社会进步的要求,一切维护和纵容传统消费模式的内容都应当从人类法律之中被剥离出去,个人在消费过程中必须注意到其权利的行使,既要合乎自己的身心健康,又要符合良好的社会风气;不仅要满足自己的需求,还要对他人和社会负责。第三,法律也是在谋求社会稳定与秩序方面最有效率、最有保障实现的强大工具,生态消费乃是对消费活动或消费行为中的秩序追求,旨在通过对消费活动中消费行为的秩序规范,保障消费活动的有序展开,从而实现消费活动中人与人、人与自然的和

谐。该章还对部分发达国家和我国关于生态消费的法律保障内容与体系进行了比较研究。

第三章,生态消费法一般原理研究。该章意在对生态消费法的概念、功能、原则和体系构成进行明确。该章认为,生态消费法是国家基于保护生态环境和节约资源的需要而确认并规范人们在消费活动中按照生态规律进行消费的法律规范的总称。当我们对生态消费法进行界定的时候,不是指某项生态消费法规,而是指有关促进生态消费行为形成的各种法律规范所形成的体系。从广义上讲,凡是引导和规制消费行为符合生态规律要求的法律法规都可以纳入到生态消费法的范畴。生态消费法的目的与环境资源法的独特目的协同一致,具有环境资源法的性质,因此,生态消费法属于环境资源法。生态消费法具有消费文化的传递功能、消费行为的导向功能和消费秩序的整合功能。生态消费法的原则是消费正义、环境义务、国家和社会干预原则。从生态消费法的体系构成而言,生态消费法内部法律体系由产品环境标志制度、消费者社会义务制度、政府绿色采购制度、生态消费税收制度所组成;生态消费法外部体系是生态消费法与清洁生产法之间的关系,生态消费法和清洁生产法共同调整环境资源开发利用中的社会关系,同属环境资源法,一个在消费领域发挥作用,一个在生产领域发挥作用。

第四章,生态消费法中的人。纵观人类社会的法律演进路径,法律视野下的人范式,大致遵循了近代法治中的经济人到现代法治中的社会人,再到生态消费法中的生态人这样一种变化走向。近代法治主义基于经济人假设理论而高举所有权绝对、契约自由和自己责任的自由主义旗帜,形成了权利本位的法治观,从而极大地推进了自由资本主义的发展。但是,由于经济人假设固有的缺陷,也不可避免地导致了近代法治价值单一、难以应对复杂利益冲突等的危机。社会人的产生,在很大程度上克服了权利本位观念之流弊,克服了经济人的个人自由放任主义之缺陷,促使了社会公平、社会公益之实现。但无论是近代法治中的经济人还是现代法治中的社会人,囿于其自身的时代实践,对于遏制生态危机,保障人类社会的永续生存和发展都显得力不从心,而生态消费法中的生态人是人类应该回归的合理生存状态,生态人的消费行为

应该是节约适度、公平正义、追求人与自然和谐的消费行为。

第五章,生态消费法的伦理意蕴。在人类文明的历史进程中,法律与伦理从来是相互依存的。无论是制度设计还是实践运行,生态消费法对消费伦理的依赖程度之深在各种法中是绝无仅有的。从内涵精神看,生态消费法堪称“消费道德法”。该章首先对消费主义伦理观进行了历史考察,对消费主义所导致的人、社会的异化,消费主义所导致的生态破坏进行了批判。消费主义下人类消费问题的种种困境告诉我们,消费行为绝不能缺席生态伦理的关怀,否则,消费享乐主义在消费完生态资源的同时,最终将耗尽人类自身。从西方环境伦理思潮的理论建构可以看出人类在这一探寻过程中的思想发展轨迹。该章在对人类中心主义两种伦理观和非人类中心主义伦理观的研究基础上,剖析了生态主义的意旨和内涵,并指出和论证了生态消费法的法治观、生态消费法的建构基础以及动态运行基础都是与生态主义相一致的。

第六章,生态消费法的价值取向。生态消费法的价值理念内容是丰富的,但就其最为根本和最为重要的应该是生态安全、天人合一、和谐发展这三个取向。生态消费法通过对产品环境标志法律制度、消费者社会义务法律制度、政府绿色采购法律制度以及生态消费税收法律制度等的设计,表面看来是对个体消费生活的干预和调整,其实质却是法律对传统安全价值理念的突破和发展,是对社会整体安全的维护和追求。生态消费法能够将文明的历史积淀共时性地投射到现实发展中,不仅在微观上调整和指导着消费者的消费行为,而且在宏观上体现着天人合一的价值取向,引导着整个社会在处理人与自然关系上的价值观。生态消费法是为了保障人类得以与自然生态系统和谐共生协调发展。生态消费法是制度合目的性与合规律性的统一,它是站在和谐的角度上反对消费主义,追求人与自然、人与社会、人与自我即人的全面发展。

第七章,生态消费与产品环境标志法律制度。自该章以下是本书建构的生态消费法的内容体系。产品环境标志是表明产品符合环保要求的一种特定标志,它向消费者表明该产品或服务从研制、开发、生产、使用、回收利用、处置的整个过程符合环境保护要求。产品环境标志制

度是调动公众参与环境保护、塑造生态消费行为的一种理想制度。环境标志制度不同于传统的环境管理制度,它不是依靠强制的行政命令,迫使企业承担环境义务,而是使环境管理由单纯的强制性行政管理逐步转化为强制性和指导性相结合的管理模式。该章在论述了证明商标基础理论的基础上,指出环境标志是一种证明商标,保护环境标志的手段是证明商标登记。除了将环境标志登记为注册商标,环境标志法律保护的另一措施是国家与环境标志使用者签订环境标志使用合同。环境标志使用合同从其法律性质上而言是行政合同,是一种环境行政合同。

第八章,生态消费与消费者社会义务的确立。该章意在论证消费者在消费活动中所应当承担的责任。该章认为消费者社会义务的主要内容在于符合生态规律下的理性消费,即消费者在满足自身消费需要的同时,在消费活动中为保护和改善生态环境,达成生态消费模式,实现良好消费秩序所应履行的社会责任。消费者社会义务的思想渊源是个人本位向社会本位法理念的转变、所有权社会化观念的形成。消费者社会义务首先体现为环境道德,表现为一种道德义务。消费者社会义务的法律化实质是一个道德的法律化问题,是道德义务升华为法律义务的问题。消费者社会义务的法律化有利于生态消费模式的建构、有利于提高消费者素质、有利于实现生态消费法的价值取向。消费者社会义务的法律构建具体表现为消费者在消费活动中应当优先选购环境标志产品,使消费活动有利于生态环境的保护等内容。

第九章,生态消费与政府绿色采购法律制度。该章认为,作为一个庞大的消费群体,政府的消费强度在国家财政支出乃至国民生产总值中都占有很大的比重。政府作为国家的象征和代表,其行为对全社会具有极大的影响力。因此,促进资源节约和环境保护,塑造生态消费模式,政府应当率先垂范。政府绿色采购的逻辑起点是满足社会公共需要,维护和提倡公共利益。政府采购必须一切从社会公众的利益出发,为社会公众拥有一个良好的生态环境提供服务。政府绿色采购制度的微观效应是示范效应和扶持效应。该章在对政府绿色采购制度国际比较的基础上,提出了完善我国政府绿色采购制度的内容体系。

第十章,生态消费与消费税收调控法律制度。该章认为针对消费问题所带来的生态破坏和环境污染,国家就有必要通过税收手段对公民所涉及的消费活动进行调整,以鼓励或限制对某些物品的消费,从而改变或引导公民的消费行为朝着有利于生态环境保护的方向发展。生态消费税收乃是指为了保护生态环境和引导理性消费,国家对特定消费物品和消费行为所进行的税收征纳。生态消费税具有导向特别明确、环境保护作用特别明显、平衡社会收入与财富特别有效的特性。生态消费税的经济理论基础是消费外部性,法学理论基础是国家基于财政权对公民环境权的保护。生态消费税的课征原则是限制性、节约性和受益性原则。我国应当开征消费副产物税、燃油税等消费税,加大在奢侈品和奢侈行为方面的消费税收调控力度。

Abstract

The relation between mankind and nature, from a certain meaning, is reflection that the mankind consumption behavior, consumption mode, making use of or destructing nature. Though we can't ascertain the variety of the natural ecosystem absolutely due to the mankind consumptive behavior, in the face of the serious resources crisis and the environment crisis, it is no doubt that the mankind consumption play the very important role. The consumption problem due to improper consumption behavior changes our environment, decaying and affecting our social values seriously. The unlimited consumption desire result in opposite between person and nature in logic and actualities, causing the ecosystem crisis and exhausted problem of the resources. Therefore, we should change the traditional consumption mode, building up a kind of consumption mode which accord with environment rule—ecotype consumption mode.

This article advises to guarantee ecotype consumption mode by legislation. The surmounting and change of the ecotype consumption mode to the traditional consumption mode decide that ecotype consumption mode is not a general meaning of problem, but an important and social problem that relates to mankind's activity. This also comes to a decision the ecotype consumption should be guaranteed by the law. Therefore, this article studies and builds up a set of law system which restrict and guide consumer's consumption behavior under environment and resources law, this law system is called the ecotype consumption law to be studied in this article.

Based on explain of consumption problem and ecotype consumption,

this article argument the need and practice that the law system guarantee ecotype consumption mode, carrying on the research to the general theory of the ecotype consumption method, studying the person's characteristic in ecotype consumption law, ethic standpoint of ecotype consumption law, value choice of ecotype consumption law. Finally, the article build up ecotype consumption law system, including environment labeling system, the consumer social obligation system, the government green purchase system and consumption revenue adjusting system etc. There are 200 thousands words in this article, consisting of 10 chapter.

Chapter I, About ecotype consumption. The chapter points out that the consumption problem is problem of mankind consumption behavior, the main characteristic of consumption problem is that consumption exceed mankind's actual demand, such as the high consumption and excessively consumption, showy consumption etc. These consumption ideal come into the life cognition and mental layers of the public, causing the mankind spending lavishly the natural resources in pursuing unsatisfactory consumption desire. Therefore, the consumption problem is a core of the environment problem, the deep root of the environment problem is hid in the consumption behavior. The consumption problem is caused by consumption conciliarism which is due to the consumer paramountcy, the consumer paramountcy seemingly endow consumer with the highest position, it is actually nickname of the mankind center doctrine. It not only gives totalitarian legal reason to seek private interest, but also fosters the mankind's overbearingness to the nature, makes society progress in a kind of unilaterally, abnormal value choice, make the relation between person and nature increasingly opposite. Based on survey of consumption problem cause and the ethics of the consumption behavior, the writer think that the ecotype consumption is the consumption mode that accord with ecosystem rule. This consumption mode not only can satisfy the consumption need but also can't destroy environment system. It's core is to consume appropriately, consume fairly, consume

responsibly. This article still compare the concept of ecotype consumption, green consumption and sustainable consumption, argument the rationality to use ecotype consumption.

Chapter II, The need and fact of ecotype consumption law. The chapter argument the theories to guarantee ecotype consumption by law, this kind of theories includes three aspects. First, the modern law begin to takes the individual benefits into restrict, by investigation of law philosophy dimension to social benefits and the individual benefits relation, facing the social benefits influence of the principle upon the law, the ecotype consumption should be builded up. The second, accompanying with the duty idea to be expanded and request of social progress, those contents which maintenance and connive the traditional consumption mode should be removed from mankind's law, everyone should have a proper consumption method when he enjoys his consumption right. The consumption not only satisfy his own need, but also be responsible for the others and society. The third, the law also is the best tool to seek the society stability and orders the most efficiently, the ecotype consumption seek to consumption order, it's aim at realizing harmonious between person and person, mankind and the nature by law. The chapter also study the ecotype law legislation and enforcement condition abroad and in China.

Chapter III, The study about the general theory of ecotype consumption law. The chapter points out that ecotype consumption law is integration of guiding consumption behavior according with environment to protect environment and save resources. The ecotype consumption law is not a separate law, it is a system which adjusts and guides consumption behavior according with environment. From the broad sense, the code and rule which adjust and guide consumption behavior according with environment should be included in ecotype consumption law. The purpose of the ecotype consumption law is in accordance with the special purpose of the environment and resources law, so the ecotype consumption law belongs to environment

and resources law. The ecotype consumption law has the function of delivering culture of consumption, function of guiding consumption action and the function of integrating consumption order. The inner system of ecotype consumption law includes environment labeling system, the consumer social obligation system, the government green purchase system and consumption revenue adjusting system etc. The exterior system of ecotype consumption law includes relation between ecotype consumption law and clean produce law, ecotype consumption law play role in consumption field, clean produce law play role in produce field.

Chapter IV, The person model in the ecotype consumption law. By studying the history of law, we can find diverse person model in law history, it is economic person within latter-day rule of law, social person within modern rule of law, then ecosystem person within ecotype consumption law. The latter-day rule of law doctrine supposes the theories according to the economic person, insisting on absolute ownership, contract freedom and oneself's responsibility, forming the criterion of the right conciliarism, pushing the development of the free capitalism. But, shortcoming of economic person also inevitably cause the latter-day rule of law to be unitary value, unable to cope with complicated benefits conflict etc. The social person overcame the corrupt practice of the right conciliarism to a large extent, urging realization of the society fair, social public benefit. But neither social person nor economic person can't solve the ecosystem crisis and guarantee the lasting existence of the mankind society. Only ecosystem person in ecotype consumption law can help mankind realize harmonious between of man and nature.

Chapter V, The ethics idea of the ecotype consumption law. In civilized history progress of mankind, the law and ethics have always been depended on mutually. Whether legislation or enforcement depend on ethics to deep degree in ecotype consumption law. From it's spirit, the ecotype consumption law should be called consumption morals law. The chapter firstly

review the ethics ideal history of consumption, criticize consumptionism which causes dissimulation of mankind and society. The difficulty caused by consumptionism tells us that the consumption behavior can in no way be absent the ecosystem ethics, otherwise, consumptionism will not only use up the ecosystem resources but also end the mankind itself. We can find the theories history from the western environment ethics. Based on the study about mankind center doctrine ethics and non-mankind center doctrine ethics, the chapter analyze the idea and contents of the ecosystem doctrine, pointing out and arguing the ecotype consumption law is accordance with ecological ethics.

Chapter VI, The value choice of ecotype consumption law. The value contents of ecotype consumption law is abundant, but the most important value should be ecosystem safety, the nature and man uniting as one, harmonious development. The ecotype consumption law seemingly intervene the personal consumption life, in fact it is the breakthrough and developments of the law for traditional safe, it is to maintenance and pursue the whole safety of society. The ecotype consumption law can integrate the civilization in development, not only adjust and guide the consumption behavior of the consumer on the tiny view, but also on the macro view body value choice of nature and man uniting as one, guiding the whole society value in handling relation between man and nature. The ecotype consumption law is to guarantee the mankind and the natural ecosystem system develop harmoniously, including development of man and nature, man and society, man and egos.

Chapter VII, The ecotype consumption and product environment label system. The product environment label is a kind of particular label that expresses the product to meet the request of environmental protection, it indicate the product or services is in accordance with environmental protection during the whole process including design, manufacture, develop, produce, use, reuse, dispose. It is a kind of good system to guide the public