

CAI SHOUQIU: JURISPRUDENCE BASED ON ECOLOGICAL CIVILIZATION

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Is industrial civilization suitable for our society? We rethink this question when environmental issues emerge. An advanced civilization, that is an ecological civilization, was made a strategic developing target in China by the 18th National Congress of the Communist Party of China in 2012 when ecological civilization construction was written into the CPC constitution. This placed ecological civilization on an equal footing with politics, economy, society, and culture when environmental quality and pollution issues affect people's well-being and livelihoods.

Since China is undergoing comprehensive change and restructuring, legal developments should adjust and adapt to the rapid changes in society and the economy which are producing significant environmental issues that loom large. Environmental law should respond without any hesitation. *Jurisprudence Based on Ecological Civilization*, published in March, 2014, is thus very timely. The book elaborates a systematic theory of environmental law that supports ecological civilization. It sets forth a research paradigm of subject-object integration, a new legal subject of ecological man, and it articulates the relationship between ecological civilization and environmental law. According to the author, law can not only adjust the relationship between people, but also between humans and nature. The book analyzes the legitimacy of the ecologicalization of the legal system in China, Hume's "is-ought" question¹ and Snow's proposition,² and highlights the problem of legal protection of the commons. The book provides both a new theory of jurisprudence of environmental law and a range of profound thoughts on basic questions in environmental law.

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¹ On Hume's is-ought question, please refer to David Hume, *A Treatise of Human Nature*, Clarendon Press, 1896, translated to Chinese by GUAN Wenyun under the same name (The Commercial Press, 1980)p509.

² C. P. Snow in the Rede Lecture, Cambridge University, May 7th, 1959, argued that there was a major difference between natural sciences and the humanities, which could not be fused. This lecture was published under the name of *The Two Cultures and the Scientific Revolution*, translated to China by JI Shuli under the name of *Two Cultures* (SDX Joint Publishing Company, 1994) pp3-5.

The author, Cai Shouqiu, is a law professor at Wuhan University, and this book was published on his seventieth birthday. Cai has dedicated himself to environmental law, participating in drafting more than ten national environmental laws, and publishing 30 monographs and textbooks, and over 200 articles about environmental law. This book, which covers his new research results in this decade, is suitable for policy-makers, law-makers, environmental practitioners, law students, environmental law researchers, and persons interested in environmental law in China. The book provides essential analysis on a series of environmental issues by research paradigm and theoretical resolution. It will undoubtedly become a landmark for environmental law development.

The book first reviews traditional law theory. The author thinks that both the human-centered and subject-object dichotomy approaches are disadvantageous to environmental protection, and instead the law should focus on both human and natural components of ecological systems. The research paradigms of subject-object dichotomy is the foundation of traditional Chinese civil law, where the private law relationships are the relationship between subject and object; subject is in the first place, then the object. The civil law society consists of person and things, persons are always the subject, and things are always the object, but in the field of environmental law, things may be the subject. The source of subject-object integration traces back to Taoism and old western thoughts, such as Laozi's "syncretism between heaven and man" of Chinese traditional culture, Georg Wilhelm Friedrich Hegel's "the identity of subject and object", and Ludwig Feuerbach's "man is the entity of man and nature." Subject-object integration is materialism actually. However, subject and object can transform mutually under it: things could be the first, and man the second, thereby favoring environmental protection and an environmental law which concerns both human and nature, and their relationship, while subject-object dichotomy is idealism.

The book suggests that the law model of ecological man replaces the legal person as legal subject, where the legal person puts man and nature in unfair position, with man above nature. According to Cai, the idea that "only man could be the subject, and be subject for ever, never be object" is not correct, it comes from the paradigm of subject-object dichotomy. Prof. Cai considers a new concept in China, the commons, which is different from things in civil law. Commons includes air, sunshine, the scene of sunrise or sunset, the beach; no one has ownership, but any of us can use them without excluding all others. Because the manifest character of commons is not exclusive, traditional Chinese civil law cannot resolve this issue, because the real right is completely exclusive. Commons is also different from

shared ownership, where shared ownership means certain persons own same thing. The commons should be protected by public law, to prevent “the tragedy of the commons”, the idea of ownership is not the solution to commons.

Since there is no legislation for commons in China, in order to take good care of them, the right to use commons should be confirmed by law at first. Then access to justice would be available in environmental public interest litigation. When the right to use commons is infringed, environmental courts may accept the cases.

In conclusion, the book reviews basic theory of Chinese environmental law, and proposes a theory of ecological civilization and a legal law system that is ecological. Amendment of Chinese basic environmental protection law adopted in 1989 is being discussed by the National People’s Congress. The public, environmental experts and law researchers hope these amendments could promote environmental protection policy and law which tackles the serious environmental problems associated with Chinese social and economy development. This book also provides important theoretical support for this amendment. Unfortunately, this book is published in Chinese but it is hoped an English version will meet readers soon.