合作与分歧: S村征地过程问题研究

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声明

根据学术研究规范,本文叙事中所涉及到的人名、地名及图片等要素,都做了技术化的处理和虚化,请读者勿要牵强附会。 且各利益主体更不能以此书内容作为某种"证据"。此文中事件的"真实"要素仅供学术研究,而非它用。

序

改革开放以来,中国的城市化加速发展,城市数量从 190个(1978), 猛增到666个(2011); 城市人口从近20% (1978),增加到54.77%(2014)。城市化的发展是中国社会现 代化的重要组成部分,对实现社会发展的工业化、信息化和提高 社会的生活质量与水平,发挥了十分重要的历史作用。没有不付 费的晚餐,迅猛的城市化进程必然伴随着大量的农村土地开发与 占用。于是,政府、开发商与农民三方的利益博弈也随之展开。 对农民来说,风险与机遇并存,因失去土地沦为城市赤贫,抑或 趁城市化发展机遇实现土地开发效益最大化,从而迅速脱贫致 富。开发商力图最大限度降低开发成本,实现自身利益最大化的 目标,与农民最大限度实现自身利益最大化的目标,常常相互冲 突。对政府来说,由于土地的国有与集体所有性质,实现政府、 开发商、农民三方利益最大化,是政府的理想目标;但政府要同 时平衡开发商与农民双方的利益最大化诉求、并确保政府利益最 大化的目标, 其现实性则大打折扣。因此, 土地开发纠纷频繁发 生。

以陕西省横山县为例,该县辖区内有14个乡镇、4个办事处、1个农场、16个社区、359个行政村,面积4084平方公里,人口36万。2008年至2013年6月底,县法院共受理诉讼至法院的农村土地纠纷案件共9件;因诉求撤销土地经营权证(含林权承包

证)到法院咨询后,进行诉前调解或找政府处理的有21件;因违法用地(含拆除违章建筑)为职能部门提供司法谋划的400余件。上述案件的主要特征是:案件数量逐年有增无减;诉讼主体和法律关系明显复杂化;产生涉及土地纠纷的原因多种多样;引起矛盾激化和群体性上访事件态势有增无减;违章违建愈演愈烈。

土地纠纷的实质是不同利益集团或个人之间的利益纠纷。追求实现利益最大化是利益相关者的理想性追求,本无可厚非。但在多元利益相关者进行利益分配的情况下,单一集团或个人一味追求自身的利益最大化,就会出现利益受损方或利益被剥夺方,由此会引发激烈的利益矛盾与冲突。因此,政府作为利益相关方,应重视利益分配中的政府利益与企业、农民利益的平衡,设计和制定更加合理的土地开发制度,适度实现政府的利益,让企业更有投资积极性,推动城市化进程;让农民在城市化进程中获得更多利益,迅速脱贫致富。

三十多年来,我国城市化突飞猛进。2014年,我国批准建设 用地40.38万公顷,即605.7万亩。保守估计,改革开放35年来,2 亿亩土地被城市化进程开发利用,十分之一的农民应该因受益而 脱贫致富。但从农民收入始终与城镇居民收入保持三分之一的差 距看,从大部分进城农民属于城市低收入群体的事实看,从有增 无减,愈演愈烈的土地纠纷与上访的现实看,相当一部分当事农 民并不满意。除个别农民一味追求自身利益最大化外,多数涉诉 涉访的农民不认同自身利益得到合理实现,这一现象值得社会高 度重视。

化解利益冲突的最好方法,是通过调整利益分配,实现普遍的公平。新中国成立后,城市土地和森林矿山收归国有,农村

土地先分配给农民,人民公社化以后,收归集体所有,形成了政府成为国家和社会这一最大的土地所有者代表的利益格局。在城市化进程中,政府又成为最大的土地开发推动者。企业作为投资者,只能按争取效益最大化的原则投资土地开发。在这一利益博弈格局中,只有土地使用权的农民自然成为弱势群体。如何保障与实现农民在土地开发中的利益,就成为社会与学术界高度关注的焦点。

冯耀云博士的著作《合作与分歧》, 是我指导的博士论文。 他以东北农村的某个村庄为个案, 运用社会学、人类学的实地调 查研究方法,依托社会冲突的相关理论,以"讲故事"的方式, 叙述了农民与政府征地冲突持续性的问题: 描述了该村庄从顺利 征地的村庄, 到征地冲突的村庄和持续冲突的村庄的演变过程: 提出了"在宏观上要想解决冲突问题,使持续的冲突走上良性的 轨道,需要在制度层面上进行相应的变革","在微观上,建立 一种调节机制, 让冲突的持续走向消解, 避免升级为暴力化; 然 而,不管是宏观变革还是微观的调节机制,其核心是不断调整国 家与农民不合理的权利配置"。他在文中尝试实现两个突破,一 是根据科塞的"冲突持续性命题"提出了"冲突持续性命题"; 二是提出了解释冲突持续性的"结构——话语"框架。这些研究 都很有启发性。正如作者所说,土地开发中农民与政府的矛盾冲 突, "其核心是不断调整国家与农民不合理的权利配置"。如果 作者沿着这一核心线索展开,可能会更深刻的揭示冲突持续性的 成因和冲突的化解。

我以为,土地开发本来是多方受益的大好事。由于利益分 配指导思想与体制机制出现的偏差,反而成为影响政府与农民关 系的普遍性问题,这不能不说是一个历史性的遗憾。长期以来, "效率优先,兼顾公平"的思想对政府执政产生了巨大的影响, 急功近利的功利主义思潮泛滥,使各级政府在土地开发过程中缺乏公平优先的利益分配的制度设计。由于政府是国家和集体土地的利益代表,开发商支付给政府的是真金白银的现金,政府和开发商的利益是容易做到最大化的。唯有农民追求的利益最大化最不容易实现。这就要求各级政府清醒地认识到做好国家与农民利益的双重代表的特殊身份,做好确保国家、企业、农民三者利益合理平衡实现的制度设计与操作规范,在三方的产权确认、价格制定,分利比例,补偿方式、依法执法等问题上更加科学与规范,围绕土地开发的利益纠纷与冲突才可能走出"冲突持续性"的怪圈、才能实现多方受益、皆大欢喜的理想目标。

希望作者不断持续刻苦钻研,在学术上不断取得更大的成就!

邴正 2015/8/13

中文摘要

合作与分歧: S村征地过程问题研究[1]

本文以东北N县H镇S村为分析个案,运用社会学、人类学的实地调查研究方法,以"讲故事"的方式,叙述了S村农民与政府征地冲突持续性的问题。在以S村个案"厚描"的基础上,本论文又在时间和空间上进行了相应拓展,以便进行比较研究。在时间上,不仅考察了S村征地冲突的兴起(2007—2010)与持续(2011—至今),而且,在征地冲突之前,考察了征地之前村庄的历史沿革、制度变迁与经济发展(1949—1991),以及征地之初的顺利征地;之后,又对S村征地冲突的未来进行了预测。在空间上,不仅重点关注了S村的征地冲突事件,而且也关注了H镇周边的其他村庄,以及S村与长春相邻一些村庄的土地冲突问题。

在视角方面,本文采用了"结构——行动"并重的方法。即借鉴赵鼎新提出的宏观结构视角:变迁、结构、话语,又借鉴图海纳的"行动者的归来"。在变迁方面,不仅考察了经济社会的发展,对冲突的兴起以及持续的影响,而且也考察了国家结构、征地制度以及话语变迁,对冲突持续性的影响作用;在结构方面,考察了整个土地的征用制度,以及纠纷处理机制,对冲

^[1] 本文系笔者博士论文修改而成,原名为《冲突的持续性:S村农民与政府征地纠纷问题研究》,吉林大学,2013年。

突持续的影响;在话语方面,考察了农民从传统话语(生存话语)——国家话语(体制内话语)——外来话语(挑战性话语)的转变。以及,政府在使用"集体主义"话语的日渐式微和转向需求。而本文的另一个线索就是,作为冲突双方的农民抗争者和政府工作人员的"行动",始终贯穿故事的始终。在这种双重的视角下,更加清晰地理清了事件的来龙去脉。

上世纪90年代以来,中国城市化进程加快,H经济开发区成立,S村处在开发区规划的工业区腹地,征地陆续展开。征地之初,因农业税赋繁重,乡镇企业发展迅速,多数成年劳动力另谋出路,农业收入占家庭总收入份额极小,土地"不值钱",村民都乐于"被征地"。但进入九十年代中后期,农业赋税逐渐减轻,乡镇企业式微,征地价格逐渐上涨,土地越来越值钱,村民逐渐不愿意被征地。

自2007年伊始, H经济开发区大规模征地,导致征地冲突兴起。农民从自发抗议到有组织抗议的形成,并采取了多种抗争策略与剧目。在这个过程中,地方政府也采取了各种应对策略,致使有些冲突矛盾"被摆平",而有些冲突反而愈演愈烈,持续发酵升级。

在S村征地持续冲突的过程中,大致经历了三个阶段。第一阶段,农民的抗争表现的比较原始和传统。例如采取"以死威胁""暴力抵抗""集体闹事"等方式。采取的话语也是传统的"保护土地就是保护我们的生命线"等生存伦理话语。第二阶段,主要表现为"依(以)法抗争"阶段。这阶段的特点是有步骤的信访、复耕、向媒体爆料、举报等,多数是在法律的框架内采取行动,尽量避免触及法律红线。抗争话语转变成利用国家话语,体制内的话语。第三阶段是出现了冲突转型和挑战性话语的

苗头。当利用"国家话语"进行抗争失效之后,农民代表组织试图要借助境外媒体和寻找人权组织。外来话语成为其抗争的工具或抗争意识。目前,S村持续冲突的走向有两点:当政府刚性"维稳"时,有出现克里斯玛精神的激化和民粹主义风险;当政府及时进行结构制度调整,会出现类似于西方发达国家较为规范的社会运动,而这有利于征地冲突向良性轨道发展。

通过研究发现,产生征地冲突及持续的原因较为复杂,在宏观上表现为"结构——话语"未能随着社会变化而相应的变化,在微观上表现为冲突的基本问题没有解决,反而随着时间的推移和冲突的持续,诸多其他因素掺入,使冲突升级且难以解决,最后走向了危险、暴力、极端的边缘。在宏观上要想解决冲突问题,使持续的冲突走向良性的轨道,需要在制度层面上进行相应的变革,调整"结构"与"话语"的革新内容和速度;在微观上,建立一种调节机制,让冲突的持续走向消解,避免升级为暴力化;然而,不管是宏观变革还是微观的调节机制,其核心是不断调整国家与农民不合理的权利配置,这种权利配置需要在法社会学视角下,有步骤地进行。

本文尝试实现两个突破:

一个是在概念创新方面,根据科塞的"冲突持续命题",提出了"冲突持续性命题"。虽然"冲突持续"与"冲突持续性" 之间只有一字之差,但是所关注的内容却发生了根本性的变化。 科塞的"冲突持续命题"只关注冲突时间的长短,而本论文中, 冲突时间的长短只是一个维度。本文将冲突的持续性理解为,冲 突自产生以来,双方主体之间始终维持着一种激烈或非激烈的、 对抗或非对抗的过程或状态。本论文不仅对冲突持续性的概念进 行了界定,而且考察和分析了冲突持续性的原因和条件、进程和

影响;

二是提出了解释冲突持续性的"结构——话语"框架。"变迁、结构、话语"以及"行动者",都对S村征地冲突的持续性问题造成影响。然而,笔者对诸多要素进行简要分析后,不仅对S村征地冲突持续性做了微观分析,而且提出了衡量和解释征地冲突持续性问题的"结构——话语"框架。

关键词:

征地 冲突持续性 结构——话语

Abstract

Cooperation and Conflicts: A Study on the Problems in the Process of Land Acquisition in the S Village

S village in the countryside of H, town of N country in the Northeast is the case of this paper. This paper uses the fieldwork research method from the perspective of sociology and anthropology to "storytelling" approach, describing the S village farmers and the government land acquisition conflict persistent problem. On the basis of "massive description" to the S village, this paper also expands the content in the profile of time and space in order to carry out a comparative study. In time, it not only examines the rise of the S village land acquisition conflicts (2007-2010) and last (2011 present), and in the land acquisition before the conflict, study villages before the history of this land acquisition, institutional change and economic development (1949 - 1991), as well as land acquisition at the beginning of the smooth land acquisition; and then, it predicts the future of the S Village land acquisition conflict. In space, it not only focus on land acquisition and clashes in the S village, but also concerned about the H town surrounding villages, as well as the village land conflict.in the adjacent of S Village of Changchun.

In perspectives, we use both methods of "structure-action" and the new macro-structural perspective learning from Zhao Dingxin: change, structure, discourse, and learning from the Touraine "return" of actors. Changing not only examines the economic and social development, the rise and continuing impact of the conflict, but also examines the structure of the State, the land requisition system and discourse change in structure, the continuing effects of the conflict; it investigates the entire land requisition system, as well as the dispute resolution mechanism for the continuation of the conflict; discourse, it also examines the farmers to shift from the traditional discourse (survive discourse) - national discourse (discourse within the system) - the alien discourse (challenging words), and "collectivism" discourse declining and steering demand. There is also another clue of this paper, as the parties to the conflict peasant protesters and government workers "action", it runs through the story. In this dual perspectives, it can show more clearer geographical sequence of these events.

Since the 1990s, Chinese urbanization process has accelerated, and the H Economic Development Zone had been established, the S village in the hinterland of the industrial zone planning area, land acquisition was launched. In the beginning of the land acquisition, it was due to heavy taxation of agriculture, according to the development of township enterprises, it quickly found another way out of the majority of the adult labor force, agricultural income accounted for a very small share of total household income, land "worthless", the villagers were happy to "land acquisition". To the late 90s, agricultural taxes and gradually reduce the decline of township enterprises, land acquisition prices gradually rise, more and more valuable land, the villagers gradually did not want to be land

acquisition.

Form the beginning of 2007, H Economic Development Zone, large-scale land acquisition, leaded to the rise of land acquisition conflict. Farmers from the spontaneous protest to the formation of organized protest had taken a variety of protest strategies and plays. In this process, the local government had also taken a variety of coping strategies, resulting in some conflicts that "settle", but some conflicts intensified and continued to simmer upgrade.

In the process of the land acquisition and ongoing conflict, the S village has undergone three stages: The first stage, the performance of the farmers struggles are original and traditional. For example, in the form of "death threat", "violent resistance", "collective troublemakers". Discourse taken the traditional "protection of land is to protect our lifeline" survival of ethical discourse. The second stage. according to method protest stage, this stage is characterized by steps petition, rehabilitation, broke the news to the media, reporting, etc., most of the action within the framework of the law, trying to avoid touching the legal red line. Protest discourse into the use of national discourse, the discourse within the system. The third stage is the emergence of signs of conflict transformation and challenging discourse. When the "national discourse" to fight failure, farmers on behalf of the organization with the foreign media trying to find human rights organizations. Foreign words become their tools to fight or struggle awareness. The S village continuing conflict toward two points: When the Government rigid "stabilize", the charismatic spirit intensification and populist risk; when the government timely adjustment of the structural system similar to the Western developed countries, there will be more standardized social movements, and land acquisition conflict is conducive to a healthy track.

It is found from this research that the generation of land acquisition conflict and its sustained evolution has more complicated reasons, "structure - words" can not change with the social changes and corresponding in the macro and micro performance, it can not also solve the basic problems of the conflict. However, with the passage of time and the persistence of conflict, the incorporation of a number of other factors escalates the conflict and solve more difficultly, and finally toward the danger, violence, extreme edge. In order to resolve the conflict at the macro level, the ongoing conflict in the benign track corresponding changes at the institutional level, adjust the "structure" and "Words" innovative content and speed; at the micro, the establishment of a regulator mechanism to allow continuation of the conflict towards digestion, avoid escalation of violence; However, regardless of the macro changes or micro-adjustment mechanism, the core is to constantly adjust the rights of the state and farmers unreasonable configuration, this right configuration requires the Sociology of Law perspective, carried out step by step.

This paper attempts to achieve two breakthroughs:

One is innovation of the concepts, according to Coser's conflict continued proposition, persistent conflict proposition. Although different from only one word, "continuation of the conflict" and "the conflict of continuity", the concern has undergone a fundamental change. Coser's conflict continued proposition "only concerned about

the conflict of the length of time, in this thesis, the length of time of conflict is just one dimension. As the continuation of the conflict, the conflict has been the subject of both sides maintained between a violent or non-violent, confrontational and non-confrontational process or state. This paper not only defines the concept of persistent conflict, but also examines and analyzes the persistent conflict causes and conditions, process and impact.

Another is highlighting the explanation of the "structure-words" framework in the conflicting Continuation. "Changes, Structure, words" and "actors", the impact on the S village land acquisition and continuation of the conflict issues. However, after a brief analysis of the author of a number of elements, not only the S Village land acquisition conflict continued to do a microscopic analysis and structure - the framework of the discourse of the proposed measure and explain the persistent problems of land acquisition and conflict.

Key Words:

Land Expropriation, Conflicting Continuation, Structure-Words