

Study on Value Orientation of Environmental Law*

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Abstract - Legislation values provide ethic foundations for environmental legislation, and then affect the value orientation of environmental legal system. This paper reviewed the generation and the development of environmental law, and the evolution of ethic foundations. The impacts of anthropocentrism and ecocentrism on environmental legislation were compared and investigated respectively. It is proposed to adopt ecocentrism to be the ethic foundations of environmental law to establish the value orientation of the harmonious development of human and nature. Then the environmental legal system could be rebuilt around the common interests of human and nature.

Index Terms - environmental law, value orientation, ethic foundation, harmonious development of human and nature

1. Introduction

Legislation values provide ethic foundations for environmental legislation, ethic foundations affect value orientation of environmental law, and finally value orientation is reflected in the environmental legal system. Currently, Chinese researchers and scholars carried out insufficient studies on ethic foundations and value orientation of environmental law, and no consensus was reached. There presented several views: 1) some scholars claimed to accept modern anthropocentric ethics as the ethic foundation of environmental law. This view believed that the modern anthropocentrism actually integrated traditional anthropocentrism and non-anthropocentrism, while beyond the traditional anthropocentric and non-anthropocentric ethics. Also, it indicated that the value pursuit of environmental legislation had determined its ethic foundation to be the modern anthropocentrism [1,2]; 2) some other scholars advocated that non-anthropocentrism (including ecocentrism) should be the ethic foundation and value guidance for environmental law [3-5]; some others believed that the viewpoint of sustainable development should be the ethic foundation for environmental law. They believed sustainable development viewpoint containing active factors of both anthropocentrism and ecocentrism, and launched their discussion of value orientation of environmental law based on the sustainable development viewpoint [6-9]. In summary, although the value orientation of environmental law has been recognized by domestic scholars, there lack of relevant researches, and an academic consensus has not yet been reached, nor the systematic theories. Thus this paper discussed the value orientation of environmental law based on the ethic foundations of environmental law.

2. Generation and Development of Environmental Law, Evolution of Ethic Foundations

Early human society did not introduced specific legislation into the environmental protection for animals, plants, land and other natural resources. These resources were only protected as the objects of ownership, and these kinds of protection were only embodied in the laws for ownership protection. Since the middle-20th century, the environmental pollution has presented to be a critical problem. Consequently, the developed countries began to issue environmental laws to control environmental pollution. In 1972, the United Nations Conference on the Human Environment was held successfully, which was considered to be an important milestone of the international attention to ecological and environmental protection. From then on to the mid-1980s, a series of environmental treaties had been issued. In 1987, the United Nations initiated the establishment of the World Commission on Environment and Development (WCED). Meantime, the WCED published report, namely "Our Common Future", on environment and development issues in the same year. Afterwards, the concept of "Sustainable Development" proposed by WCED became the target of environmental legislation in most countries.

Environmental laws named differently in different countries, such as "Law of Nuisance" in Japan, "Pollution Control Act" in some European countries, "Environmental Law" in the U.S., and "Environmental Protection Law" in China. Despite their different names, their objectives are basically identical, i.e., to coordinate human relationship with nature, to protect and improve the environment, and to ensure the environmental resources developed, utilized, protected and improved subjected to the objective laws of nature especially the ecological law, so as to support the sustainable development of human society. Then the environmental law means the development of relevant codes of conduct and its implementation under the state coercive power.

The root causes of the generation of environmental law result from the environmental deterioration, representing as the conflict between human and the environment. Differing from other laws, the environmental law adjusts not only the relationship between people, but also the relationship between people and the environment. Also the environmental law adjusts a variety of social relations around the intermediary of the environment. When considering the legal subjects and objects, the subjects of environmental law are the government,

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non-government organizations, enterprises and citizens; the legal objects are the objects pointed by the rights and obligations of the legal subjects, where is the natural environment, including forests, grasslands, air, water, minerals and wildlife, etc., also including a series of actions, facilities and pollutants related with environmental resources planning, protection and development.

Because environmental law specified behaviors have a certain particularity, that how to understand the relationship between human beings and nature consists of the ethic foundations of environmental law, while also determines the value orientation of environmental law. Current modern society mainly regards anthropocentrism and ecocentrism as the ethic foundations of environmental law. Anthropocentrism was the ethic foundations of traditional environmental law, and later evolved into the modern anthropocentrism, as an amended version of traditional anthropocentrism. Anthropocentrism emphasizes the needs and interests of human beings as the subject, which is criticized by ecocentrism. Ecocentrism came from recent increasing environmental pollution and resources scarcity, emphasizing the overall interests and development of human together with nature, and thus became the environmental ethic cogitation which could not be ignored by legislators. After ecocentrism was proposed, the correctness of anthropocentrism began to be questioned. Contrarily, ecocentrism began to affect various aspects of environmental law.

3. Anthropocentrism Impact on Environmental Legislation

Anthropocentrism believes that environmental ethics can provide optimal methodology for environmental protection policies to adapt to environmental protection practices. This is the “win-win” theory. The traditional cognition usually believes that for two opposites, one will lose and another will win; the new thought believes that under certain conditions, a compromise between the two opposites will make both of them win [10]. Anthropocentrism first admits the value of humans, but also admits the instrumental value of nature for humans. Thus the interests of humans coordinate with interests of all living creature in natural systems through interdependence relation to form a whole. To recognize and pursue the interests of humans as a whole provides the driving power for anthropocentrism. Furthermore, humans need to achieve equitable distribution of resources in different countries and peoples, and establish a more rational international order compatible with environmental protection. People should not overdraw environmental resources to meet all their needs or even greed. Instead, people ought to leave a good living space for their future generations. In order to protect the ecological balance of the earth, the developing countries have the responsibility to maintain a balance between environment protection and sustainable development. On the other hand, the developed countries have the obligation to reduce their total energy consumption, and to support and participate in environmental protection in developing countries to help them

solve the dilemma between environmental protection and economic development.

Anthropocentrism provides traditional ethic foundation for environmental law. Most environmental laws of modern society are based on anthropocentrism as their ethic foundations. In the current knowledge of nature, human is the only intelligent beings, is the only beings to be able to recognize their value and can consciously realize their value of life. All planned actions of all kinds of animals cannot mark consciously in nature which only people who can do [11]. Unlike animals unconscious or without advanced awareness, humans can build object relationship with nature. Humans can actively change the natural conditions through their own practices to maintain their survival and development. Humans can consciously and purposefully transform the outside world according to their needs, so that the properties of the external world can be changed to satisfy them. Human beings become the natural and historical subject when establishing object relationship with nature. Range of cognitions and practices of human extend around the center of beings. The human cognitive process and practical process are always subject to the constraints of human intuition and rational thinking. Also, the outcomes of human cognitions and practices result from conscious choices with human subjectivity implication. Human beings can constantly design, select and create new needs and new lifestyles according to their own ideals and value orientations. Human is not only the cognitive subject and the practical subject, but also the value subject [12].

From anthropocentric perspective, environmental law is impossible to address the natural interests separate from the human interests. Environmental law intended to protect the human interests so as to protect the environment. Hence any natural value out of human values is meaningless in law. Consequently, for both legislation of environmental pollution control and legislation of resources protection, their fundamental purpose is to protect the happy lives of humans and the orderly development of human society. Thus only parts of the legislation put less attention to the rights of plants, animals and other life in nature.

Anthropocentrism has rooted in environmental law, but it has insurmountable logic difficulties, which have caused a lot of deviation in the implementation of environmental law.

Firstly, one essential point of anthropocentrism is that human beings should unite under the whole interests to unify their behaviors, although it is indeed difficult to define such a concept. Various interest groups exist among and within different countries, which have their different or even opposed interests in environmental protection issues. Furthermore, in the decision-making process of environmental law, even within the same interest group, it is prone to address the interests of present generation but ignore the interests of the next generation, which can impair the intergenerational justice.

Secondly, anthropocentrism is based on the interests of human itself. It considers the ethic codes just as the game rules of humankind. The ethic codes are the conventions only within the human community and thus humans have no moral

obligations on nature. The idea has confined people to think standing for non-humans. This is inevitably reflected in the environmental law, i.e., lack of human care for nature. For whether the individual standard during recent liberalism period or the social standard during modern monopoly capitalism period, their common ideas stress the superior "human interests", and claim the human interests as the center, where human is the master of nature. Thus, even though the laws have declared for the protection of natural resources and ecological environment, the environmental laws and regulations developed under the guidance of anthropocentric legislation values, are focused on the interests of humans. In practices, the dominant ideas, such as "human interest" first and "environmental interests being only tools", result in a variety of ignoring ecological environment as well as profit-oriented behaviors frequently.

4. Ecocentrism Impact on Environmental Legislation

When facing environmental pollution and the increasing scarcity of resources, the correctness of anthropocentrism began to be challenged. Ecocentrism, as the correction of anthropocentrism, began to affect various aspects of environmental law. Ecocentrism, with environmental protection cognition, appeared in the West in recent decades, as the criticism of traditional anthropocentrism. Ecocentrism put forward arguments about several major views of anthropocentrism and thus built its own theoretical system upon them. A number of modern environmental legislations are based on Ecocentrism.

Ecocentrism questioned on anthropocentrism in follows.

1) *Criticism of Human Subjectivity*: Anthropocentrism considers that human is the subject and all nonhuman is the object. The subject is autonomous, self-sufficiency and active beings, but the object is just a physical entity without spirituality. When humans become the only subject, it means that only humans have intrinsic value and rights, while other non-human beings have no such intrinsic value and rights. This is where anthropocentrism started. However, Ecocentrism believe that the distinction between subject and object is relative, where subjective degrees can vary. Humans are not the only subject, but the whole of nature is the highest subject. For the degree of subjectivity, the human has the greatest degree of subjectivity, followed by animals, and then plants. In another words, subjectivity means the purpose and the initiative. Things have a certain degree of subjectivity if they are able to spontaneously or consciously transform or adapt to the environment.

2) *Criticism of the Supremacy of Human Interests*: Since various things in nature, like humans, have subjectivity, their intrinsic value should be respected. Therefore, the human species is no longer the most noble, and no longer have human interests over other natural beings. Moreover, ecocentrism believes that the moral relation and obligation exists not only between humans and humans, but also between humans and nature, where humans have a moral obligation for nature.

Ecocentrism questions the traditional ethic foundations of environmental law when environmental problems have become worsening and traditional ethics has presented its inability to solve such problems. Ecocentrism appears as a valuable introspection and adaptation of the traditional ethic foundations, which has deeply influenced the modern environmental law in following ways.

1) *Emphasis on the Harmony of Human Interests and Natural Interests*: Ecocentrism thinks that nature possesses values which do not rely on human, beyond the values useful for humans. People should respect nature, recognize the value of its existence, and undertake its moral commitments and obligations. The animals, plants and other species, as an integral part of the ecosystem, have their own values, which should be respected. Hence the design of environmental law should reflect not only the human rights, but also the natural rights.

2) *Emphasis on the Justice Reflected in Environmental Law Values*: This justice means that the rights humans and all things of nature should be respected. It also means the rights of present and future generations should be respected, that is, the intergenerational justice. The former should emphasize in the legislation on respects for natural laws in the natural development, appropriate development and recycling, kind treatments for other forms of life, prohibition of abusing and killing animals. Other living creatures should be included in the human ethics, and be given legal qualification of subject. The latter should emphasize on the justice for allocation limited resources for present and future generations. It requires regarding unborn future generations as contemporary people, and giving them equal rights and respecting their interests, who could equally share and use earth resources, and the same should also be charged with the obligations for nature.

However, ecocentrism also has its logical dilemma. In addition to humans, whether other species or nature has its own value or not after all. This value should be how to regard itself, and who should define it. Ecocentrism fights against traditional anthropocentrism in that the anthropocentric metaphysical approach regards the value of nature as only instrumental value, and sets the value of human itself in opposition to the value of nature. However, the approach regarding equally the value of nature and the human value also has its own weaknesses. For example, nature does not subjectively seek its own interests from humans, and thus, from this perspective, the human does not have value for nature itself. Ecocentrism recognizes that natural species other than human beings possess axiological significance with each other. Yet it is worth to understand, first of all, that these species are not conscious to transform the world around them but only instinct to exist to influence the surrounding environment; secondly, their value is not actually given by their own, but imposed upon them by humans, since it is still of a human perspective. Therefore ecocentrism values about nature are still disguised human-centered point of view, which regard the value of nature as a certain different level. In fact, this is a kind of surface differences, where essentially it is still

the human beings that dominate the right to speak instead of nature.

5. Conclusions

Most countries in the world have declared to protect the environmental rights. Different choice between anthropocentrism and ecocentrism has led to different value orientation of environmental law. Currently, anthropocentric ideology dominates such value orientations, where environmental rights of human beings are stressed in laws, such as the Korean Constitution (1980) article 33 states that “people have the right to live in a clean environment, and the nation and people have the obligations for environmental protection.” China Constitution also made similar statements. However, along with environmental pollution and the increasing scarcity of resources, the correctness of anthropocentrism began to be challenged, while ecocentrism impact on the environmental legislation became increasingly evident. This paper justified that ecocentrism should provide the ethic foundations for environmental law so as to establish the value orientation for harmonious development of human and nature, and reconstruct the environmental legal system to focus on the common interests of human and nature. It must be noted that in practice there are certain difficulties to define “environmental rights” for non-human. Claims of rights of natural objects, for example, often due to weaknesses including vague concept, the uncertain subject and the unspecific procedure, receive rudimentary admission, although it is difficult to get protection and relief for them. Therefore, future studies are desired to verify and protect the legal rights of the natural non-human beings, and to improve the environmental public interest litigation system.

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