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On the Value of Chongqing Back-Feeding Agriculture Legislation in China

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I. THE THEORETIC BASIS OF THE VALUE OF CHONGQING BACK-FEEDING AGRICULTURE LEGISLATION IN CHINA

"Value" is a word that refers to nondifferential ordinary human labor condensed in goods in terms of economics, and usefulness or specific positive effects of objective things in the general sense. "The value analysis means the cognition and evaluation of the value relations between phenomena or things as objects and people as subjects (a certain class, stratum, group and individual), namely the embedded and proper value factors in particular objects. It is very necessary and of great significance to apply value analysis in the study of jurisprudence for the value cognition and evaluation of laws phenomena." [1] The discussed value of back-feeding agriculture legislation is to apply the method of value analysis to see through "the usefulness or specific positive effects" of back-feeding agriculture legislation and to make clear its superficial purpose value and deep moral values, then it may be possible to make appropriate, timely and accurate guidance for establishing the related legislative regulations

Before analyzing the value of Chongqing back-feeding agriculture legislation, it's necessary to define

what's "value of legislation" which is a controversial issue in the judicial field. For example, "generally the value of legislation doesn't refer to legislative function or usefulness of legislation, but the correlations between needs of legislative subjects and legislative objects (the objects that the law will adjust) shown by moral rules and interests that legislative subjects pursue to realize through legislative activities." [2] "The value orientation of legislative decision-making is the idea, common principle, goal, etc approved in general and deserved to be pursued by people while making legislative decisions. Value orientation is determined by the character of the particular practical activities of legislative decision-making, not extra added." [3] "It is the unique character of the distinct phenomenon of legislation procedure that determines the value orientation of legislation procedure, which is actually the common principles and goals approved at large and greatly pursued by people while formulating legislation procedures. They are the factors beyond the scope of laws that may exert an influence on legislation, policy application, judicial decision, etc. The logic reason that people choose legislation procedure is its satisfaction to human ideal and the pursued common principles." [4] "The value of legislation indicates the relation between legislation subjects (legislature with legislative power) and legislation objects (objects adjusted laws) existing in legislative actions, reflecting the wish of 'good laws and kind governance ' the whole of social members run after and hope the wish can be to some extent suitable for, close to or corresponding with changing and developmental legislation objects in order to satisfy their requirements for realizing code of conduct such as moral standards, custom requests and scientific rules." [5] "The value orientation of legislation refers to the idea, common principles, aim, etc acknowledged generally and pursued by people while carrying through legislative activities, including two kinds of implication, one is the purpose or social benefits every country wants to obtain while making laws, the other is the ultimate choice of value goal when contradictions turn up in various value goals that laws seek." [6] Although these viewpoints has their own merits, they doesn't define completely the essence of "the value of legislation". Hence, the analysis can be made by referring to the classical standpoint of Jeremy Bentham, the chief representative of utilitarian theories of laws.

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Bentham regards "the greatest happiness of the greatest number" as the value orientation of legislation, "the greatest happiness of all the interests-related people is the only right, proper and expected in general purpose of human actions".^[7] "The general purpose all laws have or usually should possess is to increase the total of social happiness, and the four specific purposes are subsistence, equality, richness and safety."^[8] Bentham's thesis actually defines the value of legislation from 3 aspects which are motive, goal and value. "Subsistence, equality, richness and safety" are human lower needs of instinct desires to ideal community life, that is motive; "increasing the total of social happiness" is the expression of human needs with certain characters of reason based on instinct desires, namely the goal; "the greatest happiness of the greatest number" is the moral guidance to the ideal community life surpassing instinct desires, i.e. , value. The former two aspects are binary expressions of superficial value of purpose, subjects' needs and interests which can be calculated via number. If legislation reduces its conflicts only for coordinating the interest of "subsistence, equality, richness and safety", it is merely "positive legislation"; if legislation ascends to the degree of "increasing the total of social happiness" for realizing maximum interests, it can become "active legislation". The latter can be called the incisive proverb of deep value of morality and it can not be calculated according to number. "The greatest number" means the gradual approach of relative "fairness" in procedure to absolute "fairness" in entity that can be realized; "the greatest happiness" shows the pursuit of efficiency, and it needs to start with society and the subject himself in order to realize efficiency, and outside social order provides the environment of realization, the subject himself means the accomplished outcome. "The value of legislation is the code of ethics that legislation subjects need to realize through legislative activities, then the satisfaction of the needs and interests of legislation subjects can be realized through the outcome of legislative activities under the effect of this code."^[9] We might as well analyze the value of Chongqing back-feeding agriculture legislation from purpose and morality on the basis of this definition.

II. THE PURPOSE VALUE OF CHONGQING BACK-FEEDING AGRICULTURE LEGISLATION IN CHINA

"Back-feeding" is a bionic concept, first originating from "when a little bird grows up, it feeds food to its mother." in The Story of Beginning to Learn: the Ode to Bird. It is endowed with new connotation when it is applied in the public policy of "back-feeding agriculture". That is to say, industries and cities have

been developed after taking in agriculture's feeding, and they should feed back to agriculture. The issue of back-feeding agriculture in China was first put forward by the General Secretary Hu jintao while expounding the "Two Tendencies" in The CPC's Fourth Plenary Session of The Sixteenth Central Committee in 2004. "In the development course of some industrialized countries and the initial stage of industrialization, generally agriculture supported industry and provided accumulation for industry; but after industrialization developed into quite a degree, industry fed back to agriculture and cities supported the countryside, realizing the coordinated development between industry and agriculture, urban and rural areas was also a universal trend."^[10] "In 1986 Fei xiaotong came up with the 'back-feeding' theory of industry to agriculture after investigating cities like Suzhou and Wuxi. The rising of industry depends on the accumulation of agriculture, yet once industry gets preliminary development, it will support agriculture constantly, 'make supplement for agriculture' and 'construct the countryside', thereby promoting the sustainable development of agriculture and the countryside."^[11] It is the stage veer of "agriculture fosters industry" and "the countryside fosters cities", " 'industry feeds back to agriculture, cities support the countryside' is a significant regulation of development strategy which China's economy is confronted with after entering into the medium term of industrialization."^[12] Regurgitation-feeding agriculture is the general rule of each country's economic development in the medium term of industrialization across the world, and industrialized countries mostly achieved the policy swerve from "agriculture support industry" to "industry supports agriculture" via related legislations, such as the American Agricultural Adjustment Act of 1938, British Agricultural Law of 1947, German Planning of Agricultural Structure Reform of 1953 and Japanese Agricultural Fundamental Law of 1961, marking the country's entering into the phase of large-scale back-feeding agriculture. The theory, system and practice of back-feeding agriculture also exist in foreign countries, however, there isn't corresponding words and phrases for expression, "back-feeding agriculture" is the unique policy concept of Chinese characteristics.

At present, China has entered into the stage of back-feeding agriculture on the whole, and all parts of the country are vigorously exploring approaches and mechanism of back-feeding agriculture. There are now five sorts of mature modes of back-feeding agriculture, including Pearl River Delta Mode, Mode of Zhejiang Province, Mode of Shanghai, Mode of Beijing, and Mode of Qingdao. Recently new types of back-feeding agriculture appeared in cities such as Shenyang in Liaoning Province, Suzhou in Jiangsu Province, Xinyu in Jiangxi Province, Huizhou in Guangdong Province,

Nanning in Guangxi Province and Tongren in Guizhou Province. As a whole, Chongqing has had the basic requirements of "industry feeds back to agriculture, cities support the countryside". In Chongqing of 2008, the gross of GDP came up to 509.666 Yuan (RMB) and per capita GDP reached to 2573 dollars; but rural per capita net income was only 4126 Yuan, while urban per capita disposable income has 15709 Yuan. During years from 2007 to 2010, GDP had been maintaining a growth around 15% ; per capita GDP grew constantly to 2000 , 3000 and 4000 dollars for three years. In 2010 financial general budget revenue increased by nearly 49%, and in the first half of 2011 the rate of growth exceeded 50%. However, the Gini coefficient of 2010 was 0.438, reflecting that under the background of economic high-speed growth Chongqing had a large residents' income gap, especially the income gap between urban and rural areas still got no effective solution. In July of 2011, the Ninth Plenary Session of the Third Chongqing Municipal Committee of CPC (the Communist Party of China) passed the "Decision Concerned with Narrowing down the Three Gaps and Promoting Common Prosperity by Chongqing Municipal Committee of CPC" and put forward 12 specific measures about unifying towns and the countryside and promoting the coordinated development between urban and rural areas, for realizing towns' support for the countryside and industry's regurgitation-feeding to agriculture. The objective is as follows: by 2015, the economic aggregate of Chongqing will multiply synchronically with the resident income, narrowing down the income gap between urban and rural residents to the ratio of 2.5 to 1 approximately, and Gini coefficient to around 0.35; basically complete the important growth pole of the western regions, the economic center of the upper reaches of Yangtze River and the municipality directly under the central government with the urban and rural overall development, thus to be the first to realize overall well-off life in the western regions.

For the past few years, the law circle had made research on the issue of regurgitation-feeding agriculture from many perspectives. A number of scholars defined its meaning, basic principles, all kinds of misunderstanding, the do's and don'ts, and particularly made detailed explanation of its real significance to the economic and social development in various regions. Some scholars explicitly pointed out that China has entered into the of stageback-feeding agriculture and put forward the judging basis such as "reality need, international experience, realistic conditions" and so on. Many scholars made detailed analysis of the restriction factors to the back-feeding agriculture (like the constraints of system, population, finance, structure and organization) and all kinds of specific difficulties. The most studies are concerning the specific solutions to solve the back-feeding agriculture problem, mainly comprising studies of method, system

and mode. Besides, some scholars made a comparative analysis of the regurgitation-feeding agriculture experience of the U.S.A., Germany, France and South Korea combining the practice of China. In a word, Chinese academic circle's study on back-feeding agriculture has formed a comprehensive system in a short period of time, but few scholars do research on this proble from the aspect of the science of law especially legislation. Among all the hierarchy normalizative documents of law, only the principled regulations of Chapter 6 and 7 in the Agricultural Law of the People's Republic of China (PRC) touch upon the matter of "regurgitation-feeding agriculture" to some extent, lacking operable detailed rules and regulations. Moreover, most of the relevant laws and regulations are concerned with the protection of agricultural resource, and less involve the related fields like agricultural production and management, agricultural production elements, price of agricultural products, consumption and reserve of agricultural products, finance (credit) support, system of imports and exports, promotion of agriculture science and technology and protection for peasants' interests.

Hence, there is need to construct China's legislation system of regurgitation-feeding agriculture so as to provide necessary system security for carrying out the practice of back-feeding agriculture. We should first make experiments prudently in some local places, and then build unified and high-hierarchy legislation of back-feeding agriculture in China on the basis of summarizing experimental places' experience. Chongqing, as state-level experimental site of connecting urban and rural comprehensive supplementary reforms, has accumulated some valuable experience about promoting the development of agriculture with industry and leading the countryside by city. So it may as well take the lead in innovating local legislation as to the issue of back-feeding agriculture with industry in the experimental site of Chongqing and formulating the Regulations of Regurgitation-feeding Agriculture in Chongqing by the Standing Committee of People's Congress in Chongqing, in order to establish the basis for setting up the legal system of China's back-feeding agriculture. The purpose value of Chongqing back-feeding agriculture can be clearly defined as having a try on making local legislation of back-feeding agriculture based on systematically analyzing the basic theory, system arrangement and operation mechanism of China's back-feeding agriculture; and then increasing the total of "social happiness" concerned with back-feeding agriculture for maximizing the interests; and gradually making Chongqing back-feeding agriculture work standardized and legalized for pushing forward the definite realization of "Decision Concerned with Narrowing down the Three Gaps and Promoting Common Prosperity by Chongqing Municipal Committee of CPC".

III. THE MORAL VALUES OF CHONGQING BACK-FEEDING AGRICULTURE LEGISLATION IN CHINA

The moral values of Chongqing back-feeding agriculture legislation are mainly embodied in the fairness and efficiency this legislation brings for the society, namely ensuring the impartiality on entity and procedure in the back-feeding agriculture activities and the efficiency on order and benefits. The former as the inherent moral value of back-feeding agriculture legislation decides the essential attributes of this legislation; the latter determines the existence form of this legislation because it let people have specific perception of reality as the extrinsic moral value.

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a) *Inherent value of fairness*

The value of fairness requires that each legal subject should enjoy equal status and can allodially take part in certain activities in the allowed band of laws. Pursuing the fairness value of back-feeding agriculture means seeking for the justice idea of balanced urban and rural development and common prosperity, the justice of back-feeding agriculture activities entity and procedure must be achieved.

Firstly, the justice of entity indicates that the three aspects of back-feeding agriculture's guiding idea, basic principles and practice outcome meet the demand of justice value. First of all, in term of the guiding idea, we must promote agricultural modernization and realize mutual promotion between industry and agriculture and mutual prosperity of urban and rural areas on the whole from the perspective of facilitating social progress in line with the maximum interests of the overwhelming majority. Specifically speaking it needs improving long-term agricultural production capacity, increasing farmers' income to let the great majority of people get benefited, integrating urban and rural differentiation to promote healthy development of urbanization, and protecting environment etc. Then, as to the basic principles, we can set up principles of resource attraction, moderation and gradual advance, "hematopoiesis", industrial double win and protection. Practically speaking, carrying out back-feeding agriculture activities according to local conditions must live up to natural law of development, social and economic development rule. Lastly, as far as the practice outcome, it is primarily concerned with that the practice result of back-feeding agriculture activities can obtain expected benefits and let the subject of property rights, the subject of investment and supervision justly enjoy the benefit, and then realize the diversified effective management of agricultural and rural sustainable development. The government should be the pusher of back-feeding agriculture activities, encouraging more investment subjects to play a part in

through guiding financial support for agriculture department; farmers are both the subject and the object of back-feeding agriculture activities, enjoying the right to be fed back while doing their duty; social organizations are the important assistants of back-feeding agriculture activities, organizing farmers' training for improving their technological and cultural quality, promoting rural economic development by providing fund and technology support with their own conditions, and helping stand up for farmers' rights with professional knowledge like laws; industrial and commercial enterprises are the direct participants of back-feeding agriculture activities, needing to increase the financial strength of supporting the agriculture or enhancing the ability to accept rural surplus laborers with their own development, or by offering industrial products of high quality and low price and agricultural means of production for agriculture, or by increasing the demand of agricultural products, or by increasing financial contribution.

Secondly, the fairness on procedure means that the operating procedure of back-feeding agriculture should embody the justice of procedure based on the examination of justice, so as to let subjects of many parties carry out related activities in accordance with their own will under the permission of laws in the process of back-feeding agriculture. The legal system of back-feeding agriculture should establish authorized standard in order to fully guarantee right owners' right to freedom and to realize the active participation during the whole course in the policy-making, operation and performance evaluation of back-feeding agriculture of the various subjects of back-feeding agriculture and especially farmers in vulnerable position. In the preparation stage, related subjects must join in the project demonstration and consult to the full as to the scheme, feasibility, design, ownership adjustment and budget formation of back-feeding agriculture specific items, for reaching the uttermost common view; in the implementation stage, the implementation must be carried out in compliance with the established plan and project design organizationally, for ensuring the project operation accord with the schedule request and design intention; in the evaluation stage, it must pledge that specific items of back-feeding agriculture attain expected goal, complete established task and produce proper results.

b) *The extrinsic value of efficiency*

The value of efficiency calls for with the least legislative, law-enforcing and judicial cost achieving the best distribution of rights and duties of subjects of legal relation and guiding rational allocation of social resources and then building ideal social order. The pursuit of the efficiency value of back-feeding agriculture is to bring about the maximum benefits of back-feeding back-feeding agriculture with motivating measures and

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agriculture activities based on constructing perfect agricultural legal order.

On one hand, as far as the order is concerned, the legal order of back-feeding agriculture is the general term of ordered actions and social relations generated from social life by the interaction of relevant legislations of back-feeding with social, political and economic elements in the operational process. It aims to keep a look out of the disorder and chaos in the back-feeding agricultural activities and realizing ordered national governance, economic development and social progress. It is comprised of the two elements of order of back-feeding agriculture action and order of back-feeding agriculture relation. The order of back-feeding agriculture requires the actor to put actions into effect in accordance with legal setting or guided mode. For instance, the above stated principles regulations of Chapter 6 and 7 in the Agricultural Law of People's Republic of China define back-feeding agriculture action as compound actions of management and self-governing. The nature of action decides the composite back-feeding way with government input and market allocation under the dominance of government that should be established in the back-feeding agriculture activities. The government should formulate the mechanism of fund input, technology regurgitation-feeding and human capital formation; the market should form industrial back-feeding mechanism to guide business enterprises to invest, produce and operate in agriculture or rural areas, for bring about fund, technology and modern production elements such as advanced operation idea, marketing mode and management methods for agriculture and the countryside. The order of back-feeding agriculture relation refers to the specific legal relation of back-feeding agriculture generated on the basis of legal regulations, mainly about the relations between rights and duties of the three parties which are the subject of property right, the investment subject and the supervision subject of back-feeding agriculture. The subject of property right is composite, consisting of the ownership adjustment among rural collective land and between state-owned land and rural collective land, and the operational power adjustment among peasants' contracted land, and adjustment of other rights occurred from adjusting the proprietary right or the right to use in the operational process of back-feeding agriculture specific items. The subject of investment is polynary, including national direct investment, farmers' autonomous input, business enterprises' participation and collective financing, etc. The supervision work is complicated, including dividing the supervision limits of authority, redistributing and redefining ways and procedure of related ownership adjustment, ownership examination and property right, supervising the performance of the operation procedure of back-feeding agriculture specific item, supervising the announcement

of back-feeding agriculture specific items' scheme, and normalizing and confirming the agreed supervision between the implementation party and relevant rights subjects.

On the other hand, as far as the benefit is concerned, the benefit of back-feeding agriculture activities demands under the legal order of back-feeding agriculture the purpose of all the back-feeding agriculture activities is to achieve social sustainable development by making the best of natural resources and increasing social wealth to the hilt. The maximum benefits of back-feeding activities realized under the legal order of back-feeding agriculture cover the maximum economic benefit, social benefit and environmental benefit. The main part of realizing economic benefit is to achieve optimized disposition of relevant resources, and the standard of evaluation contains back-feeding agriculture specific items' economic rationality and the contribution degree to local economic development; achieving social benefit is mainly reducing Gini coefficient, improving peasant's income level, promoting the employment of rural laborers and increasing the rate of household registration in cities; realizing environmental benefit principally points to improving the producing and living surrounding of agriculture and the countryside, building new villages of farmers, raising the coverage rate of green vegetation, forest and grass, preventing soil erosion and land deterioration, perfecting landscape, eliminating environmental pollution and so on. The final maximum benefit of realizing back-feeding agriculture means obtaining the relative balance of urban and rural economic aggregate, promoting urban and rural unified sustainable development and building the overall well-off society.

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