



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

环境法的人文精神论纲

AN OUTLINE OF HUMANISTIC SPIRIT OF ENVIRONMENTAL LAW

王继恒 著

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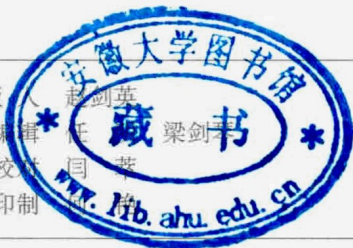
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总 序

《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^①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

^① 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

尽管人文精神是一个在历史中生成又要在历史发展变迁中不断充实和丰富自身内涵的概念，但人文精神总是包含着这样一些基本的价值判断，即崇尚和尊重人的尊严，重视人的价值，把人当作目的而不是手段，高扬人的自由和全面发展。环境法的人文精神，是人文精神所蕴含的“以人为本”的核心价值理念在环境法上的法律表达，即环境法所体现的以人为目的、以人为中心旨归，尊重人的价值和尊严的人文价值取向和价值追求。把人文精神作为环境法的精神要素加以弘扬，其目的在于通过对环境法的人文主义阐释，试图从理念和制度上为环境法确立和展现一种新的人文主义的世界观，以期为全面协调人与自然的关系，为人类在自然中有尊严地生存提供一个法律运作上的绿色航标。

关心人、尊重人，自然离不开对人类赖以生存的环境报以人文眷注。自然与人文不是对立的观念，“没有无自然的人文，也没有无人文的自然”。因此，人文精神在环境法中的体现，不能外在于人与自然的关系而仅被狭隘地理解为一般意义上的法律的人本观、法律上的权利本位以及以人为目的和中心，承认并保障人的利益和需求的一些体现着尊重人的价值和尊严的法律上的人本要求，而且它内在地包含着对自然生态的人文关怀。环境法的人文精神，是因“生态”因素的介入，而科学认识和正确处理人与自然关系的一种生态化思维方式，是对传统自然观的反思而引起的法观念上的变革与更新，是一种生态性趋向极为明显的法的人文导向，是一个提倡人道地对待自然，按生态学原理来处理人与自然的关系，使人与自然和谐共处的具有显性的尊重自然生态的人文精神。

环境法对人文精神的法律表达，其理论意图在于展示人本立场的同时，也内在地隐含着消除偏狭的人本主义缺陷所导致的人与自然对立的负面影响、重建人文精神的要求。因此，对“生态人文”的挖掘和阐释，就成了环境法人文精神的题中之义。生态人文精神，即倡导以一种辩证的

思维来看待人与自然的关系，主张人类自我关怀的同时，还要求把传统人文精神所指向的对人的关怀扩展到对自然的关怀上来，既要以人为本、重视人的生存与发展，又要善待自然、践行人类对自然天地万物应尽的生态义务。

人文精神，既是环境法应当倡导和坚持的一个基本观点，又是对环境法进行人文阐释的一条基本线索。基于此，本书主要从人文精神与环境法的关系、环境法人文精神的生成背景与人的尊严生存、环境法人文精神的价值追求、环境法人文精神的理性建构、环境法理念与制度的人文审视以及环境法在当代中国的新发展六个方面对环境法的人文精神这一主题展开讨论。本书在理论上阐发的主要观点有以下几个：

第一，人文精神是环境法合理性的内在根据。对人的关怀是法的固有属性。法不是什么别的东西，它是维护和促进人们对幸福生活的追求和走向自由全面发展的手段和工具。建立起尊重人的价值、维护人的尊严、确证人的个性的价值机制，使社会主体广泛的自由和权利在法律上得到确认和保障，是人文精神对环境法的必然要求。

第二，环境法的人文精神是生态人文精神。生态人文精神是在深刻把握环境法这一新兴部门法特质的基础上，提炼和挖掘出的新的人文精神类型，它是符合环境法内在要求的精神气质，是人文精神在环境法领域的提升和发展。以人文精神为参照，反思并获得对环境法在认识上的新突破，从而有利于我们发现、辨识或推导出环境法的理想规则和程序，以及为环境法现象提供一种立基于生态人文导向的价值理念和思维方式，正是本书研究的目的之所在。

第三，环境法的现代化是人文精神的现代化。在环境法制现代化的过程中，注重形式合理性固然重要，但价值合理性更为重要。因为，环境法制的现代化本身只是一个过程、一种手段而不是目的，通过这种方式达至人的自由全面发展，才是环境法制现代化发展的最终目标。

关键词：人文精神 环境法 生态 价值理性

Abstract

Humanistic spirit is not some kind of fixed essence, it is one conception which need to enrich its connotation unceasingly based on historical development and vicissitude. For all this, humanistic spirit so-called always include generally some basic meanings of value judgment, namely it is philosophic cognition which takes people as the value and measure; human which is the center must be respected and human's all-around development is its final target. People-oriented spirit as the essence of the law must be embodied in each division of the system of law. Humanistic spirit of environmental law as a core value idea which takes people as value orientation and the value pursue is legal expression of the human-oriented conception. However, to carry forward humanistic spirit by environmental law lies in to establish and develop one kind of new world outlook of ecology humanism for environmental law from idea to legal system and attempt to provide green legal operation navigation aid for the harmonious relationship between human and nature and human's dignity survival in the environment.

To take care of human and respect people can not leave naturally environment related to human survival out. On the contrary, we should give nature the humane care deeply. The nature and the humanities are not opposite conception. Human and nature are whole unity. Therefore, the humanistic spirit in the environmental law is not only the manifestation of human-oriented on the basis of acknowledge and safeguard person's benefits and demands but also the humanistic spirit of containing intrinsic the humane care to nature. Undoubtedly, we should attach importance to ecological responsibility. The narrow conception of legal value must be changed. We said precisely that the humanistic spirit of environmental law in this significance should be that of one kind of thinking mode of ecologicalization which know and coordinate correctly the relationship between

human and nature because of the involvement in factor of ecology; should be that of the transformation and renewal of legal idea caused by the reconsideration to natural view of the tradition; should be that of one kind obvious of humanistic guidance of ecological trend in law; should be that of one kind of respecting nature which advocate humane treatment of nature, use of nature, control of nature, according to the ecological principle in the harmonious coexistence.

Obviously, humanistic spirit in the environmental law perhaps has a more official intention of theory. That is excavation and explanation of ecological humanism. Namely treatment of the relationship between human and nature through one kind of dialectical thought and advocates to expand human self-concern at the same time in traditional humanistic spirit to nature not only to take people as center of value, attach importance to the survival and development of human being but also must treat nature kindly and to fulfill the duty to nature that should to do. Frankly speaking, ecological humanistic spirit request that we should change attitude to relationship between human and nature in both theory and practice, namely turn the relationship between human and nature from domination to partnership and coexistence; from claim to feedback and compensation; from the rights to control nature and the duty to which should to do nature separately into becoming unification both right and duty.

Humanistic spirit toward ecology is a basic conception on which we should insist in the understanding environmental law and a basic clue which we explain the humanistic spirit of environmental law. Based on this, this article mainly elaborated on humanistic spirit of environmental law from six aspects including relations between humanistic spirit and environmental law; the background of humanistic spirit of environmental law and the survival of dignity of human being; humanistic spirit of environmental law pursuit of the value; the rational construction of humanistic spirit of environmental law; the humanistic examination of idea and system in environmental law as well as the development of environmental law in contemporary China and so on. The viewpoint explained theoretically in this article mainly has:

First, humanistic spirit is the rational basis in environmental law. As to the relations between law and person, the inherent attribute of law is to respect per-

son. Law is not the other thing, as the tool or means to maintain and promote people's pursuit for happiness, freedom and consciousness and overall development, law shall take human-oriented as fundamentals. It is because humanistic spirit that environmental law should establish the mechanism of value to respect human value, defend human dignity, justify human individuality in order to confirm and safeguard the widespread freedom and rights obtained by the social main body in law.

Second, humanistic spirit of environmental law is one of kind of humanistic spirit toward ecology. Humanistic spirit toward ecology is one kind of new type in humanistic spirit refined and excavated from environmental law. It conforms to the intrinsic attribute of environmental law and it is of promotion and development of humanistic spirit in environmental law. For reference to humanistic spirit toward ecology, we shall have a new breakthrough on the basis of reconsidering environmental law itself in order that we can discover, identify, infer a ideal rule and procedure, or provide with one kind of new basic idea and thinking mode based on humanistic spirit toward ecology for environmental law. It is the goal of study in this article.

Third, modernization of environmental law is of the modernization of humanistic spirit. In process of modernization, we should pay great attention to the formal rationality but the value rationality is very important. In the final analysis, the modernization of environmental law is a process and one method but not a final goal. Through this way to achieve human's overall development is the ultimate objective of environmental law in process of modernization.

Key words: Humanistic spirit; Environmental law; Ecology; Value rationality

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