



Theoretical Analysis on Chinese Public's Participation in Environmental Matters—Institutionalization Approach

TANG Meng^{[a],*}; GUAN Jingxiao^[b]

^[a] Ph.D., Lecturer, Postgraduate Research Supervisor, School of Law, Changchun University of Science and Technology, Changchun, Jilin, China.

^[b] Master Candidate, School of Law, Changchun University of Science and Technology, Changchun, Jilin, China.

* Corresponding author.

Received 15 September 2012; accepted 23 November 2012

Abstract

How does the public participate in environment matters to influence decisions that affect their own environment? There are two existing theories supporting the public's participation in environment matters. However, they emphasize the certainty of the public's participation in environment matters. The real problems that the public facing during their participation in environment matters and their practical needs lack of resolutions and responses. The way to figure out these problems is to put forward theoretical framework for the public's participation in environment matters so that to set up an interactive environment law system that can reflect action subjects' initiatives.

Key words: Public participation; Certainty; Institutionalization

TANG Meng, GUAN Jingxiao (2012). Theoretical Analysis on Chinese Public's Participation in Environmental Matters—Institutionalization Approach. *Cross-Cultural Communication*, 8(6), 30-33. Available from: <http://www.cscanada.net/index.php/ccc/article/view/j.ccc.1923670020120806.1688> DOI: <http://dx.doi.org/10.3968/j.ccc.1923670020120806.1688>.

Environment issues have always been accompanying with human society's development. Environment issues are comprehensive which concern various aspects of our society. With the rapid development of Chinese economic, our surrounding environment is becoming worse when we enjoy the excitement brought by economic development. At the same time, people have been caring more about

their living environment than before. What can people do when face environmental deterioration and increasing numbers of environment problems? In what degree can people take control of their living environment? Do we have influence power on environment decisions as an individual? In which condition can the influence work? And to what degree?

Public participation in environment matters refers to actions that made by ordinary people (individuals or groups) apart from government to obtain favorable results via various kinds of means to attend or influence government's administrative activities. This kind of "actions" is formed by interactivity between the public and the government under certain changes of conditions and restrictions. The core issue of this paper is to give a primary theory framework for the rationale of by which means can the public influence their own environment during the participation process in environment matters and the theory basis of this means.

1. PREVIOUS THEORIES ON THE PUBLIC'S PARTICIPATION IN ENVIRONMENT MATTERS

Concluded from previous researches, we found that most scholars made their researches from the following two theoretical views, that is to say, the jurisprudential basis for supporting public participation in environment matters are of two types: 1) democracy theory; 2) related laws and regulations. We think that research results concluded by those researchers are most "certainty" explanations for the two point of views and they mainly focus on the significance, necessity, and benefits and value for the public in participating environment matters. Although we agree with those researchers, for us, these theories or views are merely "presupposed theories" in the public's participation in environment matters. They hardly or never

give further evidence in proving their theories. Therefore, we briefly discuss the two views in this paper and also provide proofs for our understandings and reasons.

1.1 Democracy Theory of the Public's Participation in Environment Matters

Mark E. Kane gave in his paper "The American Environment Democracy" that "democracy is an influential theory"; "the people and organ of power should united together to make common decisions jointly on public life. People should take part in the process of evaluating aims and values that regulate public interests; make political and social organizations use their group power to guarantee public interests. This type of democracy is an idea that people should have equal freedom and influence on evaluating and fighting for public interest." Some people also think "environment democracy means interactivity between nature and society which should be influenced by regulating activities made by executing power or people who obtain public interests"; "environment democracy is an idea grown out of American traditions. It insists on making choices accordingly on already existed and currently dealing with modern environment crisis's elite domination (CAI, 2005). With worldwide democracy movement and environment protection movement development, different countries' environment law legislations have made environment democracy as the directing principle of environment law; some international treaties have also provided environment democracy statements.

The theory of environment democracy mainly has the following meanings and effects: 1) developing the environment democracy idea is the requirement of developing human environment protection. Carrying out environment democracy is the fundamental guarantee for coordinating human and natural environment relation. 2) Environment democracy theory is the ideological basis of the public's participation in environment protection which is the significant reflection of environment democracy. 3) Environment democracy is the demand of guaranteeing public's environment interests. The public should use certain means or methods to take part in environment management to maintain and realize their environment right and the basic way is to carry out environment democracy. 4) Implement environment democracy and public participation is the need of environment protection groups' activity, living, development, and realizing their own value. 5) Implement environment democracy and public participation has very important meanings in China (CAI, 2005).

Environment democracy is inevitable requirement of Socialist democratic political system. The reality of environment law condition depends on the real existence of environment democracy. The spirit of environment democracy should not be formulated in one society's environment policies and laws, it should also allow,

encourage and guarantee the public's participation in environment management.

From above we can see the principal reason for adopting environment democracy theory is that in our democratic country people is the master of the nation and they should have the power and rights to making decision jointly with the government on public life. Thus, this is the related democracy theory for "certainty" in the public's participation in environment matters.

1.2 Laws and Regulations of the Public's Participation in Environment Matters

It is necessary to provide legal protection and support for public's participation in environment matters. If there are no related environment laws and regulation to provide support for the public and restricting and supervising government, the Public's basic rights may be violated. Public participation without legal protection cannot be recognized as the complete public participation.

China's laws and regulations about the public's participation on environment matters can be concluded in the following aspects:

(1) Principle provisions about public participation in environment matters

Article 2 of the Constitution of the P.R. China stipulates: "The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law." This is the constitutional grounds of Chinese people participating in environment matters. Article 35 of the Constitution of the P.R. China in fact provides that the public has the freedom to express their environment interests which reads "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."

In 1979, the Environmental Protection Law of the People's Republic of China (trial implementation) stipulated in its General Provisions the general principle of Chinese environmental protection work: "Overall planning, rational distribution, comprehensive utilization, turn disadvantages into advantages, depend on the masses, everybody take part in, protect environment, and benefit the people." The Environmental Protection Law of the People's Republic of China which was promulgated in December 26, 1989 has improved this principle as stated in Article 6: "All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment". State Council approved "Ninth Five-Year Plan of National Environment Protection and 2010 Vision and Long-Term Goals" in 1996 also provides that based on comprehensive construction of democracy and law system, build up environmental protection mechanism with public's participation gradually and listen to the public's opinions during evaluating environmental

influences of the constructing projects.

(2) Provisions of the subject of Public participation in Environment matters

For example, Article 13, paragraph 3 of the Law of the People's Republic of China on Prevention and Control of Environmental Noise Pollution formulates that "The environmental impact statement shall include the comments and suggestions of the units and residents in the place where the construction project is located". Article 5 of the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (2000) provides: "All units and individuals shall have the obligation to protect the atmospheric environment and shall have the right to report on or file charges against units or individuals that cause pollution to the atmospheric environment". Article 5 of the Law of the People's Republic of China on Appraising Environmental Impacts which was promulgated in October 28, 2002 also states: "The state encourages relevant entities, experts and the general public to participate in the appraisal of the environmental impacts in appropriate ways."

(3) Provisions of detailed forms of Public participation in Environment matters

There are provisions provided in "Interim Procedures of Public Participation in Environmental Impact Appraisal Procedures" on investigating public opinions, consulting experts' suggestions, hearings, and forums. Article 34 of the Law on Legislation of the People's Republic of China provides: "For a bill which has been put on the agenda of the session of the Standing Committee, the relevant special committee and the office of operation of the Standing Committee shall hear the opinions of the concerned constituents. In gathering opinions, various methods may be adopted, such as panel discussion, feasibility study meeting, hearing, etc.." Article 58 stipulates: "In the process of drafting an administrative regulation, the drafting body shall gather opinions from a wide circle of constituents such as the relevant agencies, organizations and citizens. The gathering of opinions may be in various forms such as panel discussion, feasibility study meeting, hearing etc.."

(4) Provisions of rights and obligations of public participation in environment matters

There are symbolic provisions in both the Chinese Constitution and the environment law about the rights of public participation in environment matters. Public participation in environmental protection, to certain degree, is to use the public's environment rights to restrict environmental administrative power's implementation. Environmental rights of citizen include substantive rights and procedural rights. Procedural rights here refer to participation right, right to know, and right of claim. There are provisions about the right for the public to obtain environmental information stipulated in "Environmental Information Disclosure Rules". The public can supervise

environmental administrative conducts through different means and report and disclosure vandalism of environment.

(5) Legal relief measures for public participation in environment matters

Public participation is a right of the public. Where there is right, there is relief is the basic rule of laws. According to current laws, the relief measures are mainly administrative and judicial ways. Administrative method refers to raise administrative review to Chinese competent administrative department of environmental protection according to Chinese Administrative Reconsideration Law. Judicial method mainly means administrative lawsuits. If administrative organs' administrative act violates laws or is nonfeasance, the public can file a lawsuit against the related organ in the court according to Administrative Procedure Law.

Generally speaking, the reason for adopting the method of laws and regulations is that the laws and regulations have made up the reason of the legality for the public's participation in environment matters. The default theory for this method is laws and regulations will be implemented in reality without any exceptions.

2. DISCUSSION ON PREVIOUS THEORIES

Although we think democracy theory and laws and regulations methods are correct, which is also admitted by this paper, their defects are the lack of persuasion. The application condition supporting public participation theory has changed which means the world structure that China is in has changed. China is now in a globalized economic, environmental, and legal world structure which has been changing our lives. This paper argues that the essence of Chinese current development status is all about the normal form transformation issue which is just the background that those researches do not realize. This is because these theories are in fact started from the "certainty" point of view but neglect the fact that the content of laws is determined by the material life condition. As a matter of fact, these means have treated the public's participation in environmental matters as a matter of course. However, they have ignored other conditions' restrictions and influences of the society and broken away from current social background and potential systematical problems that support public participation and even the public's own factors have changed very much during the social transformation period. These means are merely helpful for understanding the "legitimacy" of the public's participation in environment matters but cannot effectively explain practical issues that the public facing when participating in environment matters and respond to the public's real needs in social transformation conditions.

Besides, we think the above discussed "presupposed

theories” for public participation in environment matters belong to a kind of “value judgment”. However, the behavior of value judgment is based on a priority selection of a value as intermediary and has high subjectivity. The degree of the value judgment’s objectivity is in accordance with the people that making up as the value system of this judgment basis. Due to the division of labor and specializations in the society, there are different groups and organizations and their value judgments are usually different. Therefore, it is inevitable to have separations and confronts between various value systems. This value judgment means is easily to cause the result that everyone has their own value judgment (Takeyoshi, 2004, p. 244). Therefore, “value judgment” cannot replace “objective argument”. These means lack of persuasive practical proofs and are hardly to answer how do people participate in environment matters in real life and the important meaning for this participation in forming the system.

No wonder the above mentioned research means are of significance meaning to environment law development from the environment law research point of view. However, if we put the two means in practical social life as certain regulations or value, we can find that they cannot answer paradoxes as: on one hand, environmental protection laws are increasing day by day and rules on public participation are also becoming more and more; on the other hand, people do not follow the way that provided by regulations to participate in environment matters.

In Conclusion, the two means can hardly answer detailed questions of legal system. All conditions require us to put the practice of public participation in environment matters into China’s social transformation period, investigate reasons of the problems of the regulations of public participation in environment matters and resolutions since the changes of objective environment conditions and the public’s own element such as the improvement of social productive force level, economics, politics, and culture etc. have all influenced the detailed ways that the public participate in environment matters.

3. NEW THEORETICAL MEANS – INSTITUTIONALIZATION APPROACH

This paper gives out the institutionalization approach which in our point of view has the practical objective proving function. The issue we need to address here is the institutionalization approach is not totally against the previous theoretical researches and do not look down upon the influence and effect of democracy theory and laws and regulations as well. The institutionalization approach just never separates these elements from detailed context to recognize them as the first cause of the whole world’s every activity. It insists that any theory, norm, and system and so on must be adhere to human being or other material existence but cannot exist without foundation. Apart

from pure historical investigation, every investigation on historical or foreign legal systems or regulations must be accompanied with its current social requirements. Thus, the historical legitimacy is usually connected with the current one in some way (ZHU, 2004, p. 256).

This paper uses institutionalization approach to prove public participation in environment matters. Which systematic thinking should be adopted to do institutionalization? The process of institutionalizing public participation in environment matters is not an abstract or obligatory value choice; it is a combined result formed by many elements during social transformation period. First, we need to consider about the social background of institutionalization. It is necessary to investigate social life that people currently live in and cannot neglect the fact that China is now in the social transformation period. During this period, the guidance function that tradition has on people is gradually dissipating, people’s subjective feelings have been increasing, and they request to control their own living conditions in some degree. Therefore, they may participate in environment matters either in groups or in person by various kinds of ways. Study on people’s psychological changes in transformation period and people’s social life activity changes is of great importance. What is more important is that previously we have neglect such fact that the influential power people’s daily life activity’s changes have. This influential power cannot only make systems that are not inconsistent with people’s requirement invalid in part or in whole but also bring mass disturbance to impact the stability of the society order. On the other hand, tyrannical power comes out of system itself is also a restriction on people’s subjectivity. Life is changing and active. Before the change of institutional structure, people’s activity has gone further before it which reflects that initiative people’s innovating ability and systematic structure are imbalanced. Thus, the fundamental way to institutionalize public participation in environment matters is to set up interactive public participation system in environment law and to let the public decide on their own destiny and public affairs.

REFERENCES

- CAI, Shouqiu (2005). Environment Fairness and Environment Democracy—Discussion on Basic Theories of Environment Resource Laws. *Journal of Hohai University (Philosophy and Social Sciences)*, 7(3).
- Takeyoshi, Kawashima (2004). *Modernization and Law* (SHEN Zhengwu et al. Trans., p. 244). Beijing: China University of Politic Science and Law Press.
- ZHU, Suli (2004). *It May Be Happening—Science of Law in the Transformation Period of China* (p. 256). Beijing: Law Press China.