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More is Better? Overcompensation in Takings in China

Abstract

Nowadays, there is hardly no country holds the doctrine of absolute property right in practice, especially when facing conflicts between public interests and private property rights. As to takings, more and more academic discussions focus on the “public interest” goal and the fair compensation standard instead of the legitimacy of the “takings” concept itself. Takings in China are really noteworthy for their extraordinary large scale and its relationship with the country’s rapid economic development. And what’s more interesting is that compared to the stereotype of takings as damage to property rights, Chinese people have more complicated attitudes towards takings since potential windfalls and violent conflicts co-exist in this process. Many lower class people even view the compensations of takings as their best way, if not the only one, to improve their living standards in short time. This paper intends to introduce the compensations of takings in China and explain the inner political economy logic briefly.

Annotasiya

Hal-hazırda praktikada, xüsusilə ictimai maraqlar və xüsusi mülkiyyət hüquqları arasında münaqişələrlə üzləşən zaman mütləq mülkiyyət hüququ doktrinasından istifadə edən heç bir ölkə yoxdur. Torpaqlar üzərində mülkiyyət hüququnun məhdudlaşdırılması haqqındakı elmi müzakirələrin çoxu “ictimai maraq” məsələsi və legitim “məhdudlaşdırılma”ların əvəzində ədalətli kompensasiya standartı anlayışı üzərində fokuslanır. Çində belə məhdudlaşdırılma əhalinin ağılsızdır. Dərəcədə geniş miqyası və bunun ölkənin sürətli iqtisadi inkişafı ilə əlaqəsinə görə həqiqətən olduqca əhəmiyyətlidir. Və daha maraqlısı məhdudlaşdırılmaların mülkiyyət hüququnun pozulması kimi görülməsi stereotipidir. Uğursuzluq və ciddi münaqişələrin eyni vaxta mövcud olması səbəbindən Çin əhalisinin məhdudlaşdırılmalara münasibətləri daha da mürəkkəbləşmişdir. Aşağı təbəqə əhalinin böyük hissəsi qısa vaxtda yaşayış standartlarının yaxşılaşdırılması üçün torpaqların tutulmasına görə kompensasiyanı yeganə olmasa da, ən yaxşı variant kimi görür. Bu məqalənin məqsədi Çində tutulmaların kompensasiyasını təqdim etmək və daxili siyasi-iqtisadi məntiqi qısaca izah etməkdir.

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Introduction

With symbols of demolition that can easily be found nationwide in the last decade, China is named the country of demolition. About 16% of Chinese households (about 65 million households) have once been involved in the eminent domain or demolitions during the process of city renewal and urbanization.¹ Another survey led by Chinese Academy of Social Sciences, which covered 160 towns and 184 villages nationwide, reported that more than half of the 1913 interviewees were eager to get involved in takings, as long as being compensated fairly.² Take car consumption as example; according to the data from China Automobile Dealers Association, among the 80,000 imported cars (which are more expensive and luxurious compared to domestic car) sold in Beijing in 2010, half were sold to condemnees. Fancy cars can very easily be found near Beijing Nanyuan Airport since it's common for the local villagers to get compensation of 20 to 30 million RMB (around 3.5-5 million U.S dollars) in the takings for the airport extension construction program.³

This paper does not intend to illustrate that property right is better protected in China than the US since not all condemnees are well compensated and violent takings do exist in China. However, the phenomenon that more people's living standards are lifted through takings and compensation also should not be neglected by academic discussion. Indeed, the logic of takings in China is more complex than protection or violation of property right itself. It is deeply rooted in the political economy of modern China and reflects the governments' hard balance of economic development and social stability.

I. Related Conception Clarification

According to the Article 10 of Constitution of China, "Land in the cities is owned by the state. Land in the rural and suburban areas is owned by

¹ Richard Silk, *Chinese Push for Urban Growth Carries Social Costs*, The Wall Street Journal (Oct. 30, 2013), available at <http://www.wsj.com/articles/SB1000142405270230384310457916742223721620> (last visited Feb. 6, 2017).

² Zhu Qizhen (朱启臻), *Peiyang Nianqing Zhiye Nongmin Shi Yixiang Zhanlue Renwu* (培养年轻职业农民是一项战略任务) [*It is a Strategic Task to Train Young Professional Farmers*], *Renmin Wang Lilun Ban* (人民网理论版) [PEOPLE'S DAILY NET THEORY SECTION] (Jan. 12, 2012, 9:08 AM), <http://theory.people.com.cn/GB/16857462.html>.

³ Mei Xinyu (梅新育), *Zhengdi Chaiqian Buchang Guogao Qushi Jiqi dui Chengzhenghua he Chanye Zhuanyi de Zuai* (征地拆迁补偿过高趋势及其对城镇化和产业转移的阻碍) [*The Trend of Too High Compensation for Takings and Its Negative Effect on Urbanization and Industrial Transfer*], 4 *Tansuo* (探索) [PROBE] 47(2013).

collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives. The state may, for the public interest, expropriate or take over land for public use, and pay compensation in accordance with the law. No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means.”⁴ In another words, no lands in China are owned by individuals, which differs from the traditional western framework of property right. And thus, some concepts in Chinese context need to be clarified in advance.

The first related concept is *CHAI QIAN* (拆迁), the action of expropriation and demolition of buildings and request of the residents to move. The second is *ZHENG DI* (征地), which means the collectively owned rural lands be taken by eminent domain. Due to the rural-urban dual household registration (*HUKOU*, 户口) system, urban lands are state owned and what residents hold is the ownership of the buildings built on the land. While the rural lands and lands of suburb of cities are collectively owned by the village, and each family also has the ownership of the buildings built on the land. Therefore, in Chinese context, the eminent domain can only be used in rural areas and the demolition can be seen both in urban and rural areas. The phenomenon of overcompensation exist in both urban and rural areas although takings in rural areas are more complicated for involving the shift of *HUKOU* style from rural to urban one, which would usually also terminate condemnees’ career as farmers. This article focus on demolitions in urban areas since the existence of real property market in urban areas makes it possible to make comparison to market value, which is seen as an easy and well-accepted standard in the U.S and worldwide.

II. Literature review

The fifth amendment of the U.S constitution provides that “[n]or shall private property be taken for public use, without just compensation”. As to the standard of “just compensation”, “fair market value” is the most widely accepted standard in U.S or worldwide. However, the standard of “fair market value” has long been seen as a fiction and been criticized for both possibility and rationality. Firstly, some scholars discussed that the standard of “market price” is impossible logically. Takings typically happen where negotiations for a market transaction break down, so by definition ‘market value’ is unavailable in takings.⁵ Of course, references like transaction history, similar transaction, rental value, replacement cost, the degree of wear and tear

⁴ XIANFA art. 10 § 1-3 (1982) (China).

⁵ Thomas W. Merrill & Henry E. Smith, *Property: Principles and Policies* 1250 (Foundation Press 2nd ed. 2012).

can all be used to assess the approximate market price, but the accuracy is still hard to be guaranteed. The “thick market”,⁶ which Merrill takes as a requisite for market value standard for compensation, can rarely be qualified in takings, especially in China, where the housing market in urban areas only established in 1998 and not even yet in rural areas. Secondly, many argue that the market price is not reasonable standard for compensation for not including subjective attachment,⁷ as well as some more items that are not covered by market price.⁸

Instead of the standard of market price for compensation, the U.S Supreme Court has stated that the first-best option should put owner if condemned property “in as good a position pecuniarily as if his property has not been taken.”⁹ This can be divided into the subjective category and objective category. Condemnees’ subjective indifference to takings could be a favorable status although quite hard to assess. However, some interesting and experimental mechanisms have been designed and suggested to help, among which the tax-related self-assessment is the most highlighted and potentially feasible.¹⁰ Objective methods are more variedly designed. “Specific items add-on” standard emphasizes on compensating those out-of-pocket but uncompensated expenses, including the attorney’s fee, relocation fee, which takees have actually paid but not included into market value.¹¹ Quite a lot of policies take “specific items add-on” standard as reference in reality. For

⁶ Thomas W. Merrill, *Incomplete Compensation for Takings*, 11 N.Y.U. Envtl. L. J 110, 116 (2002).

⁷ See, e.g., Robert C. Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV 681, 735 (1973) (using the concept of “consumer surplus” to illustrate “the excess of this subjective value over market value”); Thomas W. Merrill, *The Economics of Public Use*, 72 CORNELL L. REV 61, 83 (1986) (suggesting that condemnee may not be compensated for the “subjective premium” that “he might attach to his property above its opportunity cost”); MARGARET JANE RADIN, REINTERPRETING PROPERTY 3 (1993) (developing the “personality theory of property” which emphasizes that “ownership is bound up with self-constitution or personhood”).

⁸ See, e.g., Katrina Miriam Wyman, *The Measure of Just Compensation*, 41 U.C Davis L. Rev. 239, 254-255 (2007) (categorizing “non-compensable losses” as “out-of-pocket expenses”, “difficult-to-quantify intangible or subject losses” and missed gain); Lee Anne Fennell, *Taking Eminent Domain Apart*, 2004 Mich. St. L. Rev 957, 963-966 (2004) (categorizing “uncompensated increment” as “the subjective premium”, a chance of reaping “surplus from transfer” and owner’s “autonomy to decide when and whether to sell”); Nicole Stelle Garnett, *The Neglected Political Economy of Eminent Domain*, 105 Mich. L. Rev 101, 106-109 (2006) (categorizing the “unjust compensation” as “economic losses”, “subjective losses” and “dignitary harms”).

⁹ *Olson v. United States*, 292 U.S. 246, 255 (1934).

¹⁰ Nathan Burdsal, *Just Compensation and the Seller’s Paradox*, 20 BYU J. Pub. L 79, 96 (2005) (suggesting a self-assessment model which “can be used in conjunction with the tax-based insurance model to determine the willingness of individual sellers”). See also, Abraham Bell & Gideon Parchomovsky, *Taking Compensation Private*, 59 Stan. L. Rev 871, 871-875 (2007).

¹¹ See, e.g., Garnett, *supra* note 9, at 121.

example, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) covers the relocation expenses by federal funds.¹² “Proportional increase” standard suggests certain percentages of bonus payments for compensation.¹³ Another alternative is “benefit/loss equivalent” standard, which is raised by Roger P. Smith. It sets compensation equal to the benefit received by the taker from acquiring the property or based on the loss to the owner.¹⁴ A fourth method is “living standard equivalent” standard. Wyman recommends an “objectively indifferent to takings” standard which would be “a considered judgement by outsiders about the amount of compensation required to allow a take to enjoy the elements of socially valuable life to the same extent that she enjoyed them before the taking.”¹⁵ All these objective standards can be found in China’s practice solely or in combination case by case.

III. Basic Institutions of Overcompensation in China

As mentioned above, although lands do not belong to individuals, buildings do. Takings of buildings also follow the rule of public purpose and fair compensation according to the Constitution.¹⁶ And the establishment of urban housing market in 1998 makes “market price” gradually accepted as a basic line, although not rigid and only one. Article 19 of *Regulation on the Expropriation of Buildings on State-Owned Land and Compensation* requires that “compensation for the value of expropriated housing may not be lower than the real estate market prices of expropriated housing on the day the housing expropriation decisions are announced.”¹⁷ Since this regulation is made by the

¹² 42 U.S.C. § 4630 (2000).

¹³ See e.g., John Fee, *Eminent Domain and the Sanctity of Home*, 81 NOTRE DAME L. REV. 783, 814-815 (2006) (recommending a compensation standard of market value plus “X percent” of that value, in which X depends on the length of living, ranging from 2 to 60); Richard A. Epstein, *Takings: private property and the power of eminent domain* 173-174 (1985) (emphasizing that the surplus generated by takings over market price should be divided evenly and giving the example of New Hampshire Mill Act’s compensation standard that be “payable to the owner of flooded land at 50 percent above the market value, thereby ensuring a division of the surplus brought about by the forced exchange”); Thomas S. Ulen, *The Public Use of Private Property: A Dual Constraint Theory of Efficient Governmental Takings*, in *Taking Property & Just Compensation: Law & Economics Perspectives of the Takings Issue* 163, 180 (Nicholas Mercuro ed. 1992) (proposing the compensation of 125% of market value).

¹⁴ Roger P. Smith, *Real Property Valuation for Foreign-Wealth Deprivations*, in *The Valuation of Nationalized Property in International Law* 141 (Richard B. Lillich ed. 1972).

¹⁵ See Wyman, *supra* note 9, at 244.

¹⁶ Xianfa art. 13 § 3 (1982) (China).

¹⁷ Guoyou Tudi Shang Fangwu Zhengshou yu Buchang Tiaoli, (国有土地上房屋征收与补偿条例) [Regulation on the Expropriation of Buildings on State-Owned Land and Compensation] (promulgated by St. Council, Jan. 21, 2011, effective Jan. 21, 2011), §§ 19, St. Council Gaz., Jan. 30, 2011, at 3, <http://landwise.resourceequity.org/record/270> (China).

State Council and is of legal force nationwide, “no lower than” market price could be seen as a national framework principle of compensation. In other words, the overcompensation can be viewed as the original goal of compensation to some extent. And the alienation of the institutions in practice sometimes enlarged the degree of overcompensation to an unreasonable one.

There are several specific institutions are widely used to guarantee the realization of the “no lower than” market price standard in China. The first important institution is the dual-compensation institution, through which governments provide housing compensation as an alternative for monetary compensation. The article 21 of the *Regulation on Expropriation of Buildings on State-Owned Land and Compensation* entitles an owner to “choose either monetary compensation or exchange of titles.”¹⁸ The dual-compensation institution itself could be seen as a product of the transformative period from planned economy to market economy. Housing compensation solves the problem of incomplete market system in early years. To those families whose only house facing takings, the exchange of titles could help to prevent them from being homeless. Actually, millions families took housing compensation as first choice and have moved to the new apartment buildings constructed by governments. Providing and encouraging housing compensation can be seen as a nudge by the governments who intend to improve the housing condition of condemnees as well as reduce the marginal cost by constructing new apartment buildings in large amount. The housing compensation also offers a solution to the undercompensation caused by ignoring “the value that property owners derive from living in a close-knit community”.¹⁹ The families that treasure the community-tie and relationship with neighbors can choose to move to the same community or even the same building. The overcompensation is most possible and obvious in takings of poor-conditioned housings, such as slums, which are of very low market value or even no willing buyers at all. Housing compensation can surely help to improve the housing condition of those poor families. When Premier Li Keqiang visited a slum in Shanxi Province in the Jan. 1, 2016 as the first investigation of the New Year, the inhabitants there complained to him that the housing conditions were too poor that they even had difficulty in using toilets. Premier Li expressed understanding and said he once lived in this kind of slum and queued to get to toilet as well.²⁰ Since some basic requirements

¹⁸ *Id.* §§ 21.

¹⁹ Gideon Parchomovsky & Peter Siegelman, *Selling Mayberry: Communities and Individuals in Law and Economics*, 92 Cal. L. Rev. 75, 84 (2004).

²⁰ Zou Chunxia (邹春霞), Li Keqiang Kainian Kaocha you Shenme Jiangjiu (李克强开年考察有什么讲究?) [What’s Remarkable about Li Keqiang’s First Investigation of the New Year?], Zhongguo Zhengfu Wang (中国政府网) [China Gov Net] (Jan. 5, 2016, 9:54 AM), http://www.gov.cn/zhengce/2016-01/05/content_5030712.htm.

cannot be met, it is not strange at all that in some cases inhabitants are so eager to takings, which could provide new apartments as well as new life.

A second institution is the minimum compensation standard, which aim to guarantee the basic requirement for living. The specific minimum standards are set by local governments, varying case by case. But some provinces set lowest standard by local regulations. For example, Inner Mongolia sets 50 square meters as minimal compensation standard for housing compensation²¹, which means no matter how low the market value of the original house is, the compensating housing cannot be smaller than 50 square meters and the minimal monetary compensation should be no less than 50 square meters multiply unit market price. Zhejiang²² and Shandong²³ Province both set the minimal standard as 45 square meters. In practice, the more local the government is, the higher the minimal standards it may set. Actually, the housing types of new constructed apartment buildings for compensation are standardized, usually of one-bedroom, two-bedrooms or three-bedrooms types. Once enrolled in takings, even the houses with poorest original conditions can be compensated for at least one-bedroom apartments. High value taken house can get compensation of several units of apartments with combination of these three types.

A third important institution is the housing population reference for compensation, which is closely related to household registration (*Hukou*) system. Although market value is the basic standard for compensation, housing population is also considered in the calculation of compensation. Take Shanghai as an example, the regulation guarantees 22 square meters per person.²⁴ In another word, if a small housing were registered with many members, the government would compensate according to population

²¹ Neimenggu Zizhiqu Guoyou Tudi shang Fangwu Zhengshou yu Buchang Tiaoli, (内蒙古自治区国有土地上房屋征收与补偿条例) [Regulation on Expropriation of Buildings on State-Owned Land and Compensation of Inner Mongolia Autonomous Region] (promulgated by the Standing Comm. Inner Mongolia People's Cong., Nov. 25, 2015, effective Mar. 1, 2016), §§ 30, CLI.10.1142763 (Lawofchina).

²² Zhejiang sheng Guoyou Tudi shang Fangwu Zhengshou yu Buchang Tiaoli, (浙江省国有土地上房屋征收与补偿条例) [Regulation on Expropriation of Buildings on State-Owned Land and Compensation of Zhejiang Province] (promulgated by the Standing Comm. Zhejiang People's Cong., May. 28, 2014, effective Oct. 1, 2014), §§ 22, CLI.10.864217 (Lawofchina)

²³ Shandong sheng Guoyou Tudi shang Fangwu Zhengshou yu Buchang Tiaoli, (山东省国有土地上房屋征收与补偿条例) [Regulation on Expropriation of Buildings on State-Owned Land and Compensation of Shandong Province] (promulgated by the Standing Comm. Shandong People's Cong., Nov. 27, 2014, effective Mar. 1, 2015), §§ 25, CLI.10.1036823 (Lawofchina)

²⁴ Shanghai shi Guoyou Tudi shang Fangwu Zhengshou yu Buchang Shishi Xize, (上海市国有土地上房屋征收与补偿实施细则) [Rules of Shanghai Municipality on Implementing House Expropriation and Compensation on State-Owned Lands] (promulgated by the Standing Comm. Zhejiang People's Cong., May. 28, 2014, effective Oct. 1, 2014), §§ 31, CLI.11.542894 (EN) (Lawofchina).

standard instead of market price standard.

In a word, all these institutions are designed to offer mild overcompensation and lift the living condition for the condemnees. However, the plural and flexible compensation standards can easily lead to opportunism, corruption and windfalls in takings. For example, the families who get the information of taking plans from insiders or those only predict of takings could do some preparations by increasing registered family members, enlarging the housing by illegal construction or just purchasing the housings in these areas before the date of declaration of takings. Interestingly, the divorce rate rose dramatically in some takings since the increasing housing needs caused by divorce would usually be admitted by the takers.²⁵ Others enlarge the family population by inviting relatives or friends to transfer their household registration to the housing to be taken. All these methods can raise the risk of moral hazard and distribution conflict, which may ruin the ethical foundation of the society.

Besides these formal institutions and their alienation in practice, another important cause of overcompensation is holdout. The phenomenon of nail householders did not originate from China, but is greatly developed in this country. There are nail householders in almost every taking case in China, no matter for pure public interest or for economic development.²⁶ Most nail householders got overcompensation or windfalls at the end in practice, stimulating more to imitate and upgrading the conflicts between condemnees and governments.

IV. Political Economy Analysis

The unique phenomenon of overcompensation in China can be viewed as a product of government's attempt of balancing the economic development and social stability. Rapid economic development of China in last 30 years is the basic background of frequent takings. Neither infrastructure construction nor urban renewal can happen without takings. The Slogan of "No demolition, no development" has been used by local officials when advocating takings to the condemnees. Local governments and officials have full incentives to takings for several reasons.

²⁵ Hao Shaobin (郝绍斌), *Zhadui Lihun Kaoyan Jiceng Zhengdi Chaiqian Zhihui* (扎堆离婚考验基层征地拆迁智慧) [*Soaring Divorce Rate Challenge Local Taking Practice*], Zhongguo Fayuan Wang (中国法院网) [CHINA COURT NET] (May. 26, 2016, 8:41AM), <http://www.chinacourt.org/article/detail/2016/05/id/1884301.shtml> (last visited Feb. 6, 2017)

²⁶ Emily Chan & Oliver Chan, *You'll Have to Build Around Us! 'Nail' House Stand defiant Against Property Developers as Stubborn Residents Refuse to Move Away*, DAILY MAIL, (July 22, 2015, 9:02AM), <http://www.dailymail.co.uk/news/peoplesdaily/article-3170596/You-ll-build-Nail-houses-stand-defiant-against-property-developers-stubborn-residents-refuse-away.html> (last visited Feb. 6, 2017).

Firstly, the promotion mechanism of local officials, which emphasizes GDP and economic development, also stimulates them to demolish and construct. Compared to other strategy of economic development, like industry upgrade or technical innovation, takings and constructions bring much faster and more obvious effect to local development. In fact, the revenue of land sales is the largest income in local finance in many areas. Take Beijing as example, the annual financial income of 2015 was 472.3 billion RMB²⁷ (around 73 billion U.S dollar), while the revenue of land sales was more than 200 billion RMB²⁸ (around 31 billion U.S dollar). The proportion of land revenue could be higher in other cities since their resources of financial income are not as plural as Beijing.

Secondly, takings and construction offer great opportunity for corruption. A survey shows that among the 83 senior officials involving in corruption cases during November 2011 to November 2013, more than half were related to the corruption in takings and construction.²⁹ Last but not least, the new and modern appearance of the local areas and the convenience of infrastructures could help to realize the self-achievement of local officials.

The economical motive could lead to large scale of takings. But the overcompensation is the result of balancing both economical and political goal. Gevinson argues that government actors in the U.S. mainly respond to political incentives, not financial ones- to votes, not dollars.³⁰ This logic is similar here. But the index of political incentives here is not votes, but people's satisfaction, which usually show in a counter form, dissatisfaction and conflicts. This is a more basic and strict requirement constrained to governments of all levels. Stability is the top concern, as well as the foundation of any development. To local officials in China, social conflicts even of small scale could easily destroy their whole political careers. Takings in early days

²⁷ Sha Lu (沙璐), 2015 Beijing Caizheng Shouru 4723yi yuan Wancheng Yusuan (2015北京财政收入4723亿完成预算) [*Beijing Financial Revenue of 472.3 Billion Yuan, Meeting the Budget*], Xin Jing Bao Wang (新京报网) [Beijing News Net], (Jan. 6, 2016), http://epaper.bjnews.com.cn/html/2016-01/06/content_617103.htm?div=0 (last visited Feb. 6, 2017).

²⁸ Li Haixia (李海霞), Beijing 2015nian Tudi Churangjin chao 2000yi (北京2015年土地出让金超2000亿) [*Land-transferring of Beijing in 2015 was more than 200 billion yuan*], Qian Long Wang (千龙网) [QIANLONG NET], (Dec. 24, 2015, 2:46PM), <http://beijing.qianlong.com/2015/1224/217458.shtml> (last visited Feb. 6, 2017).

²⁹ Liu Jun (刘俊), Shibada hou 83 ming Luoma Guanyuan Duoshu yu Dachai Dajian Youguan (十八大后83名落马官员多数与大拆大建有关) [*Most of the 83 Senior Officials Implicated in Corruption after 18th CPC National Congress were Involved in Takings and Construction*], Wang Yi Wang (网易网) [NETEASE], (Nov. 14, 2013, 11:21AM), <http://news.163.com/13/1114/11/9DKUD6JD0001124J.html> (last visited Feb. 6, 2017).

³⁰ Daryl J. Gevinson, *Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs*, 67 U. Chi. L. Rev 345, 345 (2000).

were relatively peaceful since they were mainly for public interest and condemnees were more easily to be satisfied to the compensation. But the stories of windfalls lift condemnees' expectations greatly, encouraging them to struggle and bargain. Takings in cities are usually not isolated ones, but clearings,³¹ which could easily lead to collective and severe social unrest. The frequent conflicts in takings in recent years push governments to introduce some institutions to avoid the instability caused by takings. The first is the pre-taking social stability risk assessment required by article 12 of the *Regulation on the Expropriation of Buildings on State-owned Land and Compensation*.³² Takings that are assessed as of high social stability risk need be denied or postponed by the local governments. A second institution is the pre-taking agreements, which need be signed by condemnees and governments. Only if certain proportions of owners agree to the plans of takings and compensations, takings could be put into practice. The necessary agreement rates are set by local governments, basically varying from 70% to 90%. For example, Shanghai sets 80%³³ as baseline for all the urban renewal programs. Pure public interest takings are only required get the baseline set by local governments. While economic development program are usually asked for higher agreement rate to control risk. It is a little tricky that in some cases, the agreement rate is high enough to start a taking program, but condemnees refused to follow the agreement they signed before and ask for higher compensation. A third usual method is pre-taking owners conference, which intends to enhance democracy and transparency though participation and negotiation between two parties. This method is also not so effective since many of them are unwilling to participate and express real need until the final individualized negotiation for compensation. The relationship between condemnees could be subtle, they may unit as a whole to ask for more compensation, but they may also envy or complain others' windfalls. Some nail householder which get windfalls are even required to sign confidentiality agreement to avoid new potential conflicts for inequality.

V. Conclusion

In Calabresi and Melamed's classical framework³⁴, what the Fifth Amendment of U.S Constitution provides its liability rule protection for property owner. While Chinese taking practice usually departs from the liability rule, and reaches a fragile balancing point between liability rule and

³¹ Gideon Parchomovsky & Peter Siegelman, *supra* note 24, at 137-138 (categorizing takings cases into isolated takings, tippings, and clearings three categories).

³² See *supra* note 22, §§ 12.

³³ See *supra* note 25, §§ 21.

³⁴ See generally, Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 Harv. L. Rev 1089 (1972).

property rule. The compensation institutions in China have the advantages of lifting the overall housing condition and welfare of the condemnees. However, the overcompensation, which is based on the rapid economic development, is not sustainable once the economic development slows down. Moreover, the overcompensation in takings may lead to opportunism, corruption as well as more serious inequality between families which have been taken and which have not. All in all, the phenomenon and experience of takings in China should still be introduced and discussed both academically and practically.