

Research on the Social Obligation of Property Right and Property Collection

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Abstract: The emergence of the social obligation of property rights marks the property rights began to undertake social obligations, this paper from the study of the theoretical basis of social obligations at the same time, from the restriction of the property rights, to distinguish it and property collection to try to distinguish the value of theoretical reference.

Keywords: Property rights;Social obligations;Property collection;General restrictions;Individual restrictions

1. Social obligation of property rights

1.1 Contents and connotations of the social obligations of property rights

The origin of the Weimar Constitution as the social obligation of property rights marks the transformation of property rights from absolute to relative in the constitutional sense. The exercise of property rights should be in line with the interest of the public welfare, and the state can impose legal restrictions on the private property rights in order to promote the public welfare. Through the observation of the modern civil code norms, the concept of emphasizing the individual freedom and the absolute right of private property can be understood more intuitively. But if the ownership is allowed to move to complete freedom, it will lead to the destruction of property freedom due to its opposition to the society. Therefore, the transformation from absolute property right to social obligation means that the function of property right begins to assume the function of redistribution of social interests, rather than guaranteeing the private freedom to use and control the property at will^[1].

1.2 The theoretical basis for property rights and social obligations

The publicity of property right originates from the exclusive right of the subject of the right. In the use of property, the effect of making the full use of property and the elimination of private property rights are the two extremes of the public property of property right. When individuals obtain the specific property rights of society, they actually deprive the corresponding rights of other members of society. The fact that property rights come from the society and the theory of social contract can prove that property rights should serve multiple values. Social contracts occur not only between members of the society and the state, but also between social members. Therefore, social responsibility and social morality should be the necessary elements of property rights. There should be no arrangement conducive to the rich in the design of the system, and the rich should also be required to assume the responsibility of realizing social prosperity together.

2. Social obligations and the limitation of property rights

Property expropriation acts as a legal concept corresponding to the social obligation of property rights. Compared with identifying the social obligation of property right as a general limitation, the academic circle regards property expropriation as an individual restriction on property right. The social obligation of property right is the necessary element of property right, which is irrelevant to the property right itself. The significance of the distinction between the two is that the general limitation should not be compensated, and the individual limitation should be compensated. In order to protect the basic rights of citizens, the practical significance of exploring clearly the social obligation of property right and the restriction of property right is the purpose of compensating the limitation of a certain property right^[2].

Strength theory and special sacrifice theory dominate the discussion of property right restriction in German academic circles.

The strength theory points out that when the state's restriction on individual property rights reaches a certain intensity, it constitutes expropriation. The theory of special sacrifice, from the perspective of justice and equality, holds that if the property rights of an individual or a small group are damaged far more than others and are unforeseen special sacrifice, then this restriction should be regarded as expropriation. No matter which theory is based on, once constitute levy, should give individual corresponding compensation, to make up for its unfair treatment. The social obligation of the property and the expropriation can be transformed due to the intensity of the restriction^[3].

3. Review of the proportional principle of social obligations of property rights

When the law stipulates the social obligation of property right, it must be subject to the examination of whether it conforms to the constitution, which raises a question: what standard that the social obligation of property right should meet to review. The "proportionality" is one of the most important criteria for examination of fundamental rights in the Constitution^[4].

The "small pastoral case" is a historical German system designed to lease suburban land to urban residents to ease food shortages and ensure basic survival. The German law stipulates that the administrative organs set the rent standard, and it is difficult for the lessor to terminate the contract, resulting in the limited rights of the land right holder, which is regarded as the social obligation to assume the property rights. When social and economic conditions improve food no longer shortage, even if the small rural no longer play the main role of providing food supplies for urban residents, but small rural land lease holder is still restricted by property rights, the limit of the original land property holder in the 1979 federal constitutional court ruled in violation of the proportional principle, violates the fundamental content of property rights. When the rental policy of small countryside was born, the survival purpose of ensuring the food supply of urban residents disappeared, the social significance of its existence no longer existed, and there was no longer a legitimate purpose to continue the property restrictions of the land right holders of small countryside. The continued existence of this restriction violates the requirements of means and purposes in the principle of proportionality, and makes the land owners of small countryside lose the essential rights. Under the limitation of this high intensity, the private attribute of the property right and the meaning of the freedom of personal use no longer exist, which damages the main content of the property right. Although the social obligation of this property right is historically justified, it does not conform to the constitution in the new social context^[5].

When the law establishing the social obligation of property right is judged to violate the principle of proportionality and does not conform to the specific content of the Constitution, such social obligation to property should be abolished in time. But such restrictions are still necessary if lawmakers consider the public interest of social groups^[6].

4. The enlightenment of the German theory of property right and social obligation to our country

Different from Germany, China has an obvious concept of distinction between "expropriation" and "property restriction". Whether the transfer of property ownership is still the main basis for China to distinguish the two, but the distinction between the regulatory collection and the social obligation of property is still relatively vague^[7].

The essence of the traditional private property of individuals is to distinguish the property needs between individuals and groups. Generally speaking, private property represents the individual rights of individuals and does not contain the social obligations of property rights. Although the main content of property right is still the free exercise of private property, the relevant norms of social obligations of property right break the traditional concept of absolute freedom of private property right of individuals, and property right brings the redistribution of public interests of social groups into its core function. This means that even if the property right still belongs to the exclusive interests of the individual, the individual still has the right to dispose of the proceeds of the subject matter corresponding to the property right, but the individual must consider the public interest when exercising the property right^[8].

The theory of strength and special sacrifice of social obligation in German law can provide certain reference value for the theoretical study of social obligation of property right in China. The specific standard system of individual property and social obligations can be gradually established from the current administrative collection system in China.

Most of the social rights in the constitution of our country means that the obligee in the right of the corresponding social obligations, but from the current restrictions on the social obligations of property rights, the obligee because of the social obligations to sacrifice their property rights but not get compensation did not get the corresponding attention. In actual cases, in the case of the compensation and relief of the encounter strength theory and the special sacrifice theory, there is often no clear regulations to define the intensity of the sacrifice of the right holder. In this case, we can refer to the strength theory and the special sacrifice theory to con-

struct the public interest restriction regulations with the national constitution as the main content. On how to determine the individual property obligee to assume social obligations of the limit of the rights and interests of the sacrifice of the degree of compensation, the main key factor is how to measure the influence of the property of the restrictions of the property mark use function use scope, in order to determine whether the obligee of social obligations beyond the general limit and turn to individual restrictions, and the individual limit compensation^[9].

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