

Issues of historic buildings of preservation in Taiwan --A perspective property rights

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Abstract

The rapid transformation of economics and society in Taiwan had not merely led to de-memorize historic buildings, but increasingly made Taiwanese lose their valuable space of history. In order to present a historic development of cities, the historic buildings always constituted as the declined area in the cities. In the growing disappearance of these historic buildings that had rescued in people's minds are the illusive memories only. Recently, preservation concepts for historic buildings have become more important, while the meaning of common memory space for people living and growing-up is well aware in the world. Because ownership for historic buildings gets more private, people feel their historic buildings rights had deprived. From the governmental view of maintaining public benefits, the historic buildings interests belong to the public. This is why question of "who should own historical building rights? Is it controversial? Recently a lot approach practiced by many countries to solve the historic buildings problems such as zoning system and transferring development rights. However, most of them considered on the basis of statute and methodology without little philosophy thinking about the historic buildings issues. Although these approaches also used by many scholars, is it is really appropriate in Taiwan? For clarification these complex problems and who should have the historic buildings rights, the paper begins with the identification of historic buildings exploring the historic meaning of land property rights and ownership, and the equity. The preservations of historic buildings issues in Taiwan should examine and their policy implications for further research proposed.

Key Word:Historic buildings, Property rights, Zoning

Introduction

Most of the historic buildings have been the best symbols and records of city development in the past. In Taiwan, the rapid transformation of economy and society had not merely led to de-memorize historic buildings spaces, but also increasingly made residents lose valuable space of history. The historic buildings always constitute as the declined area in the cities, because they represent a historic development of cities. In the growing disappearance of these historic buildings, which have rescued in people's minds are the illusive memories only. Recently, it has focused on how we should preserve our historic buildings, while the meaning of common memory buildings for people living and growing up is well aware in Taiwan. The rights for historic buildings have not considered as private, until their houses already be limited to use and accounted historic buildings for the preservation reason by the government. Then owners would feel that their rights had be deprived. From the governmental view of maintaining public benefits, the heritage interests belong to the public. It is why questions of "who should own heritage right? Is it fair? Are controversial. Approaches such as zoning system and transferring development rights be used by many countries to solve the historic

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buildings problems. However, most of them considered on the basis of statute and methodology without little philosophy thinking about the heritage issues. Although many scholars also use these approaches, is it really appropriate for Taiwan's environment? In order to clarify these complex problems and who should have the historic buildings rights. This paper begins with the identification of historic buildings exploring the historic buildings meaning of property rights and land ownership, and the equity. The historic buildings issues in Taiwan should examine and their policy implications for further research be proposed.

Under the fast change of society and economy, not only historic buildings had be banished, but also vanished by people progressively. The old historic buildings zone becomes the declined spot in the city. What we can keep is only impracticable memory without specific space. Historic buildings have represented as significant symbols of history process. Specially when it can provide the setting and memory of the people, events, locations that have contributed to changing scene of human experience and they represent an important link across time and space. Yet, the preservation of historic buildings is a very complex and multi-faced problem. Because it not only embroiled in issues relating to land use and preservation of landscape that used to be, but also care about the property rights belong to whom. In USA enthusiasm for the cultural landscape has been partly attributed to the maturation of historic preservation movement in the late 1960s and early 1970 (Tishler, 1982).

Recently in Taiwan, people begin to notice the preservation of historic buildings more, for it was our living-memories in the past. Thus, historic buildings should preserve and conserved. In these days, the past people think that they have rights to use their own land of historic buildings, they do care if their rights be deprived or not. On the other hand, due to society fairness, government takes for granted the ownership attached to the public. We must conserve all historic buildings. Now, the point is who should have the rights of these? They had been serious arguments between rights of public and private for a long time.

Equity is other problem, too. In lots of countries, so far, many methods like TDR, permitting development, etc., have be used to solve these problems. In the fact these methods are still controversial. In Taiwan, many literate uses these methods, but do these fit in Taiwan? Most of discussions focus on legislation and methodology rights of historic buildings, but less for philosophy. Therefore, to make these complex problems easy to find "who have the rights of historic buildings?" Then this study will define historic buildings and discuss the development of rights; at first look into some historic buildings problems in Taiwan. Furthermore, trying to find fair situation and offer some approaches solve rights for historic buildings in the city and make a conclusion at the end.

Defining property rights

Property rights are an issue of long-standing debate throughout human history. What does it mean to think of land as private property? From the environmental protectors point of view, private property rights on the basis of being unless to others. Coase showed that the essential problem was not external effects in themselves but barriers to trade as attenuation of property rights and high transaction costs, including costs of bargaining. If transaction costs were low, the best solution would reach by bargaining between producer and consumer. Moreover, the best solution was unaffected by whether the relevant property rights were vest in the producer or consumer.¹ Therefore Coase use the bargaining way to solve.

The development in history of rights

¹ A critique of Pigou, Coase and other authors on this subject is given by Steven N. S. Cheung in *The Myth of Social Cost*, Hobart Paper 82, IEA, 1987.

Since the ideas of rights appear, there are lots of arguments for that. In different times and social backgrounds, it would appear different idea of rights. Therefore according to many literate and experts, I classify them into four periods by the times.

2nd Century BC Middle Century AD

First the concept of ownership rights law appeared in Civilian and German. They represented two different ownership rights. One was Individualism. The other was Socialism. Civilian means that people had absolute rights in private law. German means that rights should consider as the welfare of most people without arresting the rights of others, and then everyone could get and enjoy their rights. In this period, the concept of rights just started and developed increasingly.

17th Century AD -- 19th Century AD

In 17th century AD John Locke think that human should have the right of the survival and worked for basic life, and could not be deprived from others. After John Locke, Jean Jacques (1712-1778) advocated God-given human rights popularity in Europe in 17th and 18th century. Therefore civilians also agree this concept in USA and France. American constitution perspicuousness advocated people were born free to have rights without infringement. In other words, we should prospect the basis property right of people in the constitution. If we could not limit some rights, people's life could be in danger. So American constitution claimed that the country should protect all rights under limiting rights of persons.

19th Century AD -- 20th Century AD

In 19th Century AD, socialism becoming main stream, and socialism replaces individualism gradually. Rudolph von Thering(1818-1892) was the first one to advocate these. Otto Friedrich von Gierke(1841-1921) also agreed that socialism was a very important idea of human rights. L, eon Duguit (1859-1928) thought property. Property rights would be deference cause by prompting social welfare. Therefore we should take this duty for society. By the end of 19th century, socialism replaced individualism, specially in Germany. The most important to represent socialism is Germany constitution. Germany constitution was the best example to provide rights between people and government clearly.

20th Century AD -- Now

Recently, a lot of countries interfere legislation with authority, so that performing rights becomes more and more rigid. In the other hand, because government practice democracy institutions in many countries, then these make people's minds to release finally. People gradually cared and fought for their own rights. In order to fitting both ideas of socialism and individualism rights, Japan literate advance rights of harmony between individuals and society in 21st century.

Who has historic buildings rights?

Historic buildings in Taiwan

Historic buildings mean that architecture could reserve in period of history. According to the Oxford Dictionary mean that is a sign or relic of bequeathed by custom, faith, people, etc. These all are very old buildings or ruin, or a statue, painting, coin, etc., made in ancient time, could preserve nowadays. To sum up, historic buildings should be architectures after tempted by time and environment could still preserve now.

What is equity?

What is equity? Rawls (1971) tried to formulate an approach to understanding justice, which could apply to playing analysis. Misczynski (1978;p143) has noted that equity is slippery concept. Meadows (1977; p136) researcher inequity is a subjective concept, related to ethic and value and undeniable in exact terms.

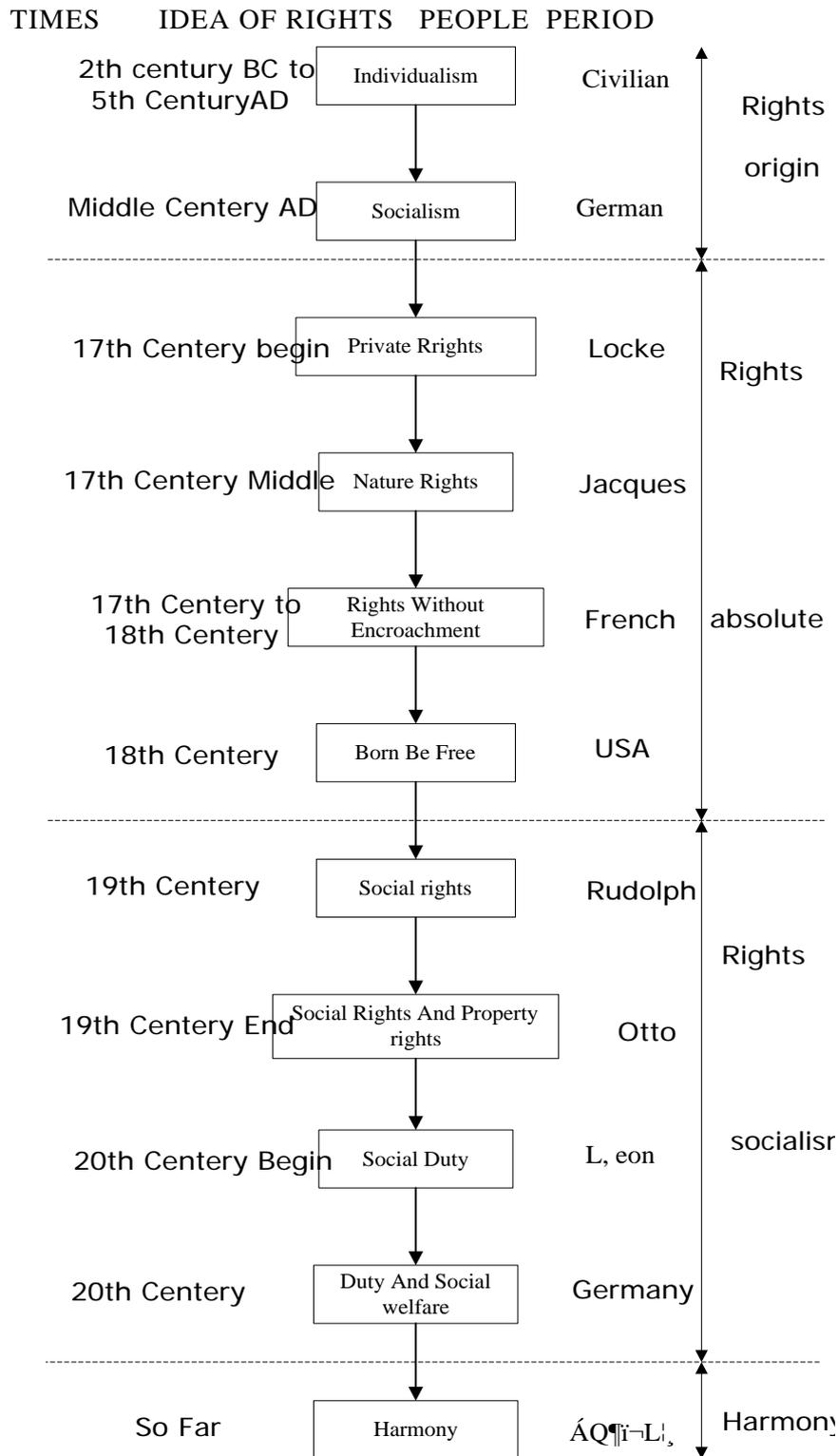


fig rights change by times

Do we should Conservative or redevelop?

People always argue it historic buildings should conserve or redeveloped in many years. In past autarchy, no one really cared the conservation of historic buildings, but now in democracy there are more and more people care about it. In 1972, UN approved an oath to protect historic buildings. In England, there was a same law, too. There is still a lots different advice showing how to preserve historic buildings in each country. The majority thinking still as same as conservation by historic buildings, if make an area to protect them. On the other hand, there are many countries taking good care of responsibility historic buildings (ex. England and USA), and it makes this job is well continuously. People always think that protecting historic buildings are like "curio," but I reject. We should understand that protecting historic buildings should not be like curio. Instead, it must redevelop and make it better.

Preservation historic building is a task that must considered combining urban plans and development. If this done well, not only can it could make connection to symmetry between historic buildings and environment, but also judge the rights for ownership. Therefore, a lot of methods like TDR (Transfer Development Rights) and permitting development be used to solve problems between preservation and development. In the fact these methods are still controversial and do not tell us who have rights for them. In Taiwan, a lot of literate use these methods, but "Do it work?" So far, it is still a problem. Before we finish this how do historic buildings redevelop, we should go for the development in history of rights first.

Problems of preservation in Taiwan

Preservation and ownership are the most important problems of historic buildings in Taiwan. A lot of Taiwan literate have already found some keys to solve the problems for preservation. There are a few people to consider who have ownership of historic buildings, including regulation of framework and laws, social value, Economics Efficiency.

Regularization of framework and laws

In Taiwan, laws made to protect cultural and historic buildings. According to regulations, government have all rights for historic buildings except private ones. When people use rights of historic buildings, it must privately own. In other words, this study tries to find out whether government dispossess private rights of historic buildings or not. There were more rough regulations than particular ways about how to protect historic buildings for urban plans in Taiwan. There is not a good system and framework to protect historic buildings. This also makes those who care about historic buildings feel unable to do well.

Social value

Although government had already advocated the idea to conserve and safeguard historic buildings for a long time, people still could not accept them. This is because of social values in Taiwan. People could not adequately understand how to conserve and safeguard those historic buildings can also enhance people 's living standard. To conserve historic buildings would be for their private benefits, and that is why they would counteract these works. The concept of selfishness exists in Taiwan society. In order to get more private benefits, most people agree to dismantle or reconstruct historic buildings. So the situation becomes worse. This is why conserving and safeguarding could be hard to establish in Taiwan.

Economics efficiency

At the angle of economics, people should have rights to keep the basic living needs. Base

on most people's welfare, government need levy or protect private historic buildings, then it should compensate owners for that. How are advisability and efficiency ways? So far, there are still no certain conclusions in Taiwan. In many countries (ex USA) TDR (Transfer Development Rights) ways have been used for many years in historic buildings conservation. That can solve some problems between government and owner. Therefore, preservation the historic buildings, at the same time, government must consider compensating owners who will lose benefits in Taiwan.

Do property rights of owner's equity?

It is hard to say who have the historic buildings rights. It belongs public or individual? It is no doubt that rights have to be established on the basis of fairness. Therefore it is necessary to understand some theories of fairness and justice just to make it more clear, including what is fair, how to judge fair? Rawls has some purpose of fairness.

What is fairness?

We thought that fairness always uses justice, dove-deck and equity together. Neither definition nor judgment both could hardly make a certain conclusion. Glaucon thought that fairness should consider one thing when he did something bad to others, not been punished and avenged. He considered it must be an engagement a compromise way to make laws or contracts in order to protect each right. Aristotle thought fairness is equals should treat equally and unequal. The other view like owner right it was right is rights. This all idea told us in order to pursue fairness must due to most people's great welfare and no hurt each other on time.

How do we judge fairness?

For fairness, no matter politician, jurisprudence or philosopher all had the same opinion. They thought whether fairness or not is a question of distribution. They hope to establish a kind of criteria to judge if fairness or not. Deutsch (1975) and Cohen (1989) thought standard of fairness must embody absolute fairness, need, and contribution at least. Hochschild (1981) also agreed with it. If we add ability, standing, process of contribution, the principle of judgment will be more impassability. Generally speaking, I agreed all thought could do preliminary judge fairness on the base.

Rawls-theory of justice

Fairness originated from Rawls (The Theory of Justice). After his idea, there were a lot of concepts of fairness coming up soon. Rawls indicated that society was an equity system that each should treat equally and freely. Rawls also referred that establishing society must depend on social welfare and fairness. In other words, he thought make rules for people to obey, then all should treat equally. Jean Jacques also had the same opinion in his book (Social Contract). If everyone wants to enjoy rights, they must obey social rules. Therefore, justice not only passively restrains private public behavior, but also positively protect the basic rights and free.

The purpose of fairness

Whatever it is fairness or not, both must abandon their rights, and then we could reach real equality. On the contrary, if everyone can not give up their rights for social welfare, there is no equality come true. This study hopes fairness based on conservation for historic buildings without ignoring rights of owners.

Historic buildings conservation and development in the future

Many historic buildings preservation problems still exist in Taiwan city. These problems happen especially in metropolis. So there are a lot of pressures and voice to dismantle historic buildings. How do we conserve and redevelop these cities without deprivation rights of owners? This is a hard work and needs some practical ways to solve them. Therefore, I offer an initial view to consult. Including strengthen good framework, legislate related the historic buildings laws, intense historic buildings of conservation, encouraging people to participate, fairness, and planner 's attitude.

Strengthen good framework

We shall establish strengthened framework as soon as possible. Thus, we can make laws to protect owner of historic buildings in legitimate. At the same time, let historic buildings owners know their rights clearly. On the other hand, government should establish new laws or ways in order to compensate for the lost to owner when government renew or protect historic buildings; then, it would reduce down play by people. There would not be more resistance and redevelopment.

Legislate Related Historic buildings Laws

Besides constituting laws, some laws must legislate and found where are their draw backs, because they utmoded. Evaluation is one of the most important things, which should be conservation? What is the criterion of conservation? There are all must establish evaluation system, then historic building can have a better principle to evaluate.

Intense historic buildings of conservation

Let people know the importance of historic buildings of conservation. There are still many ways to make owner content. Under conservation, their rights would deprive. It is necessary to educate our children to conserve historic buildings. Historic buildings represent the development history of the city, so it is the most precious property for human being.

Encouraging people to participate

It needs both the government and civilians to have the same opinion on which can ease the conflict between conservation and redevelopment and get the balance for future growth of city. In order to reach these goals, the best way is to encourage people to pay more attention and participate in on public. When people knowing what the government is doing, they would accept result that government and people deceased together.

Fairness

Owner of historic buildings is the most important problem that should treat fairly like the others. In the future, policy of historic building should not only consider as conservation of historic building, but protect rights of owners. Fairness goal means when historic buildings be conserved, people who own historic buildings can obtain rationality off set that he deserves. Therefore, not only owner of historic buildings could treat fairly, but also most people could enjoy their own rights in society.

Planner 's attitude

Historic buildings planning are different from the other substantiality plans. Urban planner must carefully pay more attention to historic buildings of history, social meaning, impact for city. Therefore, to be a good planner must take much more time to understand and realize. Which historic buildings should conceive and what is the principle of judging historic building before planner doing planning job.

Conclusion

Could fairness exist in historic buildings in the modern world? This question needs us to think and discuss seriously. If rights belonged to the public, government should seek the best benefits for most people in society. The way is to let historic buildings used and redeveloped propriety. On the contrary, it belonged too private, considering social welfare the private benefit, otherwise government should respect rights of owners. Without effecting their rights, government should permit people to use. Thus rights of owners would treat fairly.

To protect historic buildings without redeveloping to let it reborn and making better, then historic buildings could be just like "curio" at last. Historic buildings should use more elasticity and lively, and it can converge the principle of fairness. To preserve historic buildings is a job that needs consideration of both urban plan and development. This study has defined historic buildings and discussed theory of rights, besides seeking some historic buildings problems in Taiwan. I must point out that conserving historic buildings is a good way to redevelop city, not only conservation could deter city development, but also help planner to create new specific space. This way can bring more comfortable, cultural space to citizenry. It also can prompt city to become more attractive. Furthermore, I try to find fair situation and offer a little way to solve the problems of rights of historic buildings in the city.

Government seeks most people 's welfare to levy or protect private historic buildings then it should compensate owners for that. I think that the goal of fairness means when historic buildings be conserved, people who own historic buildings can obtain rationale offset that he deserves. Therefore, not only owners of historic buildings could treat fairly, but also most people could enjoy their own social rights.

To sum up, there are still different ideas of rights of historic buildings all around the world. We all need to establish a fair, suitable, and workable system in order to conserve historic buildings and redevelop cities without ignoring rights of owners. I hope sincerely this study would help those who are doing research about rights of historic buildings. This approach is full of challenge, and needs more people to take more time and efforts on these in the future.

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