

# Research on Environmental Law Theory from the View of Sociology of Law

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**Abstract:** *The development model of environmental law research paradigm does not follow the trajectory of traditional law theory, but gradually matures with the socialization, globalization, international, comprehensive and highly scientific development of environmental problems. Based on the new theoretical paradigm of environmental law, this paper makes a preliminary exploration and construction in the modernization and transformation of environmental governance, so as to reconstruct the basic content and legal framework of environmental law theory paradigm. In general, the environmental law research should continuously deepen its theoretical connotation in the social law paradigm. In short, the research methodology of environmental law is returned to the field of pedagogy, in order to strengthen the social practice effect of the localization research of environmental law in China, and focus on guiding the solution of the environmental protection problems faced in the practice of environmental law.*

**Keywords:** *environmental sociology; environmental law theory; social law paradigm; localization study*

## 1. Introduction

From the perspective of the development history of the world environmental law, the rise of environmental law discipline is based on the gradual socialization tendency of environmental problems and has become the mainstream branch of "social law" today. But environmental law paradigm research is not completely deviate from the traditional law such as criminal law, administrative law, economic law law teaching research direction, but in social science law and law paradigm, did not value the depth of environmental sociology theory on environmental law paradigm, even some scholars advocate "environmental philosophy", environmental law itself is a strong and more interdisciplinary practical applied law branch, environmental law empirical research is the cornerstone of environmental judicial practice.<sup>[1]</sup> It is precisely because of the high socialization and globalization of environmental problems that we must face the problem of the research paradigm reconstruction of environmental law, that is, whether legal pedagogy, social law school and even the field law path proposed by some scholars can respond to and solve many problems faced by the future development of environmental law paradigm. This paper believes that the environmental law research methodology should return to the social law paradigm, which helps to strengthen the practical effect of environmental law social standard theory research, moreover, the traditional environmental law theory paradigm is based on the department of the right standard paradigm, cannot better adapt to both public and private law dual attributes of environmental law the social law environmental protection reality demand.

## 2. The Basic Position of Contemporary Chinese Environmental Law Paradigm

The word "paradigm" first came from the western scholar Kuhn's paradigm theory. Kuhn believes that "A paradigm is a consensus belief or theoretical analysis framework of a scientific community in long-term exploration, training and education."<sup>[2]</sup> Mr Deng Zhenglai to "paradigm" made the macro accurate summary, namely the Chinese law adopts the concept of paradigm occasions mainly includes three situations, the first situation from the contribution of professor Sue, its think paradigm mainly refers to get a group of faithful "academic community", and at the same time for a specific field provides relatively stable and a series of sharing rules research results. The second way is the way adopted by Liang Zhiping, which is a complete set of convinced theories or a set of beliefs constructed on the historical level. Therefore, the paradigm is the thing or material shared by those members of the academic community. The third way is mainly represented by Zhang Wenxian and others. Professor Zhang Wenxian

drew lessons from Kuhn's concept of "paradigm", and made moderate innovation on this basis, and further defined the legal paradigm as "right standard paradigm". This definition originally analyzed the specific meaning of the paradigm from the standpoint of right standard.<sup>[3]</sup> above definition way for environmental law, environmental law concept framework system and functional, so the author in combing the basis of the above definition, combined with the unique properties of environmental law itself, the environmental law paradigm defined as: methodology related to the concept of environmental law theory, environmental law paradigm not only called environmental law the features of the academic community of marginal disciplines, such as academic rules, common way, and includes the rational natural science disciplines such as ecology. In short, Kuhn's paradigm theory has laid a solid social theoretical foundation for the proper construction of the social law paradigm of the contemporary environmental law paradigm theory in China.

### **2.1. Epistemological Level**

At the epistemological level, the basic position of the contemporary Chinese environmental law paradigm is divided into two levels: the first level is the traditional legal cognition theory transplanted from the West. That is, Descartes mainly represents the mature mechanical theory through Newton, social contract theory derived from the western modern natural law school, material capital theory represented by Bentham utilitarian law, transaction security theory mainly based on private law and social security theory with social security as the core. Also corresponding to the second level, corresponding to the "master and guest integrated thinking" environmental law paradigm theory, including the most representative ecological holism, namely the epistemology of ecological holism and the host and guest "integrated" thinking paradigm, ecological contract theory, based on ecological theory and ecological theory of ecological capital, and risk society under the background of universal ecological security theory. Through comparative analysis, the author thinks that the above epistemology level of environmental law research paradigm, ecological security theory pay more attention to nature and human survival and development of the balance between the two, through the sustainable development in the active use of environmental law, finally achieve the ultimate goal of harmonious coexistence between human and nature.

From the first level of epistemology, first, the core and path of the "host and guest integration" paradigm is to break the traditional cognitive paradigm of anthropocentrism, hoping to reunderstand the relationship between man and nature and try to construct a new research paradigm, which has opened a new perspective and a new situation for the research of environmental law. Second, the research path of "ecological model" is mainly to reject the ecological value of environmental law. Thus, it can be seen that "the ecology of legal methodology reflects the integration of humanities and natural science, including the dialectical unity of natural law and empirical law; the ecological integration of Oriental legal thinking and western legal thinking; the ecological methodology or the unity of value judgment and fact judgment."<sup>[4]</sup>third, According to the inductive generalization of scholars, The methodology of environmental law mainly has six points: first, the methodology of environmental law breaks the research paradigm of traditional law, It has further broadened the vision of legal research; Second, the methodology of environmental law revises the disadvantages of the "client and client dichotomy" theory, Turn to the paradigm research theory of "integrating subject and guest"; "Third"; The methodology of environmental law expresses that the purpose of realizing the law is for the survival and sustainable development of contemporary people and future generations; "Fourth," The methodology of environmental law expands the expression form of legal value; "V.", The methodology of environmental law once again promotes the organic unity of "reality" and "should"; last, The methodology of environmental law continuously expands the scope of legal subjects, Make the legal subject extend to the height of the active protection of the environment and the resource subject.

As for the second level of epistemology, it is a relatively mature and advanced theoretical understanding of modern environmental law. It has the comprehensive perspective of the past, and considers the theory of environmental law from the overall epistemology of integrating subject and guest. This is mainly attributed to the deepening of human understanding of environmental problems, that is, from the ancient agricultural era to the modern industrial period to the current modern industrial revolution development period, the relationship between man and the environment has undergone tremendous changes. That is to say, from the initial agricultural period few environmental deterioration to today's environmental deterioration, so environmental problems are usually with economic and social development and gradually become increasingly prominent, it also reshape the understanding of environmental law of modern environmental problems: modern environmental problems essentially belong to the economic and social development, namely the social problems facing human survival and

development.

## **2.2. Practical Theory Level**

From the perspective of practice theory, the empirical research of environmental law mainly focuses on the practice goal of overall environmental rule of law, which means that the practice of environmental rule of law in China carries out the construction of modern environmental rule of law from the perspective of holism, and the earliest theoretical source of holism can be traced back to the holistic view of Aristotle and others. The so-called holism, “it is a new term emerging in the postmodernism period, as a basic concept of human cognitive system, refers to the concept of distinguishing it from negative postmodernism, advocating the regularity and integrity of the internal and external relations of various things.”<sup>[5]</sup> Aristotle’s “four causes” elaborated on the idea of the relationship with the whole in order and structure. Specifically, we believe that the theoretical significance of the environmental law paradigm of building holism lies in the profound criticism and abandonment of the dichotomy, dualism, mechanism and reductionism. Because holism and the current mainstream view of environmental law, that is, the governance of environmental pollution and ecological damage from pluralism happen to coincide, the practice concept of environmental law presents the whole but not isolated, diversified and comprehensive characteristics. Some scholars believe that although the mainstream paradigm of environmental law research realizes that only by controlling the concept of nature can we seek the solution to the most profound root causes of environmental problems. However, because the subject of the environmental rule of law in China still measures the value and significance of the environment by human interest subjects, so it cannot recognize the role of the legal subject of nature based on the support of morality. It can be seen from the above, the epistemology of environmental law paradigm is not without weakness, on the contrary, it reflects the tension between man and nature, so it may face the danger of changing the inherent nature of environmental law.

First of all, the main purpose of practice paradigm is that it should admit and adhere to the “human — natural —” triangle, in a sense, society is also a part of nature, practice paradigm of epistemology beyond is its changed epistemology paradigm internal contradiction logic, namely emphasizes the environment subject entity is the first, rather than practice paradigm focused on the “relationship logic”.<sup>[6]</sup> In other words, it is the transition from an entity context to a practice-centered relational context.

Secondly, there are obvious differences between practical paradigm and epistemological paradigm in many ways. For example, there are fundamental differences between main actions, core foundations and underlying weaknesses. From the perspective of the main actions, the logic approach of the former is “discovering the problem and put forward the proposition”, while the generation logic of the latter is “discovering the problem and put forward the proposition to solve the problem and propose the reflection and improvement”.<sup>[7]</sup> Obviously, the weakness of the former is too idealistic, taking the existing understanding as the existing and legitimate rules of behavior, and the lack of integrity understanding. But the latter also has basic theoretical defects: it cannot completely eradicate the concept of strong human-centrism. In this way, it is easy to lead to the protection of the actual human property interests contrary to the actual human property interests.

Finally, the core elements of the practical theory paradigm mainly include four aspects: the “people-oriented” logical starting point, the field appearing in the social world, and the thinking method with social technology as the intermediary and systematic thinking. These four elements are interactive and mutually influential relationships. In the author’s opinion, the design of environmental law paradigm should not only start from the specific environmental law system pointed to by the practical theory paradigm, but also construct the solution of environmental law problem in the way of “combining points and aspects”.

## **3. The Concrete Expression Pattern of the Contemporary Chinese Environmental Law Paradigm**

On the specific expression mode of environmental law research paradigm, the views of environmental law circles at home and abroad are not unified. However, there are three main kinds of authoritative theories in the academic field: the environmental law paradigm of the field law research path, the environmental law paradigm of the empirical law (the concept corresponding to the natural law) and the environmental law paradigm of the comprehensive law research path. The details are as follows.

### ***3.1. Modality First: Advocate Taking the Road of Field Law***

Advocate law field environmental law scholars and other scholars have professor Wang Jin, Liu and RuanYanQian scholars, among them, professor Wang Jin thinks, "environmental law discipline itself belongs to the emerging discipline, although department law sequence did not include environmental law, but does not affect the real environmental law education practice, such as Beijing university law school law environment and resource protection professional doctoral training program set up domain, machine professional color" nuclear policy and legal direction".<sup>[8]</sup> At the same time, it also advocates starting from the perspective of ontological significance, effectively combining the experience and lessons in the development of environmental law in China, to explore the possible common consciousness of environmental law problems in the field law research paradigm, and further examine the research path of environmental law norms as field law. But environmental law research paradigm is not very stable, after all, environmental law development history is less than 100 years, so emphatically claims that environmental law should belong to a branch of field law or have field law discipline attribute is in the norms of environmental law law is untenable, not the realistic environment of the judicial process, the typical case of environmental protection its stability is not strong, and even difficult to repeat. It should be emphasized that some emergency response cases related to environmental problems have not continued to suffer from the legitimacy test, resulting in the application of environmental law norms and the judgment of environmental law cases, and even run counter to the legislative concept of environmental law. In addition, Professor Liu Jianwen of Peking University advocated that the new paradigm of environmental law construction of field law can fully reflect the unique adjustment function of environmental law. For example, the basic function of field law is very similar to environmental law, that is, they all have open, dynamic and changing functional positioning. Some scholars believe that through the analysis of the above views, it can be seen that their environmental law can be the supporting view of field law. They all believe that the research paradigm of department law law does not directly conflict with the division standards of field law, on the contrary, they can tolerate and complement each other.<sup>[9]</sup> In addition, the field law and the department law are mainly obviously different in the research pattern, research objects, research methods and research significance.

Specifically, in the research pattern, the field law is stereoscopic, and the department law is flat; in the research object, the field law phenomenon is the core, the department law is the pillar, the field law is open, the department law reflects relatively closed; in the research sense, the field law is committed to the destination and positioning of new disciplines, the department law constitutes the basis and support of traditional law.<sup>[10]</sup>

To sum up, the author basically agrees with the research perspective of field law, but I also agree that the research paradigm of environmental law is only limited to such a huge and seemingly vague research path of field law. If limited to this, it is not possible to solve the environmental problems of environmental law adjustment, such as the relationship between human and carnivores, which may only be adjusted by the traditional value system of ethics. Therefore, the open feature of the field of law research method is the deficiency of this paradigm, which cannot reasonably limit and adjust the extension boundary problem of environmental law research.

### ***3.2. Modality Second: Advocate the Road of Social Law***

Generally speaking, Merkel is the founder of the general doctrine in the separate branch of jurisprudence, which divides the legal science roughly into two parts, namely, general jurisprudence and special legal science. Whether the special legal science referred to by the latter contains the connotation of social science and law remains to be discussed. The proposition of social science law is not yet completely unified in the academic circles. The so-called social science law is "not just short, nor is it a unique research paradigm for sociological reference, but refers to a system of all-inclusive but well-organized legal system."<sup>[11]</sup> From this concept, we can know that social science law combines some views of sociological knowledge with real legal reality, so as to make the internal sociological meaning of law more prominent and clear. Some scholars in the academic circle believe that there are two main characteristics of social science law research methods: the first point is to start from the study of specific legal problems arising in the society, and the second point is its basic theory as a means to solve problems. Then, in the study of environmental law, if we advocate the road of social science law, we must also study the specific environmental problems arising in the practice of environmental law. Therefore, in a sense, this is indeed a unique advantage of social science law, that is, the formation of China's unique environmental law theory through empirical research, to fill the gap between law and other social sciences. In fact, the logical starting point of social science law, as scholars say, in a sense, can be said to

be the historical law as its logical starting point, because from the perspective of social science, law is a fact, and it is a kind of human behavior that occurs in a specific time and space and can be perceived by human senses. Environmental law is the result of people's intellectual efforts, and the society itself is also the fundamental source of law. Therefore, the actual effect of environmental law research paradigm on environmental law governance must serve the fundamental purpose of social harmony. Only when man and nature are in a dynamic and balanced and harmonious relationship, the construction of environmental rule of law can truly produce performance.

### ***3.3. Sample State Third: Advocate Taking the Road of Comprehensive Law***

In Cai Shouqiu's book, *On Adjustment*,<sup>[12]</sup> In the book, Professor CAI Shouqiu believes that a comprehensive legal research path should be adopted, so as to solve the environmental problems that often occur in China's reality. The reasons for its claim are as follows.

First, from the perspective of standard analysis, the comprehensive law paradigm should pay attention to the exchange and cooperation between disciplines. Because in the previous established thinking mode and standard, it is the typical feature of the traditional legal norms to determine the attribution of the traditional legal research paradigm.

Second, from the point of view of value theory, the characteristic of comprehensive law is a kind of interpretive law. However, through the analysis of the four typical theoretical models described in Mr. Deng Zhenglai's "Where is Chinese Law Going", we can see that all these four models have a full smell of western modern jurisprudence paradigm. In other words, these four typical theoretical models are the "imported products" of western jurisprudence. It is neither beneficial to solve the "legal practice of subject China", nor to describe and construct the "ideal picture of Chinese law".

Third, from the perspective of the social practice function of environmental law, comprehensive law mainly points to responsive law. Responsive law aims to solve the logical criticism of "subject and guest separation" of traditional law, which is a legal paradigm put forward on the basis of subject and guest integration paradigm and in line with Marxist practical epistemology.

From the above analysis, it can be seen that in order to truly achieve the consciousness of environmental law methodology, if we take the road of comprehensive law paradigm, then it is possible to make environmental law research turn to the other extreme of — pluralism. Of course, pluralism also has its advantages. For example, a variety of legal technologies can be used to adjust environmental problems, but this cannot completely replace the normative analysis of legal pedagogy, so the positivist tradition of legal pedagogy can provide substantial help for solving environmental problems.

## **4. Modernization Transformation of Environmental Law Paradigm in China**

### ***4.1. The Social Governance Significance of Law Teaching and Doctrine in the Development of Environmental Law***

First, law doctrine can do its best to achieve the predictability of law. Then, as an environmental law paradigm, law doctrine should also be duty-bound to realize the predictability of environmental law, because it is necessary in any legal application activities, and it also gives the legal attribute of environmental judicial judgment. Specifically, the governance significance of law doctrine in the development of environmental law is to give the normative value judgment of "doctrine" and "type" of environmental law. In the future, judges can encounter similar environmental justice cases again and apply doctrine from the position of "relatively neutral value".<sup>[13]</sup> In a word, environmental law plays an authoritative role in all legal activities of environmental law.

Secondly, the doctrine of environmental law can ensure the unity of formal environmental rule of law and substantive environmental rule of law. From a positive level, the teaching of environmental law has a unique system, that is, the systematic form of environmental rule of law provides an important reference standard for the coordination and unification of various environmental laws and regulations, and also points out the direction of value judgment for the effective implementation of substantive environmental law and rule of law.

Finally, the doctrine of environmental law protects the environmental rights and interests of citizens or society from illegal interference and damage by state power. National environmental right and citizens' environmental right have always been the core controversial issues in the academic circle. How to protect

the rights and interests of citizens or society and environment from the intervention and damage of state power is the core of environmental rule of law practice. In the field of environmental law, a stable environmental law doctrine can help to maintain the unity of the environmental legislation system.

To sum up, the law doctrine of environmental law can promote the stability of environmental law from three aspects: predictability of environmental law, complete unity of system, and protection of citizens and environmental rights and interests from illegal interference and damage of state power. These functions are derived from the formal rationalization characteristics of modern jurisprudence and its thinking paradigm constrained by authority. Therefore, it is essential to construct and revitalize environmental law doctrine to gather consensus on environmental law and establish the authority of environmental rule of law.

#### ***4.2. The Function of Environmental Law Pedagogy Constructed Based on the Sociology of Law***

Through the above governance significance of the teaching of law in the development of environmental law, we can see that one of the functions of the little knowledge of environmental law doctrine is to standardize the governance function. So is there anything other than that? Through consulting relevant academic literature, the author found that the function of law and doctrine is not only regulating and guiding the practice of environmental governance, but also includes the selection function and verification function of law and doctrine. The latter two functions are that legal pedagogy is also indispensable to legal pedagogy based on the premise of real legal norms. Similarly, the function of environmental law doctrine should be expanded on the play to the basic function of law doctrine. For example, the selective function of environmental law doctrine and the inspection and demonstration function of environmental law doctrine.

First, scholars point out, "legal doctrine requires the treatment of existing rules seriously, which is closely related to the study of legal positivism."<sup>[14]</sup> In the same way, and environmental law is more recognized as a practical and applicable law branch discipline, but the author does not agree with the scholar think "the law of our country is actually teaching", the reason is: first, if the nature of the law and the nature of the law, then how can the two on the connotation or denotation? This is something worth reflecting on. Secondly, the original theoretical sources of the research of law and doctrine in China are all from German scholars, which has a completely different research style from the current socialist rule of law with distinctive characteristics in China, that is, the latter does not always take the current real legal order as the basis and boundary of the work, and carries out the task of systematic and legal interpretation under this context. On the contrary, the latter can continue to carry out the systematic and socialized task of social science law without breaking through the general premise of the actual law. Therefore, although respecting the system and logic is the basic feature of law doctrine, the formal rule of law is the ultimate goal of its pursuit. But don't forget that the law cannot be separated from the "feedback" of the society, and the society also cannot be separated from the standard guidance of the law. As a doctrinal law, environmental law should adapt to the social changes in the new era, and timely adjust the actual value of updating norms according to the actual operation of the real law, so as to meet the public's needs of environmental rights. In view of this, the main function of environmental law pedagogy is: when the disputed environmental legal facts have multiple optional legal rules, the judges of specialized environmental courts are provided with expressive, interactive and visible legal selection function and legal demonstration mechanism.

Second, the second and third function of environmental law teaching is when environmental law specification selection is difficult, then need environmental law doctrine to play the standard selection function of the most suitable for the case of environmental law specification and in the specific case judgment inevitably encounter complex difficult to demonstrate the legitimacy and legitimacy, which should timely find out the argument test method and play the environmental law doctrine demonstration test function. The function of environmental law doctrine does not conflict or conflict with the exercise of judges' discretion, but is reasonable and legal regulation<sup>[15]</sup>.

To sum up, the social law school advocates social standard legal thought, although the banner of social law school have points, including many different specific theories, such as sociology, economics, ecological law, the name of the theory, but its essence is an external perspective to observe the actual operation or reflect the state of facts. Environmental law has natural natural and social attributes, which not only meets the theoretical needs of social law paradigm, but also advocates constructing and improving the basic theory of environmental law, but also cooperates with the strong ability of social law school to accommodate social logic theory, which can better reflect the social standard function of environmental law. Social standard construction, of course, in the social paradigm of social law theory,

because the social law school to realistic, and often ignore the individualistic standard has natural moral value, law as a social science, is a kind of weapon, if inappropriate, is enough to destroy the existing legal culture. Thus it can be seen that the theoretical paradigm research of environmental law should establish the path of social law research formed between individual right standard and social standard. After all, the development and maturity of the concept of environmental law cannot finally leave the influence of human ethics.

## 5. Conclusion

From the perspective of environmental law paradigm social function transformation of environmental law paradigm preliminary review and research, through the specific development of three environmental law paradigm and different characteristics, the author concluded that China environmental law theory paradigm more meet the second type, namely based on law doctrine, starting from the function of sociological interpretation method, should fully consider the social effect of environmental law, in this sense, environmental law is to seek interests balance between legal system and social system. And social law is just based on the maximization of social interests, but also in line with the social and public interest guidance of environmental law. This paper holds that the development of environmental law theory paradigm from the perspective of legal sociology is gradually changing from the dual combination mode of right standard and individual standard to the social standard centered social law theory mode, which is also the legal appeal of environmental law to maximize the interests of human society.

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