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Original Paper

From "General Public" to "Beneficiary Representative": Reconstructing Environmental Social Organizations' Right to Participate in Environmental Affairs Based on Public Trust Theory

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Abstract

The procedural environmental participation rights of environmental non-governmental organizations (hereinafter "ENGOs") face the predicament of ambiguous subject positioning and procedural rights erosion under the current positive law framework. The public participation rights allocation framework centered on "interest nexus" proves inadequate to address the public interest representation function of ENGOs in environmental governance. This Article introduces the Public Trust Doctrine to reposition ENGOs as "beneficiary representatives" within the "settlor-trustee-beneficiary" tripartite structure, while distinguishing between "expressive rights" and "representative rights" as two categories of procedural entitlements. Based upon the principle of functional appropriateness and legal fiction, the procedural rights of ENGOs are hereby justified. Accordingly, across three dimensions—namely, environmental information access rights, decision-making participation rights, and supervisory rights—this Article constructs a differentiated rights framework that effects a transition from expressive rights to representative rights. This interpretive approach overcomes the structural deficiencies of the interest nexus theory and furnishes a theoretical reference for improving the multi-stakeholder environmental co-governance system.

Keywords

public participation, environmental non-governmental organizations, procedural environmental participation rights, Public Trust Doctrine

1. Introduction

The principle of public participation has become the normalized expression of multi-stakeholder co-governance in environmental law, and relevant legislation has established principled provisions regarding the participation rights of citizens, legal persons, and social organizations. Nevertheless, the current legal framework suffers from the acute problem of ambiguous subject positioning and erosion of procedural rights in the allocation of environmental participation rights for environmental non-governmental organizations (hereinafter "ENGOs"). At present, the academic discourse predominantly employs "whether an interest exists" as the criterion for classifying the typology of the public, based upon which differentiated constructions of the public's rights to participate in environmental affairs are effectuated. Under this theoretical framework, social organizations are characterized as disinterested members of the public, namely, legally fictitious quasi-interested parties. The rationale underlying the adoption of "whether an interest exists" as the classifying standard lies fundamentally in that, within the doctrine of administrative law, public participation is defined as "an administrative law model of interest balancing". Accordingly, scholars have customarily commenced their classification and generalization of public types from the perspective of "interest." Nevertheless, the rationality and comprehensiveness of employing "whether an interest exists" as the classifying standard remain subject to further deliberation. In practical terms, public participation customarily operates within the domain of environmental governance, whereby the public exercises powers or assumes responsibilities through administrative procedures. However, the value premise of public participation originates from ecological and environmental governance and ultimately culminates in the safeguarding and realization of ecological and environmental public interests. The underlying logic embedded within the "whether an interest exists" standard still represents an extension of the traditional administrative law doctrine of private rights defense—namely, only those whose substantive rights and interests are directly affected possess participatory legitimacy, whereas all other parties require explicit statutory authorization to gain access to the procedure. This logic may be self-consistent within the general domain of administrative law; however, when transposed into the context of environmental governance, it exposes irreconcilable theoretical deficiencies: environmental public interests are not a simple aggregation of individual rights and interests, but rather possess the characteristics of indivisibility and non-excludability, rendering them incapable of being identified and allocated through the dichotomy of "direct impact versus indirect impact." It bears noting that the principle of public participation traces its origins to Article 2(5) of the Aarhus Convention, wherein the pivotal phrase "shall be deemed to have an interest" signifies a presumption of interest, meaning that environmental protection social organizations are not required to demonstrate that their substantive rights and interests have been affected; rather, the law accords them a direct presumption of interest. Accordingly, tracing back to the legal source, the prevailing "interest-based dichotomy" can be further refuted.

How should ENGOs be repositioned? And how should this repositioning inform the reinterpretation of ENGOs' procedural environmental participation rights? These questions urgently require resolution. This Article employs the Public Trust Doctrine to reshape the foundational basis of ENGOs' procedural environmental participation rights, advancing the application of the Public Trust Doctrine from the stage of judicial relief to the stage of administrative participation. This Article proposes a three-pronged pathway combining the principle of functional appropriateness, legal fiction, and ex post regulation, while systematically distinguishing between "expressive rights" and "representative rights" and constructing a differentiated institutional framework accordingly.

2. Current Status of Procedural Environmental Participation Rights of Environmental Non-Governmental Organizations

Environmental non-governmental organizations (hereinafter "ENGOs") refer to non-profit organizations established for the purpose of environmental protection, encompassing environmental social groups, environmental foundations, and environmental social service institutions. ENGOs are distinguished from the general public by virtue of their professionalism, continuity, and organizational capacity. Administrative agencies, as the entities exercising public authority, as well as residents and various professionals participating in environmental affairs in their capacity as administrative counterparts or as natural persons, lack the organizational capacity for resource integration and the sustained capacity for professional supervision. Accordingly, they are defined as the "general public."

What is meant by "procedural environmental participation rights"? In essence, these are the rights enjoyed by citizens, legal persons, and other organizations to participate in ecological and environmental affairs in accordance with law. The scope of these rights is narrower than that of environmental protection participation rights and falls within the category of procedural environmental rights. Article 53 of the Environmental Protection Law, as amended in 2014, for the first time establishes at the level of fundamental environmental law the principle that the public has the right to participate in environmental protection. (See Table 1)

Table 1. The Three-Tier Structure of Procedural Environmental Rights

Tier	Conceptual Name	Core Content	Functional Positioning
First Tier (Upper)	Procedural Environmental Right	Premised upon the right to environmental information disclosure; safeguarded by the right to environmental remedy	The overarching conceptual framework of procedural environmental rights

Tier	Conceptual Name	Core Content	Functional Positioning
Second Tier (Middle)	Right to Participate in Environmental Affairs	Encompassing three entitlements: the right to information, the right to participation, and the right to supervision	The concretization of procedural environmental rights in the context of environmental affairs
Third Tier (Lower)	Right to Information, Right to Participation, Right to Supervision	Respectively corresponding to information access, decision-making participation, and process supervision	The specific modalities for exercising the right to participate in environmental affairs

Compared with the general public, ENGOs possess more pronounced capacities for professional judgment and technical assessment, organizational operation and resource integration, bridging and linking functions, as well as sustained and systematic supervision and tracking capabilities. Nevertheless, their procedural environmental participation rights are subsumed within the same framework as those of the general public, such that their organizational advantages cannot be effectively translated into substantive governance efficacy.

2.1 Functional Predicament: The Organizational Advantages of Social Organizations Cannot Be Transformed into Procedural Entitlements

Social organizations possess core advantages of professionalism, organization, and normativity. Pursuant to the “interest nexus dichotomy,” social organizations are categorized within the classification of the “uninterested public.” This interpretive approach fails to adequately reflect their public interest representation function, such that their organizational advantages cannot attain corresponding rights allocation. Taking environmental impact assessment hearings as an illustrative example, the Measures for Public Participation in Environmental Impact Assessment does not establish a differentiated response mechanism for the opinions submitted by social organizations. In practice, the professional opinions of social organizations often struggle to receive individualized responses from administrative agencies. The existing legal framework similarly lacks any incentive mechanisms, whereby the costs of participation are borne by social organizations while the benefits are shared by society at large, resulting in the suppression of participation enthusiasm.

2.2 Status Predicament: The Structural Gap between Special Subjects and the General Public

Social organizations possess standing as plaintiffs in public interest litigation within judicial proceedings, whereas in non-litigation contexts they are indistinguishable from the general public, thereby engendering a structural imbalance characterized by “litigation-based empowerment contrasted with non-litigation-based equalization.” First, organizational advantages cannot be redeemed as supervisory effectiveness. Mechanisms such as public hearings and public opinion surveys frequently deteriorate into mere formalities, with certain stakeholders being preemptively excluded, and instances of questionnaire data manipulation also occurring. Social organizations universally face the fundamental impediment of insufficient access to information; the lack of relevant data renders it difficult for them to intervene in the decision-making process. Certain organizations, in order to secure livelihoods, selectively remain silent, resulting in the weakening of public attributes and a decline in activity levels. Second, the erosion of participation rights compels social organizations to concentrate their resources upon terminal judicial relief, with prosecutorial public interest litigation accounting for more than 95%, rendering social organizations marginalized. Third, administrative decision-making lacks independent participation from social organizations, thereby compromising both scientific rigor and democratic quality. The case of All-China Environment Federation v. Xiuwen County Environmental Protection Bureau demonstrates that the rights of social organizations to access information are indistinguishable from those of the general public, lacking procedural safeguards and independent remedial rights. The aforementioned case illustrates that the organizational advantages of social organizations in non-litigation contexts cannot receive differentiated institutional responses.

2.3 Effectiveness Predicament: The Lack of Independent Initiating Effect and Binding Force of Procedural Rights

Procedural rights of public participation in environmental affairs, within the current legal framework, universally lack independent initiating effect and substantive binding force, which constitutes a fundamental deficiency in the protection of procedural rights. The so-called “independent initiating effect” refers to whether the public, particularly social organizations as organized participants, possess the qualification to proactively initiate administrative procedures, or whether they can only passively await administrative agencies to open channels for participation. The so-called “substantive binding force” refers to whether the opinions expressed by the public during procedures can exert legally mandatory effects upon administrative decision-making, rather than merely remaining within the discretionary scope of administrative agencies’ discretionary consideration. Compared against one another, both suffer from severe structural deficiencies. With respect to initiating effect, social organizations lack the right to independently initiate procedures in such contexts as environmental information disclosure, environmental impact assessment, and environmental decision-making hearings. Taking environmental information disclosure as an illustrative example: whereas social organizations may submit applications pursuant to the Regulations on Government Information Disclosure, when administrative agencies refuse disclosure on grounds such as “unclear application content” or “procedural information,” social organizations possess neither the right to demand that administrative agencies provide timely responses with reasons, nor access to independent procedural remedial channels. This “application–refusal–no follow-up” closed loop renders the procedural initiation right legally tantamount to a nullity.

With respect to binding force, the current legal framework's provisions regarding the legal effects of public participation are extremely ambiguous. The law provides no substantive provisions regarding the degree to which public participation opinions constrain administrative decision-making; the existence or non-existence of participation rights does not necessarily affect the establishment or validity of administrative decisions. This predicament may be characterized as the "hollowing-out of narrow-sense participation rights." Within China's current legal framework, supervision rights substitute for remedial rights, and the absence of remedial rights renders it impossible to obtain effective judicial correction when procedural rights are impaired. This institutional arrangement of "rights without responsibility, procedures without constraints" generates a paradox: whereas social organizations may lead independent judicial review procedures during litigation, they struggle even to obtain the qualification to initiate discussions during the ex ante and in medias res stages of administrative decision-making. This rights inversion—possessing the status of civil public interest litigation subjects while lacking rights protection at the administrative front end—constitutes the most direct institutional manifestation of the effectiveness predicament.

To summarize, the current procedural environmental participation rights of social organizations face a threefold predicament. The practice of categorizing social organizations as the "uninterested public" disregards their distinctive functions and institutional value in environmental governance, resulting in a fragile foundation for their procedural rights and difficulty in realizing their intended governance efficacy. This issue urgently requires the pursuit of a new interpretive framework in theory and differentiated institutional reconstruction in practice.

3. Justification of the Public Trust Doctrine

3.1 Core Propositions and Normative Structure of the Public Trust Doctrine

The ideological origins of the Public Trust Doctrine (hereinafter "PTD") can be traced back to Roman law, which was subsequently inherited and developed through the English common law, and gradually established through judicial precedent in the United States. In 1970, Professor Joseph L. Sax was the first to introduce this doctrine into the field of environmental protection, positing that environmental elements such as sunlight, water, and wildlife constitute the co-owned property of all citizens, whom delegate their management to the government, thereby establishing a trust relationship. Within the public trust relationship, the entire people serve as both settlors and beneficiaries, the state functions as the trustee, bearing duties of loyalty, prudence, and diligence, and the public enjoys supervisory rights.

3.2 The Inherent Alignment between the Public Trust Doctrine and Social Organizations' Procedural Rights

3.2.1 Identity Matching: "Beneficiary Representative"

Social organizations possess the representative standing of organized beneficiaries. The Public Trust Doctrine provides social organizations with a distinctive identity positioning for participating in environmental affairs—namely, "beneficiary representative." When dispersed beneficiary populations face collective action dilemmas, social organizations can overcome atomization barriers and integrate dispersed individual will into organized collective expression. Accordingly, social organizations are not positioned as organized representatives of the collective will of beneficiaries. Rather, beneficiary representatives enjoy procedural entitlements that surpass those of ordinary beneficiaries. The procedural rights allocation for beneficiary representatives possesses distinctive characteristics. Pursuant to trust law doctrine, ordinary beneficiaries enjoy expressive rights—the right to express opinions and demand that administrative agencies hear those opinions. By contrast, beneficiary representatives enjoy representative rights, whereby their opinions shall be individually responded to, and participation shall possess initiating effect. Representative rights signify that the collective interest claims expressed by representatives possess independent procedural value, and administrative agencies cannot simply equate them with the opinion expressions of dispersed members of the public.

Within the public trust relationship, individual citizens are dispersed beneficiaries, whereas social organizations are organized beneficiary representatives. This distinction is based upon the functional differentiation between direct benefit and representative benefit. The Public Trust Doctrine provides social organizations with an independent identity positioning.

3.2.2 Functional Matching: "Surrogate Supervision"

Within the public trust relationship, supervision of the trustee is of paramount importance. Phenomena of regulatory failure—such as government regulatory capture and the sacrifice of long-term environmental protection for short-term interests—persist extensively. Trustees may neglect their duties or even harm beneficiary interests due to departmental interests, performance considerations, or rent-seeking behavior. Consequently, effective beneficiary supervision mechanisms must be established. Social organizations possess distinctive institutional advantages in supervising trustee performance. Social organizations frequently concentrate upon specific environmental topics, possessing deep professional knowledge reserves. Beyond this, social organizations can conduct long-term tracking of environmental issues, rather than one-off participation; finally, social organizations possess stable organizational structures and operational mechanisms, enabling systematic supervision activities. Through the construction of "knowledge communities," social organizations can effectively integrate the knowledge resources of multiple stakeholders and promote collaborative governance of environmental risks.

The private attorney general theory and the Public Trust Doctrine complement each other functionally. The former addresses the question of "who may bring suit," whereas the latter addresses the question of "why suit may be brought." The private attorney general theory focuses upon the justification of litigation standing, whereas the Public Trust Doctrine provides a deeper legal theoretical foundation for plaintiff standing. More importantly, the Public Trust Doctrine possesses broader coverage; it applies not only to judicial review stages, but also traverses the entire process of ex ante participation and in medias res supervision.

3.2.3 Logical Matching: “Differentiation of Procedural Rights”

In trust law doctrine, the trust supervisor system—namely, the beneficiary representative system—was established to overcome the supervision dilemmas arising from beneficiary dispersion. Trust supervisors enjoy rights surpassing those of ordinary beneficiaries, including the right to independently exercise litigation rights in their own name and the right to petition courts for modification of trust management. This institutional logic applies equally to environmental public trust; as beneficiary representatives, social organizations’ procedural entitlements should exceed those of dispersed individual beneficiaries. Based upon trust law doctrine, two categories of procedural rights can be distinguished. The first category is expressive rights, whereby individuals express opinions and administrative agencies “may” respond, and whether to respond falls within the scope of administrative discretion. The second category is representative rights, whereby representatives act in the collective interest of beneficiaries and administrative agencies “shall” respond, with representative opinions possessing independent procedural binding force. This distinction signifies that, as beneficiary representatives, social organizations’ opinions shall be individually considered, rather than submerged within the general opinions of dispersed members of the public.

Procedural rights allocation should correspond to the intensity of supervision functions. The stronger the supervision function, the higher the procedural entitlements, and the more differentiated the rights allocation. Specifically, at the level of the right to information, beneficiary representatives are entitled to access more comprehensive environmental information than the general public; at the level of participation rights, beneficiary representatives are entitled to participate in a broader range of decision-making stages; at the level of supervision rights, beneficiary representatives are entitled to conduct sustained, systematic supervision of trustee performance. This tiered rights allocation both ensures the effectiveness of supervision and avoids administrative efficiency losses resulting from participation overload.

3.3 Superiority of the Public Trust Doctrine over Other Theoretical Resources

The “interest nexus” theory constructs plaintiff standing on the premise of individual rights impairment, and thus cannot explain the public interest representation function of social organizations. Categorizing social organizations as the “uninterested public” exposes the limitations of the interest nexus theory—namely, that it can only address remedial issues concerning private interest impairment and lacks the capacity to respond to the institutional needs of public interest protection. The Public Trust Doctrine, by contrast, proceeds directly from the standpoint of public interest, providing an independent legal theoretical basis for social organization participation. The plaintiff standing of social organizations is not acquired through “legal fiction” as an analogous party with an interest nexus, but rather derives from the substantive legal theory of the trust relationship—namely, that beneficiaries are inherently entitled to supervise trustees and remedy trust interests. This theoretical framework overcomes the structural deficiencies of the interest nexus theory.

The substantive content of environmental rights theory remains subject to extensive controversy. Although numerous scholars in the academic community advocate for the existence of citizens' environmental rights, the "citizen environmental rights doctrine" faces sustained theoretical challenges. Some scholars have pointed out that the rights approach proves inadequate in effectively protecting the ecological environment in practice, and that the concept of environmental rights harbors numerous theoretical deficiencies. Other scholars have explicitly noted that controversies over whether environmental rights constitute legal rights concentrate upon issues of anthropocentrism, non-justiciability, vagueness, and redundancy, and that the arguments supporting environmental rights cannot withstand scrutiny. More critically, even among proponents of environmental rights, consensus on foundational questions concerning environmental rights remains far from established. The fundamental controversies in the academic community center upon three aspects: the debate between "rights-based approach" and "obligation-based approach" in environmental law; the debate between "scientism" and "humanism" in environmental law scholarship; and the debate between "instrumentality" and "autonomy" in environmental law. Controversies have never ceased regarding fundamental questions such as whether the subject of environmental rights is the individual or the collective, and whether protection encompasses contemporary persons or extends to future generations and even non-human life. The procedural content of environmental rights depends upon the confirmation of substantive rights, resulting in procedural rights being characterized as derivative of substantive rights, with insufficient independence. The Public Trust Doctrine bypasses substantive rights controversies and directly provides a logical starting point for procedural participation. Under the public trust framework, beneficiary status does not depend upon the confirmation of substantive environmental rights; regardless of whether environmental rights are recognized as independent substantive rights, the public, as beneficiaries of environmental resources, enjoys procedural participation rights. This theoretical strategy effectively evades the quagmire of substantive rights disputes.

The private attorney general theory focuses upon the litigation supervision function and provides insufficient coverage for non-litigation stages. Originating from litigation legal theory, this theory only justifies plaintiff standing within judicial review and proves difficult to extend to such stages as information access prior to administrative decision-making and procedural safeguards for decision-making participation. The Public Trust Doctrine, by contrast, penetrates the entire process of governance, providing a unified framework for procedural rights allocation. At the ex ante information access stage, beneficiaries enjoy the right to environmental information; at the in medias res decision-making participation stage, beneficiaries possess the right to participate in environmental decision-making processes; at the ex post supervisory accountability stage, beneficiaries hold the right to supervise trustees' performance of duties; and at the litigation relief stage as the ultimate safeguard, beneficiaries may remedy impaired trust interests through litigation. This comprehensive coverage overcomes the functional limitations of the private attorney general theory.

3.4 Institutional Space for the Public Trust Doctrine in China's Environmental Law

China's Ecological and Environmental Code contains abundant trust law doctrinal resources. Article 1—"safeguarding public health and ecological environmental rights and interests"—reflects the legal theoretical positioning of the public as beneficiaries of environmental resources. Beneficiaries are, as a matter of course, entitled to demand the proper management of trust property. Article 6, the principle of "public participation," resonates with the logic of trust supervision. The supervision of trustees by beneficiaries constitutes an integral component of the public trust. Article 111, concerning ecological protection compensation provisions, reflects the trustee's obligation to preserve and appreciate trust property. Trustees must ensure the sustainability of trust property, serving the interests of contemporary and future beneficiaries. Simultaneously, the application of the Public Trust Doctrine in China's environmental law possesses a sound institutional foundation. At the level of judicial practice, the environmental public interest litigation brought by environmental social organizations such as Friends of Nature has accumulated abundant practical experience, providing case support for the judicial application of the Public Trust Doctrine. At the level of academic research, scholars such as Wang Jin, Wu Zhen, and Duan Xiaobing have conducted in-depth explorations of the introduction and localization of the Public Trust Doctrine, constructing an academic foundation for theoretical localization. At the level of institutional compatibility, the constitutional provisions concerning state ownership of natural resources in China objectively align with the institutional design of "the state as trustee" within the Public Trust Doctrine.

The Public Trust Doctrine provides a more justifiable angle for the differentiated reinterpretation of the special procedural status of social organizations. The perspective of this theory as an interpretive approach enhances the precision of identity positioning. Defining social organizations as "beneficiary representatives" reveals the foundational basis for their legitimacy in participating in environmental affairs. This precision of identity positioning creates space for the differentiation of rights allocation. Distinguishing between "expressive rights" and "representative rights" provides normative grounding for the special procedural status of social organizations. Furthermore, the functional coverage of the Public Trust Doctrine perspective is more comprehensive. The supervisory function traversing the entire process—ex ante, in medias res, and ex post—overcomes the partial deficiencies of other doctrines. Introducing the Public Trust Doctrine signifies the doctrinal-level acknowledgment of the essential difference between social organizations and dispersed citizens in terms of functional positioning, and the undertaking of differentiated rights allocation accordingly. This constitutes both an inevitable requirement of theoretical logic and an urgent need of normative practice.

4. Distinction between "Beneficiaries" and "Beneficiary Representatives" Under the Public Trust Doctrine

4.1 Legal Status of the General Public: Dispersed "Beneficiaries"

The general public, as beneficiaries of the public trust, enjoys two categories of rights. The first is the right to enjoy trust benefits—namely, the reasonable use of environmental resources such as clean air and water. The second is the basic supervisory right, encompassing defensive rights such as the right to information and the right to report, manifested in individualized and occasional reporting and petitioning. Its function is to urge administrative agencies to fulfill their duty of care, rather than to dominate or lead the supervision process. This Article characterizes this rights configuration as "expressive rights." By contrast, the "surrogate supervisory rights" enjoyed by social organizations as beneficiary representatives constitute organized, systematic, and sustained supervisory capacity. The two categories differ essentially in terms of rights holders, exercise modalities, and procedural effects.

The general public, as dispersed "atomized" individuals, faces severe collective action dilemmas. The indivisibility of environmental public interest further exacerbates this predicament. Individual members lack sufficient incentives to proactively participate in supervision, and dispersed participation proves difficult to substantively influence decision-making. The essential nature of the general public's procedural rights is "expressive rights," characterized by individualism, passivity, and non-binding force. Their participation constitutes more of a procedural "performance" than the "exercise of rights" that substantively affects decision-making.

4.2 Legal Status of Social Organizations: Organized "Beneficiary Representatives"

Confronted with the collective action dilemmas of dispersed beneficiaries, the Public Trust Doctrine provides an institutional pathway out. On the premise that all the public are recognized as beneficiaries, this doctrine recognizes that specific social organizations possess the legal status of "beneficiary representatives" (beneficiary representative), through which they exercise supervisory and participation rights on behalf of the collective of beneficiaries. This theoretical distinction separates social organizations from the general public, conferring upon them the independent identity of "beneficiary representative"—which serves as the theoretical starting point for the differentiated construction pathway in Chapter Four.

4.2.1 Legitimacy of the Beneficiary Representative: The Trust Law Basis for Organized Expression

In private law trusts, the beneficiary representative operates on the premise of authorization from all beneficiaries. However, the beneficiaries of an environmental public trust encompass the entirety of society and even future generations, rendering genuine authorization impossible to effect. Accordingly, an independent legal theoretical basis must be sought.

First, trust law doctrine provides the internal basis for identity positioning. Within the tripartite structure of the public trust, although environmental public trust does not constitute a trust in the private law sense, its legal theoretical logic is analogous. When the beneficiary population is large, dispersed, and indeterminate, it becomes necessary to employ specific entities to exercise supervisory rights on behalf of the beneficiaries. Therefore, the beneficiary representative system itself derives from the inherent requirements of trust law doctrine. The principle of functional appropriateness addresses “why social organizations rather than other entities are selected,” whereas trust law doctrine addresses the preliminary question of “why a beneficiary representative is needed.” Neither can be neglected.

Second, the principle of functional appropriateness provides the comparative benchmark for “who should serve as representative.” The core proposition of this principle is that specific functions should be allocated to entities that are most qualified to fulfill those functions in terms of organizational structure, procedures, and capabilities. Among potential representative entities, prosecutorial authorities take litigation as the final safeguard, with their functional focus on judicial accountability rather than sustained participation throughout the entire process. Administrative agencies endowed with environmental protection responsibilities are themselves in the position of trustees; having them serve as beneficiary representatives would generate a “self-supervising-self” role conflict. The general public, as dispersed individuals, lack organized professional capabilities and sustained motivation. By virtue of their professionalism, organization, and public interest representation, social organizations possess irreplaceable comparative advantages among the aforementioned candidates. The function of the functional appropriateness principle here is to select the optimal representative, rather than to arbitrarily create a representative identity.

Third, the state’s constitutional obligation to protect fundamental rights provides the source of the state’s empowerment obligation. Although the public’s environmental rights and interests have not been expressly constitutionalized under the name of “environmental rights” in positive law, the provisions of Article 26 of the Constitution—“the state protects and improves the living environment and the ecological environment, prevents and controls pollution and other public hazards”—have already provided a constitutional-level protection framework for the public’s environmental interests. The success of environmental protection depends upon the broadest possible public participation. Conferring upon social organizations the status of beneficiary representatives constitutes an inherent requirement of the state’s fulfillment of its obligation to protect fundamental rights. This represents the “dimension of obligation” that the functional appropriateness principle itself cannot provide.

Fourth, mechanisms to prevent representative abuse lie in ex post regulation rather than ex ante thresholds. Unlike litigation rights, procedural acts such as expression, information access, and supervision within environmental affairs participation rights generally do not cause substantive harm to the rights and interests of others. Even if individual social organizations abuse representative rights by engaging in malicious applications, repetitively submitting meaningless opinions, or similar conduct, such abuses can be rectified through ex post measures such as discretionary rejection by administrative agencies and good faith records, without the necessity of establishing high ex ante admission thresholds. Accordingly, beneficiary representative eligibility should adhere to the principles of low thresholds and broad coverage, such that all social organizations lawfully established with environmental protection as part of their purpose may assert the identity of beneficiary representative.

4.2.2 Procedural Entitlements of the Beneficiary Representative: "Representative Rights" Surpassing Those of General Beneficiaries

Based upon the legal status of beneficiary representative, social organizations should enjoy "representative rights" (representative rights) that differ from those of the general public. Representative rights and expressive rights differ essentially in nature. With respect to rights holders, the entities exercising representative rights are organized social organizations, rather than dispersed individual members of the public. Social organizations may exercise rights in their own name rather than in individual names, and their expressions of opinion possess greater authority and credibility. With respect to the modality of rights exercise, representative rights constitute proactive, assertive exercise of rights, rather than passive, defensive expressions of opinion. Social organizations may not only express opinions on existing decision proposals, but also possess the right to proactively initiate participation procedures to substantively influence environmental governance decisions. With respect to the effects of rights, representative rights impose substantively binding legal constraints upon the trustee. Specifically: the trustee shall provide written responses to the opinions of the beneficiary representative, setting forth reasons for adoption or non-adoption; for important opinions not adopted, the trustee shall provide explanations in the decision document. These procedural requirements ensure that the beneficiary representative's participation no longer remains at the level of mere "expression," but rather attains substantively interventional capacity within the decision-making process.

In summary, "expressive rights" and "representative rights" constitute the core theoretical instruments of this Article: the former represents the procedural rights configuration of dispersed beneficiaries, characterized by individualism, passivity, and non-binding force; the latter represents the procedural rights configuration of beneficiary representatives, characterized by organization, proactivity, and substantively binding force. This distinction provides the theoretical foundation for the differentiated construction of procedural rights.

4.3 Theoretical Leap: From "Public Participation" to "Representative Governance"

The "public participation" framework and the "representative governance" framework represent two distinct theoretical premises of democratic participation. The former conceptualizes the public as dispersed individuals, emphasizing the importance of individual participation; the latter acknowledges the limitations of individual participation, advocating for effective collective action through representative mechanisms. Under the public participation framework, social organizations and ordinary citizens are treated equally, both conceptualized as individuals participating in environmental governance, with the logic of rights allocation being undifferentiated equality. This homogenized rights allocation disregards the subjective characteristics of social organizations as public interest representatives, resulting in the failure to fully realize their organizational advantages. Under the representative governance framework, social organizations are positioned as beneficiary representatives, and the logic of their procedural rights allocation transforms into differentiated empowerment. This differentiated rights allocation not only possesses legitimacy grounded in trust law doctrine, but also corresponds to the practical needs of multi-stakeholder environmental co-governance: as beneficiary representatives, social organizations can effectively remedy the deficiencies of dispersed citizens in collective action, forming effective supervisory synergy vis-à-vis the trustee through organized means. The theoretical leap from "public participation" to "representative governance" holds fundamental theoretical significance for the differentiated construction of procedural rights. It reveals a basic fact: the special status of social organizations in environmental governance cannot merely be understood as a functional advantage in practice, but must be elevated to a normative legal status. It is precisely based upon this normative legal status that social organizations should enjoy procedural rights surpassing those of the general public.

In order to prevent "representativeness" from being misinterpreted as confirmation of a factual representative relationship, it is necessary to clarify that the representative rights of beneficiary representatives are not established upon the truthful reflection of the collective will of beneficiaries, but rather constitute a procedural status conferred by law based upon the principle of functional appropriateness. The source of its procedural binding force does not lie in whether social organizations factually represent all beneficiaries, but rather in the institutional arrangement whereby administrative agencies bear the obligation to respond. In other words, the core of representative rights is not "whom is represented," but rather "administrative agencies shall respond." This formulation both avoids the empirical predicament that "representation cannot be proven" and precludes the improper elevation of admission thresholds resulting from the introduction of ex ante examination standards.

5. Differentiated Construction of Procedural Rights: From Expressive Rights to Representative Rights

The differentiated construction of procedural rights constitutes the bridge through which the Public Trust Doctrine transitions from abstract legal doctrine to concrete institution. In what follows, employing functional appropriateness and organizational capacity as the dual criteria, this Article constructs a differentiated framework across three dimensions: environmental information access rights, decision-making participation rights, and supervisory rights. (See Table 2)

Table 2. Rights Characteristics Comparison

Dimension	Expressive Rights	Representative Rights
Subject	Scattered individual citizens	Organized social organizations
Nature	Individual, passive	Organizational, proactive
Legal Effect	Non-binding, administrative organs retain discretion over adoption	Substantially binding, administrative organs shall respond

Dimension	Expressive Rights	Representative Rights
		and provide reasons
Function	Procedural "expression," with participatory formality outweighing substance	Substantive intervention in the decision-making process

5.1 Basic Framework of Differentiated Construction

The general public possesses expressive rights, through which concerns are expressed to the trustee. Social organizations possess representative rights, through which they represent all beneficiaries in supervising the trustee's performance of obligations. The two categories differ fundamentally with respect to rights holders, nature, content, exercise modalities, and procedural effects. The functional appropriateness criterion requires that rights allocation correspond to institutional functions; the organizational capacity criterion requires that rights allocation account for organizational capabilities. The principles of non-discrimination and non-privilege ensure the legitimacy of the differentiated construction.

5.2 Differentiated Construction of Environmental Information Access Rights

The general public's environmental information access rights primarily take the form of receiving government-initiated information disclosure and submitting item-by-item applications. Social organizations should enjoy the right to batch information applications, the right to apply for exceptions regarding classified information, moderately shortened response deadlines, and priority access to urgent information. With respect to remedies, social organizations should additionally enjoy the right to apply for superior supervisory review, the right to propose normative document review, and the reversal of the burden of proof.

5.3 Differentiated Construction of Decision-Making Participation Rights

The general public's participation modalities include submitting written opinions and attending hearings, whereby opinions lack binding force. Social organizations should enjoy the right to apply for hearing or symposium initiation, the right to request explanations for opinion adoption, the right to propose stays of execution, and the right to expert consultation participation. Participation periods should be sufficient; administrative agencies must provide explanations for important opinions not adopted, and decision documents should be disclosed in their entirety.

5.4 Differentiated Construction of Supervisory Rights

The general public's supervisory rights include reporting, petitioning, and public opinion supervision, characterized by individualism and non-binding force, with the function of urging the government to fulfill its duty of care. Social organizations should enjoy the right to require superior agencies to conduct supervisory review, the right to propose normative document review, and the right to follow-up supervision of environmental law enforcement. Supervision feedback should be subject to time limits; handling results should be publicly disclosed; and incentive systems should be established for effective supervision.

6. Conclusion

This Article employs the Public Trust Doctrine as its analytical framework to provide a differentiated reinterpretation of ENGOs' procedural environmental participation rights. The current public participation rights allocation framework centered on "interest nexus," which categorizes social organizations within the "uninterested public," proves inadequate to address the threefold predicament of function, status, and effectiveness confronting ENGOs. In response, the "settlor-trustee-beneficiary" tripartite structure established by the Public Trust Doctrine provides social organizations with the independent identity positioning of "beneficiary representative." This Article advocates advancing the applicable scope of the Public Trust Doctrine from the stage of environmental public interest litigation's judicial relief to the stage of administrative procedures, systematically distinguishing "expressive rights" from "representative rights," and constructing a differentiated institutional framework. Regarding the justification of the beneficiary representative's legitimacy, this Article proposes a three-pronged pathway combining functional appropriateness, legal fiction, and ex post regulation. Based upon the foregoing, this Article constructs a differentiated rights framework transitioning from expressive rights to representative rights across three dimensions: environmental information access rights, decision-making participation rights, and supervisory rights.

Whereas the interpretive pathway constructed herein will, to a certain extent, remedy the deficiencies of prior interpretive theories, this Article's theoretical framework still harbors certain limitations. The application of the Public Trust Doctrine in China's environmental law still lacks clear positive law basis, and the transformation thereof into specific legal norms awaits further legislative exploration. Moreover, this Article focuses primarily on clarifying the empowerment logic of procedural rights; issues such as how to prevent social organizations from abusing representative rights and how to balance interest conflicts among different social organizations have not been fully examined. The deepened advancement of multi-stakeholder environmental co-governance requires transcending the "government-society" binary opposition mindset. Under the premise of respecting the subject status of social organizations, a institutional system featuring clear rights and responsibilities, complete procedures, and unimpeded remedies must be constructed. The interpretive approach grounded in the Public Trust Doctrine furnishes a highly explanatory theoretical resource for this objective, yet its localized application still requires sustained endeavors from the legal academic community. It is hoped that this Article may serve as a starting point for further deliberation, and that additional scholars may direct their attention toward empirical research and institutional design concerning ENGOs' procedural rights.

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