



教育部人文社会科学重点研究基地《环境法学文库》

王树义 主编

# 基于社会资本理论的中国环境法治考察

A STUDY ON CHINESE ENVIRONMENTAL RULE-OF-LAW IN THE FRAME OF THE SOCIAL CAPITAL THEORY

徐忠麟 著

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## 总 序

《环境法学文库》是由教育部人文社会科学重点研究基地武汉大学环境法研究所和中国社会科学出版社悉心培育、联合推出的环境法学学科的大型学术丛书，目的在于加速中国环境法学研究的进一步发展，推动中国环境法治的不断进步。

武汉大学环境法研究所是中国国家环境保护总局<sup>①</sup>和武汉大学共同建立的一个以环境法学为专门研究领域的学术研究机构，1999年首批进入教育部普通高等学校人文社会科学重点研究基地。2002年，基地的“环境与资源保护法学”学科被教育部评审为国家级重点学科，次年，该学科又被列入教育部“211”工程的第二期重点建设项目。

武汉大学环境法研究所的研究基本上涵盖了整个环境法学学科的研究范围，并且，其整体科研水平在中国环境法学界居领先地位，在国内外具有广泛影响。自20世纪80年代初成立以来，武汉大学环境法研究所紧紧跟随中国环境法治前进的步伐，密切结合中国环境法治建设的实际需要开展研究和教学工作，取得了一系列显著的成绩。20多年来，研究所陆续为国内外培养出了几百个环境法学学科的硕士和博士，出版了几十部环境法学研究的学术专著和教材，发表了千余篇环境法学研究的学术论文，参加了中国数十部环境法律、法规和地方性环境法规的起草、调研和修改工作，向国家和地方提供了许多具有参考价值的环境立法方面的研究咨询报告，受到国内外同行的瞩目。

21世纪是中国全面进入世界先进行列的世纪，可以预见，中国在许多领域还将走在世界的最前列。为此，中国正在努力着、奋斗着，而在这努力奋斗着的队伍之中就有环境法学人的身影。环境法学人的梦想就是让中国环境法学的研究同样走在世界的前列。为了这个梦想的实现，武汉大

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<sup>①</sup> 现改组为“环境保护部”。

学环境法研究所作为教育部环境法学研究的基地，拟将《环境法学文库》作为研究所长期支持的一个出版项目，面向国内外所有的环境法学者及其他所有关心、支持并有该学科相应研究成果的专家开放，每年推出数本。凡环境法学学科领域内有新意、有理论深度、有学术分量的专著、译著、编著均可入选《环境法学文库》。文库尤其钟情那些在基本理论、学术观点、研究视角等方面具有原创性或独创性的著作，请各位学者、专家不吝赐稿。让我们共同努力，为繁荣中国的环境法学研究、加快中国环境法治的进程略尽绵薄之力。

教育部人文社会科学重点研究基地

——武汉大学环境法研究所所长

王树义

2005年春月于武昌珞珈山

## 内 容 摘 要

近年来,我国环境法律规范体系、环境法治实施体系、环境法治监督体系和环境法治保障体系建设取得了较大成绩,已初步形成与生态文明基本相适应的环境法治体系。但环境群体性事件和突发事件不减反增,生态环境问题日益突出,表明我国现阶段的环境法治部分甚至大部分失灵。从环境法治自身来看,环境法治失灵的原因主要体现在环境法治观念冲突、环境法律制度权威不足和环境法治运行不畅等方面,而我国的环境与资源保护法学对这些问题的研究还主要停留在法学内部,注重制度构建但对制度落实或对制度实施的配套条件研究不够,注重环境法律规范体系的构建但对环境执法、司法、守法特别是对影响环境执法、司法和守法效果的相关因素研究不够。因而,有必要跳出现有环境与资源保护法学甚至是整个法学理论的束缚,寻求其他学科前沿理论的支持来解释和矫正当前我国环境法治失灵的现象。

社会资本理论是社会学与经济学交叉演化而来并对其他社会科学产生重要影响的社会科学理论,是当前解释经济、政治、社会等现象的一种颇具说服力的理论范式,也可以引入环境法治领域解释和矫正我国的环境法治失灵问题。社会资本是根植于一定社会关系或社会结构,嵌入一定网络、规范和信任等因素及其蕴含文化中的,可以促进或阻碍经济社会或其某方面发展的重要资源。社会资本核心构成的网络、规范和信任是考察环境法治的基本视角,对环境法治的观念、制度和运行都会产生重要影响,既可以解析我国当前环境法治的失灵问题,也可以为我国环境法治失灵的矫正提供新向度。

基于网络考察环境法治形成的环境立法网络、环境执法网络、环境司法网络和环境法治监督网络,可以较好地解析环境法治失灵的原因。环境立法网络中,纵向网络的突出而横向网络特别是公民参与网络的不足、权威关系异化即权力机关和行政机关在网络中的错位、强关系突出而弱关系

不足对环境立法理性商谈的影响等问题的存在,是环境法治失灵的重要原因;环境执法和司法构成的环境法治实施网络中,网络的封闭性不足和“结构洞”过多难以保障严格执法和公正司法,权威关系不足和权威关系过度并存影响了环境执法与司法的公信力,纵横向网络与强弱关系的结构不尽合理影响了环境执法与司法的效果;环境法治监督网络中,纵向网络的强关系突出容易排斥圈外人而失去监督作用,横向网络的弱关系不足容易导致监督作用不能有效发挥,“结构洞”的普遍存在致使信息难以在网络内传递而减弱监督作用。矫正环境法治失灵,优化环境法治网络,需要通过优化不同环境法治网络的成员,改善环境法治网络的结构,健全环境法治网络的运行机制来增加社会资本的积累。

基于规范考察环境法治形成的环境文化规范、环境习俗规范和环境软法规范,也可以较好地解释我国环境法治失灵的问题。环境法治观念的冲突,主要源于环境文化规范内部科学主义与人文主义、人类中心主义与非人类中心主义、经济主义与生态主义的冲突;环境法律制度权威的不足,可归因于环境法律制度与环境文化规范、环境习俗规范和环境软法规范的冲突;环境法治运行的不畅,也可以在环境文化规范、环境习俗规范和环境软法规范中找到原因。矫正环境法治的失灵,需要通过生态人文精神的塑造来推动环境法治观念的规范整合,通过“自上而下”和“自下而上”相结合的方式推动环境法律制度的规范整合,通过生态实践理性的一以贯之来推动环境法治运行的规范整合。

基于不同学科视野的信任考察环境法治形成的环境法治观念信任、制度信任和运行信任,也是解释我国环境法治失灵的重要视角。基于心理学对我国环境法治的人际信任分析、基于社会学对我国环境法治的社会信任分析以及基于政治学对我国环境法治的政治信任分析,可以发现我国环境法治的观念信任缺失与环境法治观念冲突之间、制度信任缺失与环境法律制度权威不足之间、运行信任缺失与环境法治运行不畅之间的内在关联并解释我国环境法治失灵的原因。矫正环境法治的失灵,需要通过建构环境法治的观念信任、制度信任和运行信任来提升信任这一社会资本对环境法治的支撑作用。

总之,环境法治失灵的重要原因之一是网络、规范和信任等社会资本的缺失,矫正环境法治失灵要通过优化网络、整合规范和建构信任来增加社会资本的存量。简言之,环境法治的绩效提高离不开社会资本的投入和支撑。

**关键词:** 社会资本 环境法治 网络 规范 信任



## Abstract

In recent years, great achievements have been made in Chinese environmental system construction of legal norms, execution, supervision and guarantee. The environmental law system, being fundamentally compatible with ecological civilization, has initially taken shape. But environmental group events and emergencies have been increasing rather than decreasing and problems of ecological environment have become progressively prominent, indicating the dysfunction of Chinese environmental rule-of-law partly or even of majority part at the current stage in China. In terms of Chinese environmental rule-of-law itself, reasons accounting for this mainly lie in such respects as: conflicts in the concept of Chinese environmental rule-of-law; being low authoritative in environmental law systems and the sluggish operation of Chinese environmental rule-of-law. The study of Chinese environmental rule-of-law on these problems still largely remains within the law framework, paying more attention to the system construction, but lacking in the research on the fulfillment and implementing conditions. We have single-mindedly focused on the establishment of environmental law system but being deficient in environmental law enforcement and judicature, especially in relevant factors affecting this. Thus, it is necessary to jump out of the shackles of the existing legal theory and seek the support of some frontier theories in other disciplines, hence to explain and correct the the dysfunction of Chinese environmental rule-of-law.

Social capital theory, evolving from the intersection of sociology and economics, has exerted a significant influence on other social sciences and is a considerably convincing theoretical paradigm to explain the economic, political and social phenomena currently. It can also be introduced into the field of Chinese environmental rule-of-law, offering an explanation and correction of some failures in



it. Social capital is an important resource that can somewhat promote or hinder social economy or the development in some certain aspect. It is rooted in certain social relationships or social structures and embedded in factors such as certain networks, norms and trust and contained in its culture. The fundamental perspective to study Chinese environmental rule-of-law lies in networks, norms and trust constituted by the core social capital. This will have a significant impact on the concept, system and operation of Chinese environmental rule-of-law, not only serving as an analysis on the dysfunction of the law-based government of environment, but to provide a new direction and dimension for its correction.

It's better to analyze reasons giving rise to the dysfunction of Chinese environmental rule-of-law through networks of environmental law making, enforcement, judicature and supervision. Reasons are founded in the environmental law making networks as followings: Prominence of the vertical networks and problems in horizontal networks, especially insufficient citizens' network participation; authority relations alienation namely the dislocation of legislature and administrative organs; the prominent strong ties and the deficient weak relationship. In the execution networks of Chinese environmental rule-of-law consisting of environmental law enforcement and judicature, the lack of network closeness and too many structural hole make it hard to guarantee strict law enforcement and fair administration of justice; the coexistence of the deficient and excessive authority relationship affects the environmental law enforcement and judicial credibility; the vertical and horizontal networks and the unreasonable structure of the strong and weak relationships has influenced the effectiveness of environmental law enforcement and justice; In the supervision networks of Chinese environmental rule-of-law, the prominence of the strong ties in the vertical networks easily repels outsiders and lose its supervisory role; the deficiencies of weak ties in horizontal networks is likely to lead to failure in effective play of oversight role; the prevalence of structural hole will make it difficult to pass information within the networks, thus weaken the oversight role. We are required to optimize the members of different networks of Chinese environmental rule-of-law, improve its structure, and increase the accumulation of social capital through perfecting its operation mechanism, thus to correct the dysfunction of

Chinese environmental rule-of-law and optimize the networks of it.

It's also efficient to give an explanation of the dysfunction of Chinese environmental rule-of-law through cultural norms, practical norms and soft law norms. The conflicts on concept of the law-based government of environment are mainly due to the internal conflicts between scientism and humanism, anthropocentrism and non-anthropocentrism, economism and ecologism in the cultural norms of environment; the low authority of environmental law system can be attributed to the conflicts between environmental law system and cultural norms, practical norms and soft law norms of environment. The reasons of sluggish operation of Chinese environmental rule-of-law can also be found in those norms listed above. In order to correct the dysfunction of Chinese environmental rule-of-law, it is necessary to promote normative integration of the concept of the law-based government of environment through eco-cultural spirit shaping, of the environmental law system through a combination of top-down and bottom-up methods, and of the operation of the law-based government of environment through unswerving ecological practices.

It's also an important perspective to explain the dysfunction of Chinese environmental rule-of-law through conceptual trust, institutional trust and operational trust from various disciplinary views. From interpersonal trust analysis of Chinese environmental rule-of-law based on psychology, social trust analysis of Chinese environmental rule-of-law based on sociology, and political trust analysis of Chinese environmental rule-of-law based on politics, we can find the internal connections between the lack of conceptual trust and the conceptual conflicts of Chinese environmental rule-of-law, between the lack of institutional trust and the low authority of environmental law system, between the lack of operational trust and the operational obstacle of Chinese environmental rule-of-law, which also accounts for the dysfunction of Chinese environmental rule-of-law in China. To correct the dysfunction of Chinese environmental rule-of-law, we need to strengthen conceptual, institutional and operational trust of Chinese environmental rule-of-law so as to enhance the role of trust in supporting Chinese environmental rule-of-law.

All in all, one of the important reasons for the dysfunction of Chinese envi-

ronmental rule-of-law is a lack of networks, norms, trust and other social capital. Thus, it is important to optimize the networks, integrate norms and construct trust so as to increase the stock of social capital in order to correct the dysfunction of Chinese environmental rule-of-law. In short, the improvement of Chinese environmental rule-of-law performance is inseparable from social capital investment and support.

**Key words:** Social capital; Chinese environmental rule-of-law; Networks; Norms; Trust

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