

## Legal Logic of the Generation of Chinese Village Community Order

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### Abstract

The study on the legal logic of the generation of Chinese village community order is in touch with the essential understanding of famers' collective membership rights for only spontaneously generated order can give birth to reasonable rights. This paper tries to study different legal logic of the generation of traditional, modern, and contemporary Chinese village communities so that to investigate the path that village community order generates spontaneously.

**Key words:** Village community order; Spontaneously generated; Path dependence

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## 1. GENERATING PATH OF TRADITIONAL CHINESE VILLAGE COMMUNITY ORDER

### 1.1 The Fundamental Significance of the Existence of Traditional Chinese Village Community

Farming is a traditional way for Chinese farmers to survive, therefore, the existence significance of Chinese traditional village community and order arrangements are of course closely connected with agricultural production. Due to the favorable climatic conditions brought by monsoon, intensive farming is the characteristic of

Chinese agriculture since ancient times. The agricultural industry with intensive farming characteristic has created basic condition for the generation of populous village community. Rhoads Murphey writes when he describing Asian countryside that "high productivity generated by intensive cultivation mode means a family can feed themselves with just one or several crofts which has made their houses closely built one to another even in the countryside. They do not look like the houses in Western countries which scatter in various farms instead." (Rhoads Murphey, 2004)

The inherent nature of Chinese famer families is another important reason of the existence of traditional village community. Intensive farming mode requires close labor cooperation. The foundation of Chinese traditional village community is farmer families whose characteristic is "cohabitation and common wealth". This kind of families provides organizational precondition for internal labor cooperation. Families' internal labor cooperation has low cost and high efficiency and is always the basic living and production mode for Chinese famers. However, the short average life span of family members and poverty has made Chinese rural society lack of the fundamental conditions for the existence of big families. Undersize family scale cannot resolve various problems occurred during agricultural production and a family life, thus, the requirement for secondary organization above families has appeared to resolve these problems. Clans linked by blood relationship or villages linked by regions have latterly become the required secondary organizations. Clans and villages intersect and construct various village communities. Village communities have the ability to provide social security, small size irrigation works, famine remedies, and dispute resolutions and other "public products" called by modern economics. The old motto "help each other" stipulates the existence significance of Chinese traditional village community.

## **1.2 The Spontaneous Generation of Traditional Chinese Village Community Order**

From the aspect of functional significance, the existence of Chinese village community is inevitable result of Chinese small-scale peasant economy development within limited natural conditions and its generation is spontaneous. From the fact in history, we can see that state political power and external authorities did not directly intervene in such spontaneous generation of order. This may be because that social resources produced by agricultural society cannot feed enormous bureaucrat system which can seep into basic level. It is the FEI Xiaotong and LIANG Shuming called “social management method in weak country”. Regardless of the reasons, there has actually formed a situation in Chinese history that “imperial power does not control towns and villages and all towns and villages are autonomous. In rather a long period, state power did not intervene in basic level of the society and all village affairs are handled by village community in Chinese rural areas which has formed the spontaneous legal order of Chinese traditional village community.

## **2. GENERATING PATH OF MODERN CHINESE VILLAGE COMMUNITY ORDER**

### **2.1 The Changes of the Existence Significance of Modern Chinese Village Community**

After 19 century, China has become a national state in modern sense. In traditional society, community’s social, economic, educational, and cultural aspects are local and community autonomous. When the country has entered the age of national state, all these aspects have become hyper-local and all people’s affairs whose forms are directly built by national central administrative power. In order to accomplish this mission, political power has to go deep into every primary-level organizations. Du Zhanqi thought when he investigated the condition of North China rural areas in the first half of the 20<sup>th</sup> century that all central and local political powers were trying to stretch national power into primary-level society at that time in China’s political arena. It is because that the establishment of modern country’s political power must gather resources from the country’s rural areas. Meanwhile, to build a grass-root society which can meet the requirement of modern society we have to set up a powerful political system from the upside to the bottom to guarantee it. The establishment of “town” and “village” in the late Qing dynasty and the “village” in the republic of China is just because of this reason. The new China had not got rid of this mode until the early years of this century. In this period, no matter in what forms, village community always represented national power and the significance of its existence is to

guarantee the country successfully get resource from the rural areas and expand modern senses supported by the nation. Of course, in order to protect the production of rural resources, village community has to provide some public products for farmers any way. In addition, due to the well organization, modern village communities’ efficiency is much higher than traditional ones.

### **2.2 The Break off of Modern Chinese Village Community Spontaneously Generated Order**

The penetration of state power in primary-level organizations led to the collapse of the original legal order of Chinese village community. When confiscated landlords’ lands, agrarian reform redistributed families’ private and public lands and cut off the economic base of village unity and mutual assistance; class struggle utterances’ make up and spread effectively destroyed the identity of traditional villages and clans; labor turnovers brought by industrialization and enlightenment thought smashed the value system that village society depends on and the economic, political, and ethic foundations of the old order disappeared as well. At the same time, the state hopes that farmers can become real citizens of the republic, there is no obstacles between the state and the citizens, citizens can directly use laws and ideological weapons of the state to express their own demands to protect their interests, and the state also does not allow any other things apart from laws to stop the interaction between the citizens. The change of traditional village organizations has made the customary law which used to have great influence in maintaining village order lose its legal foundation and a legal order created and designed by legislators and outside authorities have gradually covered all the society.

## **3. GENERATING PATH OF CONTEMPORARY CHINESE VILLAGE COMMUNITY ORDER**

### **3.1 The Real Significance of the Existence of Contemporary Chinese Village Community**

#### **3.1.1 The Regression of Contemporary Chinese Village Community Existence Significance**

Since the reform and open up of China and the speed up of Chinese industrialization, the remodeling of Chinese primary-level value has almost been done. In addition, the benefit get from rural resources cannot balance the cost, therefore, state power are gradually get off from village community. The significance of Chinese village community’s existence is now coming back to its real nature. Based on the implementation of rural self-governing and taxes and fees reform at the end of last century to the beginning of the century, the main functions of village community changed once again, related

systems, organizations, and human resources which are used by the state to get rural resources have changed as well. The fundamental significance of Chinese village community's existence is now changing into providing public products which are closely connected with its members' existence. These public products include:

First, land which is the means of production and also the survival guarantee. Chinese rural land collective ownership belongs to farmers and all collective members are just individuals who use rural lands according to contract relations. Most collective members of Chinese rural areas are pure farmers who are merely engaged in farming. All these farmers have been struggling for living for a long period and living is their first ethics. Therefore, a lot institutional arrangements in the villages are mainly set up for protecting minimum income of the residents, just as He Xuefeng pointed that the core of Chinese rural issues is huge amount of farmers who are difficult to transfer from rural areas to cities; economic income lacks of fast speed increase space; the expense pressure caused by consumerism and marketization is increase rapidly; and the position of social culture is fast marginalizing. Chinese farmers' relative income decreased, their subjective position disappeared, their significance of life was destroyed, but their living risk increased greatly. Under such circumstance, guarantee the possibility of dividing lands equally for farmers, maintain the stability of rural areas, and comforting farmers' moods are key aspects for resolving this core problem. Therefore, joint ownership of lands and free supply for its members, and supply plans which adjusted according to changeable existence environment of the members provided basic protection for farmers and also the most important reason for the existence of farmers' group.

Second, irrigation, tractor-ploughing, and roads and other agriculture related public products. Apparently, land cannot provide agricultural product automatically. For agricultural production which relies heavily on season, thus public products that are closely connected with farming are inevitable for farmers especially in China. Before the reform and open up in China, these public products are provided by basic village community. Take irrigation facility as example, the water infrastructure built by people's commune in China in 1950-1960s has increased the Irrigated land from 18% at the beginning of new China to 46%. The 46% irrigated land produced 70% more food in China. Due to the collapse of primary level village community after the reform and open up, regular water infrastructure construction was stopped. Most irrigation facilities that current rural villages use in China are still built before 1980s and many of them are destroyed. Under such circumstance, office director of central rural work leading group Chen Xiwen pointed out when interviewed by CCTV in 2006 that Chinese rural water facilities will fully breakdown in no more 7

or 8 years. The statement has turned into reality in 2010 winter and 2011 spring. Provide irrigation and tractor-ploughing facilities and other agriculture related public products for its collective members is important function for farmer group and also one of the most important reason of the existence of farmer collectivity. Farmer collectivities which lack of such function will lose its significance of existence.

Third, village community should provide other public products. Fei Xiaotong gives classic description on the individual relations in traditional Chinese rural village community in his "*Rural China*". The traditional agricultural social system arrangement in which family and village community are both identified by farmers and differential pattern is the core resolved most public products provide issues at that time. However, things changed after all. With the modernization incursion, rural basic social structure has changed drastically. Farmers' original value system has broken down. Public products providing issues which can be handled by original village community rules in the past, for example, the problem of supporting old single persons and villagers' disputes and so on, have been put in front of new farmers' collectivities. Therefore, the requirement for systematic and structure innovation has become stronger for Chinese rural areas. In a long period in the future, we cannot depend on the country or market economic to resolve the public products supplying problem. However, various functional fragments left by tradition will generate selective affine relation between Chinese small-scale rural economic.

### **3.1.2 The Inevitability of the Village Community Supplying Public Products**

When state power gets into primary-level society, the state will of course be thought as the one who has the responsibility to provide rural public products for villages. In fact, the state has become the supplier for rural public products, for example, village community members' education, medicine, and security and so on which are previously provided by village community are now supplied by the state. Therefore, the State-farmers individual public products supply mode. The advantages of this mode are that farmers' individual rights clear, power executing organization is definite, and good for protection. The shortage of this mode is that the efficiency is very low. Large-scale groups' (the state is definitely the biggest group) disadvantages in supplying public products for their members has been criticized by the academic world. Good policies regulating public products supply should focus on supporting competitive small-scale groups that can provide public products for their members and create better and stable policy environment for them.

In addition, the state is unable to provide public products for all farmers in current situation. Take the more and more serious rural land irrigation issue as example, China carried out the "Decision on accelerating the

development of water conservancy reform” in January 29, 2011 and decides to increase input in water conservancy construction to 400 billion yuan. However, such input from the state cannot meet the need of providing basic irrigation products. According to the Linzhou Municipal Water Resources Bureau of Henan province, the maintenance fee for small reservoirs which are used for providing water for Hongqi canal, the mainstream of Hongqi canal, and its distributaries (irrigating facilities from distributaries to farmland are not included) is about 300,000,000 yuan. The irrigated area of Hongqi canal is 440,000 mu. Accordingly, the whole nation’s 1,800,000,000 mu farmland’s yearly maintenance and construction fee must be above 1 trillion. The financing gap is so huge as we can see and it is why farmland irrigation cannot be completed by the state.

### 3.2 Path Dependence of Contemporary Chinese Village Community Order’s Generation

The existence significance of contemporary Chinese village community has already returned into the traditional path but the generation of its order is still trapped by Rationalism path of the Constructionism. Top to bottom political operation has been used as effective and convenient path for institutional formation and change since modern China. The structure of the nation and society is thought to be designed by people and of course can be changed and reconstructed by people. This has led to the appearance of ruling custom which thinks upper-layer designing form is more important than private subjects’ operation. In such custom, the upper layer never trusts or waits for individuals’ spontaneous movements to achieve great history; they always ignore the stubbornness and power of individuals’ rational behaviors’ motives and would rather to imagine individuals as dolls and tools that can be used to realize their purposes. The legality of related individuals’ aims is never protected by system. Such typical ruling custom which is practicing construction Rationalism theory is continuously building the deep structure of Chinese “collective unconsciousness” and locks real systematic change process into the construction rationalism path. The generation path choice of Chinese village community order has also reflected such custom.

Since the amendments to the Constitution in the end of last century, village self-governance and collective ownership has become the basic systematic allocation in vast rural society of China. Legislators have realized the irreplaceable function that village community has as rural public products supplier. However, due to the inertia effect of constructivist rationalism institutional change path in hundreds of years, legislators always restrict the spontaneous generation of new village community legal order. The state is used to directly intervening farmer collectivity’s aims and conduct structures. According to Organic Law of Village Committees, the set up and dissolution of farmers’ collectivities must be proposed by administrative organizations; According to Property Law and Land Management Law, although farmers’ collectivities are the owner of rural lands, they do not have the right on the structure of rural land contract rights. Farmer collectivities’ power of forcing, rewarding, and punishing their members are restricted or cancelled by laws. Collectivity relies on its members’ compliance on collective decisions, rewarding and punishing its members, and urging its members take actions for its collectivity. The direct intervene from the state goes against the fundamental logic relation between the collectivity and its members, directly leads to the failure of effective operation of farmers’ collectivities. And farmers’ collectivities without financial income and political power cannot provide public products for its members.

Anyway, village community is left by history and its existence shows its values. It is the best organizational form existing by now for providing public products for farmers. If the state loosens the restriction on farmers’ collectivities, it will operate effectively without doubt. If China still follows the wrong direction to strengthen related system, farmers’ collectivity will disappear sooner or later.

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## REFERENCES

- Rhoads Murphey (2004). *A history of Asia*, (HUANG, Lin trans, pp. 22-23). Hainan: Hainan Publishing House & Three Ring Press.