

財產權的限制與補償： 新理論分析框架

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「財產權重大限制」是指財產權雖然沒有被徵收，但受到超過「至為輕微」的管制。臺灣的「財產權重大限制」理論，主要有兩大缺失：第一，缺乏夠具體的判斷標準；第二，沒有現實可操作的補償計算方式。本文以大法官釋字第564號解釋理由書，以侵害是否「至為輕微」作為區分特別犧牲和社會義務的判斷標準。本文並進一步主張，使用特徵迴歸模型與實價登錄數據，計算系爭不動產在管制前後的市場行情。市價差異可以用來判斷侵害是否至為微小而須給予補償；也可以作為補償數額的估價方式。

關鍵字：騎樓、公共設施保留地、特徵迴歸模型、財產權、隱然非金錢補償、大法官釋字第564號解釋、至為輕微

The Limitation and Compensation of Property Rights: A New Theoretical Framework

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ABSTRACT

Current theories and constitutional interpretations on regulatory takings in Taiwan only vaguely distinguish regulations and regulatory takings, in addition to failing to advance any operable method to compute the amount of compensation. This article expands the *de minimis* standard raised in Constitutional Court Interpretation No. 564 and argues that constitutional law scholars should develop theories regarding which kind of implicit, in-kind compensation can be used to offset the regulated parties' losses. This article explains how hedonic regression models and the big data on real estate transactions enable regulators and courts to calculate the market value of the real properties in question before and after a regulation. The difference in computed market value can be used to decide whether the limitation of property rights is *de minimis*—if not, the value gap should be compensated.

Key Words: pedestrian arcade, reserved land for public facilities, hedonic regression model, property rights, implicit in-kind compensation, Judicial Yuan Interpretation No. 564, *de minimis*