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厦门大学

硕士学位论文

我国城市房屋拆迁制度的完善

On Perfection of System of Dismantling and

Removing of Urban House in China

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## 内 容 摘 要

我国城市房屋拆迁制度经过两次的变迁。第一次是上个世纪 90 年代初，为加快城市旧区改造和新区建设，优化城市生态环境和推动城市经济发展，国务院于 1991 年制定了《城市房屋拆迁管理条例》。这是我国上世纪城市拆迁依据的主要法规。以后全国各地相继制订了与之配套的地方性法规或规章，并在实践中不断予以规范和完善，逐步形成了一套基本的拆迁制度，使各地的拆迁工作得以顺利进行。第二次是为了适应经济体制改革的需要，2001 年国务院制定了新的《城市房屋拆迁管理条例》，对 1991 年制定的旧《条例》进行了修改补充，全国各地和建设部也制定了相应的配套法规、规章，形成了较全面的现行城市房屋拆迁制度，新《城市房屋拆迁管理条例》对我国本世纪经济建设和城市的发展起了重要的作用。

随着我国经济发展和社会进步，现行拆迁制度在立法和实践层面严重侵犯了公民的私人财产权，因此如何完善我国的城市拆迁制度，保护公民的私有财产权，以适应我国社会进步的需要，显得极为重要。本文侧重于研究我国现行城市房屋拆迁制度存在的问题并对如何解决问题提出自己的一些看法，试图解决在城市房屋拆迁中如何切实保护公民的私人财产权的问题，完善我国现行城市房屋拆迁制度，以适应我国市场经济发展和依法治国的需要。

本文共分五部分

前言：通过讲述我国城市房屋拆迁的重要性及两个事例，引出对我国城市房屋拆迁制度存在问题的思考。

第一章：论述宪法保护公民私人财产权的重要性、国内外宪法对私人财产权的规定及其特点、我国宪法对私人财产权规定的历史沿革等。

第二章：论述我国城市拆迁制度存在的问题。存在问题包括拆迁立法和拆迁制度方面的问题，拆迁立法问题主要是征收和征用私人财产的程序规定不明确，《城市房屋拆迁管理条例》与法律冲突，拆迁的法律阶位与立法法的规定不一致，《城市房屋拆迁管理条例》中的法律错误等。拆迁制度存在的问题主要是城市拆迁评估制度不公正，拆迁补偿制度不合理，政府各部门在拆迁中的职能界定错误，强制拆迁侵犯公民人权，滥用公共目的导致随意拆迁

## 内 容 摘 要

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第三章：论述完善城市房屋拆迁制度的措施，主要是确立拆迁的正当法律程序，严格限定城市强制拆迁的范围，实行公平和合理补偿，妥善解决安置问题，正确界定政府在城市拆迁中的职能，扩大法院的司法审查范围，规范强制拆迁行为等。

结 束 语：通过论述我国城市房屋拆迁存在的问题及完善的措施，提一些完善我国城市房屋拆迁制度的具体建议。

**关 键 词：**城市房屋拆迁制度；私人财产权；完善；

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## ABSTRACT

The system of dismantling and removing of urban house has been changed twice. The first change is in the early 1990s. In order to quicken the reconstruction of old urban districts and building of new districts, and for the purpose of beautifying the urban environment and promoting economy development, State Department enacted Management Statute of Dismantling and Removing of Urban House in 1991. The statute is the most important regulation, which regulated actions of dismantling and removing of urban house. After the statute, local regulations on this field were enacted one after the other in many provinces, which were improved in practice. Therefore, a fundamental system of dismantling and removing of house was formed, which directs dismantling and removing work. The second change is in 2001. The investment subjects of city construction shifts government to social organ and individuals. In 2001, State Department enacted new Management Statute of Dismantling and Removing of Urban House as to respond demand of economy system reform, based on the amendment and makeup of the old statute. At the same time, local governments and construction department enacted corresponding regulations. The new statute has played an important role in the construction and development of the cities.

The statute is just like a two-edged sword, which brings out the economy development and social process and the consequence of infringement of private property rights of citizen. Therefore, it is necessary to perfect the system of dismantling and removing of house as to protect the private property rights and accommodate social development. This thesis concentrates on analysis of problems of dismantling and removing of house and suggestions as to how to perfect the legal system, for the purpose of protection of citizen's private property rights. Perfection of the system is to accommodate the need of promoting social development and legal government.

This thesis consists of the following five parts.

The part of preface points out the significances of dismantling and removing of urban house, giving two examples.

Chapter One discusses the significances of constitutional protection of citizen's private property rights. And then, the writer introduces the legal system of dismantling

and removing of house in foreign countries and analyzes its characteristics. At last, the historical evolution of constitutional protection of citizen's private property rights in China is also discussed.

Chapter Two describes problems of dismantling and removing of house in China, which exist in both regulations and legal systems. From the legislative perspective, procedural regulations on expropriation of privacy property is ambiguous, and there are conflicts between the Law and Management Statute of Dismantling and Removing of Urban House, and Management Statute of Dismantling and Removing of Urban House doesn't observe Legislation Law on Legal Force. What's more, legal mistakes exist in Management Statute of Dismantling and Removing of Urban House. Similarly, there are problems in the system of dismantling and removing of house in China, that is, assessment system of dismantling and removing of urban house is unjust system of compensation for loss is unreasonable, orientation of function of government department in dismantling and removing of house is inaccuracy, dismantling and removing by force infringes human right of citizen, and abuse of public interest results in dismantling and removing of house at random.

In the last chapter, the writer advances some suggestions as to how to perfect the system of dismantling and removing of house, such as establishing just legal procedural system of dismantling and removing of house and limiting scope of dismantling and removing of urban house by force strictly. In addition, it is necessary to compensate for loss justly and reasonably and solve problem of resident arrangement appropriately. Finally, the writer points out that function of government should be defined correctly, the scope of judicial review should be enlarged, and action of dismantling and removing by force should be regulated.

Finally, in the part of conclusion, based on analysis above, the writer advances some suggestions as to how to perfect the system of dismantling and removing of urban house in China.

**Key words:** System of Dismantling and Removing; Private Property Right; Perfection



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## 前 言

城市房屋拆迁是城市发展、城市建设的一项非常重要的工作。做好城市房屋拆迁工作，能够有效地保证住宅建设、城市基础设施建设及旧城改造等的顺利进行。同时，能够促进城市环境的改善，提升城市的功能，为城市经济的发展和和社会稳定作出重要贡献。因此我国在城市拆迁方面的立法条件还不够成熟的背景下，授权国务院分别于 1991 年和 2001 年制定了两部《城市房屋拆迁管理条例》行政法规。这两个条例对我国上个世纪 90 年代以来的城市房屋拆迁工作起了重要的指导、规范作用，全国各地和建设部在两个条例的基础上也制定相配套的法规、规章，指导各地具体的城市拆迁工作，发展形成了我国目前较全面的拆迁制度。随着我国经济发展和社会进步，现行城市房屋拆迁制度存在的问题也逐渐暴露出来，2003 年 8 月 22 日，南京市被拆迁户翁彪因为对拆迁不满在玄武区邓府巷拆迁办公室内点燃自己浇满汽油的身体自焚，导致发生包括其本人在内多人受伤的事件；此事让人对我国现行城市房屋拆迁制度引起了深刻的反思：被拆迁人为何会以这种惨剧的方式来表达对我国城市房屋拆迁制度的严重不满？虽然此种方式是不可取的，但从整个事件来看，主要原因是我国目前现行城市房屋拆迁制度严重侵犯了公民的私人财产权和人身权等权利。财产权是公民生存的基础，没有了财产权，就无从谈起其它的权利，财产权是最基本的人权，各国宪法包括我国宪法都对保护公民的私人财产权作了规定。本文侧重于研究我国目前城市房屋拆迁制度存在的问题及如何进行完善提出自己的一些看法和见解，试图解决我国现行城市房屋拆迁制度在立法和实践方面侵犯公民私人财产权和人身权的问题，为我国改进现有的城市房屋拆迁制度提出一些建议。

## 第一章 宪法对私人财产权的规定

### 第一节 宪法保护公民私人财产权的重要性

#### 一、财产权保障是建设法治国家的基础

近现代社会结构的一个基本事实,就是私人领域逐渐摆脱政治国家的控制获得独立,成为整个市民社会的基础,并与公共领域形成二元对立。私域独立的首要条件是个人人格的独立和理性的充分运用,财产权正是个人人格和人类理性的外化。它不仅是市场自发秩序的前提,也构成社会自律的首要条件,因而是维护社会秩序,建立法治国家的基础。人权是法治的核心内容,法治是人权的表现形式,保障基本人权已经成为近现代法制的基本价值目标。没有财产权,人权就没有实际内容。财产权被认为是一个人的自由意志的体现,是他的自由的外在领域。人自身作为目的所具有的价值,不能自己证明自己,只能通过财产权得到表现、得到确证。不承认财产权,个人就难以获得独立的人格,人的意志自由也必然趋于任性,以保障人权为目标的现代法制就不可能建立起来。只有体现在财产权中的意志才不会成为主观的任性,而能够与理性相一致。任何人在财产的占有、使用和处分关系中,都会理性地进行成本收益核算,而不会滥用他的自由以招破产。财产权受到蔑视总是与人权受到排斥紧密联系着的,因为在财产权得不到尊重的社会里,个人在自由意志支配下的行为将不受对成本收益进行理性核算的约束。由于个人对其行为没有后顾之忧,法律秩序必然受到严重威胁。<sup>①</sup>

#### 二、财产权保障是提高经济效率、促进经济增长的重要手段

社会生产是在一定的制度规则约束下,物质资源与人力资源相互作用的过程。提高经济效率,需要普遍界定人们对各种生产要素的权利,物权是权利主体对物质资源的所有权,人权则是权利主体对人力资源的所有权,物权保护与人权保障都是经济增长不可缺少的条件。传统民法的财产权就是物权,注重物质资本对经济增长的贡献;即使现代民商法与人力资源密切相关的工业产权和知识产权

<sup>①</sup> 赵世文.论财产权的宪法保障与制约.北京.法学评论.1999(3).8-10



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