
The Justice and Democracy in the Process of Economic Reform and Transformation: China's Experience ,Problems and Enlightenment

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Abstract:Economic reformed from planned economy to market economy is generally considered justicial because it conforms to liberalism. However, China's experience and problems tell us that if we fail to properly handle the issues of fair distribution and sharing of public resources, then this transformation will be unfair and undemocratic. In fact, socialist countries owns large amounts of public resources generally .Because of ingoring this dimension,in the process of China's transition from planned economy to market economy, both the right to subsistence at the bottom line and the right of free and fair competition as the core requirements of the market economy, as well as the democratic value of public resources and the environmental rights, have been seriously violated. Therefore, the transformation should not only be guided by liberalism, but also needs conform to the principle of fair distribution and share of public resources. Furthermore, it is necessary to distinguish different fields and use different standards to judge whether economic reform and transformation are in line with justice.

Keywords: justice; democracy; transformation; public resources; fair distribution and share

Economic reform from planned economy to market economy is generally considered righteous because it conforms to liberal principles. It liberates the individual, enables the individual to freely enter the market and freely obtain what he wants, satisfies and respects the individual's freedom of choice, and thus makes the society more tolerant and diversified. Through the freedom and free competition brought by the market, it can improve the efficiency of social resource allocation and maximize the overall social welfare. Moreover, it reconstructs and respects the society, realizes the separation between society and the state, and makes the individual get rid of the dependence on the state and the collective. Accordingly, individuals liberated

from the planned economy are bound to instinctively lean toward liberalism, toward democracy, and against despotism and dictatorship.

However, China's experience and problems tell us that if we cannot properly handle the fair distribution and sharing of public resources, then economic reform and transformation will not fully meet the requirements of fairness and justice.

From the perspective of property rights, reform and opening up is not only a process in which the government keeps withdrawing from the economic production field in the era of planned economy, thus opening up the market space for people to give play to their initiative, enthusiasm and creativity, but also a process in which the public resources originally owned by the state and collective are reallocated and property rights are defined.¹ Based on the past planned economy system, not only production area is dominated by the state, and the production of resources also belongs to the state, in the hands of the national property, the implementation of market-oriented reform, by the market rather than by the administrative authority to allocate these resources, the market main body rather than the state to use these resources, in fact is the redistribution of these public resources and property rights definition, in other words, the privatization of these resources can be achieved by means of marketization. However, because these resources are public, the process and results of market-oriented allocation must also implement the principles of people's governance, people's ownership and people's enjoyment, so as to achieve equality in the sharing of public resources, instead of violating this principle and damaging the publicity. Even after the collapse of the Soviet union, which adopted the radical privatization method, the form of comprehensive and fair privatization voucher was adopted.

This means that, in the allocation of public resources by market mechanisms, in order to give attention to both efficiency and fairness, freedom and equality, must be in three different level satisfy citizens to public resources of the government of the people, by the people and the people, meet the commonality of resources as the premise of economic reform and the transformation: the first level, to ensure that citizens obtain public resources needed to meet basic survival and development rights,

¹ See Michael A. Heller. *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 Harv. L. Rev, April, (1998).

namely the bottom line equitable sharing right. This is the fundamental dimension of the status of the ownership of state-owned or collective resources. This is because both the sharing at the second and third levels are highly uncertain, which cannot be translated into equal rights for everyone, and cannot fundamentally guarantee the most basic survival and development needs of citizens. Therefore, ensuring citizens' basic need-based fair sharing right is the premise and boundary of the marketization of public resources. The second level, through fair procedures beyond the bottom line to the rights of the public resources, mainly embodied in, but is not limited to access to public resources by means of fair competition, development contract or the rights of the administrative license, the right to correspond directly and restricting administrative organs in principle by the contract, license, including the power of the allocation of public resources. In fact, the marketization of public procurement, which has been widely developed since the 1980s, centers on ensuring that market subjects can freely and fairly compete for government contracts. Of course, because of the limitation of public resources and the value for money principle, only a few people can obtain this right through the market mechanism, which is essentially the right of fair opportunity. The third level is the right to enjoy various public benefits. These public benefits come either from the public resources invested in people's livelihood, such as public schools, libraries, gymnasiums, etc., or from the public resources invested in market exchanges for various public services, such as the expressways built in the form of MBO. The first two levels can benefit from rights. Although the last level is difficult to benefit from rights, citizens can also supervise or participate in the distribution through various democratic means, so as to ensure that they can enjoy more public benefits. Any of the above rights and interests are not effectively maintained, can be regarded as a fair distribution rights have been violated.

However, in a very long period of time, China's administrative law system has not systematically and comprehensively determined the baseline equity equitable sharing right, and has not given this kind of equitable sharing right a place. Therefore, it is unable to effectively make the concept of equity sharing procedural, institutionalized and rights-based. One of the important reasons is that in the past, China's administrative law will focus on individual's negative liberty to serve the economic comprehensive market-oriented reform, centering on the individual private rights against state intervention, but don't realize the individual have the right to share

common resources, lead to the silent denial of citizens' equitable sharing right. As Yu an, a Chinese administrative jurist, points out, the rights of citizens, legal persons and other organizations protected by law are limited to the right to operate state-owned enterprises mainly in terms of economic autonomy except for the basic civil liberties and rights....This reflects the requirements of the old concept of development.²Also because of the lack of thinking within equitable sharing right, blindly to negative liberty at the center of market main body, the traditional administrative law in dealing with public resource allocation, either in a state of aphasia, cannot effectively regulate administrative behavior of ignoring citizens' equitable sharing right, or compete with the people, given the infringement, deprive citizens' basic needs solution about equitable sharing right, leading to rely on public resources rights deprived survival, life and production. This phenomenon can be found everywhere, in all areas of universal existence. For example, a good ecological environment is the most beneficial to people's well-being, but because of the lack of fair share thinking, in the public resources for the power of local government, did not notice this dimension of natural resources, development activity for natural resources, not only caused the extreme waste of public wealth, also produced such as cancer villages swallowed many common people life and health of the people's livelihood huge black hole. The country has to take out a lot of money from the already limited livelihood funds to fill this black hole and guarantee the people's right to subsistence. For another example, local governments do not leave enough urban land and space to meet the housing needs of the economically weak and the sustainable development of the city. Instead, they blindly sell land through the market mechanism to serve the land finance and local economic development, resulting in the continuous increase of housing prices. A small number of people have gained huge wealth through the real estate market, but more and more people are unable to meet their needs through the market. As a result, the housing problem has become one of the three new mountains, and the basic living needs of citizens cannot be met. For another example, when capital goes to the countryside to use rural water resources to develop industry, it occupies the water resources that should be used to develop agriculture, which leads to the lack of water resources in rural agricultural production and makes it unsustainable, resulting in the

² Yu an: 《 development-oriented revision of <administrative procedure law >”, journal of 《East China University of Political Science and Law》 , no.2, 2012.

deprivation of basic resources that farmers rely on for sustainable survival and development.

What's more regrettable is that due to the lack of effective administrative laws and regulations, in the process of trading public resources, citizens' rights of sharing at the third level are not effectively protected, which is mainly reflected in the fact that public resources are not fully valued when they are put into the market for trading and fail to realize higher economic value to give back to people's livelihood. However, precisely because of the lack of effective administrative laws and regulations, the allocation of public resources in the past did not conform to the principle of openness and transparency pointed out by general secretary Xi Jinping to a large extent, and a large amount of public wealth was lost.³Justice is thus hurt to a greater degree. Therefore, the general secretary of China has recently put forward a new concept of development that includes sharing, coordination and green development, so as to better realize the fairness and justice of market-oriented allocation of public resources.

In visible, because the socialist countries of economic reform is to establish on the basis of the marketization of public resource allocation ,if ignored the public resources by the people of the government ,of the people, by the people, then in China in the process of transition from planned economy to market economy, whether it's the bottom line of the right to life, or as a core requirement of free competition of the market economy and fair competition, and democratic values of public resources, and environmental right, have been seriously harmed. Therefore, economic transformation should not only be guided by liberalism, but also accord with the principle of fair distribution and sharing of public resources. Furthermore, it is necessary to distinguish different fields and judge whether economic reform and transformation are in line with justice by different standards.

³During his visit to the Anhui delegation, general secretary Xi Jinping pointed out that we should learn from the past experience and lessons of the reform of state-owned enterprises and not turn state-owned assets into opportunities for profiteering amid the clamor for reform. The key to reform is transparency. Wu Linhong, Huang Yongli: 《toward reform to create new advantages of vitality and development: a side note of general secretary Xi Jinping's participation in the deliberations of the Anhui delegation》, Anhui daily, March 10, 2014, 1st edition.