



云南财经大学前沿研究丛书

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The Systematical Construction for
China's Environmental Legislation Purposes from Perspective of
Diverse Environmental Ethics

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摘 要

2012年11月,中国共产党第十八次全国代表大会召开。2013年11月,中国共产党第十八届三中全会召开。“社会主义生态文明”在执政党的这两次重要会议上得以被提出并被赋予突出地位。十八大报告提出,“要大力推进生态文明建设,要树立尊重自然、顺应自然、保护自然的生态文明理念”,大会同意将生态文明建设写入党章。时隔一年,十八届三中全会国家领导人将生态文明建设作为深化改革过程中的重大问题之一重申,提出要“加快生态文明制度建设”,昭示着生态文明将从一种理念转化为实际制度。社会主义生态文明提上“两会”,意味着“人与环境的关系”在执政党的治国战略中日益被重视,环境因素会被纳入国家重大决策、政策和法律的制定过程中,继而对社会、经济发展产生深远影响。

法律是政治上层建筑的重要组成部分,是执政党实现其政治宣言、行动纲领的有力工具。建设社

会主义生态文明,环境法责无旁贷。为此,环境法首先要按照生态文明的要求完善环境立法目的。所谓环境立法目的,是指立法者通过制定环境法律法规,所欲达到的目标。环境立法目的是整个环境法制的出发点和归宿,对环境立法、环境执法、环境司法、环境守法均具有方向性的影响力、综合性的指导力。如果没有清晰、正确的环境立法目的引领,整个环境法制将陷入困惑、迷茫,甚至可能南辕北辙,更不可能服务于社会主义生态文明建设。

目前,我国环境立法目的存在一定缺陷,有碍于生态文明建设。这个缺陷为:环境部门法下属的现行各部环境立法在立法目的规定上各自为政,互相冲突,未能形成统一、明确、有序的环境部门法立法目的体系。笔者认为,造成该缺陷的根本原因是:环境法基础理论薄弱,环境立法目的在制定过程中缺乏环境伦理的统一指导。所谓环境伦理,是指关于“对人与环境所应具有的正常关系及维护这种正常关系的行为规则”的理念。没有环境伦理支撑的环境立法目的的规定,难以获得立法内容上的合理性,难以获得有效的执法效果,难以得到国民自觉自愿的守法配合。

修正该缺陷的方法是:以符合社会主义生态文明建设要求的环境伦理思想作为环境立法目的的指导思想,对现行多元的环境立法目的进行整理、归纳、分析,通过对其内容正当性的评估、修正,重新调整各具体环境立法目的的位阶,重新划分各具体环境立法目的的适用领域,重构一个统一、有序的环境立法目的群,从而推动社会主义生态文明建设。

本书主体部分共五章。第一章“环境立法目的与环境伦理”首

先对本研究所涉及的基本概念——环境立法目的和环境伦理进行界定,明确本书所研究的基本对象、主要研究角度。本书所研究的环境立法目的,是指立法者通过立法活动,对人类利用自然行为进行调整而欲达到的目标和效果。本书研究的环境伦理,是指关于“对人与环境所应具有的正常关系及维护这种正常关系的行为规则”的理念。随后该章从法理学的角度,研究了环境立法与环境伦理的关系,得出结论如下:研究环境立法与环境伦理的关系,有两个层面。从规范层面上,环境立法与环境伦理都是社会规范的一种,彼此之间有各自调整的范畴,但也有交集。这个交集的重要体现就是环境立法目的。从价值层面上,环境伦理是环境立法的上位哲学指导思想。环境伦理是环境立法的价值来源、理论支撑和正当性依据。环境立法则是环境伦理在法治社会实现的必经途径。环境伦理在环境立法中体现的重要标志,就是将环境伦理追求的最基本的价值目标转化成环境立法目的性规定。本书主要从价值层面上来看待环境立法与环境伦理的关系,即应该用符合社会主义生态文明建设要求的环境伦理来指导环境立法,把符合社会主义生态文明建设要求的环境伦理价值转化为环境立法目的的规定。从而使环境立法目的获得内容上的正当性,组织结构上的科学性和国民内心的服从性,继而推动社会主义生态文明建设。

第二章“我国环境立法目的现状及伦理分析”归纳总结了我国环境立法目的现状,并对其从环境伦理角度进行分析。此章主要采用了统计分析和比较的研究方法。首先,通过对列入研究范围的28部环境法律法规中有关立法目的条款进行列表、归纳和统计,得出

我国环境立法目的现状如下:我国环境立法目的的内容不是单一的,而是多元的,其字义表述不是明确的,而是含糊的。我国环境立法目的组织结构不是统一有序的,而是分散、相互冲突的。其次,从环境伦理角度来分析我国环境立法目的现状,得出分析评估如下:我国环境立法目的的伦理理论基础薄弱,伦理价值存在冲突,伦理水平不高。最后,将我国环境立法目的现状与国际环境法立法目的现状加以比较分析,得出我国环境立法目的水平落后于国际水平的结论。以上不足有碍于社会主义生态文明建设。

第三章“指导环境立法目的之环境伦理甄选”,在尽可能广的范围内考察了多种环境伦理思想,并分别对其利弊优劣做出评价,以期对环境立法目的完善甄选指导理论。本书所考察的环境伦理思想包括可持续发展思想、科学发展观与社会主义生态文明理念、马克思和恩格斯的环境伦理萌芽、中国传统的“天人合一”思想、非人类中心主义和绝对人类中心主义思想。经过考察,笔者认为,西方绝对人类中心主义思想指导下的资本主义工业生产模式是造成环境与人类发展危机的根源,绝对人类中心主义理论不符合世界进步潮流,是完善我国环境立法目的时要尽量避免的思想。能对环境立法目的完善起指导性作用的环境伦理思想,是“可持续发展”思想、科学发展观与社会主义生态文明理念、马克思和恩格斯的环境伦理萌芽。必须指出的是,以上这几种环境伦理思想也都具有各自的局限性。目前没有一种相对成熟完整的环境伦理理论,来对完善环境立法目的进行全方位的指导。在实际操作上,只能以这四种环境伦理思想作为我国环境立法目的的主要指导思想,同时参考其他环境

伦理思想中具有合理性的部分,并结合笔者自身提炼的一些环境伦理看法,来对环境立法目的进行指导。环境伦理这种不成熟的现状,决定了本书的研究结论是探索性的,是不成熟的。

第四章“西方环境伦理影响环境立法目的之特点”,主要研究实然层面上,环境伦理影响环境立法目的的路径、机制和特点,对我国环境伦理价值转化为环境立法目的提供技术路径上的参考。本章选取三个案例来进行考察。这三个案例分别为:生物中心主义思想对美国杀虫剂立法目的之影响;反虐待动物伦理思想对英国反虐待动物法立法目的之影响;可持续发展伦理思想对法国巴尼耶法、《环境宪章》的影响。本章认为,从实然层面上,环境伦理对环境立法具有深远的影响力。其影响方式之一,是将环境伦理的价值追求转化为环境立法目的的规定。其影响方式的特点为:曲折性、间接性、深远性。其转化为环境立法目的之路径有:通过国家首脑的认同而推动立法转化;通过提出立法议案而推动立法转化;通过非政府组织和环境运动而推动立法转化。

第五章“我国环境立法目的之体系构建”,以符合社会主义生态文明要求的环境伦理来指导环境立法目的,以系统论思想来安排多个环境立法目的的适用领域和排列顺序,使原本分散的环境立法目的群内在具有环境伦理价值的正当性支持,外在排列统一有序,形成一个多元、统一、有序、协调的环境立法目的体系。这种多元平衡的格局,是生态学系统论原理在环境立法目的上的映射。整个生态系统就是一个由多个环境要素存在,并在相生相克中维持平衡、稳定状态的系统。作为环境法立法目的,也可以仿照生态系统,形成

多元、多层次、有序、协调的环境立法目的体系。在这个体系中,其统帅性环境立法目的为“促进经济、社会与环境的协调可持续发展”。其他环境立法目的必须服从于统帅性立法目的,本章最后一节对环境伦理价值如何转化为环境立法目的的规定作出探讨。

Abstract

In November of 2012, the Eighteenth National Congress of the Communist Party of China was held; in November of 2013, the Third Plenary Session of the 18th Central Committee of the Communist Party of China was held. In the two important meetings, the concept of socialist ecological civilization was proposed and attached great importance to. According to a report of the Eighteenth National Congress of the Communist Party of China, “give great impetus to the construction of socialist ecological civilization by establishing ecological civilization ideas of respecting, conforming to and protecting the great nature, attaching great importance to the construction of socialist ecological civilization and integrating it into every aspects and processes of economic construction, political construction, cultural construction and social construction. Work had to construct a

beautiful China and realize sustainable development of China”. Moreover, the construction of socialist ecological civilization has been agreed in the congress to be included into the constitution of the communist party of China. One year after that, the construction of socialist ecological civilization was restated in the Third Plenary Session of the 18th Central Committee of the Communist Party of China as one of important issues for the country leaders in the process of deepening the reform. In the session, the suggestion of “speeding up the construction of socialist ecological civilization system” was proposed. The proposing of socialist ecological civilization in the “two sessions” indicates that “the relationship between human being and the environment” has become more and more important in the country – governing strategies of the ruling party of China and that environmental factors will be taken into account in the process of formulating important national decisions, policies and laws and therefore cause far – reaching influence on the development of the society and economy.

As an important component of political superstructure, the law is an effective tool for the ruling party to realize its political declarations and program of action. Therefore, an environmental law is necessary for constructing socialist ecological civilization. First of all, the legislative purposes of the environmental law should be perfected according to the requirements of socialist ecological civilization. Environmental legislation purposes refer to goals the legislator intends to achieve

through making environmental laws and regulations. As the start point and objectives of the whole environmental legislation, environmental legislation is influencing the directions and guiding the comprehensive-ness of environmental legislation, environmental law enforcement and environmental law observation. Without the leading by a clear and correct environmental legislation purpose, the whole environmental legislation will be in bewilderment or even result in negative effects, let alone serve for the construction of socialist ecological civilization.

Currently, certain defects are existing in China's environmental legislation purposes, which are hindering the construction of socialist ecological civilization in China. The defects include: a lack of accordance among various current subordinate departments of the environmental department with regard to provisions on legislation purpose when practicing environmental legislation; a lack of a definite and ordered system on legislation purposes of the environmental department. In the author's view, the fundamental reason for the existence of the defects is: environmental legislation purposes are lacking of guidance from environmental ethics in the process of formulating due to the weak foundation for environmental legislation. environmental ethics refer to ideas on "proper relationship between human being and the environment and behavioral rules for maintaining such proper relationship". Without support from environmental ethics, it will be difficult to result in rational environmental legislation purposes with regard to content, or ef-

fective law enforcement effect, or conscious law – abiding among people of the country.

Methods for making up for the defects include: regard environmental ethics and ideas that are in accordance with the requirements for constructing socialist ecological civilization as guiding ideology for environmental legislation purposes; sort out, conclude and analyze the current multiple environmental legislation purposes; reconstruct an unified and ordered environmental legislation purpose group through evaluating and correcting the validity of the content, arranging ranks of all specific environmental legislation purposes and classifying applicable fields of specific environmental legislation purposes so as to promote the construction of socialist ecological civilization.

Body of this paper is consisting of five chapters. In chapter one—basic concepts involved in this research are defined, such as environmental legislation purpose and environmental ethic; moreover, the basic objects and perspective of the research are determined. Environmental legislation purposes studied in this paper refer to goals and effects the legislator intends to achieve through practicing legislation and adjusting human beings with natural behaviors. Environmental ethics studied in this paper refer to ideas on “proper relationship between human being and the environment and behavioral rules for maintaining such proper relationship”. Later in this chapter, a study on the relationship between environmental legislation and environmental ethics is

conducted from the perspective of nomology and a conclusion that there are two layers in the research on the relationship between environmental legislation and environmental ethics is attained. From perspective of specification, both environmental legislation and environmental ethics are parts of social norms; though the two are independent in the scope of adjustment, the scopes are overlaying to certain extent. The overlaying is indicated by environmental legislation purposes. In value level, environmental ethics are superordinate philosophical guiding ideas, value source, theoretical support and legitimacy basis for environmental legislation. On the other hand, environmental legislation is the only way for realizing environmental ethics in a society governed by law. One important mark for the reflection of environmental ethics in environmental legislation is the conversion of the most basic value goals pursued by environmental ethics into goal – directed provisions through environmental legislation. In this paper, the relationship between environmental legislation and environmental ethics is viewed from the perspective of value, that is, environmental legislation should be guided with environmental ethics that are in accordance with the requirements for constructing socialist ecological civilization and that the value of environmental ethics that are in accordance with the requirements for constructing socialist ecological civilization should be converted into goal – directed provisions through environmental legislation so as to attain legitimacy for the content of environmental legislation purposes, scienti-

ficity for the organizational structure and compliance in people of the country and therefore promote the construction of socialist ecological civilization.

In chapter two—current state of China's environmental legislation and ethical analysis, the current state of China's environmental legislation is summarized and an analysis on the current state is conducted from the perspective of environmental ethics. Major research methods applied in this chapter are statistical analysis and comparison. First of all, articles on legislation purpose from the 28 selected environmental laws are listed, summarized and counted to attain current state of China's environmental legislation as: the content of China's environmental legislation purposes is not simplex but multiplex and the literal meaning is not definite but vague; the organizational structure of China's environmental legislation purposes are not unified or ordered, but disperse and conflict with each other. After that, an analysis on the current state of China's environmental legislation purposes is conducted from the perspective of environmental ethics to attain an evaluation as: the ethical theory foundation of China's environmental legislation purposes is weak; there is a conflict among ethical values, and; the ethical level is low. Then a comparative analysis on the current state of China's environmental legislation purposes and that of international environmental legislation purposes is undertaken. Generally speaking, environmental ethics are out of line with environmental legislation and

the two are not mutual – depending or mutual – supporting. The shortcomings mentioned above are obstructing the construction of socialist ecological civilization.

In chapter three—environmental ethic selection for guiding environmental legislation purposes, a considerable number of environmental ethics are investigated in a scope that is as wide as possible and an evaluation of the pros and cons of those ethics is conducted with a view to selecting appropriate instructive theories for reconstructing environmental legislation purposes. Major environmental ethic ideas investigated in this paper include: idea of sustainable development, scientific outlook on development and idea of socialist ecological civilization, germination of environmental theory by Marx and Engels, Chinese traditional idea of “unity of men and nature”, non – anthropocentrism and definite anthropocentrism. Through investigating, the author holds that: the capitalist industrial production mode under the guidance of definite anthropocentrism in western countries is the fundamental reason for the generation of environmental crises and human development crises; definite anthropocentrism is against the development trend of the world and therefore should be avoided to use when reconstructing China’s environmental legislation purposes. Environmental ethic ideas that are instructive for perfecting environmental legislation include: the idea of sustainable development, scientific outlook on development and idea of socialist ecological civilization and germination of environmental

theory by Marx and Engels. Notably, the above several environmental ethic ideas are limited to different extents. Currently, there is no a relatively mature and perfect environmental ethic theory for providing comprehensive guidance in perfecting environmental legislation purposes. In practical operation, only above four environmental ethic ideas can be applied for guiding China's environmental legislation purposes while referring to rational components of other environmental ethic ideas and combing with some views on environmental ethics by the author. The immaturity of environmental ethics means the research result of this paper is exploratory and immature.

In chapter four—features of the influence of western environmental ethics on environmental legislation purposes, a research on the path, mechanism and features of the influence of environmental ethics on environmental legislation purposes is conducted on an objective level for providing reference on technological path for converting the value of China's environmental ethics to environmental legislation purposes. In this chapter, three cases are selected for studying, including: Silent Spring—the influence of ethic ideas on legislation for pesticides in the United States; the influence of anti - animal abuse ethic ideas on the purposes of formulating the law for opposing animal abuse in Britain; the influence of the idea of sustainable development ethic on the environmental charter and another law of France. This chapter holds that environmental ethics have far - reaching influence on environmental