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China's Mode for Compiling an Environmental Code

LYU Zhongmei

Abstract "Basic law + separate laws" and codification are the two modes countries worldwide adopted for enacting environmental legislation in line with their national circumstances and legal traditions. Following the goal of establishing a modern environmental governance system, the mode "moderate codification" should be China's choice for compiling an environmental code. "Moderate codification" is a dynamic and open substantive code-compiling mode. Based on idea changes and method innovations, it builds a basic logic system with the goal value as the core and the tool value as the technical method. An environmental code following the "moderate codification" mode can use the structure of "General—Specifics." The General Part "extracts common factors" and elaborates the legislative purposes, basic principles, management rules and lead measures that dominate the overall situations and are universally applicable. Then each Specific Part (they form Specifics) compiles and integrates the relevant prevailing laws and regulations, and further regulate environmental factors. Therefore, the cornerstone concept of "eco-environment" should be defined and the environmental legal relationships should be clarified. "Environmental code" derives from "dual source-of-law" and considers sustainable development as its value goal, takes the "eco-environment" as its cornerstone concept, and regards the legal relationship as its systematic tool for constructing its framework system.

Keywords environmental legislation, codification, moderate codification, sustainable development, eco-environment, environmental legal relations

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Introduction

After years of studies, Chinese legal scholars have fundamentally agreed that systematized environmental legislation in China should be codified and that compiling a Chinese environmental code (Code) should practice "moderate codification." However, there are disagreements on the definition of "moderate codification," and there are even fewer ideas on the methodology of "moderate codification." Should these issues remain unsolved, compiling the Code would, most likely, go nowhere beyond desire and debate. Therefore, two aspects of the study need moving forward: epistemology and methodology, to provide a solid theoretical support and workable scheme for the legislature to commence compiling this Code.

I. Various Modes of Systematizing Environmental Legislation

Worldwide, systematization of environmental laws has been highly valued. In 1969, the United States promulgated the national environmental policy act, which started the legislation of the basic environmental laws.[1] Many countries followed suit, and gradually formed their own environmental legislation system with the basic environmental laws as the lead and the specific environmental laws as the backbone. For example, after having introduced the national environmental policy act, the United States revised and enacted several specific laws on environmental protection, such as the clean water act, the clean air act, the solid waste disposal act, and the comprehensive environmental response, compensation and liability act.[2] Some countries have revised, integrated and upgraded their basic environmental laws as a result of their deepening understanding of the relationship between humanity and environment. For example, Japan enacted the basic law on countermeasures against public hazards in 1967 and the natural environment preservation law in 1972, which respectively provided for pollution prevention and natural environment pro-

[1] LYU Zhongmei, ed., 环境法原理 (*Principles of Environmental Law*), 2nd edition, Fudan University Press (Shanghai), at 115 (2017).

[2] ZHANG Hui, 美国环境法研究 (*Studies in American Environmental Law*), National People's Congress Publishing House (Beijing), at i–ii (2015).

tection. They were considered the basic laws in the field of public hazards prevention and natural environment protection. However, after the United Nations Conference on Environment and Development in 1992, Japan merged these two laws and enacted the basic law on environment in 1993, raising the goal of environmental protection legislation from "public hazards prevention," and "natural environment protection" to "sustainable development." [3] At almost the same time, some countries systematized their environmental laws by compiling the environmental code, such as Colombia's national code on renewable natural resources and environmental protection in 1974 and the Philippines' environmental code in 1977. Some other countries, after having legislated a number of specific environmental laws, began to compile the environmental code. For example, Sweden introduced the environmental code in 1998 and Kazakhstan passed the ecological code in 2007. Generally, the systemized mode "basic law + separate laws" provides a mode of formulating a basic law that commands the whole field of environmental laws. In the basic law, general terms and conditions such as primary concepts, basic principles, basic systems and regulating means are stipulated. Afterwards, the separate environmental laws primarily regulate specific matters, but each separate environmental law should respect the basic environmental law. With regard to an environmental code, it integrates all or most of the norms of the environmental laws and possesses a complete structure and a rigorous system.[4]

The two modes have their respective advantage and disadvantage. The advantage of the "basic law + separate laws" mode is that it does not need to consider the overall logic thread and text structure, but only needs to ensure that each specific law does not run against the basic law in terms of the basic concepts, basic principles, basic systems and rules. Concerning its disadvantage, although the norms of all environmental laws should be consistent under the unified command of the basic law, yet those separate environmental laws have differences due to their fragmented structure, legislation timing, circumstances, and even their specific objectives and tasks. Furthermore, when specific environmental laws are constantly formulated or revised, they often "escape" from the constraints

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[3] DU Qun, 日本环境基本法的发展及我国对其的借鉴 (Development of Japan's Basic Environmental Law and China's Reference), 4 比较法研究 (*Journal of Comparative Law*), 55–64 (2002).

[4] For example, although the French environmental code excludes minerals and forest resources and other related content, it generally covers a large number of laws and administrative regulations such as the natural environment, natural space, animal and plant communities, and pollution, risk and nuisance prevention, see XIA Ling, 法国环境法的法典化及其对我国的启示 (The Codification of French Environmental Law and Its Enlightenment to China), 4 江西社会科学 (*Jiangxi Social Sciences*), 177–181 (2008). Another example: the Swedish environmental code, which coexists with offprint laws such as the road law, the railway construction law, and the forest protection law. See ZHU Xiao & TIAN Shiyu, 瑞典环境法典化的特点及启示 (Characteristics and Inspirations of Swedish Environmental Codification), 15 中国人大 (*The People's Congress of China*), 53–55 (2017).

of the basic law.[5] As Harold J. Berman has pointed out: In terms of theory and practice, the laws of the 20th century are less and less regarded as a coherent integration, as an entire system and a complete set of decrees, but increasingly regarded as a melting pot, a lot of fragmented individual judgments and conflicting rules that are only linked by common "technology." [6]

The advantages and disadvantages of an environmental code are just the opposite of "basic law + separate laws." The advantage is that it has a perfectly logical system, embodies legislative democracy, scientificity, comprehensiveness, predictability and operability, and can facilitate societal activities. It also has political symbolism, unifies the legal system, accelerates the national strategic transformation, and promotes social change. In addition, it has legal-culture significance and promotes the modernization of the country.[7] In addition, it can raise systematization of environmental legislation, heighten social and political reform, promote sustainable development, and modernize environmental governance system.[8] The biggest challenge of codification is that it needs to be supported by mature legal theory to ensure that the prevailing environmental laws must be compiled into a logical normative system through screening and integration. Furthermore, such a "formal rationalization" [9] code may make the legal system stagnant or inadaptable, and even make the legislation divorced from the actual needs of societal activities and legal adjustment.

Countries worldwide are constantly exploring to innovate the environmental law system. A very noteworthy phenomenon is that countries attempt to gradually integrate the "basic law + separate laws" mode and the codification mode, and to make best use of their combined advantages. On the one hand, some countries adopt the "basic law + separate laws" mode to complement the structure-fragmentation disadvantages by allocating additional to the basic law. This involves, especially, establishing the sustainable development objective value for the

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[5] See 法国环境法典 (*French Environmental Code*) (Volumes 1–3), translated by MO Fei, LIU Tong & GE Sudan, Law Press (Beijing), at 1–2 of Preface by translators (2018); 意大利环境法典 (*Italian Environmental Code*), translated by LI Jun, LI Xiuqiong & CAI Jie, Law Press (Beijing), at 3–4 of the Preface by translators (2021).

[6] Harold J. Berman, 法律与革命——西方法律传统的形成 (*Law and Revolution: The Formation of the Western Legal Tradition*), translated by HE Weifang et al., China Encyclopedia Publishing House (Beijing), at 44 (1993).

[7] ZHANG Xiaojun, 刍议中国法律法典化的价值和意义 (*On the Value and Significance of Codification of Chinese Laws*), Paper Collection of the International Symposium on Comparison of Chinese and Foreign Legal Systems, in Wanfang Data, available at https://d.wanfangdata.com.cn/conference/7268458 (last visited Aug. 30, 2021).

[8] See 瑞典环境法典 (*Swedish Environmental Code*), translated by ZHU Xiao et al., Law Press (Beijing), at 6–7 (2018).

[9] See SU Guoxun, 理性化及其限制——韦伯思想引论 (*Rationalization and Its Limits: An Introduction to Weber's Thought*), Shanghai People's Publishing House (Shanghai), at 219–222 (1988).

environmental laws, creating a hierarchical value system,[10] and maintaining the consistency of concepts, principles and systems of environmental law norms. Although many countries do not use "code" to name their environmental basic laws, yet their basic laws do have a code's outlook, structure and substantive provisions.[11] On the other hand, some countries introducing the environmental code have created a "moderate" codification mode, and optimized "formal rationality" with pragmatic rationality and substantive justice, thus having updated codification theory and practice.[12] A typical example in this regard is the Swedish environmental code, which adopts a "moderate" mode. It is the mode of national framework substantive compilation plus authorized legislation, giving up the traditional-code's absolute inflexibility and inadaptability to allow their environmental code being open and operable. It solves the prevailing laws' fragmentation and inoperability, but also innovates sufficiently to modernize environmental legislation. Meanwhile, the environmental code is equally applicable as the road law, the railway construction law, the forest protection law and other separate laws, and its potential inadaptability can be compromised in the name of updating a separate law.[13] In addition, although environmental codes of some countries are named as the "code," these codes actually are applied as the basic laws. For example, in the Philippines, in addition to the environmental code, they have many more codes, such as water code, fishery code, forest reform code, and the environmental code plays an umbrella role in the environmental law system.[14]

Generally, the systematization of environmental legislation in various countries adopts different modes per their national circumstances and legal traditions. But in essence, the environmental legislation integrates substantive justice with formal justice and modernizes state governance.[15] Building or shifting a country to achieve sustainable development is

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[10] See LI Zhiping, 环境基本法立法目的探究 (Exploring the Purpose of the Basic Environmental Law), 6 中山大学学报（社会科学版）(*Journal of Sun Yat-sen University* [*Social Science Edition*]), 170–177+204–205 (2008).

[11] Such as Switzerland's Environmental Law adopted in 1983, Mexico's General Law on Ecological Balance and Environmental Protection adopted in 1998, and Canada's Environmental Protection Act adopted in 1999, and other comprehensive basic environmental laws, which often have integrated some of the original legislation and have different degrees of codified nature, can be regarded as "Quasi-Environmental Code." See LI Zhiping, 环境基本法比较研究 (*A Comparative Study of Environmental Basic Laws*), China University of Political Science and Law Press (Beijing), at 30 (2013).

[12] See LI Yanfang & TIAN Shiyu, 比较法视野中的我国环境法法典化 (Codification of China's Environmental Laws from the Perspective of Comparative Law), 2 中国人民大学学报 (*Journal of Renmin University of China*), 15–28 (2019).

[13] See ZHU & TIAN , fn. 4.

[14] See 菲律宾环境保护法典 (*Philippine Environmental Protection Code*), translated by YUE Xiaohua, Law Press (Beijing), at 9–11 (2020).

[15] While various countries are updating their environmental law systems through the compilation of the environmental code, they advance their national strategic transformation through codification. For example, Cambodia decided to launch environmental governance reforms in 2012, and compiling the Environmental Cods was part of this reform campaign. See Matthew Baird & Brendon Thomas, "Developing an Environmental Code for Cambodia," 1 *Chinese Journal of Environmental Law*, 99–103 (2017).

the common pursuit of the two modes.[16]

II. "Moderate Codification" of Environmental Legislation in China

Based on its own needs, a country chooses a mode, scope and provisions for systematizing its environmental legislation, and every mode has advantages and disadvantages. It is important that their modes can best serve their environmental rule of law and promote their environmental law development. What is even more important is whether their mode can systematize their environmental legislation and modernize their national governance system and governance capacity. After more than 40 years of development since introducing the reform and opening up policy in 1978, China now very much needs to systematize its environmental legislation and modernize its environmental governance. To choose a right mode for this purpose, China needs to work around its prevailing environmental legislation and the rule of law development goal.

A. Code Compilation: The Inevitable Choice for China's Environmental Legislation Systematization

In China, the systematization of environmental legislation is a goal established when the environmental protection law was introduced. At the dawn of reform and opening up, Deng Xiaoping, set this goal for China's environmental protection legislation by clearly pointing out then: We should concentrate on formulating criminal law, civil law, procedural law and other necessary laws, such as forest law, grassland law and environmental protection law ... so that there must be laws to go by, the laws must be observed and strictly enforced, and law breakers must be prosecuted.[17] On September 11, 1979, Li Chaobo, delivered a speech on Notes on the Environmental Protection Law of China (Trial Draft) at the 11th meeting of the 5th National People's Congress (NPC) Standing Committee. He suggested establishing an environmental protection legislative

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[16] For example, the Vietnam environmental protection law passed in 1993 stipulates in the preamble: "The environment is extremely important to the survival of human beings and other living things, and to the economic, cultural and social development of the country, the nation and all human beings. In order to improve the effectiveness of national environmental management, strengthen responsibility of the governments at all levels, state institutions, economic and social organizations, the People's Armed Forces and everyone to protect the environment, protect the public health and ensure that everyone has the right to live in a healthy environment and serve Vietnam's sustainable development goals, and protect the national and global environment, this law is specially formulated to protect the environment in accordance with Articles 29 and 84 of the Constitution of the Socialist Republic of Vietnam in 1992." Quoted in LI, fn. 10. For another example, in the autumn of 1997, the Swedish government cabinet decided to compile an environmental code in order to transform Sweden into an ecologically sustainable country. See fn. 8 at 2 of Preface by translators.

[17] DENG Xiaoping, 解放思想、实事求是,团结一致向前看 (Emancipate the Mind, Seek Truth from Facts, and Look Forward in Unity), in 邓小平文选 (*Selected Works of Deng Xiaoping*), Volume II, People's Publishing House (Beijing), at 146–147 (2006).

system in China, in which the environmental protection law served as the basis, and specific laws provided the backbone. He further noted that its legislative mode was to formulate the basic environmental protection law first, and then to formulate specific laws one after another for preventing and controlling the pollution of environmental factors, which embodied the "basic law + separate laws" mode.[18] After the environmental protection law (trial implementation edition) was promulgated in 1979, China enacted such laws as the marine environmental protection law, the air pollution prevention law, and the water pollution prevention law. However, the environmental protection law (trial implementation edition) and these additional laws were deliberated and passed by the NPC Standing Committee, all having the equal effect, did not conform to the "basic law + separate laws" mode, which was criticized by many theorists.[19] The Environmental Protection Law promulgated in 1989 made significant changes to the Environmental Protection Law (trial implementation edition), but it was not upgraded to the status of "basic law."[20] Since then, China enacted the law on prevention and control of noise pollution, and the law on prevention and control of environmental pollution by solid waste. These laws are administrative laws in the legislative system.

During this period, the environmental protection law focused on preventing and controlling environmental pollution, and its basic concepts, principles and systems were still limited to the scope of pollution prevention and control, known as "mini-environmental protection."[21] There were few laws for protecting the natural environment, especially protecting the eco-environment. In addition to the wildlife protection law and the soil and water conservation law, the land management law, the forest law, the grassland law, the fishery law and the mineral resources law all had provisions dedicated to the protection of the natural environment, among which the forest law especially stipulated in the Part. However, some laws on resources, such as the water law enacted

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[18] See LI Chaobo, 关于《中华人民共和国环境保护法(试行草案)》的说明 (Explanation on the Environmental Protection Law of China [Trial Draft]) (Sep. 11, 1979), cited from: WANG Jin, 从环境基本法的立法特征论我国《环境保护法》的修改定位 (On the Amendment and Positioning of China's Environmental Protection Law from the Legislative Characteristics of the Basic Environmental Law), 4 中外法学 (*Peking University Law Journal*), 475 (2004).

[19] See CHEN Maoyun, 我国环境法制发展趋势管窥——纪念《环境保护法(试行)》颁行十周年 (A Brief Look at the Development Trend of China's Environmental Legal System-Commemorating the 10th Anniversary of the Promulgation of Environmental Protection Law [Trial]), 10 环境科学动态 (*Environmental Science Trends*), 1–5 (1989).

[20] See WANG Jin, 论我国《环境保护法》的现状和修改定位 (On the Current Situation and Amendment of China's Environmental Protection Law), 6 环境保护 (*Environmental Protection*), 8–10 (2003).

[21] See LYU Zhongmei,《环境保护法》的前世今生 (The Past and Present of Environmental Protection Law), 5 政法论丛(*Journal of Political Science and Law*), 51–61 (2014).

in 1988, had no relevant provisions on water resources protection.[22] These laws are economic laws in the legislative system.

Economic and social development has drawn increasing attention to environmental problems and environmental protection, and has made China's environmental protection sector gradually expand from "mini-environmental protection." In particular, after the United Nations Conference on Environment and Development in 1992, China established the sustainable development strategy, and began to shift environmental management from pollution prevention and control to environmental quality management,[23] and natural resource protection also started to receive more attention. In terms of pollution prevention and control legislation, clauses on environmental quality management were incorporated into the revised laws such as the air pollution prevention law and the water pollution prevention law.[24] In terms of natural resource legislation, relevant provisions were also updated. The water law, revised in 2002, incorporated a dedicated chapter on "Water Resources Planning," updated a chapter from "Protection of Water, Water Source Areas and Water Projects" in the 1988 water law to "Protection of Water Resources, Water Source Areas and Water Projects," and revised the chapter from "Water Utilization Management" to "Allocation and Conservation of Water Resources" by including clauses on conservation and protection of water resources. In addition, environmental impact assessment law, cleaner production promotion law and circular economy promotion law were formulated. At that time, some laws on pollution prevention and resource management were amended. As such, the number of laws increased during those years, but the mode of "basic law + separate laws" was not systematized yet, and there was a debate in theoretical and practical circles about whether the environmental protection law was still needed in China.[25] Scholars also begun to suggest systematizing environmental legislation by the codification mode, and gained a wealth of theoretical

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[22] Although the 1988 Water Law included "reasonable development, utilization and protection of water resources" in the purpose clause, its third chapter was mainly concerned with the protection of water projects.

[23] See XU Xiangmin, 环境质量目标主义：关于环境法直接规制目标的思考 (Environmental Quality Objectivism: Reflections on the Direct Regulatory Objectives of Environmental Law), 6 中国法学 (*China Legal Science*), 116–135 (2015).

[24] For example, in 2000, the Air Pollution Prevention and Control Law was revised to include Article 3, Paragraph 2, stating that local people's governments at all levels are responsible for managing the quality of the atmospheric environment in their respective jurisdictions, and formulating and implementing plans to ensure that their respective quality of the atmospheric environment reaches the prescribed standard. In 2008, the Water Pollution Prevention and Control Law was revised, and Article 4, Paragraph 2 was added, which stipulated that local people's governments at or above the county level shall develop and implement plans to prevent and control water pollution, and be responsible for managing the quality of the water environment in their administrative regions.

[25] LYU Zhongmei, 中国需要环境基本法 (China Needs the Environmental Basic Law), 6 法商研究 (*Studies in Law and Business*), 40–46 (2004).

research results.[26] In 2011, after the NPC Standing Committee decided to revise the environmental protection law, many scholars proposed from the perspective of compiling an environmental code, that the environmental protection law should be placed in the General Part of the environmental code, leaving room for incorporating would be specific laws into the environmental code in the future.[27]

In the report to the 18th National Congress of the Communist Party of China (CPC), the ecological civilization construction was elevated to the status of "overall national development strategy" related to the governance of China, and the new requirement of "putting ecological civilization construction in a prominent position and integrating it into all aspects and the whole process of economic construction, political construction, cultural construction and social construction" [28] was clearly provided. In the report to the 19th National Congress of the CPC, the five development concepts of "innovation, coordination, greenness, openness and sharing" were logically combined with the "economic construction, political construction, cultural construction, social construction and ecological civilization." Following the philosophy of "material civilization, spiritual civilization, political civilization and ecological civilization," the overall national development strategy of "Five-Sphere Integrated Plan" and "Four-Pronged Comprehensive Strategy" formed a complete structure for the national governance

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[26] For example, Professor WANG Canfa proposed: "According to the development trend of the environmental law system in developed countries, China should also adopt a systematic approach in the construction of the environmental law system, and consider codifying environmental laws at an appropriate time." See WANG Canfa, 瑞典环境法的体系及其借鉴意义 (Swedish System of Environmental Law and Its Reference Significance), 5 中国环境管理 (*Chinese Journal Environmental Management*), 11–14 (1995). Another example, Professor CAI Shouqiu pointed out: "Some environmental law scholars follow the trend and put forward suggestions to introduce systems theory, cybernetics, information theory and other methods into environmental legislation and formulate a comprehensive and systematic environmental code." See CAI Shouqiu, 论国外环境法的综合性、一体化 (On Comprehensiveness and Integration of Foreign Environmental Law), 4 科技与法律 (*Science Technology and Law*), 1–10 (1998).

[27] Professor WANG Jin proposed that in the process of revising the Environmental Protection Law, we should pay attention to effectively linking other offprint environmental protection laws and regulations with China's relevant basic laws, so as to lay a legislative foundation for sorting out the environmental legal system or compiling an environmental code in the future. See WANG Jin, 论有限修改《环境保护法》的有效性课题 (On the Effectiveness Subject of Limited Amendment of Environmental Protection Law), 2 清华法治论衡 (*Tsinghua Forum of Rule of Law*), 38–48 (2012). Professor ZHANG Zitai proposed that the legislative purpose, basic principles, basic systems, legal status of basic subjects, basic legal responsibilities and scope of application involved in the Environmental Protection Law will become the general provisions of the Code. See ZHANG Zitai & GUO Shaoqing, 结构性陷阱：中国环境法不能承受之重——兼议我国环境法的修改 (Structural Traps: The Unbearable Weight of China's Environmental Law—Also Discussing on the Revision of China's Environmental Law), 2 南京大学学报（哲学·人文科学·社会科学版）(*Journal of Nanjing University* [*Philosophy, Humanities and Social Sciences*]), 41–48+157–158 (2013).

[28] HU Jintao, 坚定不移沿着中国特色社会主义道路前进为全面建成小康社会而奋斗——在中国共产党第十八次全国代表大会上的报告 (Firmly March on the Path of Socialism with Chinese Characteristics and Strive to Complete the Building of a Moderately Prosperous Society in All Respects—Report to the 18th National Congress of the CPC) (Nov. 8, 2012), 22 求是 (*Qiushi*), 3–25 (2012).

system. In the course of modernizing China's national governance system, we should promote the comprehensive ecological civilization institutional reform, develop overall ecological civilization construction, introduce whole-process control of the eco-environment, and diversify the system of eco-environment governance. It is also important to form a "mega-environmental protection" scenario under the leadership of the Central Committee of the CPC and the corresponding government at all levels, while enterprises should play a primary role, and social organizations and general public should all extend their helping hand.[29] To this end, it is required to establish an "environmental governance system with clear guidance, well-informed decision-making, strict implementation, strong incentives, diversified participation and benign interaction." [30] The "ecological civilization construction" was incorporated into the amended constitution in 2018. The environmental protection law, revised in 2014, incorporated "sustainable development" into the legislative purpose, and defined its basic attribute as a comprehensive law of environmental protection.[31] Subsequently, China revised more than 10 specific laws such as air pollution prevention law, water pollution prevention law, forest law and grassland law, formulated about 10 new laws such as soil pollution prevention law, environmental protection tax law, Yangtze River protection law, nuclear safety law and biological safety law, and planned to develope eco-conservation laws such as wetland protection law and national park law.[32] All these legislations further sped up eliminating the shortcomings of environmental legislation. While compiling the China's civil code, close attention was paid to the legislative demand of "green development," and the "green principle" was specifically listed in the General Part of the civil code; the dedicated "green system" was provided in the parts of property, contract and tort responsibility.[33] Up to now, China has enacted more than 50 laws on ecological civilization construction, of which more than 40 are separate laws. The relevant departments of the State Council of the People's Republic of China (PRC), local People's Congresses and their governments, have formulated thousands of administrative regulations, departmental regulations and local rules, forming a huge group of environmental laws and regulations, which are still categorized as administrative law and economic law.[34]

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[29] See 生态文明体制改革总体方案 (Comprehensive Program for Reform of the Ecological Progress System), 中华人民共和国国务院公报 (*State Council Gazette of The People's Republic of China*), No. 28, 2015.

[30] 关于构建现代环境治理体系的指导意见 (Guiding Opinions on Building a Modern Environmental Governance System), 中华人民共和国国务院公报 (*Gazette of the State Council of The People's Republic of China*), No. 28, 2015.

[31] See LYU , fn. 21.

[32] At the same time, in the field of ecological protection legislation, the requirement to formulate a law on nature reserves was also put forward. See 关于建立以国家公园为主体的自然保护地体系的指导意见 (Guiding Opinions on Establishing a System of Natural Reserves with National Parks as the Mainstays), 中华人民共和国国务院公报 (*Gazette of the State Council of The People's Republic of China*), No. 19, 2019.

[33] See LYU Zhongmei,《民法典》"绿色规则" 的环境法透视 (Environmental Law Perspective on the "Green Rules" of the Civil Code), 10 法学杂志 (*Law Science Magazine*), 1–11 (2020).

[34] See WANG Canfa, 论生态文明建设法律保障体系的构建 (On the Construction of a Legal Guarantee System for Constructing the Eco-Civilization), 3 中国法学 (*China Legal Science*), 34–53 (2014).

However, in sharp contrast with the increasing number of environmental laws and the ongoing ecological civilization institutional reform,[35] it is still difficult to allow the environmental law system for updating social relationships to meet the New Era ecological civilization construction requirements. On the one hand, legislations on environment and on resources are separated, uncoordinated and unconnected in terms of legislation purposes, principles and systems. On the other hand, administrative regulations, departmental regulations and local legislation have been introduced individually for crisis management, such that they work in the short term, but could not cope with complex environmental issues. Thus, legislating according to environmental factors and regions disintegrates the overall eco-environment management, and turns the public power of nature conservation into departmental power, which are converted into departmental interests and are legislated departmentally. Furthermore, those laws are enacted at different times and based on limited legislative resources, such that they are overlapping, repetitive, inconsistent and conflicting on some same issue. Since it is impossible to solve these legislative problems in one shot, it is very difficult to apply them in handling cases and to leverage them for directing and judging the practice of legal compliance, enforcement and justice.[36] In short, there are no unified and fundamental spiritual directions and principled norms in environmental legislation; thus, the legislation is split up based on environmental factors and regions. There are also many gaps. For example, there are still many gaps in the nature conservation legislation; the legislation of

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[35] In April 2015, the CPC Central Committee and the State Council issued the "Opinions on Fast-Tracking the Eco-Civilization Construction," which proposed establishing "an eco-civilization institution for source prevention, process control, damage compensation, and accountability." Later in September 2015, the "Comprehensive Program for Reforming the Ecological Progress System" was issued, requesting for well-defining the property rights system of natural resources assets, establishing a national territorial development plan, bettering the total resource management and overall conservation system, the paid use of resources and ecological compensation system, and setting up a sound environment governance system, perfecting the environmental governance and eco-conservation market system, enhancing the eco-civilization performance evaluation and accountability system, and further clarifying the "four beams and eight pillars" (the basic main frame) for constructing the eco-civilization institution. Under the overall arrangement of the CPC and state institutional reform in the report of the 19th National Congress of the CPC in March 2018, the CPC Central Committee issued the "Plan for Deepening the Reform of Party and State Institutions." The Ministry of Natural Resources was established to uniformly exercise the responsibilities of the owner of all natural resource assets, and all land-space use control and ecological protection and restoration. Furthermore, the Ministry of Ecology and Environment was established to integrate the fragmented responsibilities for ecological and environmental protection, and it uniformly exercises the responsibilities of ecological and urban and rural pollution discharge supervision and administrative law enforcement.

[36] A follow-up survey on the current situation of environmental justice in China shows that in judicial practice, judges rarely apply environmental protection laws in judging cases, prefer a few laws and note that the rationality is very weak. The key reason is that environmental legislation does not provide sufficient basis for environmental justice. See LYU Zhongmei et al., eds., 环境司法专门化：现状调查与制度重构 (*Specialized Environmental Judiciary: Current Situation Investigation and Institutional Reconstruction*), Law Press (Beijing), at 71 (2017).

pollution prevention could not control new pollutants and has no relief system for large-scale environment health damage; and the legislation of environmental management falls short of the requirements for mega-environmental protection scenarios and the modern environmental governance system.

Theoretically, China's environmental legislation is a "multi-level, relatively complete environmental law system with environmental protection law as the basic law, environmental pollution prevention and control law, natural resource protection law, nature conservation law, resource recycling law, energy conservation and emission reduction law, disaster prevention and mitigation law as the backbones." [37] However, practically, China has not fully adopted the "basic law + separate laws" legislation mode. Objectively, when the environmental protection law (trial implementation edition) was enacted in 1979, the environmental law system was only confined to the field of pollution prevention and control. Even so, the "deviation" from separate law was a big issue requiring close attention. Therefore, if we were to return environmental legislation to "basic law + separate laws" mode, we would then need to upgrade the environmental protection law into the basic law at first, and thereafter revise one by one all relevant laws, regulations and rules, which is no easier than compiling an environmental code. Furthermore, updating those legal norms could not bring the benefit that an environmental code has in modernizing the national governance system. As such, all parties concerned select the codification mode to systematize China's environmental laws. In 2021, the legislative work plan of the NPC Standing Committee clearly stated: "Advance the codification of laws in the administrative legislation fields where conditions are mature, such as environmental code, educational code and basic administrative code." [38] This shows the top-legislature's acknowledgement of the codification mode. What needs to be discussed next is how an environmental code is to be compiled and what it would be like.

B. "Moderate Codification": A Reasonable Choice for Compiling China's Environmental Code

In his book titled *On the Code of Law*, Japanese Professor Hozumi Nobushige categorized codification and divided it into five categories based on the code purpose: public security strategy, retention strategy, unification strategy, arrangement strategy and renewal strategy. He also pointed out that one or more code purposes can be chosen for codification. For example, the Law of the Twelve Tables, which was formulated to subdue civil strife, is a typical code of public security strategy, while the Napoleonic

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[37] HUANG Xisheng & SHI Yucheng, 中国环境法律体系的架构与完善 (The Framework and Upgrading of China's Environmental Legal System), 1 当代法学 (*Contemporary Law Review*), 120–128 (2014).

[38] 全国人大常委会 2021 年度立法工作计划 (*Year 2021 Legislative Work Plan of the NPC Standing Committee*), available at 中国人大网 (website of the National People's Congress of PRC), http://www.npc.gov.cn/npc/c30834/202104/1968af4c85c246069ef3e8ab36f58d0c.shtml (last visited Aug. 30, 2021).

Code considers both unification strategy and renewal strategy on the basis of retention strategy.[39] The purposes of various countries' compilations of environmental codes until now show that the renewal strategy is the primary consideration, and both unification strategy and renewal strategy are taken into account in some cases. In terms of legislation technique, code compilation can be divided into formal compilation and substantive compilation.[40] Some scholars indicate that proceeding from the need for innovating environmental law system, substantive compilation seems to be an ideal solution, while looking from a conservative standpoint, assembling a code may be more realistic for environmental legislation.[41]

1. "Moderate Codification" Is a Dynamic and Open Substantive Compilation of Codes. Now, Chinese scholars agree that the Code should be based on the national strategy of completing ecological civilization construction, but they hold different views on formal compilation and substantive compilation, and the research on the two methods are in parallel.[42] Just like when developing the China's civil code, civil law scholars generally believed that "System is the life of a civil code, and a 'civil code' without system and logicality is equivalent to 'assembling civil laws' instead of compiling a civil code." [43] Most scholars of environmental laws also believe that developing the Code should embody the essence of both assembling and compiling. "Assembling" means integrating prevailing environmental laws and systems of environmental protection, pollution prevention, nature conservation, resources and energy, and rational and systematic arrangement. "Compiling" means establishing a new system in consideration of various emerging scenarios and issues in executing the ecological civilization construction campaign, in building the "Beautiful China" and in ensuring China's sustainable development. Therefore, compiling the Code should learn from

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[39] See Hozumi Nobushige, 法典论 (*On the Code of Law*), translated by LI Qiuyi, The Commercial Press (Beijing), at 26–27, 31 (2014).

[40] See J. L. Bergel, *Principal Features and Methods of Codification*, 5 *Louisiana Law Review*, 1073–1097 (1987).

[41] See DANG Shufeng & GUO Wu, 中国环境立法法典化的模式选择 (Mode Choice of Codification for China's Enviromental Legislation), 1 甘肃社会科学 (*Gansu Social Sciences*), 116–124 (2019).

[42] At the end of 2020, at the "High-Level Forum on Implementing Xi Jinping Thought on the Rule of Law and Improving the Eco-environment Legal System," the Beijing Zuoya Economic and Social Development Research Center shared an expert proposal for the Ecological Environment Code with 1,023 articles in seven Parts General: Pollution Prevention and Control; Natural Ecology Protection; Environmental Protection in the Development and Utilization of Natural Resources; Energy Saving and Comprehensive Utilization of Resources; Circular Economy and Comprehensive Utilization of Waste; and Response to Climate Change. This proposal is an outcome of summarizing the prevailing environmental laws in China. See JIAO Minlong, 生态环境法典专家建议稿完成 (Completion of Expert Recommendations on Ecological Environmental Code), 中国青年报 (*China Youth Daily*), Dec. 18, 2020, 7th edition.

[43] WANG Liming, 体系创新：中国民法典的特色与贡献 (System Innovation: Features and Contributions of China's Civil Code), 4 比较法研究 (*Journal of Comparative Law*), 1–13 (2020).

Sweden's experience and implement the "moderate codification." [44] On the one hand, the substantive compilation of an environmental code reflects the "secondary adjustment law" characteristics of environmental law,[45] making codification the main direction for reforming the national governance system. On the other hand, the "moderate" compilation of the environmental code can reflect the pursuit of substantive justice in environmental law, and make the environmental code free of inflexibility and inadaptability.[46]

In general, "moderate codification" means codification of the prevailing environmental laws to a certain degree, with moderately compromise between the conditions and logical requirements of an idealized code. This should ease the tensions between the theoretical support and practical needs for environmental laws. In addition, "moderate codification" should also be dynamic codification, and the degree of codification and even the form of codification can be continuously improved based on the maturity of environmental law theory, so as to enhance the adaptability and flexibility of an environmental code. This also means that the Code compilation can learn from the French experience and work along a gradually progressive and open path, which would not result in a rigid and inflexible system.

Objectively, under the current conditions, compiling an environmental code does not have to replace all specific environmental laws nor cover all of their aspects including all sources of environmental laws. What should be done is to select and integrate the most fundamental and essential provisions that demonstrate the essence of environmental laws and facilitate realization of national tasks. In addition, compiling an environmental code should comprehensively regulate its basic category, system and content, and establish a comprehensive, concrete, organic and coordinated legal framework system for modernizing the environmental governance system. There are three reasons for compiling an environmental code this way: (1) There are still some weak links or even gaps in current environmental legislation, such as specific laws on nature reserves, national parks, regional eco-system and biodiversity protection; these needed laws and regulations still have a big role to play. (2) In some aspects, the environmental code cannot completely replace all the roles and responsibilities of the separate laws. For example, the legislative provisions for protecting the Yangtze River Basin and the Yellow River Basin cannot be completely incorporated into the environmental code. (3) Some separate laws are related

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[44] See ZHANG Zitai, 中国环境立法应适度法典化 (Moderate Codification Called for Environmental Legislation in China), 1 南京大学法律评论 (*Nanjing University Law Review*), 239–245 (2009); LYU Zhongmei & DOU Haiyang, 民法典"绿色化"与环境法典的调适 ("Greening" of the Civil Code and the Adaptation of the Environmental Code), 4 中外法学 (*Peking University Law Journal*), 862–882 (2018).

[45] See LYU Zhongmei, 环境法回归路在何方？——关于环境法与传统部门法关系的再思考 (Where Is the Return-Path of Environmental Laws? —Rethinking the Relationship between Environmental Law and Traditional Departmental Law), 5 清华法学 (*Tsinghua University Law Journal*), 6–23 (2018).

[46] See LI Chuanxuan, 中国环境立法发展的路径省思 (Reflections on the Development Path of China's Environmental Legislation), 3 南京大学法律评论 (*Nanjing University Law Review*), 70–78 (2009).

to the environmental law but belong to other categories, such as biosafety law, nuclear safety law, and disaster prevention and mitigation law. They cannot be incorporated into the environmental code. Therefore, it is necessary to retain some separate laws for complementing, reinforcing and concretizing the principles, systems and provisions of the environmental code, so as to give full play of the environmental code and truly systematize the environmental legislation. In this sense, keeping and upgrading some separate laws is also the connotation of "moderate codification." Certainly, in this "code + separate laws" mode, there is no doubt that the environmental code owns a primary position and supreme effectiveness. The separate laws play a supporting role to the environmental code, and supplement and concretize the environmental code.[47]

Therefore, "moderate codification" is actually a legislative scheme that shifts the prevailing environmental law system from being separated and fragmented towards a system that is inherently coordinated and unified. Various legislations with different historical origins, different legislative purposes and mixed legislation techniques and policy tools are reassessed, reorganized and integrated in the course of codification, and the logical systems and legal provisions of environmental laws are reconstructed with holistic and systematic approach, which upgrades the capability of environmental legislation to control the modern environmental governance system and provides a good law for effective implementation of the environmental laws. Under the realistic condition that the prevailing environmental legislation is primarily regulated by environmental factors, it is impossible to utterly abandon such a legislative approach to compiling an environmental code, but it is possible to effectively shift the current separation and fragmentation of environmental legislation by defining the general objectives and basic principles of the environmental laws, establishing basic systems and governing tools to uniformly apply rules, and systematizing and stratifying the environmental legislation values. In addition, it is possible to establish unified regulatory systems and decision-making procedures, law enforcement and judicial application rules, to set up the organic connection of environmental law enforcement means, and to improve the system efficiency and effectiveness. Furthermore, it is possible to organically integrate most prevailing laws into one legal code, avert the contradictions and conflicts caused by regulating the same behavior by different laws, elevate the internal unity of environmental laws and regulations, and lower the judicial cost and law enforcement cost.

2. "Moderate Codification" Is a Code Compilation Scheme Based on Idea Changes and Method Innovations. If "moderate codification" is a scheme of compiling an environmental code, then delivering this scheme necessitates achieving a basic consensus on what "moderation" is, and more importantly, working out a specific technical path on

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[47] See ZHANG Zitai, 论我国环境法法典化的基本路径与模式 (On the Basic Path and Mode of Compiling China's Environmental Code), 4 现代法学 (*Modern Law Science*), 27–35 (2008).

how to achieve "moderation" on the basis of delineating the boundary of "moderation," which requires a high degree of methodological consciousness. At present, scholars have tabled the "moderation" scheme in systematization, openness and phases follows,[48] "moderation" scheme in regulating scope and compiling degree,[49] "moderation" scheme in dynamic progress,[50] and "moderation" scheme in three dimensions based on the benefits of the environmental code system.[51] However, they are basically running in a circle around epistemology and have not moved to the methodological level, and are still far away from the "moderation" required for compiling an environmental code. From the perspective of the development of environmental law theory, environmental law is developed in response to severe and urgent environmental problems, with a strong influence of problem-solving research and relatively weak research on methodology. Although scholars highly acknowledge substantive compilation, the codification process based on the prevailing environmental law theory is naturally inclined to be based on the formal compilation path of prevailing legislation. If the methodological problems of codification cannot be solved, then the rationality of codification is prone to be dominated by pure problem orientation, which makes it difficult for "moderate codification" to really move over "law assembling" and move towards "code compiling."

A code is a "classic" model for systematizing laws in civil law countries, and the "key" to code compilation is the Juristiche Dogmatic method. The environmental codes of various countries adopt the structure of "General—Specifics," and this structure has the remarkable characteristics of the Pandekten system and fully embodies the rationalism essence of code compilation. Since the environmental law is designed to correct the concepts of individual freedom, formal fairness and self-responsibility in civil law, it is a new type of law committed to warranting substantive justice. Thus, compiling an environmental code must change the concepts and innovate the techniques according to the characteristics of environmental law while leveraging the Pandekten system and the Juristiche Dogmatic method. This is required to satisfy the proper connotation of "moderate codification."

Although the Juristiche Dogmatic is primarily presented as "judicial centralism" based on the position of legal positivism,[52] the well-informed legislation gradually

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[48] See ZHANG Zhongmin & ZHAO Ke, 环境法典的制度体系逻辑与表达 (Logic and Expression of the Institutional System of the Environmental Code), 6 湖南师范大学社会科学学报 (*Journal of Social Sciences of Hunan Normal University*), 27–33 (2020).

[49] See HE Jiang, 为什么环境法需要法典化——基于法律复杂化理论的证成 (Why Environmental Law Needs Codification: Justification Based on Legal Complexity Theory), 5 法制与社会发展 (*Law and Social Development*), 54–72 (2019).

[50] See ZHANG Zitai, TAO Lei & LI Chuanxuan, 我国环境法典框架设计构想 (Framework Design Concept of China's Environmental Code), 2 东方法学 (*Oriental Law*), 28–36 (2008).

[51] See LI & TIAN, fn. 12.

[52] See LING Bin, 什么是法教义学：一个法哲学追问 (What Is Juristiche Dogmatic: A Legal Philosophy Question), 1 中外法学 (*Peking University Law Journal*), 224–244 (2015).

acknowledges that the "Juristiche Dogmatic can contribute to legislation" in the practice of "legislation—justice—legislation." [53] In Robert Alexy's view, the Juristiche Dogmatic "is a composite of at least three activities," which are, describing the current laws, studying the legal concepts and systems, and proposing solutions to difficult cases.[54] This means that the Juristiche Dogmatic can play an important role in the whole process of originating, compiling and applying a code. Just as "the systematic thinking of Juristiche Dogmatic makes it possible to codify a civil law," [55] compiling an environmental code also needs idea changes, systematic thinking and technique restructuring, so as to "discover the thread of thoughts between separate laws, between rule bodies, and between these laws and rules, and legal-order's leading principles." [56] In the systematic thinking of Juristiche Dogmatic, the general part of a code is a result of "extracting common factors" [57] from various laws, which bring together the "most basic, universal and abstract provisions" for the code, and also "abstract and summarize all the specific provisions for the civil code." [58] Thus, the code systematicness primarily depends on the General Part taking in provisions from the follow-up Specific Parts and the coordination between the Specific Parts. The former is primarily achieved with the basic concepts, while the latter is developed by basic logic. The connotation and extension of the basic concepts are related to the completeness of the code adjustment scope and the openness of the code structure, while the main line of basic logic that is developed around the concepts is an important embodiment of the systematicness of the code. Compiling a law into an environmental code shows the dual methodological meaning of "moderate codification where the two meanings are: setting a moderate adjustment scope of the Code under the guidance of basic concepts, and establishing a moderately strict system under the guidance of basic logic. Its essence is the rationalism scale of the environmental code in terms of concepts and systems. As German jurist Friedrich Carl von Savigny said,the essence of a system method lies in the understanding and description of inherent relation or affinity. Leveraging this internal relationship or affinity, specific legal concepts and

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[53] See LEI Lei, 法教义学能为立法贡献什么？ (What Can Juristiche Dogmatic Contribute to Legislation?), 2 现代法学 (*Modern Law Science*), 25–40 (2018).

[54] See Robert Alexy, 法律论证理论 (*Theory of Legal Argumentation*), translated by SHU Guoying, China Legal Publishing House (Beijing), at 311 (2002).

[55] LIU Min, 论法教义学的体系化功能——以民法为中心 (On the Systematized Function of Legal Dogmatic—Centering on Civil Law), 1 西南政法大学学报 (*Journal of Southwest University of Political Science and Law*), 12–17 (2014).

[56] Karl Larenz, 法学方法论 (*Methodology of Law*), translated by HANG Jiazhen, The Commercial Press (Beijing), at 548–549 (2020).

[57] Konrad Zweigert & Hein Kötz, 比较法总论 (*General Introduction to Comparative Law*), Part 1, translated by PAN Handian et al., China Legal Publishing House (Beijing), at 273 (2017).

[58] WANG Liming, 民法总则：民法的"公因式" (General Provisions of Civil Law: The "Common Factor" of Civil Law), 北京日报 (*Beijing Daily*), Aug. 28, 2017, 16th edition.

rules are connected into a huge unity.[59]

Environmental law, since the industrial revolution, has derived from construction of the law system based on individualist value orientation and reductionist methodology. Different from the traditional law, especially the formal-rationality-emphasizing civil law, the environmental law is a substantive law exploring "the ultimate purpose (value) of development." [60] This kind of law requires that the purpose value should be taken as the evaluation standard, and the reductionist method and the holist method should be surpassed. Substantive justice should be incorporated into legal regulations and integrated within a specific system, forming a self-evaluation, self-restraint, self-reflection and self-regulation mechanism of the national governance system. Under this law mode, a new type of law "guided by purpose" must be established.[61] Therefore, in the process of compiling an environmental code, all countries take "sustainable development," the greatest consensus of contemporary human development, as the objective value, which reflects the legal substantive justice. Furthermore, the law-inherent fairness, justice and order are taken as a tool value, which embodies formal justice and provide means and ways to realize the goal value. Therefore, the process of sustainable development as a value goal in the environmental codes of various countries not only completes the identification of source of law for sustainable development itself, but also realizes the reconstruction of the value system of modern environmental law. This fully reflects the dual rationality of environmental legislation: Firstly, sustainable development is the dominant goal value, the environmental-legislation goal and ideal, and presents the value rationality. Secondly, ecological security, environmental fairness and public-good protection are the instrumental values of environmental laws for achieving the goal of sustainable development. They are the basic legal attributes or common values of environmental codes, which show instrumental rationality. The purpose value determines and integrates the dynamic operation of modern environmental law, but the realization of purpose value is inseparable from the support and concrete implementation of instrumental values.

The application of Juristiche Dogmatic to compiling an environmental code must reflect the legal characteristics of environmental law in pursuing substantive justice,[62] and construct the basic concept and basic logic system with the purpose value as the core and

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[59] Friedrich Carl von Savigny, 当代罗马法体系 I (*Contemporary Roman Legal System I*), translated by ZHU Hu, China Legal Publishing House (Beijing), at 14–15 (2010).

[60] See GAO Hongjun, 现代西方法治的冲突与整合 (Conflict and Integration of Modern Western Rule of Law), in 清华法治论衡 (*Tsinghua Forum of Rule of Law*), Volume 1, Tsinghua University Press (Beijing), at 1–59 (2000).

[61] See Philippe Nonet & Philip Selznick, 转变中的法律与社会 (*Law and Society in Transition*), translated by ZHANG Zhiming, China University of Political Science and Law Press (Beijing), at 7 of the Preface (1994).

[62] See LYU, fn. 45.

the instrumental values as the technical method. In this sense, "moderate codification" should include two meanings. Epistemologically, it is moderate in adjustment scope and in system strictness that has the aim of sustainable development. It promotes legislative content innovation, and advances relative stability of the existing environmental law system. Methodologically, it sublates conceptual jurisprudence, ceases over-stressing that a code is a logical product of conceptual deduction, and indicates that a code is a system of rules with basic concepts as its mainstays. Leveraging conceptual jurisprudence's fundamental-concept core position and basic logical thinking mode, it interprets a code as a system of logical rules constructed with certain legislation techniques. It is an organic combination of "the concept and logic of the environmental code" and of "the concept and logic of the compilation of the environmental code:" The former focuses on "sustainable development," revolves around the value goal of sustainable development, and takes the basic connotation of sustainable development(sustainable economy, sustainable eco-environment and sustainable society) as a framework to develop the sub-compilation system of an environmental code. It reflects the comprehensive decision-making concept and method related to environment and development based on ecological sustainability and conditioned on economic sustainability for full sustainable development. It emphasizes the systematic and holistic thinking that supposes that human beings systematically care about economic efficiency, ecological harmony and social equity in their development. It targets promoting humane all-round development as the highest goal, and defines the "value radius" of environmental code. The latter takes "eco-environment" as the cornerstone concept and takes legal relationship as the basic logic, and concretizes the sustainable-development-determined "value radius" into the environmental code's adjustment scope, adjustment object and the subject-and-object relationship, so as to achieve the goal of "moderate codification" in legislation technique.

III. Environmental Code Compiling Method Following "Moderate Codification" Mode

Compiling an environmental code in China can draw on the experience of compiling the civil code in China, and adopt the "General—Specifics" structure. Based on the prevailing environmental protection law, the General Part "extracts the common factor," sets the legislative purposes, basic principles and management systems that have a dominant and overall significance for the whole Code, and provides the universally applicable system for the ecological environmental protection. The Specific Parts primarily address different subjects, integrating some prevailing pollution prevention and control laws and separate laws on natural resources and energy, specifying regulation matters to be adjusted in the environmental code, so as to concretize provisions of the General Part. From the perspective of compiling methods, three issues, numbered in the following paragraphs, should be first be solved.

A. Define the Cornerstone Concept of "Eco-Environment" and Clarify the Environmental Legal Relationship

In the sense of methodology, the concept of certainty can provide a tool for the formulation and interpretation of a code. Making good use of this tool is significant to compiling an environmental code. As JIAO Yanpeng and QI Daomeng pointed out: "The biggest problem in the construction of basic theory of environmental law science is that a fundamental concept has not been defined to contain the value and purpose of environmental law and to run throughout the environmental law science." [63] The environmental law science is a field of laws that focuses on environmental social relationships. How to define "environment" is essentially fundamental. At present, scholars frequently use many terms such as "environment," "eco-environment," "environmental resources" and "resource environment," but provide no valid arguments for any of these terms.[64] The prevailing environmental protection law defines the "environment" in the way of "generalization + enumeration," [65] but it is still in the stage of fact-typification for the formation of legal concepts,[66] and it is difficult to provide guidance for constructing the code system. In a sense, if compiling an environmental code is not directed by well-defined fundamental concepts, and only typification of the prevailing environmental laws such as pollution prevention and control of environmental, or natural resources protection, is introduced, it is essentially repeating the fragmented legislative thinking of "legislative response to environmental factor-problem." This cannot satisfy a code's exhaustiveness or coordination at all. Therefore, defining the concept of "environment" is a prerequisite for realizing a code's moderate adjustment scope. Meanwhile, the concept of "environment" defined in methodology must also be

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[63] JIAO Yanpeng & QI Daomeng, 论法益学说对环境法学研究的价值 (On the Value of Legal Interest Theory to Environmental Law Study), in 生态文明与林业法治——2010 全国环境资源法学研讨会(年会)论文集 (*Eco-Civilization and the Rule of Law in Forestry—2010 National Symposium of Environmental Resources Law* [*Annual Conference*] *Paper Collection*), Volume 2, at 814 (2010).

[64] See GONG Gu, "生态环境" 宪法概念解析 (Analysis of the Eco-Environment Constitutional Concept), 4 吉首大学学报 (*Journal of Jishou University* [*Social Sciences*]), 70–80 (2019); GUO Xiaohong, "生态" 与 "环境" 的概念与性质 (Concepts and Properties of "Ecology" and "Environment"), 2 社会科学家 (*Social Scientist*), 107–113 (2019).

[65] Article 2 of the Environmental Protection Law stipulates that the term "environment" used in this Law refers to the totality of various natural and artificially transformed natural factors that affect the survival and development of human beings, including the atmosphere, water, ocean, land, minerals, forests, grasslands, wetlands, wildlife, natural relics, cultural relics, nature reserves, scenic spots, cities and villages, etc.

[66] In the formation of legal concepts, the fact-typification is taken as a preparatory stage. At the same time, substantive evaluation viewpoints and formal conceptual categories are also required to develop legal concepts. The former determines the value perspective from which to classify facts, and the latter makes it possible to classify facts. The latter enables typification and concept formation to be made in the form of legal requirements. See WU Guoping, 法律概念的形成思维 (The Formative Thinking of Legal Concepts), 5 北方法学 (*Northern Legal Science*), 124–138 (2017).

highly compatible with "sustainable development" in epistemology.

Article 26 of the Constitution of the People's Republic of China states that "eco-environment" is the modernization goal of "harmonious humanity-nature coexistence," which can best demonstrate the national governance philosophy of building China with ecological civilization throughout the whole process of economic construction, political construction, cultural construction and social construction. This modernization approach has the advantage of compiling a code to meet the institutional innovation demand of "making efforts to build a policy system of turning lucid waters and lush mountains into invaluable assets, and promote the formation of a new model of ecological civilization construction with Chinese characteristics." [67] The concept of "eco-environment" should be fully argued to determine its legal connotation and extension. Once done, the "eco-environment" serves as the cornerstone concept of environmental code, and should provide conceptual tools for "moderate codification" to determine the adjustment scope of the environmental code.[68]

After being adjusted by law norms, all kinds of "eco-environment" based social relationships form a legal relationship with rights and obligations as its content. As the "greatest common denominator" in law knowledge,[69] legal relationship is a systematized tool for compiling an environmental code. On the one hand, the environmental legal relationship, as a "logical intermediary," which provides a basis for logical progression through the compilation process,[70] helps to integrate the environmental code system. For example, the environmental administrative act can be understood as the root-cause of a changed legal-relationship invoked by the will of the state. Ecological interests are also regarded as the object of the environmental legal relationship.[71] The environmental legal relationship thus has the potential to coordinate the relationship between public law and private law within the environmental code, thus making the environmental code move into the discourse system for coordinated communication with the China's civil code and the administrative code. On the other hand, the wide range of the environmental legal relationship is in line with the development direction of modern environmental governance system, and plays an important role in promoting the formation of an

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[67] 关于建立建全生态产品价值实现机制的意见 (The Opinions On Establishing and Perfecting the Value Realization Mechanism of Ecological Products), 14 中华人民共和国国务院公报 (*The Bulletin of the State Council of The People's Republic of China*), 2021.

[68] The definition of "eco-environment" will be deliberated in another paper.

[69] See LYU Zhongmei, 环境法律关系特性探究 (Exploration on the Characteristics of Environmental Legal Relations), 1 环境法评论 (*Wuhan University Environmental Law Review*), 3–21 (2018).

[70] See LEI Lei, 法的一般理论及其在中国的发展 (General Theory of Law and Its Development in China), 1 中国法学 (*China Legal Science*), 5–25 (2020).

[71] See WANG Gang, 环境法律关系客体新论 (New Theory on the Object of Environmental Legal Relations), 6 中国海洋大学学报（社会科学版）(*Journal of Ocean University of China* [*Social Sciences*]), 53–56 (2010).

environmental governance system featuring clear guidance, well-informed decision-making, strong implementation, effective incentives, multiple participation and benign interaction.[72] An environmental relationship "legally observes some common factors being extracted from a continuous and unified life relationship," [73] so as to reposition the roles of the government, enterprises and the public, set up a three-dimensional relationship among multiple subjects of environmental law, and coordinate the complex conflicts of interest involved.

In fact, environmental legal relationship and sustainable development share the same origin: legal relationship is the abstraction by legal-principle of social relationship, and sustainable development also originates from "the basic relationship of nature, society, ecology, economy and the process of utilizing natural resources." [74] On the one hand, the environmental legal relationship needs self-reconstruction under the guidance of commanding value of sustainable development. The environmental legal relationship has the indirect social relationship of "humanity—nature—humanity," recognizes the subjective value of nature, and owns the broad complexity and space-time extension.[75] Different from the traditional civil legal relationship, administrative legal relationship and economic legal relationship, sustainable development has become the spiritual core of the environmental legal relationship that can be significantly different from other legal relationships. On the other hand, sustainable development achieves its governance dimension on the strength of the environmental legal relationship. It is a balanced and coordinated development, underpinned by the three pillars of economy, society and environment. It must pinpoint the inter-subject-relationships and their code of conduct in the governance dimension. Otherwise, "it would be thinking just at the development level. Without the guarantee at the governance level, it is impossible to achieve sustainable development.[76] It is governed by the environmental legal relationship in the context of an environmental code, while the environmental legal relationship is a form-carrier for legalizing sustainable development. Therefore, the environmental legal relationship can be typologically demonstrated by examples that include pollution prevention relationship vs. nature conservation relationship, equal environmental legal relationship vs. subordinate environmental legal relationship, absolute environmental

[72] See fn. 30.

[73] Dieter Medicus, 德国民法总论 (*General Principles of German Civil Law*), translated by SHAO Jiandong, Law Press (Beijing), at 51 (2001).

[74] On March 5, 1980, the United Nations General Assembly appealed to the world to study these basic relationships and ensure global sustainable development. See LIU Donghui, 从 "增长的极限" 到 "持续发展" (From "Limits to Growth" to "Sustainable Development"), in 可持续发展之路 (*The Road to Sustainable Development*) , Peking University Press (Beijing), at 34 (1994).

[75] See LYU, fn. 69.

[76] ZHU Dajian & LIU Qiang, 在可持续发展与绿色经济的前沿探索——诸大建教授访谈 (Exploring the Frontiers of Sustainable Development and Green Economy—An Interview with Professor ZHU Dajian), 10 学术月刊 (*Academic Monthly*), 170–176 (2013).

legal relationship vs. relative environmental legal relationship, abstract environmental legal relationship vs. concrete environmental legal relationship, etc.[77] The "moderate codification" of environmental legislation can be guaranteed from the legislative technique.

B. Named after "Eco-Environment Code," Adopting the Mode of "Dual Source-of-Law"

Since 2017, the Chinese Society of Environmental and Resources Law has translated environmental codes of some countries.[78] We have noted that, different from civil codes, whose titles are generally the same in various countries, environmental codes of various countries do not use the same titles. For example, Colombia named the environmental code as renewable natural resources and environmental protection code, Sweden environmental code, France environmental code and Cambodia environmental and natural resources code (draft). Behind these titles are the basic definitions of the adjustment scope of the environmental code and the environmental legal relationship,[79] which needs to be highly valued.

China has moved into the ecological civilization era, and the roles and responsibilities of environmental protection have been expanded. The concept of "humanity and nature are a community of life" [80] and the goal of "modernizing the harmonious humanity-nature coexistence" [81] have redefined the relationship between development and protection, and have highly demanded modernizing China's national governance system and governance capacity. With a "mega-environmental protection" on the horizon and the ecological

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[77] See LYU, fn. 69.

[78] At present, the Chinese translations of the environmental codes of Sweden, France, the Philippines and Italy have been officially published, and the Chinese translations of the other countries' codes will be published in succession.

[79] For example, the Colombian code of renewable natural resources and environmental protection focuses legislation on protecting natural resources, and takes it into full consideration the interdependence between natural resources while revising the previous laws for resource utilization. See Gergi Cano, 拉丁美洲开展自然资源立法的进展 (The Progress of Natural Resources Legislation in Latin America), translated by WANG Zhengli, 1 矿产保护与利用 (*Conservation and Utilization of Mineral Resources*), 1–7 (1986). Another example: The opening of the Commonwealth of Independent States ecological model code states that it is used to adjust the ecological legal relationship in the fields of natural resource use, environmental protection and ecological security. See LIU Hongyan & MA Xin, 独联体是怎样为生态立法的？(How did the Commonwealth of Independent States Legislate for Ecology?), 23 中国人大 (*The People's Congress of China*), 53–55 (2017).

[80] XI Jinping, 加强生态文明建设必须坚持的原则 (Principles to Apply in Enhancing Ecological Conservation), in 习近平谈治国理政 (*XI Jinping: The Governance of China*), Volume 3, Foreign Languages Press (Beijing), at 363 (2020).

[81] 中共十九届五中全会在京举行中央政治局主持会议 中央委员会总书记习近平作重要讲话 (XI Jinping, General Secretary of the Communist Party of China (CPC) Central Committee Addressed the Fifth Plenary Session of the 19th CPC Central Committee), 人民日报 (*People's Daily*), Oct. 30, 2020, 1st edition.

civilization institution reform going on,[82] it is also necessary to name this Code to better meet the current-era needs. Under such historical conditions, it is obviously inappropriate to "photocopy" the legislative model of environmental protection legislation based on pollution prevention law to codification. In addition, it should never be a case that an individual government department assembles environmental protection laws in the name of compiling this Code, because the Code has a much bigger role to play.

We have to note that in China environmental protection laws are administrative laws and economic laws, based on China's legislative system of today. Among them, the pollution prevention legislation focuses on the environmental supervision system, and most of these laws can be incorporated into the proposed environmental code. The legislation on natural resources and energy covers a wide range of subjects, such as ownership determination, development and utilization, and trading. In some natural resources and energy legislation, the parts addressing nature conservation only account for a small proportion of the legislation,[83] but these parts are indispensable to the compilation of the environmental code, which takes sustainable development as its value goal. This further highlights the need for a code title that can combine the legislation related to pollution prevention, nature conservation and green and low-carbon development from the perspective of the legislative technique. The best choice for the title is "Ecological Environmental Code," as the Code have to be based on the Constitution of the PRC.[84] Such a title can highlight the characteristics of China's ecological civilization construction era, and conform to the goal value of sustainable development, and define the essential cornerstone concept.

It is worth noting that China's ecological civilization institutional reform is still going on, and some environmental legislation that "is to make up for shortcomings and weaknesses" is still under research and formulation. This objectively requires that the compiling the Code should have to ensure the environmental law system stability, and be open to reform practices. As mentioned above, the task of compiling the Code should include codifying the goals defined in the building the "Beautiful China" campaign (as specified in the New Era national strategy and the Constitution), integrating and

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[82] See SUN Jinlong & HUANG Runqiu, 回顾光辉历程 汲取奋进力量建设人与自然和谐共生的美丽中国 (Review the Shining History and Absorb the Strength for Forging Ahead to Build the Beautiful China with Humanity-Nature Coexisting in Harmony), 光明日报 (*Guangming Daily*), Jun. 22, 2021, 6th edition.

[83] For example, only a few articles in the Mineral Resources Law of the PRC, of a total of 53 articles, involve environmental protection. The main ones include environmental measures that are reviewed by the approval authority when a mining enterprise is established (Article 15), and application for relevant land reclamation and environmental protection is submitted for review and approval when a mine is closed (Article 21), and laws and regulations on environmental protection to prevent environmental pollution are observed when mineral resources are mined (Article 32).

[84] Paragraph 1 of Article 26 of the Constitution of the PRC stipulates that the state protects and improves the living environment and eco-environment, and prevents pollution and other public hazards.

upgrading the basic values and common principles of the current environmental laws, eliminating the legal conflicts and overlaps caused by the decentralized legislation and separate legislation, and forming a framework system of the environmental code with fundamental coverage and comprehensive coordination. In addition, it is necessary to retain a few applicable specific environmental laws to regulate those ever-changing and complex regions, to supplement, refine and reinforce the Code, and to allow separate laws the convenience for adaptive addition, deletion or amendment, so as to minimize the Code's chances of inflexibility and inadaptability. This approach is also conducive to properly handling the relationship between the Code and the civil code, the criminal law, procedural laws, eco-environment policy and international treaties.

C. Taking Sustainable Development as the Value Goal, "Eco-Environment" as the Cornerstone Concept, and Legal Relationship as the Systematic Tool, Construct the Environmental Code Framework System

"Purpose is the creator of all laws." [85] Compiling the environmental code takes sustainable development as its objective value, and this approach governs the whole Code. Its effectiveness primarily comes from the interpretation of the connotation of sustainable development norms in accordance with the Code purpose. Furthermore, by defining the concept of "eco-environment" and the environmental legal relationship, the environmental code has the complete content and the balanced structure, and a framework of "General, Pollution Control, Natural Ecological Protection, Green and Low-Carbon Development, and Ecological and Environmental Responsibility" is formed.[86] This approach comprehensively presents the methodological connotation of comprehensive decision-making, time-space extension and multi-governance for all round sustainable development, and promotes the organic integration of social rationality, ecological rationality and economic rationality in the Code.

According to the national strategy established in the Constitution of the PRC, the General Part of the environmental code, based on the revised environmental protection law in 2014, integrates relevant comprehensive legislation, summarizes new achievements in the eco-civilization institutional reform, abstracts the common contents in the environmental law system in combination with the needs of the times and people, establishes the value system, adjustment scope, basic principles, management system, governance system and

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[85] E. Bodenheimer, 法理学：法律哲学和法律方法 (*Jurisprudence: The Philosophy and Method of the Law)*, translated by DENG Zhenglai, China University of Political Science and Law Press (Beijing), at 115 (2004).

[86] This structure is the collective research achievement of the Environmental Legislation Codification Research group organized by the Environmental Resources Law Research Association of the China Law Society. See WANG Jin, 论中国环境法典框架体系的构建和创新——以中国民法典框架体系为鉴 (Innovations in Constructing the Framework System of China's Environmental Code—Referencing China's Civil Code Framework System), 6 当代法学 (*Contemporary Law Review*), 18–30 (2021).

basic system of the Code, and forms the governing and complying relationship between the General Part and the follow-up parts.[87]

On the basis of "extracting common factors" out of legal norms to form the General Part, the follow-up parts are formulated based on the "three pillars" of sustainable development: economy, environment and society, in the order of "ensuring public health," "maintaining eco-balance" and "achieving green and low-carbon development," and by reflecting the three meanings of "environment" : the balance of ecosystem, the ecological attribute of natural resources, and the resource attribute of the environment. It thus forms the three specific parts that the Pollution Control Part for pursuing social sustainable development, the Natural Ecological Protection Part for ensuring ecological sustainable development, and the Green and Low-Carbon Development Part for realizing economic sustainable development.

The final Part is ecological and environmental responsibility committed to the whole process protection of sustainable development. According to the regulatory logic of "risk prevention-process control-damage relief," [88] it is important to establish a specific responsibility system of environmental law. The necessary linking rules should be created to realize the seamless connection between administrative relief responsibility and civil relief responsibility. At the same time, new types of litigation, such as public interest litigation and eco-environment damage compensation litigation, should be integrated, and specific provisions should be made on the way of allocation of responsibility and judicial procedures in the environmental field. This approach reflects the characteristics of Environmental Code as a sustainable development law, such as the linking of substantive law and procedural law, the integration of behavior law and adjudication law, and the unification of protection law and promotion law.

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[87] See SUN Xianzhong, 中国民法典总则与分则之间的统辖遵从关系 (The Jurisdictional Governance-Compliance Relationship Between the General—Specifics of the China's Civil Code), 3 法学研究 (*Chinese Journal of Law*), 20–38 (2020).

[88] See LYU & DOU, fn. 44.