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Core Disparities in Land Resumption Valuation Rules Between Mainland China and Hong Kong: A Comparative Study of Valuation Dates and Development Betterment Compensation

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Abstract. The results of this study show that the two legal systems have different property rights structures and legal cultures, which are reflected in three valuation practice elements. The mainland opts to select the "date of expropriation notice" as its valuation reference date because it is more efficient administratively, whereas Hong Kong selects the "date when the requisition becomes effective" because it is more likely to represent the loss-based compensation. Looking at capital gain, the mainland adopts the concept of "public appropriation of urban development gains"; Hong Kong adopts the concept of optimal legal use and acknowledges the potential of redevelopment in the land leases. Regarding evidentiary paradigms, the mainland uses the method of ex officio valuation, in contrast, Hong Kong has established an adversarial system based on the idea of balancing probabilities. Such decisions are not just technical, but also reflect the overall policy climate of urbanisation. The two regions aim to increase land value by renewal, but they address the problem of the public-private rights trade-off in different ways a common challenge which continues to yield different institutional results. In order to address the weaknesses of the state-led valuation system in mainland China, this paper suggests implementing a participatory compensation framework, which is inspired by the experience of Hong Kong, but does not compromise the underlying principle of public land ownership. These insights, in turn, indicate a route towards a rule-of-law-driven reformation of the expropriation and compensation processes in mainland China.

Keywords: Land expropriation, valuation date, land development betterment, property rights structure, burden of proof

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1. Introduction

Since urbanization has reached the challenging stage of improving the quality and effectiveness of the existing built-up urban areas, the redevelopment of urban villages in the mainland and revitalization of older buildings in Hong Kong confront the same problem of reducing the difference between their current state and development potential. The paper will be based on two main questions, which are establishing valuation date and considering increase in value. The mainland model sets the time of the expropriation announcement and adopts the principle of the public sector taking over the planning gains, concentrating on the administrative efficiency and reduction of risks. The Hong Kong model determines the time when resumption comes into effect, adopts the rule of highest-value legal permissible use and seeks an exact application of compensation of loss in terms of private law. According to the study, the existing ex officio valuation regime in mainland is excessively dependent on statutory planning and does not take into account the market changes and value growth due to the natural development, which often destroys the so-called legitimate expectations of the people who are going to be expropriated. The determination of development potential is changed by Hong Kong to become a transparent professional process using an adversarial evidentiary mechanism and balance of probabilities standard. This research paper will use the Hong Kong experiences in the court concerning procedural remedies and the allocation of the burden of proof to come up with several strategies on how to end the administration monopoly of valuation. Through creation of a robust participatory compensation framework that includes negotiated evidentiary mechanisms and dynamic adjustment of the valuation reference date, this paper seeks to initiate the change in the expropriation system in mainland China into an advanced paradigm of the rule of law that is a cross between procedural rationality and substantive justice.

2. Literature review

Compensation mechanism principles should be thoroughly analyzed prior to analyzing any institutional differences in mainland China and Hong Kong land expropriation assessment regulations. There are existing studies that provide very useful theoretical insight. These insights assist in explaining the development of the institutions in these two legal systems based on three views, namely, procedural law, substantive law, and institutional efficiency. In a broader sense, Paradza has investigated the historical development of expropriation valuation by bibliometric analysis and finds one of the earliest theoretical controversies between two main valuation approaches throughout legal systems: the fair market value paradigm that focuses on the protection of individual property rights, and the mechanical, simplified, and standardized administration-based valuation model. The binary opposition may be seen as the manifestation of the different valuation laws that rule land expropriation in mainland China and Hong Kong [1].

2.1. Proceduralist perspective

Other scholars such as Cheng Jie are backing the concept of procedural justice as a more superior concept since they hold that the practice of procedural justice can be employed in order to restrain the action of governmental power. According to this perspective, the main point of regulating eminent domain is not in limiting the substantive rights and powers, but in implementing rigorous procedural regulations. Procedural irregularities are seen as the main cause of the misuse of the expropriation power and eventual misvaluation of the value - distortions commonly caused by the normative uncertainty of the statute and lack of effective procedural rights protection [2].

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Based on this, this school of thought believes that land acquisition validity depends on procedure openness and positive involvement of the judiciary. The system provides the mechanism of substantive participation of judicial review in the compensation determination process so that the dispossessed may be returned to a financial situation that is almost unaffected by the taking. Finally, in the case where concepts such as the public interest are conceptually elusive at the regulatory level, the procedural norm certitude becomes the last line of defense against the protection of private property rights [2].

2.2. Social functionalist perspective

The social functionalist viewpoint is adopted by scholars, and the most representative of them is Jiang Mingan who puts emphasis on the achievement of substantial justice in the context of compensation systems during times of social change, especially the protection of the rights of the dispossessed in dynamic circumstances. This theoretical framework provides an assessment of the mechanical inflexibility of fixing the valuation date, in light of the fact that housing prices have significantly changed during China urbanization [3].

According to Jiang Mingan, when there is a fast growth of urban areas, the rigid application of the date on which the announcement of the expropriation was made as the only valuation date tends to cause the essence of the compensation awards to be lowered due to the increase in real estate prices, and thus, fails to meet the reasonable expectations of those who are affected by it. These social functionalist concerns suggest that institutional design should consider the real effectiveness of fair social distribution so that no one remains dispossessed who would have had to face unfair market risks due to long administrative processes.

3. Jurisprudential origins of property logic and value attribution

The core cause of the difference between the compensation regulations in the Mainland and Hong Kong is the distribution of Land Development Rights (LDR). Both the valuation range and compensation limits are directly limited by institutional differences in property rights systems against the common context of redevelopment of the existing stock of land.

3.1. Institutional constraints of property rights structure on land valuation

According to the Land Ownership of the Mainland and Limited-Term Leasehold Model, the dispossessed individuals have limited usage rights and are allowed to use the land only with regard to its intended use and within a particular time period. Within this structure, all central authorities of development including changing land usage or raising the Floor Area Ratio (FAR) are very centralized in the government. As a result, there is a strict limitation on the valuation logic to the concept of status quo use value, where compensation is simply used as payment in exchange of the remaining years of the leasehold interest.

However, the contractual leasehold system in Hong Kong has strong features of private property. Leases of land include an extensive package of rights such as possession, income, disposal, and development so that compensation will be based not on physical occupancy alone but on all development opportunities within the legal limits of the lease [4]. This property right completeness acts as the jurisprudential basis of the compulsory inclusion of the term "redevelopment premiums" in Hong Kong land resumption valuation.

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3.2. Divergence in value attribution philosophies

The two jurisdictions have an enormous philosophical difference in how they distribute values due to differences in property rights. The Mainland follows the principle of "public gain from planning capture", which considers the premiums from urban redevelopment and planning modifications as the results of public investment and should be distributed among the society; therefore, the compensation is limited to the current approved uses' market value. However, Hong Kong supports the idea of "full compensation for private rights", stating that the development potential is an expansion of the private property interests and deserves full compensation if it is "inherent increase" from the lease and the existing planning, rather than the value generated by the reclamation scheme itself. This concept supports the "highest legal use value" principle (the greater one), in order to provide an equal payment for the private development rights' value.

3.3. Empirical impact of property models on compensation ceilings

The flexibility of compensation standards in practice is determined by the differences in the property rights structure. Under the Mainland system, statutory planning conditions set the compensation limit; official assessments are not permitted to go beyond present-use value. Hong Kong, however, operates with finer property-rights distinctions—e.g., separate ownership or mergeable sites—and its compensation can thus move towards potential use value. The submission of professional surveyors' evidence allows owners to obtain higher compensation than the current use. This feature of property rights is the key factor behind the different institutional behaviors in handling urban redevelopment conflicts between these two regions.

4. Comparison of valuation rules and adjudication principles

Based on the property rights structure mentioned in the previous study, this chapter investigates the actualization of valuation regulations in land requisition situations. The differences in valuation date locking, value appreciation recognition criteria and judicial techniques between the Mainland and Hong Kong not only indicate their different focuses on "administrative efficiency" and "adequate private right protection", but also largely influence the final compensation and the range of interests given to those affected.

4.1. Valuation date locking

The valuation date locking is the main variable of authenticating the amounts of compensation. According to Article 10 of the Evaluation Methods of Expropriation and Compensation of Houses on State-owned Land in Mainland China, the valuation date is defined as the "date of the expropriation announcement",. The principle is based on administrative efficiency, which seeks to forcefully break the link between the expropriation procedure and future changes in the market. It achieves this by reducing the compensation disputes that arise due to the volatile nature of the real estate market as well as preventing the dispossessed individuals of making excessive profits due to the extended administration procedures, thus, stabilizing the expropriation process [5].

Alternatively, the locking rule that resulted due to Hong Kong Land Resumption Ordinance, namely the date of resumption taking effect, resembles the loss indemnification principle of private law to a greater extent. The core of such a compensation is to give a payout exactly on the moment when the property rights are extinguished. Adopting the date of actual change of title as the standard

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enables a better correspondence between the real loss of property interests, an approach towards substantive justice. The difference in date determinations is a direct manifestation of the institutional trade-offs of the administration of "efficiency" versus the administration of "precise protection of private rights" in the two jurisdictions.

4.2. Paradigms for recognizing land development betterment

The valuation methodology of the mainland is based on the strict principle of the status quo use, which implies that in practice it only accounts for the current permitted land use, Floor Area Ratio (FAR) and planning conditions, but excludes all unrealized long-term plans or development potential in a systematic way [6]. The logic behind this is that the increase in value beyond its statutory limits is a result of the fruits of public planning and hence should be distributed to the population at large.

In functional transition disputes concerning the term of the existing land stocks, Hong Kong law follows the highest legal use value principle (whichever may be higher). The statutory valuation system does not limit the compensation benchmark to the existing use; it will be considered a natural aspect of the initial property value as long as the owner proves that he is able to apply independently to redevelop it or change its use within the scope of the law, planning, and land leases. Such principle recognizes the possibility of redevelopment of land leases and implies a great reverence of the right to develop land privately.

4.3. Adjudication principles and technical tools in valuation practice

To achieve the certainty of compensation, a number of technical tools have been developed in the judicial practice in both jurisdictions. The first of these is the Pointe Gourde principle based on Privy Council precedents. It aims at excluding any appreciation or depreciation in value brought about by the resumption scheme alone. It is indicative of the fact that the results of valuation should be a reflection of the true performance of the land in an open market assuming the existence of no scheme, which means that the government will not be exposed to higher compensation costs as a result of its development plans whereas owners are protected against the loss of value due to the resumption.

Secondly, when there are no similar market transactions, the Residual Method is used to return the property to its original condition by assuming that the resumption did not take place. This standard guarantees that the procedural rationality will finally benefit the integrity of compensation, which supports the obligation of the government to compensate the damage fully due to administrative intervention. Hong Kong has implemented supplementary policy mechanisms to curb the problem of lengthy negotiation rounds that are characteristic of market-based adversarial evaluations. As per the 2023 Legislative Council Secretariat report, Hong Kong has adopted dynamic "Ex-gratia Zonal Compensation" levels outside the statutory fair value assessment structure of the Land Resumption Ordinance. These standards are intended to shorten the length of professional contestation between owners and government. The report compares the land resumption systems of Guangzhou, Shenzhen, and Hong Kong New Development Areas horizontally, highlighting the divergent routes: the mainland uniform ex officio approach to valuation against the dual-channel method in Hong Kong of both the statutory valuation and the ex-gratia buffer value on land.

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5. Paradigm divergence in evidentiary rules and the burden of proof

Within the land resumption compensation system, while the valuation date establishes the temporal coordinates for value calculation, the allocation of evidentiary rules and the burden of proof dictates the substantive outcomes of "what" and "how much" to compensate. The divergence between Mainland China and Hong Kong regarding their proof paradigms constitutes the most profound institutional difference in their respective land resumption practices [7].

5.1. The adversarial evidentiary mechanism under the Hong Kong model

Hong Kong's Ordinance on the Expropriation of Land establishes a principle of compensation based on "free market value," which encompasses not only the current use of the land but also its maximum development value, subject to legal and urban planning constraints. To convert this abstract "development potential" into a specifically determined compensation amount, Hong Kong has developed a well-established mechanism for adversarial evidence presentation [8].

Under the Hong Kong model, the burden of proof for claiming development gains, and for demonstrating the feasibility of the development project, falls on the owner. The owner must present sufficient evidence to show that, at the time the expropriation took effect, there was a lawful and economically viable development project for the property, based on the applicable urban planning and leasehold conditions. In practice, the evidence relied on by the authorities is highly technical, including precedents from similar neighboring developments, urban planning applications under review, market transaction data, and, most importantly, feasibility reports prepared by professional surveyors. This mechanism, in effect, makes the valuation process into a technical dispute between the expropriated party and the state.

Risk Allocation Based on the "Preponderance of Probability" Criterion The definition of the standard of proof is of even greater significance. In the case of Siu Sau Kuen v. the Director of Lands, the Hong Kong Court of Appeal established the "preponderance of probability" standard, under which the owner must prove that the proposed development project "is more likely to proceed than not to proceed" (with a probability of more than 50%) in order to be entitled to full compensation based on the value of that development. This standard embodies a clear logic of risk allocation: if the evidence does not exceed the 50 percent threshold, the corresponding increase in value is completely excluded. This "all-or-nothing" rule aims to shift the risk of uncertainty to the party claiming the increase in value, thereby preventing speculative expectations from becoming rigid public expenditures.

5.2. Ex officio valuation under the mainland model

Unlike the adversarial procedure in effect in Hong Kong, the determination of compensation in mainland China follows a strict ex officio approach.

Absolute reliance on legal urban planning documents. The criterion for review by the appraisal authorities is the "urban planning status" protected by law, which refers to the official detailed zoning plan in effect as of the date of publication of the expropriation notice. Under this model, appraisers conduct their evaluations based strictly on written legal documents, systematically excluding non-legal evidence such as market analyses or precedents in the neighborhood. According to Li Shurong and Mei Dacheng, a system based solely on regulatory documents would create a paradox, in which the real value of land use and the facts are not considered when determining the compensation [9]. The information is not relevant as a landowner can prove that there exist high

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potential chances of changing land use because this potential will not be used in the estimation process until it has officially been given a legal administrative permission. Legal analysis and fact testimony in opposition. The continental model is the evaluation of compensation as a form of legal examination carried out by the administrative agencies and the organizations they empower. It limits greatly the area of offering evidence to the people who are exposed to expropriation: evaluation institutions should estimate the values according to the objective urban planning documents, instead of considering the subjective economic expectations on the basis of their own discretion. This model embodies the principle of "public recapture of urban planning gains" and ensures that future appreciation–regardless of its economic feasibility–is not recognized as an integral part of private property rights, unless authorized by the government.

5.3. Institutional essence

The core of the differences between these two legal systems lies in the differing trade-offs between "efficiency and justice" within the frameworks of the "adversarial evidentiary process" and "judicial discretion" models. The Hong Kong model, through adversarial evidentiary proceedings, relies on higher costs of proof and the involvement of experts in exchange for more comprehensive protection of the potential financial interests of those subject to expropriation [10]. In contrast, the continental model emphasizes expedited proceedings and a reduction in administrative costs through an ex officio review. While this approach offers the advantages of standardized and simplified procedures, it entails a systematic exclusion of the "natural development potential" of the properties, which is determined by location- and market-specific factors. In the future development of these systems, it will be crucial to end the administrative monopoly on valuation and to introduce moderate participatory evidentiary procedures in order to achieve a balance between procedural rationality and substantive justice.

6. Conclusion

A comparative study of the valuation principles used to value land expropriations in mainland China and Hong Kong shows that discrepancies between valuation reference dates and whether capital gains should be taken into account as well as ways to prove them are indicative of essentially different priorities between the concepts of administrative efficiency and the exact preservation of private rights. On this new wave of urbanization which is based on optimizing the current stock of land, the present model of valuation in Mainland China which has been implemented through the executive order must be seen as a benefit in terms of stability and efficiency, yet its weaknesses have become obvious in their inability to depict the dynamics of the market and safeguard the legal interests of the owners of the expropriated lands.

The research finds that the Hong Kong model, by the dynamism of the calibration of the expropriation reference date, the acceptance of the maximum legally permissible use value and the professionalization of the adversarial evidentiary procedure, offers a constant technical foundation of compensating losses. These factors change the evaluation of development potential, turning it into a non-unilateral administrative decision into an open technical negotiation procedure which gives mainland China some key guidelines in the shift towards a rule of law-based system.

In the future, further improvement of the compensation system in mainland China would have to go beyond the mere binary approach to the models and rather attempt to achieve the dynamic equilibrium at the cross of procedural rationality and substantive justice. In this paper, it is argued that this paper recommends a more dynamic change in the legal paradigm in the form of a limited

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participatory compensation framework and the preservation of the principles of the public ownership of land system. The framework entails the creation of moderate adversarial evidence systems to counter the rigidity of administrative reviews, along with technical regulations of changing the appraisal basis date to ensure the protection of the citizenry rights.

To sum up, one could say that the ideal compensation system should strike a balance between effective distribution of public resources and the warmth of protecting private property. The land expropriation system in Mainland China needs to be slowly transformed into a form of unilateral administrative review into a more precise model of participatory legal framework in accordance with the rule of law. Not only is this a necessary step in the process of the modern mechanisms of compensation being able to successfully reconcile procedural rationality with substantive justice, but also an important tool in the enhancement of modern governance capacities.

Author contribution

All the authors contributed equally.

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