

# Transformation of Land Readjustment in Korea: A Legal Analysis on the Exchange of Rights and Collective Replotting

토지구획정리사업의 한국적 변용: 환권이론과 집단환지에 대한 법적 분석

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## Abstract

Land Readjustment (LR), also known as land pooling or land consolidation, has been employed as a method of urban planning and development in numerous nations for nearly a century. Due to the fact that LR does not involve expropriation, it can be a feasible alternative for developing and renewing urban space even in highly urbanized countries. However, LR cannot function as an effective policy tool for urban renewal or high-density development if it stays limited to the mass production of tiny parcels. Based on the experiences of several nations, it has been noted that conventional LR is disadvantageous for built-up areas, and in some nations it has resulted in replotted land being left underdeveloped and vacant for an extended period. This paper investigates and analyzes the application of LR in Korea as a technique for overcoming these constraints. Reconstruction and redevelopment projects that transform LR by exchanging building to building have been actively implemented in densely populated metropolitan areas in Korea. In addition, traditional LR is being actively altered and used to produce large sites and promote apartment complex construction. This paper aims to provide Korea's trends for comparative research on LR by analyzing the characters and prerequisites that have made this transformation possible.

Keywords: Land Readjustment, Land Pooling, Land Consolidation, Urban Redevelopment, Urban Renewal, Exchange of Rights, Conversion of Rights

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## I. Introduction

Land readjustment (hereinafter "LR") has been internationally discussed and used as a development and planning tool without expropriation. For instance, almost one-third of Japanese urban areas built between 1954 and 2003 after World War II were developed with LR (Yılmaz, Çağdaş and Demir 2015, 154; refer to Sorensen 1999, 2333). Turkey is one of the countries actively applying for LR, and 3,127 projects were carried out in 2013 alone (Turk

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2020). Discussions on its introduction and legislation have steadily existed, such as in the US (Liebmann 2000, 3) or the Netherlands (Holtslag-Broekhof 2018).

Korea has been introduced as a successful or representative example of LR (Mathur 2013; Larsson 1997; Shultz and Schnidman 1990). In Korea, LR is called “Tojiguhoekjeongnisaeop,” meaning clearing land boundaries, or “Gongyonghwanji,” meaning compulsory land exchange. Since modern urban planning legislation was introduced in 1934 (Gallent and Kim 2001, 234), LR has been a significant planning and development tool. As of 1989, more than one-third of the urbanized areas in major metropolitan areas were developed through land readjustment, excluding Gwangju (17.3%), Seoul (39.9%), Busan (30.5%), Daegu (36.7%), Incheon (35.7%), Daejeon (46.3%) (Seoul Metropolitan Government 2017, 9).

However, the current situation in Korea has not been well-updated in comparative studies. The Land Compartmentalization and Rearrangement Projects Act (hereinafter “Land Readjustment Act”) was reorganized into the Urban Development Act in 2000, and positive laws were introduced to modify the basic idea of LR. Such legislative change induces new trends: (a) LR has been transformed into replotting “co-owned large lands” to landowners for high-density development, and (b) by converting low- or mid-rise buildings into high-rise buildings, such as “reconstruction and redevelopment.” These approaches are more flexible, converting rights into rights instead of lands into lands.

On the other hand, international discussions on LR have been primarily focused on viewpoints of urbanism and policy. However, LR is a legal issue involving administrative authority and property rights, and therefore, a legal perspective is essential to understand LR. Particularly, Korea's new trends are closely related to legal principles and instruments, so understanding the legal foundations and rationales that LR is based on as well as the extent to which those trends advance is the first step in analyzing them.

The purpose of this article is to introduce and analyze, from a legal perspective, the current use of LR in Korea, which is an instrument for active urban revitalization and development. To clarify how Korea's trends differ from those of other nations, this article will analyze general discussions on LR from various nations and will attempt to establish the general legal elements of LR. In the following chapters, we will examine literatures on both LR and Korea's new trends, as well as establish the methodology for this article (Chapter II). Then, we will establish general legal elements of LR in terms of both substantive and procedural aspects, based on the research from diverse jurisdictions (Chapter III). In addition, this paper will discuss in Chapter III the extent to which these general legal elements have been clogged. Then, we will be in a position to begin discussing how Korea's current use of LR can serve as a model for resolving this impasse. Reconstruction and redevelopment, as well as collective replotting – these “new trends” that have been used vigorously in Korea - will be introduced and discussed in Chapter IV.

## II. Research Background and Methodology

### 1. Literature Review

First, the majority of studies examine the systems of successful nations in LR, representatively Japan. Japan International Cooperation Agency (JICA) has been publishing research on Japan's LR model, including De Souza, Ochi and Hosono (2018). Matsui (2019) describes the general LR framework in Japan. There were also papers that analyzed regions of Japan. Sorensen (1999) analyzes the impact of LR on sprawl at the project area and regional levels in Tokyo. For the current status of nations such as Japan, Germany, Nepal, Turkey, and India, the ACSI Journal of Management papers from the 2020 conference (De Souza 2020; Joshi 2020; Linke and Bretscher 2020; Ochi 2020; Turk 2020) are referenceable.

There are numerous comparative analyses. Home (2007) compares and analyzes LR in numerous countries through systematic explanations of each country's legal history and structure. Hong (2007) analyzes the content and procedures of LR in a comparative context and explains the essential legal issues, including not only the role of the law, the coercive character, and the boundary with taking, but also emphasis on flexible approach on exchange object (p. 24). Larsson (1997) and Turk (2008) are summarizing the main principles of LR in a comparative context, and Turk (2008) provides lessons for the success of land readjustment from the systems of different nations. While deriving models of LR, Šoškić, Višnjevac, Mihajlović and Mihajlović et al. (2022) organize the similarities and differences of countries. 28 general principles are presented by Viitanen (2001) for LR. Muñoz Gielen and Mualam (2019) present a framework for analyzing the effectiveness of LR regulations, as well as a thorough explanation of the LR systems of Germany, Spain, and Israel. Some papers are related to legislative discussion in countries where LR is not active. Holland (2018) and Liebmann (2000) focus on the drafting statutes in the US, whereas Shultz and Schnidman (1990) in the US and Holtslag-Broekhof (2018) in the Netherlands focus on the requirements and elements for successful legislation.

Whereas Korean literature on LR or reconstruction and redevelopment has been accumulated, there are not so many peer-review papers on exchange of rights or collective replotting. For example, based on the Korea Citation Index (KCI), only 7 papers are searched for with the keyword "Gongyonghwangwon (exchange of rights)." Among them, Kim (2011) analyzed the origin of the concept and criticized the fact that the legal society and courts uncritically accepted the concept of exchange of rights from Japan despite the differences in redevelopment between Korea and Japan. In addition to peer-review papers, explanations of the exchange of rights have appeared fragmentarily in administrative law or public land law textbooks, and magazines on Korean bar exams (e.g. Park 2003). Among dissertations, Kang (2012) analyzes the legal nature of Korean redevelopment historically and systematically well.

While there has been controversy over the explicability and adequacy of the concept of exchange of rights in academics, courts are generally using it. In the case of “Jipdanhwanji (collective replotting),” three papers are searched on KCI, and among them, Oh (2022) analyzes related issues, focusing on the Supreme Court precedent on collective replotting.

## 2. Methodology

Due to the nature of comparative law, it is difficult to overcome the subjectivity of sampling, and it is difficult to find a higher standard of value judgment or generalized relationships in comparative planning law (Jeon 2023). However, this does not negate the utility of organizing general and sharable concepts with functional similarities. Brand (2007, 35) suggests conceptualization by extracting common abstract elements, and mentions the possibility of comparison through the concept thus constructed. It may be useful to classify similar responses that each country has for a particular social phenomenon as well as common discussions pertaining to the response method, which is the objective of Chapter III of this paper.

The purpose of this paper is not to directly compare the systems of other countries and the Korean system. Even in Japan, which has relatively large institutional similarities, a significant gap in the number of cases of redevelopment and reconstruction shows difficulty in direct comparison. This paper concentrates on Brand's (2007) strategy, “conceptualism,” to extract “generalized concepts” and contexts of LR for critically examining them, and how Korean trends deal with such critical points. For this, this paper analyzes articles from various nations by rearranging them from a legal point of view. In discussing Korea, primary data such as literature, positive laws and precedents are used. Cases of redevelopment and collective replotting will be presented as examples for comprehension of the concept and its practice.

LR is a matter of coercive conversion of legal rights. Obviously, it is impossible without a legal foundation, and given its collective legal relationships, the possibility of potential disputes is a crucial issue. LR should be reexamined by asking what legal measures are required for the compulsory conversion of rights, how the relationship should be regulated, and how ultimately these measures can be justified.

Legal analysis of urban planning systems can blur the distinction from institutional and policy analysis. However, as discussed in Jeon (2023), the legal analysis of planning is based on the analysis of the binding legal relationship between the administrative agency and private individuals via planning, including who, how, and what interventions are available and what rights private individuals can exercise. Applying this into LR, the former is to analyze who and how the authority required to execute LR (“procedural legal aspect”), and the latter is to analyze the specific content and limitations of the rights relationship of land owners in accordance with LR (“substantive legal aspect”).

### III. General Legal Elements in Land Readjustment: Comparative Context

In this chapter, we will examine the literature on LR in a variety of countries, and attempt to identify the most “general elements” of LR. This will allow us to discover not only the general and archetypal aspects of LR, but also its critical aspects and limitations. Legal analysis can be separated into an analysis of the substantive legal relationship surrounding LR and an analysis of the procedural legal relationship governing the its implementation. The former will focus on property rights, while the latter will examine the various requirements and procedures for implementing LR.

#### 1. Substantive Legal Issues in Land Readjustment

##### 1) Changing the Physical and Legal Status of Land

As explained by Šoškić, Višnjec, Mihajlović and Mihajlović et al. (2022), the definition of LR is slightly different for each researcher. Mathur (2013) explains LR as “a public agency pools multiple privately held land parcels together” (p. 200). De Souza (2020) states replotting as “primary mechanism” of LR (p. 147). Louwsma, Lemmen, Hartvigsen and Hiironen et al. (2017, 3) evaluate “reallocation of land rights” as the essential component of LR. Putting these views together, LR is the process of combining private parcels, rearranging or replotting their physical shape, and reallocating the rights of newly replotted parcels.

However, it is not just for changing the shape of the land. LR is the process of altering the legal or urban planning status of land by modifying its developability,<sup>1)</sup> density, and usage. It makes land developable and modifies the capacity of the land. A cornfield may be converted into a building site, or a single-family home lot may be converted into a large apartment lot. In this regard, LR conflicts with existing planning and zoning (refer to Holland 2018, 868). Hence, the urban plan should be modified corresponding to the LR in advance, or the planning agency should be involved in the LR procedure.

The definition of Japanese law aptly captures this aspect of land readjustment. LR is defined by Japanese law as “alter[ing] the shape and land conditions of lots and install[ing] or improv[ing] public facilities in a city planning area in order to provide better public facilities and increase the usage of each lot” (Hosono 2018, 3). We should focus on the “condition of lots,” which refers to the land’s legal or urban planning status. Altering lot conditions means converting land previously unsuitable for development, such as farmland, into developable land (refer to Linke

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1) Developability refers to the legal status of a parcel of land in terms of whether development is legally permissible. Planning is crucially concerned with determining developability. See Kim (2018, 208-209). Insofar as land readjustment is used for active developments (refer to Kim 2018, 703), and the viability of land readjustment is contingent on the land’s appreciation, conferring developability or enhancing it through changing use or density is required.

and Bretscher 2020, 97) or increasing the potential for land development, such as by increasing density, similar to expressions like “modification of land category,” “quality of land,” or “enhancement of land usefulness as a building site” from the definition of Korean law (Korean Land Readjustment Act, Article 2 Paragraph 1 Subparagraph 1). Through these changes in the land’s legal and urban planning status, LR can provide land suitable for building and infrastructure (Linke and Bretscher 2020, 95).

These change in the developability of land are also closely connected to the feasibility of LR itself. LR has a strong relationship with land value appreciation (Turk 2008, 235; De Souza 2018, 27). Unless a third party subsidizes it, LR must find a way to finance itself. An increase in land value can incentivize landowners to participate in LR, which can also help raise funds through land sales. In areas with limited target areas, the most direct way to increase land value is to make previously undevelopable land developable or increase development density or utilization.

## 2) Land Readjustment against Expropriation

If LR does not exist, a public or private entity intending to develop must acquire all land ownership rights in the target area, partition and rearrange them, then sell and transfer them. As the acquisition and distribution procedure entails the transfer of ownership, this unavoidably incurs transaction costs (Yılmaz, Çağdaş and Demir 2015, 153). Primarily, from the perspective of the project implementer, it is required to secure money for projects, but in the case of large-scale projects, the purchase of the property would incur tremendous expenditures. When the legalization of LR began to be discussed in the Netherlands, where local governments predominantly adopted an acquisition strategy, the fiscal burden was also a major concern (Holtslag-Broekhof 2018). In addition, if public entities forcibly expropriate the land of private landowners to supply developable plots, they will encounter resistance during the expropriation process.

LR is contrasted with expropriation (De Souza 2018, 19); however, from a legal standpoint, their distinction is not indisputable. There are several issues. First, against opponents of the LR project, expropriation or taking is not entirely obsolete (Joshi 2020, 114; Holland 2018, 861); its justification, such as public purpose or necessity, must be recognized. Second, it was debated in Germany whether “compulsory participation” in LR constituted expropriation (Hong 2007, 25). Whether it constitutes a taking if opt-out is not available is controversial (Shultz and Schnidman 1990, 242; Holland 2018, 860) insofar as landowners share the financial cost of the project by deducting their land. Third, in several jurisdictions, such as Korea, Japan, Germany (Yu 2008), and Taiwan (Kotaka, Callies, and Guth 2001), it is permissible to receive land in lieu of monetary compensation for expropriation under certain conditions, hence the boundary between LR and expropriation might blur.

Nevertheless, LR is commonly regarded as not being expropriation (Linke and Bretscher 2020, 96). The continuity of rights makes a difference. Supposing land is provided in lieu of monetary compensation for expropriation, land

ownership is transferred to the project implementer and then new land ownership will be transferred again to the land owner as a compensation. In the process of transferring twice, other rights subordinate to ownership, such as mortgage rights, should be, in principle, extinguished (e.g. Japanese Expropriation of Land Act Article 101 Paragraph 1). The processes of transfer and extinguishment cause societal costs, which will eventually reduce the efficiency of LR. However, LR directly connects the former land and the replotted land without such transfer and extinguishment. In Japan, replotted plots are “regarded as original plots,” meaning that the rights subordinate to original plots are not in principle extinguished and are linked to replotted plots (De Souza and Ochi 2018, 37; Matsui 2019, 13). This continuity between old and new plots is known as the “Rule of surrogation” in Germany (Linke and Bretscher 2020, 99; German Federal Building Code Section 63 Paragraph 1).

## 2. Procedural Legal Issues in Land Readjustment

Home (2007) summarized the seven general steps of a LR project: (a) “initiation” (typically by application of majority landowners), (b) “declaration” of the project area, (c) “planning” plots and public area, (d) “measuring” of areas, (e) “cost” and benefit calculation, (f) “allocation,” and (g) “implementation” (p. 461). Muñoz Gielen and Mualam (2019) outlined four steps: (a) project planning, (b) plan approval, (c) infrastructure planning, and (d) its construction (p. 7). Taking all of these discussions into account, in broad outlines, LR entails (a) identifying a geographical target, (b) designating a project implementer, (c) establishing a project plan (including an allocation or replotting plan) and approval process for the plan, and (d) carrying out the plan (including construction work). Each phase might be the topic of legislative debate, and we will investigate some significant procedural concerns in a comparative context.

### 1) Who Leads Land Readjustment

Theoretically, the public or private sector can lead projects (refer to Yilmaz, Çağdaş and Demir 2015, 155). The issue is whether the administrative agency leads the procedure unilaterally or whether the process is carried out based on landowners’ consensus. Turk (2008, 235) underlined that permitting both public and private implementation increases the chances of LR success. Hong (2007, 14) highlighted that the majority of nations allow both public and private implementation; however, there are variations in the specifics. Korea and Japan are examples of successful recognition of public and private practices (Larsson 1997, 151). In France, private sectors, such as landowners’ associations, drive projects, whereas Germany is understood as “joint development” of public and private sectors (Larsson 1997, 142-143).

Generally, consent is required for the private implementer. Germany and Japan require two-thirds consent for private-led projects (Yilmaz, Çağdaş and Demir 2015, 155). What kind of criteria are required for the consent rate,

population, or land area, is also crucial. In Korea, it is normally necessary to satisfy at least two-thirds of the land area and one-half of the proprietors (e.g. Korean Urban Development Act Article 4 Paragraph 4). Japan (De Souza and Ochi 2018, 38) and Taiwan (Liebmann 2000, 9) require both number and area criteria as well. According to Korea's experience, formatting or withdrawal of consent can lead to legal arguments regarding whether consent rates are satisfied.

## 2) Classification and Distribution of Land

Land created by LR can be primarily separated into land for sale to pay project costs, often known as "reserve land" (De Souza 2018, 27) or "cost equivalent land" (Home 2007, 461), land for building infrastructure, and land distributed to landowners (Turk 2008, 232). For the former, the equitable distribution of project costs and benefits is critical (Ochi 2020, 94). It is a typical practice to deduce the land area at a prescribed rate from landowners for project costs or infrastructure procurement (Yilmaz, Çağdaş, and Demir 2015, 155; Turk 2008, 235). This deduction rate is regulated by legislation in some countries (such as Turkey) but not in some others (refer to Turk 2008, 235; Turk 2020, 129).

The distribution of plots to landowners is the most significant (Yilmaz, Çağdaş and Demir 2015, 163; Turk 2008, 237). Two types exist: "area-based" and "value-based" (Yilmaz, Çağdaş and Demir 2015; Linke and Bretscher 2020; Turk 2008). There may be both or merely one of the two, depending on the country (Yilmaz, Çağdaş and Demir 2015, 155). According to Turk (2008, 231), France, Sweden, Australia, India, and Nepal use only value-based, while Turkey and Indonesia use just area-based. Taiwan, Korea, Japan, and Germany utilize both. Because value-based requires a system to appraise value accurately, Turk (2020, 130) advises area-based in emerging nations lacking a value appraisal system.

## 3) Whether Follow-up Development Procedures Are Included

Whether LR includes merely the land rearrangement procedure or the development procedure for constructing something on the replotted land either is a matter of legislative choice (Kim 2018, 699). In many nations, the development of buildings and LR projects are handled separately (Larsson 1997, 150). In Finland, it is typically said that construction on an adjusted lot is not included in LR (Viitanen 2001, 4). Even in Germany, Finland and Turkey, "infrastructure" construction and LR are distinct processes (Šoškić, Višnjevac, Mihajlović and Mihajlović et al. 2022, 3; Turk 2020, 129).

Considering Korean law as an example, the following characteristics of positive law confirm whether LR works solely on a land arrangement or not. First, it is essential to determine whether the administrative agency's approval for LR includes the building permit. LR that impacts the current urban plan requires approval or authorization from

the administrative agency prior to the implementation of a project. In numerous nations, such as Germany, Spain, Israel (Muñoz Gielen and Mualam 2019), Japan (De Souza and Ochi 2018, 34), Nepal (Joshi 2020, 113), Turkey (Turk 2020, 127), Korea, etc., there is an approval process. In Korea, the Land Readjustment Act, which was the enabling legislation for LR before 2000, did not include building permits in the approval for LR plans, although the current Urban Development Act, which replaced the Land Readjustment Act, does (Korean Urban Development Act Article 19 Paragraph 1 Subparagraph 15).

Second, incidentally, whether the eligibility of landowners to participate in LR is constrained can be considered. The Land Readjustment Act of Korea only allowed landowners to participate in the landowner's association that implements projects, excluding building owners (Korean Land Readjustment Act, Article 21). As long as the act is not concerned with the construction and distribution of structures, there is no incentive for the owners of demolished buildings to join the association.

### **3. Land Readjustment from a Legal Perspective**

Several academics cite a legal framework as a requirement or success factor for LR (Yılmaz, Çağdaş and Demir 2015, 158-159; Turk 2008, 235; Home 2007, 463). It is due to the difficulty of dealing with the authority and rights associated with LR as well as its process without legislative instruments. In summing up the aforementioned legal issues pertaining to LR, the following general legal components can be identified. We will categorize them into the substantive and procedural components.

#### **1) Substantive Aspects**

The substantive aspect, an analysis of the elements pertaining to property rights surrounding LR, is as follows. First, it alters the land physically. It is the starting point for LR, which has been influenced by the need to rearrange topographically distinct parcels and secure infrastructure sites (refer to Kim 2011, 29). Theoretically, these physical modifications might be conceivable if landowners enter contracts to adjust boundary of their lands. However, LR makes these alterations widespread and collective. The exercise of the administrative authority is required for collective execution (refer to Viitanen 2001, 8) unless the project is dependent on the unanimous cooperation of landowners, which is referred to as "voluntary LR" or "private LR" (Muñoz Gielen and Mualam 2019, 7). The level of administrative intervention may vary.

Second, it alters the land's developability. It involves transforming farmland into developable land and low-rise into high-rise areas. It implies a change in the urban plan's contents. In this regard, LR is both a planning and a development instrument (Viitanen 2001, 1). Conceptually, separating the change in developability and LR is

conceivable, but then the project's feasibility will become relatively low.

Thirdly, it prioritizes the continuity of rights. Prior to and after the LR, it is presumed that ownership is contiguous (refer to Kim 2011, 39). In the event of a severance between the two ownerships, social costs are incurred to settle the legal relationship on the former rights. These costs gradually diminish the benefit of LR by blurring the distinction between LR and expropriation. Therefore, the laws of Korea, Japan, and Germany clearly establish this continuity between old and new ownership.

## 2) Procedural Aspects

From a procedural standpoint, the following legal elements are discussed in general. Prior to granting the authority of implementing LR, it is necessary to address the issue of "justification." If the public implements the project, the justification may be relatively more straightforward than granting compulsory authority to convert land to the private sector. Obtaining 100 percent consent from the project site's landowners may be ideal in the simplest case. However, it is nearly impossible to maintain a 100 percent consent rate throughout the lengthy LR process. Therefore, legislative consideration is required to justify the grant of authority in every nation, such as "democratic decision-making" (Hong 2007, 19). And as the procedural structure of LR becomes more complex, so do the concerns regarding this justification.

Second, a method of equitable distribution is crucial (refer to Hong 2007, 12). As long as the object of rights is undergoing a process of transformation, the contents of the fair evaluation method and procedure, as well as cost sharing, must be considered. Archetypal LR might be simple: it refines the boundary while maintaining the original location of each parcel. However, the more LR that is applied and transformed, the more difficult it becomes to design a method of equitable distribution based solely on territorial and physical criteria. At some point, land must be converted into value. And unless a social consensus is reached on the equitable distribution of "value," the application of LR becomes more challenging.

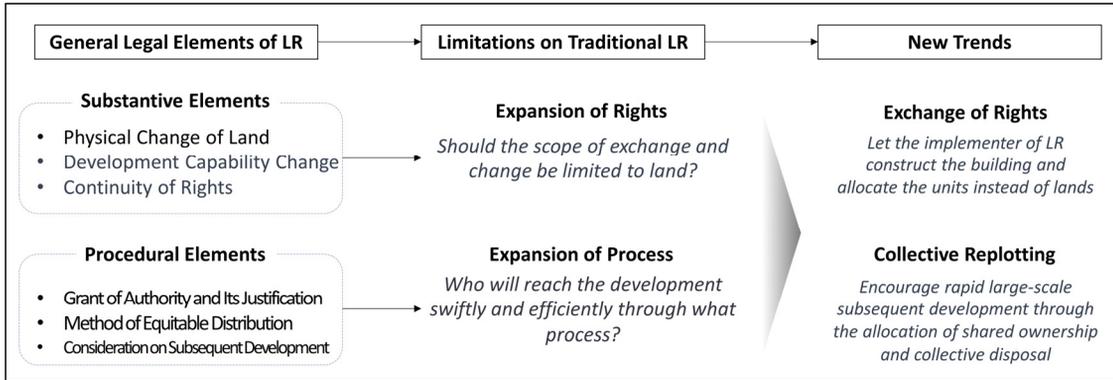
Thirdly, the extent of the project's procedural scope through LR is important. As discussed, LR, at least in the many countries, is understood to focus on land. Because land created through LR is developable, the focus should also be on subsequent development (refer to Viitanen 2001, 7). However, integrating development and LR is not simple. It is not just a matter of procedural integration, but also of rearranging various substantive procedural legal relationships, such as cost sharing, distribution, and authority.

## 4. Limitations of the Traditional Land Readjustment

By arranging general aspects of LR, we can learn about LR's limitations. These limitations refer to obstacles that must be overcome for LR to be more widely applied and expanded, but they also represent the limitations of

conventional LR (See <Figure 1>). Based on the experience of its use in numerous countries, traditional LR has the following drawbacks.

Figure 1\_Structure of Discussions



This paper understands the former (Section “1”) as an “expansion of the exchangeable items” and the latter (Section “2”) as an “expansion of development procedures.” In other words, the traditional LR was limited (a) in extending exchangeable objects in the substantive aspect and (b) in expanding and subsuming the process of subsequent development in the procedural aspect. If LR consisted solely of arranging land boundaries and securing infrastructure sites, these restrictions might be tolerable. However, as urbanization progresses and the reorganization of urban spaces becomes more complex and diverse, these limitations of the traditional LR will eventually render it inapplicable.

### 1) Limitation on Expansion of Rights

First, as long as LR focuses on the exchange of land, it is difficult to use it for purposes other than transforming rural to urban areas. Traditional LR may not be effective in areas with substantial urbanization. In the same context, we can see why Turk (2008) was concerned about the disadvantages of LR in the “built-up area” (p. 241). Compared to land, exchanging buildings requires intricate coordination of interests, including demolition, relocation, consent rate, and value assessment.

Nevertheless, it is necessary to consider whether LR can be utilized to enhance and densify urbanized areas. Many studies are gradually recognizing and analyzing LR as a means of redeveloping the existing urban area (refer to Mathur 2013; Larsson 1997; Šoškić, Višnjevac, Mihajlović and Mihajlović et al. 2022; Home 2007; Matsui 2019). Larsson (1997, 141) argued that it is necessary to renew existing urban areas instead of continually expanding them and that LR is a tool for doing this. On the other hand, various researchers argued for flexible approaches to the object of exchange. Ochi (2020, 94) cites “value conversion” as the primary aspect of LR, which also includes “land to

building floor conversion.” Hong (2007, 24) stated that the object of exchange might be shares of a LR corporation or even “future rights.” Despite these arguments, it is not easy to discover examples in which LR has been successfully applied to the redevelopment of a highly urbanized area from mid-rise or high-rise to high-rise.

## 2) Limitation on Expansion of Subsequent Development

Second, it must be contemplated whether LR provides an appropriate incentive for the construction of buildings. In Germany and Japan, after LR, a significant proportion of replotted building plots remain undeveloped for an extended length of time (Linke and Bretscher 2020, 106; Sorensen 1999, 2354). In Germany, this vacancy is related to the investment goals of waiting for the land price to rise (Linke and Bretscher, 2020, 106). Unfortunately, it means the outcomes of LR do not provide economic incentives for rapid development. Further, if building construction is conducted as a procedure completely apart from LR, it has no more significance than rearranging the estate's boundaries. For LR to reinvigorate a city, the development of buildings must be accomplished or stimulated.

LR relies upon land value growth (Turk 2008, 235; Shultz and Schnidman 1990, 237). The land acquired by landowners is a smaller parcel with a deduction rate. If so, there is no motivation for landowners to consent to the project unless the value of the replotted land is anticipated to rise. However, it would be impossible to anticipate a significant shift in the development potential of these small parcels. Unless it can produce a marketable outcome, traditional LR has no alternative but to rely on the unpredictability of the future market price.

## IV. New Trends on Land Readjustment: Korea's Experience

### 1. Introduction: Overcoming Stereotypes of Land Readjustment

In the previous chapter, we were able to organize the general legal components of LR and examine the issues at their limitations (See <Figure 1>). From this, we must address two concerns: how LR can be used more actively for urban space redevelopment beyond land rearrangement (“expansion of exchangeable items”) and how LR can promote efficient building development (“expansion of development procedures”). As time passes and urbanization continues, the utility of LR based solely on the exchange of land will decrease. The problem is that urban areas are constantly changing. Even in highly urbanized developed nations, it will be necessary to reorganize the transforming urban space. And the basic idea of LR, as a method of development that does not expropriate rights, still can be useful.

Korea has utilized LR in two directions for this goal. One is integrating the building construction process with the distribution of buildings instead of land. For this, the legal relationship following demolition, the distribution of newly constructed buildings, and the legal procedures connecting old and new buildings must be resolved. The

development of built-up areas might entail complex interests in costs (Turk 2008, 236); hence these resolutions are necessary. Korean courts and legal society explain this utilization in terms of “exchanging rights” concept,<sup>2)</sup> instead of exchanging land of conventional LR.

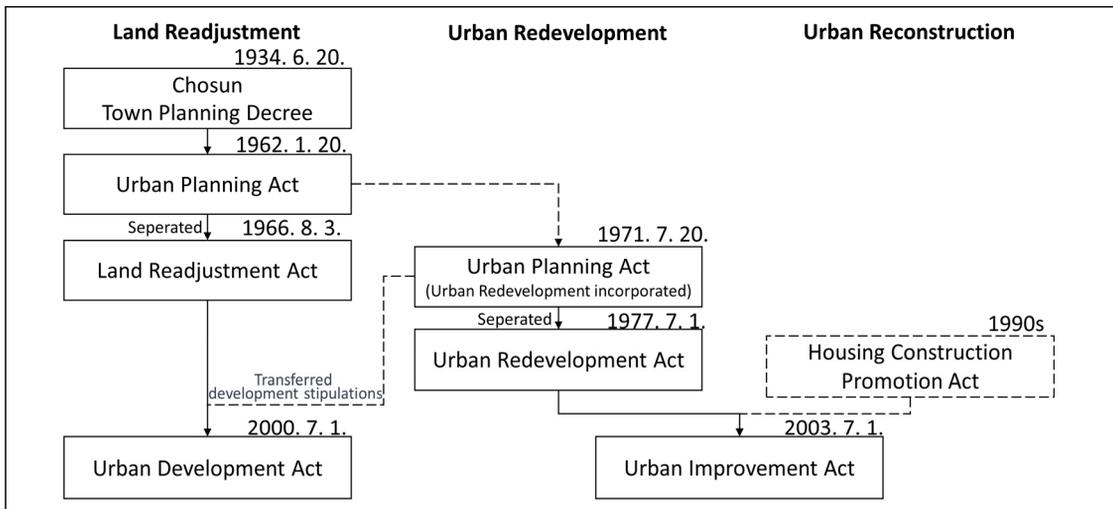
The second is economies of scale achieved by land aggregation. For this, LR should not only generate large-scale plots for high-density development, but the building construction process should also be swift and efficient. How to physically assemble landowners’ replotted property and proceed with decision-making and administrative procedures for the development and sale of such aggregated plots are crucial issues.

In the following, we will first briefly examine how LR-related laws have been amended and subdivided in Korea, and then examine how each direction actively used is coping with the above concerns.

## 2. Changes in Positive Laws for Land Readjustment

Land readjustment laws in South Korea have already experienced substantial changes. <Figure 2> shows a brief outline of the history of these legislations. The LR was enacted as the Chosun Town Planning Decree (Kim 2011, 29; Ryu and Suh 2014, 194), which was superseded by the Urban Planning Act, a general law on city planning. After that, LR became a separate law. The key factor of this change is as follows:

Figure 2\_Changes in Positive Laws.



Source: The history of each law is referred from Kim (2011) and Kim (n.d.-a). All dates except for the Housing Construction Promotion Act are effective dates of the Acts.

2) Although Kim (2011, 26) states this, he is negative about whether the exchange of rights can fully explain the essence of redevelopment and reconstruction projects in Korea.

## 1) Urban Improvement Act: Land Readjustment as an Active Redevelopment Tool

First, with the Act on the Improvement of Urban Areas and Residential Environments (hereafter “Urban Improvement Act”) in 2003, urban improvement projects employing LR theories became active. As part of urban improvement projects, urban reconstruction and redevelopment projects are actively used to restructure built-up areas. Practically speaking, reconstruction projects are typically utilized when converting various levels of apartment complexes to high-rise, whereas redevelopment projects are used when converting an area of low-rise areas to a high-rise (refer to Kim 2018, 386).

It may be difficult to find a direct connection between LR and reconstruction and redevelopment projects in the history of positive law. Before the redevelopment project was incorporated into the Urban Planning Act, LR legislation became distinct from the Urban Planning Act. The Urban Redevelopment Act of 1977, however, made a connection between the two by assuming the units distributed by redevelopment projects were the same as LR (Article 49 Paragraph 2, Article 65 Paragraph 2). Based on these connections, the Supreme Court has also applied the accumulated legal principles for LR to the redevelopment project.<sup>3)</sup> And as the procedures and legal principles of the redevelopment project were incorporated into the reconstruction project which had relatively smaller legal regulations (Kim 2018, 401), the fundamental concept of LR was eventually applied to both projects.

However, there is a clear distinction between LR and reconstruction and redevelopment in that the latter in principle target building units for distribution, resulting in “the exchange of rights” instead of exchange of lands. This will be discussed in Section 3.

## 2) Urban Development Act: New Momentum for Land Readjustment

Second, with the enactment of the 2000 Urban Development Act, LR has been an important tool for high-density development (refer to Kim 2015). Even the name of the LR project was removed from the positive law, and it was included as one of the techniques of the urban development project. Theoretically, both LR and expropriation might be employed in an urban development project. Traditional LR cases involving the development of single-family home plots are not a majority in Korea now.

In fact, until this law was enacted in 2000, LR had been nearly abandoned in Korea since the 1980s (Kim n.d.-b). Even before the 1980s, LR was used as a method to reduce landowners’ opposition without straining public finances (Ryu and Suh 2014, 214). Specifically, Ryu (2015) argues that significant socio-political events such as the Korean War and the May 16 Coup, which occurred while the Chosun Town Planning Decree was still in effect which was the first legislative basis for LR, increased the “institutional continuity” of the existing tool by causing the government to hesitate to implement radical institutional change (p. 20; Ryu and Suh 2014, 213-214) and that the government’s

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3) e.g. Supreme Court [S. Ct.], 2005Da70151, Jan. 11, 2007 (S. Kor.).

poor economic status was a financial barrier that prevented it from exercising expropriation, whereas LR did not require government expenditure (p. 21; Ryu and Suh 2014, 202).

Momentum for institutional change was established after these sociopolitical and economic conditions shifted and the government formed an intention to intervene actively with sufficient financial resources. Rapid urbanization made it difficult to meet the demand for housing with the traditional LR method (Kim 1996, 87; Ryu 2015, 30), and as a result, development through expropriation by public entities became the new standard. In addition, according to Kim (2018), the revision of positive law in 1976 that imposed a heavier infrastructure burden on property owners made LR less appealing to property owners (p. 703). As a result, LR has been neglected since the 1980s (Ryu and Suh 2014, 180).

It was revitalized by the Urban Development Act of 2000. The intent of the legislation was to combine the Land Readjustment Act with other development-related provisions as a fundamental law for urban development and to encourage development initiative of private sector (Lee 2000, 298; Kim 2018, 705). Urban development projects, which were a newly created concept that included LR, were not utilized actively for some time after the enactment of the new positive law, but in the 2010s, they were (Kim 2018, 706). However if LR remained at its current level of creating small plots, it would not be used as an active policy instrument. As the method of collective replotting was combined with the fundamental concept of LR and the construction project was able to be implemented concurrently with LR, it began to be revitalized by the private sector primarily. This will be discussed in Section 4.

### **3. Redevelopment and Reconstruction through Exchange of Rights**

#### **1) Outlines of Redevelopment and Reconstruction Projects**

The “exchange of rights” (or conversion of rights) focuses on the “rights,” which is the essence of property ownership. These modifications to LR could commence with detaining rights from a specific façade, such as land. Generally, LR refers to the conversion of ownership from the original land to the new land produced by the project. If we recognize that rights can be changed into rights, we can consider the object of rights with greater flexibility. Then, it would be feasible to transform the land into buildings and buildings into buildings.

If you consider the most original form of LR, it would be to refine only the boundary line while leaving the land's location unchanged. In this instance, there may be an issue regarding how to adjust the land's area, but unless the land's location changes significantly, the object of rights seems to be fixed to some extent. In this case, even if the concept of “exchange” is not necessarily applied, recognizing the continuity of rights poses little difficulty.

The issue arises when the object of rights undergoes a physical transformation. If the location of the land changes, the concept of “exchange” is then actively required. Why can it be said that the right to land here is continuous with the right to land there? This is because the law creates its continuity artificially. But it's not over yet. To

**Table 1**\_Comparison of Projects Based on Land Readjustment in Korea

Category	Land Readjustment Project1) (Abolished)	Urban Development Project (LR-type)	Urban Reconstruction Redevelopment Project																																		
Process of Project (Property Owners Association)	<table border="1"> <tr><td>1</td><td>Designation of Target Area</td></tr> <tr><td>2</td><td>Authorization of Association Establishment</td></tr> <tr><td>3</td><td>Establishment and Approval of Replotting Plan</td></tr> <tr><td>4</td><td>Completion of Construction Work</td></tr> <tr><td>5</td><td>Disposal of Replotted Land</td></tr> </table>	1	Designation of Target Area	2	Authorization of Association Establishment	3	Establishment and Approval of Replotting Plan	4	Completion of Construction Work	5	Disposal of Replotted Land	<table border="1"> <tr><td>1</td><td>Designation of Target Area and Establishment of Development Plan</td></tr> <tr><td>2</td><td>Authorization of Association Establishment</td></tr> <tr><td>3</td><td>Establishment and Approval of Implementation Plan</td></tr> <tr><td>4</td><td>Establishment and Approval of Replotting Plan</td></tr> <tr><td>5</td><td>Completion of Construction Work</td></tr> <tr><td>6</td><td>Disposal of Replotted Land</td></tr> </table>	1	Designation of Target Area and Establishment of Development Plan	2	Authorization of Association Establishment	3	Establishment and Approval of Implementation Plan	4	Establishment and Approval of Replotting Plan	5	Completion of Construction Work	6	Disposal of Replotted Land	<table border="1"> <tr><td>1</td><td>Designation of Target Area and Establishment of Improvement Plan</td></tr> <tr><td>2</td><td>Authorization of Association Establishment</td></tr> <tr><td>3</td><td>Establishment and Approval of Implementation Plan</td></tr> <tr><td>4</td><td>Establishment and Approval of Management and Disposal Plan</td></tr> <tr><td>5</td><td>Completion of Construction Work</td></tr> <tr><td>6</td><td>Public Notice of Transfer</td></tr> </table>	1	Designation of Target Area and Establishment of Improvement Plan	2	Authorization of Association Establishment	3	Establishment and Approval of Implementation Plan	4	Establishment and Approval of Management and Disposal Plan	5	Completion of Construction Work	6	Public Notice of Transfer
1	Designation of Target Area																																				
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3	Establishment and Approval of Implementation Plan																																				
4	Establishment and Approval of Management and Disposal Plan																																				
5	Completion of Construction Work																																				
6	Public Notice of Transfer																																				
Target Area	More than 30,000m <sup>2</sup> (Residential, Commercial Area2) or 150,000m <sup>2</sup> (Industrial Area)	More than 10,000m <sup>2</sup> (Residential, Commercial, Green Nature, Productive Green Area), 30,000m <sup>2</sup> (Industrial Area), 100,000m <sup>2</sup> or 300,000m <sup>2</sup> (Outside Urban Area). No limit in exceptional case	Ratio of dilapidated and substandard structures is key factor, Detailed requirements are stipulated by law																																		
Proposal of Property owners	No explicit legal ground	Landowners can propose designation of target area (2/3 consent of total area is required)	Property owners can propose designation of target area (2/3 consent of total number of property owners is required)																																		
Project Implementer	Principle: Landowners or Association Exception: Local or Central Governments (If no application from landowners or special needs)	100% LR: (In principle) Landowners or Association; Exceptionally public entities LR+Expropriation: Public or private Entities are available	Redevelopment: Landowners (if less than 20 exist), Association Reconstruction: Association Other Public or private entities can be co-implementer.																																		
Qualifications to Participate in Association	Landowner (Not building owner)	Landowner (Not building owner)	Redevelopment: who owns land or building Reconstruction: who owns land and building3)																																		
Consent rate (Property Owners Association)	For Association Establishment: 2/3 of Total Area (Not Number of owners)	For Establishment of Development Plan, Association Establishment: 2/3 of Total Area + 1/2 of Total Number of Landowners	For Association Establishment Redevelopment: 1/2 of Total Area + 3/4 of Total Number of Property Owners Reconstruction: Basically 3/4 of both Total Area and Total Number of Property Owners + 1/2 of Property Owners per Building.3)																																		
Building Permit	Not granted	Can be granted (If building plan is submitted)	Granted																																		
Replotting Method	Area-Base, Value Base	Principle: Value Base Exception: Area-Base	Value Base																																		
Replotting Outcome	Principle: Land Exception: Building (Multi-level replotting)	Principle: Land Exception: Building (Multi-level replotting)	Principle: Building Exception: (Theoretically) Land																																		
Construction of Infrastructure*	Unclear who will construct*	Clear who will construct*	Clear who will construct																																		
Outcome of Project*	Low-density and Low-rise*	High-density and High-rise*	High-density and High-rise																																		

Note: 1) According to Land Readjustment Act of 1999. 2) Those areas are designated by local government, which is similar to use zone.

3) This is because the majority of cases of reconstruction involve multi-building apartment complexes.

Source: \* These marked parts are cited from Kim (2015).

reconcile the interests surrounding the old land, the value must be somewhat equalized. If this value gap widens disproportionately, the issue of constitutional takings will inevitably arise. In addition, if the land's location is changed, the landowner will no longer be able to reside on the previous land and will be required to relocate. The legal relationship associated with the movement issue must also be resolved. And as long as the movement is involved, concerns about the project's legitimacy will persist. As a result, as the exchange of rights becomes more advanced and abstract, the positive laws and legal rationales to justify it must be prepared.

In reconstruction and redevelopment projects in Korea, the exchange of rights theory is widely employed, in spite of criticism on expansion of the concept and its explicability (refer to Kim 2011). Both projects aim to revitalize the urbanized built-up area where residents have land or building ownership. When the exchange of rights concept is applied, the project implementer prepares an allocation plan (management and disposal plan), demolishes existing buildings, arranges the land, builds a new building, and then distributes property rights to the new building.

The outline of the procedure is similar to the traditional LR project, which identifies the target area, creates an allocation (replotting) plan, and implements it. However, the project must entail the construction of structures on land, which should be offered to the property owners or sold to finance the project in the same manner as reserve land. The area-based method is no longer applicable for exchanging buildings; instead, the value-based method should be utilized and detailed regulations are prepared for that. <Table 1> presents a comparison between an exchange of rights project and a conventional LR project.

**Figure 3**\_Case of Korea's Redevelopment Project by Using Exchange of Rights Concept (Gajaeul 4 District)



Source: National Geographic Information Platform (Aerial and Satellite Image; <https://map.ngii.go.kr>, accessed June 11, 2023)

<Figure 3> illustrates a redevelopment project case which is the largest completed one in Seoul Metropolitan City at now. The area of the project is 283,260.7m<sup>2</sup>, and the newly built apartment complex includes 3,336 units for owners or sale and 711 units for rent. There were 1,827 property owners who joined the property owners' association (the project's implementer) (Seoul Metropolitan Government n.d.).

## 2) Formation and Evolution of the Concept

### (1) From Land Readjustment to Urban Redevelopment

The concept of exchange of rights in Korea was modified from the LR theory (Park 2003). Kim (2011, 37) explains that in Korea, the term exchange of rights was first used in 1973 to describe the legal basis of the newly introduced redevelopment project. While there is no consistent translation of “Gongyonghwangwon” in Korea, Kim (2011) uses the term “compulsory exchange of rights.”

For reference, Japan passed the Urban Redevelopment Act in 1969 based on the exchange of rights (conversion of rights) concept (Kim 2011, 33), which was the only method of redevelopment until Japan introduced the other type of redevelopment project by land acquisition (p. 37). Redevelopment projects in Japan are classified into “category 1” based on the exchange of rights theory and “category 2” based on land acquisition (Archer 2018; Kim 2011, 33; Kang 2012, 5). Archer (2018) and Matsui (2019) describe the Japanese urban redevelopment project (“category 1”) as an extension of LR. Japan typically translates “Kenri no henkan” as “conversion of rights” or “right conversion” (Archer 2018; Matsui 2019).

Like this, the concept of redevelopment applied with the exchange of rights theory appeared during a similar period in Korea and Japan, as did the terminology used in the law. Thus, discussions on redevelopment and exchange of rights in Korea have included analysis on Japan's Urban Redevelopment Act (refer to Kim 2011, Kang 2012). From a historical standpoint, it is evident that both Korean and Japanese redevelopment (category 1) are theoretically impacted by LR (Kang 2012, 81; Archer 2018; Matsui 2019), resulting in similarities such as continuity of rights. However, there are distinctions in the particulars. For instance, the timing of rights conversion differs for Japan's category 1 redevelopment and Korea's redevelopment. In Japan, the date set in the plan, whereas in Korea are based on the completion date of the project (Kang 2012, 80). Additionally, the scope of continuity of leasehold rights varies (Kang 2012, 92; Urban Improvement Act Article 87).

Comparing the cases of redevelopment under the Urban Improvement Act in Korea to category 1 redevelopment under the Urban Redevelopment Act in Japan, Korea records a greater number of cases. Due to the fact that both Japan (Kang 2012, 82) and Korea have other types of redevelopment and adjacent concepts, such as urban revitalization, it is reasonable to make this comparison only for reference.

## (2) Expansion to Reconstruction Projects

On the other hand, conceptually, what can correspond to Korea's reconstruction project is Japan's condominium (mansion) reconstruction (Kang 2012, 82), which are based on the concept of exchange of rights. In practice, reconstruction projects in Korea target old apartment complexes; therefore, the project's target and purpose can be compared to that of a condominium (mansion) in Japan. In the case of Korea, the Urban Improvement Act of 2003 incorporated the reconstruction project (Kim 2011, 38), as an exchange of rights mechanism, while in Japan, the Act on Facilitation of Reconstruction of Condominiums (hereinafter "Condominium Reconstruction Act") in 2002 began to adopt stipulations relevant to the exchange of rights, such as the continuity of rights (Kang 2008, 182). Before then, private reconstruction by unanimous consent of the original owners was the mainstream in Japan (Kang 2008, 171). In the "Reconstruction Project" column of <Table 2>, cases implemented in Korea and Japan prior to the enactment of these positive laws are included. As of 2022, 165 out of 270 concluded cases in Japan were not based on the Condominium Reconstruction Act.

**Table 2\_** Comparison of Redevelopment and Reconstruction Cases of Korea and Japan

Redevelopment Project				Reconstruction Project			
Korea <sup>1)</sup> (2018. 12. 31.)		Japan <sup>2)</sup> (2019. 3. 31.)		Korea <sup>1)</sup> (2021. 12. 31.)		Japan <sup>3)</sup> (2022. 4. 1.)	
Total Case	Total Area	Total Case	Total Area	Total Case	Completed Case	Total Case	Completed Case
1,524	7,727.01 ha	1,038	1,584.4 ha	1,192	602	316	270

Note: Case and area of redevelopment project is sum of completed or in progress cases. Number of redevelopment case in Japan is sum of category 1 (987 cases) and category 2 (51 cases).

Source: 1) Korea Ministry of Land, Infrastructure and Transport 2021; 2) Japan Ministry of Land, Infrastructure, Transport and Tourism 2019; 3) Japan Ministry of Land, Infrastructure, Transport and Tourism 2022.

This paper does not aim to provide a comprehensive comparison of the Korean and Japanese systems, so we will not proceed to do so. Juxtaposing the systems of Korea and Japan reveals, however, that the origin of redevelopment and reconstruction projects in both nations is closely tied to LR, and both are based on the theory of exchange of rights.

## 3) Further Considerations Involved in the Exchange of Rights

Concerning the limitations of the traditional LR outlined in Chapter III, namely the limitations in "expansion of the exchangeable items" and in "expansion of development procedures," we will examine what legal issues are contemplated to address in redevelopment and reconstruction projects utilizing exchange of rights.

### (1) Issues on Exchange Objects

Establishing the principles for the relations surrounding the demolition of the old building and its conversion into new rights is crucial to the exchange of rights. First, this requires a clear stipulation for the continuity of rights between

the old and new buildings. The ownership of a building is extinguished when the building is demolished.<sup>4)</sup> It may make the validity of accessory rights, such as a mortgage and certain kind of leasehold rights on the previous building, unclear. To prevent this, legislation is necessary (e.g., Urban Improvement Act Article 87 Paragraph 1). Prior to the enactment of the Condominium Reconstruction Act, the absence of legal grounds for continuity between old and new rights and their accessory rights was also problematic in Japan (Kang 2008, 176, 182). On the basis of this continuity, the Korean tax law and courts presume that the rights prior to and after the exchange are “identical.” Hence, no acquisition tax shall be imposed, as the owner did not newly acquire the right to a new apartment unit to the extent of equal value.<sup>5)</sup>

Second, there must be discipline regarding when rights are converted. Similar to typical LR projects, reconstruction and redevelopment projects in Korea involve the establishment of an allocation plan (management and disposal plan) for newly constructed structures. The project implementer will then demolish the existing structure and construct a new one. Upon completion of construction, the rights shall be exchanged according to the plan by issuing a “Public Notice of Transfer” (Kim 2018, 672).<sup>6)</sup> It is a matter of legislative choice at what point the exchange will occur. According to Kang (2012, 108), the conversion in Japan’s Urban Redevelopment Act is prior to the start of physical construction work, in contrast to Korea. Kang (2012, 108-109) evaluated that the Japanese approach of arranging legal relationships on property rights at an early stage may increase the stability of project implementation.

## (2) Issues on Allocation and Conflicts

Resolving conflicts over allocation is a crucial but complex topic. Converting buildings raises numerous challenges, such as how to evaluate the value of old and new buildings and how to allot new buildings based on what criteria. Regarding the construction work, this distribution is directly related to the issue of cost sharing. According to the Seoul National University Center for Construction and Urban Development Law (2015), 36 percent of administrative litigation involving reconstruction and redevelopment projects occurred at the allocation plan (management and disposal plans) stage. Approximately one-third of these cases involved the allocation outcome or method.

Because multiple parties are involved in the allocation plan, it is not enough to amend or cancel the allocation for a single unsatisfied property owner; the entire allocation may be affected.<sup>7)</sup> For the sake of legal stability, it is feasible to conceive of a legislative method to unify lawsuits of various conflicts or prevent lawsuits on the allocation’s content after a certain point. The former is an ongoing issue in Korea,<sup>8)</sup> while the latter has been resolved. For

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4) refer to Supreme Court [S. Ct.], 2010Da28604, May 17, 2012 (S. Kor.).

5) Supreme Court [S. Ct.], 2011Du1146, Sep. 12, 2013 (S. Kor.).

6) refer to Supreme Court [S. Ct.], 2011Du6400, Mar. 22, 2012 (S. Kor.).

7) Supreme Court [S. Ct.], 2011Du6400, Mar. 22, 2012 (S. Kor.) explains it as “nature of grouped legal relationship.”

8) For example, excessive use of individual civil suits has been a representative issue regarding the form of lawsuit (Seoul National University Center for Construction and Urban Development Law 2015, 41).

the latter, it is appropriate for the property owner and the project implementer to settle faults with monetary damage or compensation (Kang 2012, 110). Thus, after the exchange, Korean courts do not permit litigation over the allocation plan<sup>9)</sup> or even administrative acts at an earlier stage.<sup>10)</sup> In Korea, a solution is still being sought for how to effectively manage the conflict surrounding the allocation plan.

#### 4. Collective Replotting; Creation and Rapid Development of Large-scale Site

##### 1) Outlines of Collective Replotting

Due to the limitations of conventional LR, it is impossible to ensure the viability of a project by merely allocating property into small parcels. It is challenging to incentivize landowners to participate simply by rearranging small plots without increasing land value, especially in urban areas. Therefore, it would be meaningful to consider how to utilize the reallocated parcels for landowners as intensely as possible by creating a large-scale site and promoting its effective development.

These considerations drive collective replotting. Collective replotting (Jipdanhwanji), is the allocation of a single large plot to multiple proprietors. The landowners receive a proportional share of a large plot. If the implementer just distributes such a large plot as co-ownership and then ends the project, the land cannot be sold or developed effectively. It is not easy to see landowners doing such a large-scale development on their own unless they are experts on large-scale development. Then, for collective replotting to be successful, it is necessary to ensure that collective land sales and decisions on development can be made efficiently. In most situations, development on a collectively replotted site entails choosing a developer or construction company to develop the land and selling it to them (Oh 2022, 309).

Unlike reconstruction and redevelopment projects based on a distinct positive law, collective replotting is a modification “within” the framework of traditional LR.

##### 2) Use of Collective Replotting

Even before collective replotting was institutionalized in 1994 (Park 1994), there have been steady attempts to merge land replotted to the same person who previously owned multiple parcels (refer to Oh 2022, 321-323) or to collect reserve lands in a large cluster and use them for the constructing apartment complexes (Kim and Kim 2010).

Collective replotting is currently being utilized actively in LR projects under the label of “urban development project.” Although there are no statistics about collective replotting, it is utilized commonly. In a case study of Lee,

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9) Supreme Court [S. Ct.], 2011Du6400, Mar. 22, 2012 (S. Kor.).

10) Supreme Court [S. Ct.], 2011Du20680, Sep. 25, 2014 (S. Kor.).

Choi and Ahn (2020), numerous cases (Gunsan Mijang, Pohang Chogok, Cheonan Seongseong 3, Jeonju Hyocheon, Chilgok Buksam Districts) employed collective replotting to provide large-scale plots for the apartment complex. In a case study by Shin (2013) in the Daegu Metropolitan City and Gyeongsangbuk-do regions, collective replotting was employed in all eight LR-type projects.

In the case of the Jeonju-Hyocheon District, 365 parcels (424,457m<sup>2</sup>) were replotted into two large-scale sites for the apartment complex, and the sale price of these two sites more than doubled to KRW 188.47 billion, compared to the prior sum valuation of 365 parcels (KRW 91.7 billion; Lee, Choi and Ahn 2020, 202). As a result, collective replotting is considered a critical element of ensuring project viability (Lee, Choi and Ahn 2020, 172).

For reference, 49.3 percent (151 projects) of the 306 urban development projects underway in 2019 were by the LR method. 80 percent (121 projects) of LR-type projects were carried out by private entities (Korea Ministry of Land, Infrastructure and Transport 2020).

### 3) Legal Issues on the Collective Replotting

Unless prohibited by law, it is not difficult to form a co-ownership relationship by merging small plots into one large plot. However, the difficulty comes after co-ownership is established. The effectiveness of collective replotting is determined by how efficiently it can be developed (refer to Oh 2022, 333). In addition, this issue relates to the limitations of traditional LR described in Chapter III. For each limitation, we will examine which legal tools and principles collective replotting employs to address it.

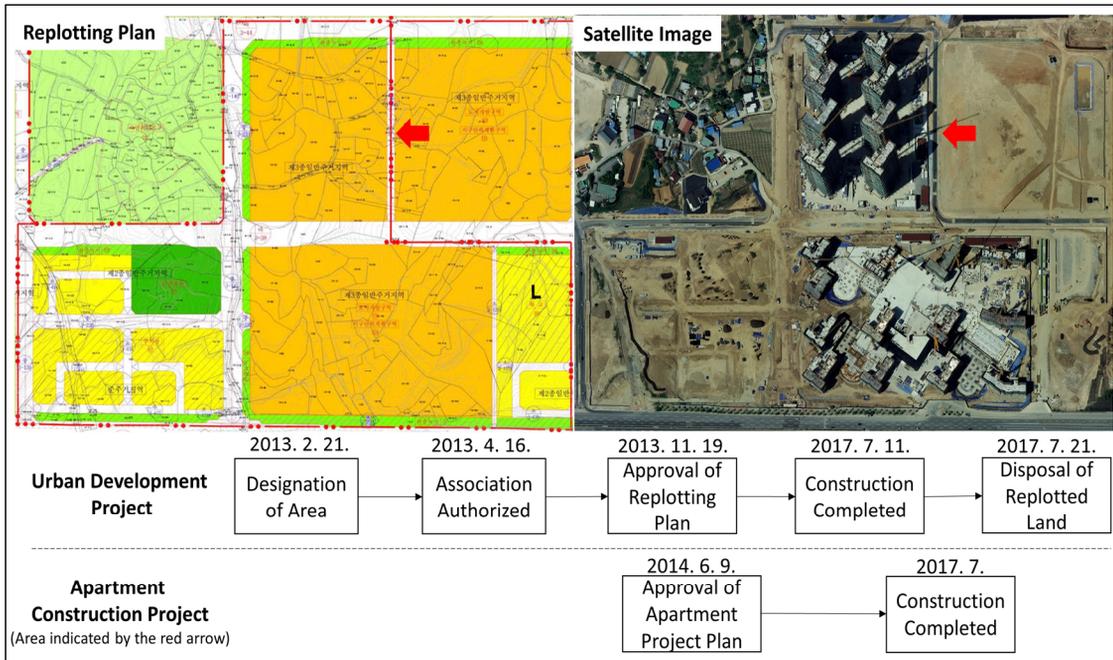
#### (1) Expansion of Exchangeable Items: Relationships on Distribution of the Share

Clarifying the site disposal and development decision-making process is essential. When replotting results in co-ownership, it is difficult to reach an agreement on disposal or development, as noted by Turk (2008, 240). Considering the Jeonju-Hyocheon District, where there were hundreds of co-owners, development is impossible if the decision-making method for the disposal of the land is unclear. Currently, the issue is resolved in Korea through consent on unilateral and collective decision-making. The project implementer employs collective replotting by landowners' application to participate. The Supreme Court of Korea interprets such an application as the landowner's consent for the project implementer to decide how to sell collectively replotted land.<sup>11)</sup> When a project's implementer is an association of landowners, the by-law of association stipulates such a decision-making power of association (Oh 2022, 333). It was discovered that the project where a construction company pushed the construction of an apartment complex on a collectively replotted site at an early stage was completed around three years and five months earlier than other similar projects (Lee, Choi and Ahn 2020, 51; See <Figure 4>).

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11) Supreme Court [S. Ct.], 2017Du70946, Mar. 3, 2018 (S. Kor.).

Figure 4\_Case of Development of Collective Replotted Site (Cheonan Seongseong 3 District)



Source: Cheonan City Government Notification. 2017. No.2017-12 (Replotting Map); National Geographic Information Platform (Satellite Image, 2016; <https://map.ngii.go.kr>, accessed June 11, 2023); Lee, Choi and Ahn 2020; Cheonan City Government 2015 (Process of Each Project).

However, such a collective disposal is difficult to enforce. Under Korean law, it is permissible to sell co-ownership shares (Civil Act Article 263), so making an exception for the collective disposal of collectively replotted sites is necessary. In other words, collective replotting can create the appearance of a co-ownership share in which the right to sell is restricted. The issue is the “numerus clausus doctrine,” one of the most significant features of property rights in civil law systems (Van Erp 2019, 1042), including Korean law. The content and types of property rights are governed solely by the law. The Supreme Court ruled that if the content of property rights specified by law is permanently excluded, it is against numerus clausus doctrine.<sup>12)</sup> To ensure the efficacy of collective replotting and reduce controversy, it may be necessary to establish a clear legal foundation for collective replotting.

It is difficult to discern whether collective replotting is pursued in Korea on a clear legal basis. As explained by the Supreme Court as the basis for collective replotting, the Enforcement Rule of the Urban Development Act Article 27 Paragraph 9 states that sites designated for constructing buildings subject to collective ownership, such as apartments, may be subject to replotting for co-ownership. Not only is it unreasonable to derive solutions for all the legal relationships described above from this Paragraph alone, but this is a subrule, not a statute. Additionally, there are Ministry of Land, Infrastructure and Transport guidelines, but these do not have the force of law. Therefore,

12) Supreme Court [S. Ct.], 2018Da40235, Dec. 30, 2021 (S. Kor.).

it appears that clear legal regulations are required in the long run.

The detailed legal relationship of collective replotting in Korea is currently governed by the bylaw of the landowners' association that implements the LR type of urban development project and the agreement submitted by landowners when applying for collective replotting. The Supreme Court has also acknowledged the possibility of collective disposal of collectively replotted sites based on these applications.<sup>13)</sup> Currently, it appears that there are few significant obstacles to regulating legal relationships through bylaw and application. In particular, if the disposal and construction of the site occurred prior to the completion of the LR project, the replotting plan may be modified to exclude the objector from collective replotting. In addition, the LR project is in a "provisional status" prior to attaining the absolute right to shared ownership,<sup>14)</sup> which may prevent a conflict with the aforementioned *numerus clausus* doctrine.

Controversy remains, however, if the disposal of the site is not determined by the completion of the LR project. Moreover, if the objector is excluded from collective replotting and the detached housing site is allocated to him, it is anticipated that the constitutional taking will be less contentious; however, if no detached housing site is planned, the only alternative is to pay him in cash, which makes the line between LR and expropriation unclear. As far as the application form for collective replotting contains an agreement on such a cash settlement, there is a chance that Urban Development Act Article 30 Paragraph 1 may serve as its legal rationale (Oh 2022, 336). As in the analysis of Oh (2022), however, legal issues that make further clarification of the legal basis necessary, such as the interpretation and effect of the agreement or the validity of bylaws stipulating cash settlement still exist (p. 336).

## (2) Expansion of Development Procedure; Legal Basis on the Rapid Subsequent Development

A legal mechanism for rapid development is also required. As in the case of Japan, LR has the drawback of being time-consuming (Shultz and Schnidman 1990, 234). In Germany and Japan, replotted land remained vacant even after the long end of LR (Linke and Bretscher 2020; Sorensen 1999). To this end, it is more efficient to induce development by permitting concurrent development projects on the collectively replotted site without waiting for a long stretch of time for LR.

Developing collectively replotted site prior to the completion of LR requires three legal instruments. (a) First, the right to use site must be recognized during the LR process. (b) In addition, based on these land use rights, various approvals for apartment construction projects must be obtained. (c) For the effective promotion of apartment construction projects, it should be permitted to presell units that will be constructed based on these land use rights.

(a) First, even if LR has been completed and ownership of the site to be replotted has not been acquired, the

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13) Supreme Court [S. Ct.], 2017Du70946, Mar. 3, 2018 (S. Kor.).

14) refer to Supreme Court [S. Ct.], 2017Du70946, Mar. 3, 2018 (S. Kor.)

law recognizes the right to use the site. In Korea's positive law, even though LR has not been completed, the project implementer may designate "Reserved Land for Replotting," allowing the land to be replotted to be used while the LR project is ongoing (Urban Development Act, Article 35).

(b) Based on these land use rights, there is a legal basis for obtaining the necessary construction permit or approval. In the case of housing, the required procedures vary based on the number of units to be constructed. Although there are a few exceptions, 30 units is the dividing line. Up to 29 units require a Building Act permit, while 30 units or more require Housing Act approval (Housing Act Article 15 Paragraph 1; Enforcement Decree of Housing Act Article 27). Both statutes allow permission or approval to be obtained with securing the right of use (Building Act Article 11 Paragraph 11 Subparagraph 1; Housing Act Article 21 Paragraph 1 Subparagraph 2). In the case of the Housing Act, the regulations are explicit, whereas the Building Act has contentious wordings ("Provided, That multi-family housing for sale in units shall be excluded herefrom") which make it unclear whether a building permit for apartments with 29 or fewer units for sale can be issued until the LR is complete. As shown in <Figure 4>, however, the size of the apartment for which collective replotting is intended exceeds 29 units, so the provisions of the Building Act have no bearing on collective replotting. In other words, the majority of cases involving apartment construction through collective replotting are supported by the Housing Act, and the grounds for this case are relatively clear.

(c) Finally, the basis for whether an apartment unit can be sold based on land use rights is ambiguous based on the wording of the positive law alone, but in practice, the sale of the unit in the state of "Reserved Land for Replotting" before the LR is complete appears to be widely permitted. When constructing a large-scale apartment complex in Korea, it is possible to sell units in advance if certain conditions are met prior to the building's completion (Rule on Housing Supply Article 15). Due to the fact that presale can facilitate financing for apartment construction, it is correlated with the viability of collective replotting. The Rule on Housing Supply, which is the basis for presale, does not make explicit exceptions for LR and Reserved Land for Replotting. Consequently, despite the potential for controversies in the positive law, presale is typically conducted as depicted in <Figure 4>. In practice, the public notice for a presale indicates that LR has not been completed, and that this may affect the timing of the acquisition of land rights or the land area.<sup>15)</sup> The Act on Sale of Building Units, on the other hand, applies to the presale of buildings that have been granted permits under the Building Act. It has an explicit provision related to LR and Reserved Land for Replotting (Article 6 Paragraph 1 Subsection 2).

As stated previously, the majority of the legal grounds associated with the rapid development of sites for collective replotting are prepared explicitly, but ambiguous ones, such as presale, also exist. Due to the nature of LR, however, if the replotting plan is approved and the status of Reserved Land for Replotting is obtained, they set a very positive

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15) E.g. Cheonan Lake Town 2nd Prugio (Cheonan Seongseong 3rd District Urban Development Zone A2BL) 2nd Phase Resident Recruitment Notice. [http://cityplan.rsun.kr/photo/complex/apt\\_supply\\_mst/uploadfile\\_20150522623597.pdf](http://cityplan.rsun.kr/photo/complex/apt_supply_mst/uploadfile_20150522623597.pdf) (accessed June 11, 2023).

environment for development, unless exceptional circumstances such as an illegal cancellation of the replotting plan exist. Since the Urban Development Act explicitly recognizes the right to use Reserved Land for Replotting, as far as private sector drives development based on this, it is possible that the project will be completed relatively quickly.

## V. Conclusion

LR provides numerous benefits since it enables the development project to continue while the present landowners retain ownership. This is the reason why international interest in land readjustment persists to the current day. However, as previously noted, if LR is limited to the exchange of land into the land, it becomes difficult to use it to renew urban space in highly urbanized countries. Moreover, if LR results in small parcels and low-density development, doubts regarding the project's viability would arise.

This article examines a modification in Korea that dissolves the original form of LR, thereby changing it into the exchange of multiple forms of rights. In this manner, Korea applies the concept of LR in a variety of ways. Obviously, there are problems and conflicts in Korean cases as well, and constant legislative efforts are made to resolve them. Notwithstanding, an analysis of the content of LR as practiced in Korea will undoubtedly aid the use and reference of LR as a tool for more active development in numerous nations.

Because various researchers acknowledge the legal foundation as a key component that directly affects the success or failure of LR (Yılmaz, Çağdaş and Demir 2015, 158-159; Turk 2008, 235), this article analyzes the contents of these Korean modifications in depth and then outlines essential legal issues for their implementation. Concerning reconstruction and redevelopment projects based on the exchange of rights concept, the legal foundation for the continuation of rights, the timing of rights conversion, and the necessity to prevent disputes following rights conversion were discussed. Concerning collective replotting, the decision-making framework for selling collectively replotted sites and the need to allow its rapid development were discussed. These are also considerations that other nations referring to Korea's experience should contemplate.

This paper also has several limitations. It was not possible to describe in detail the conflict of legal interpretation and application that specifically occurs during the actual execution of each system because of the attempt to describe the situation in Korea from an external perspective for easy understanding. Moreover, in the case of collective replotting, there is a lack of legal literature and few court precedents, so in-depth discussion is restricted. Due to the nature of the practice of collective replotting, which is led by the private sector, there are few publicly accessible data, making detailed discussions difficult.

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## 요약

주제어: 토지구획정리, 환지, 환권, 권리변환, 재개발, 재건축

토지구획정리사업 혹은 환지라고 불리는 Land Readjustment(LR)은 전 세계 여러 나라에서 오랜 기간 도시계획과 개발의 수단으로 사용되어왔고, 현재까지도 그에 대한 국제적 논의가 계속되고 있다. 그러나, 전통적인 환지이론은 기본적으로 토지와 토지를 교환하는 것에 기초하고, 국가에 따라서는 환지 이후의 지상에서의 개발에 대한 절차를 포함하지 않고 있는 경우도 다수 발견된다. 이에 환지 혹은 이와 유사한 구조를 토지 이외의 권리와 교환, 나아가 건축물의 개발과 배분을 위하여 사용한 사례는 전 세계적으로도 소개된 문헌이 많지 않은 것으로 사료된다. 그러나, 수용권을 발동하지 않는다는 점에서 환지 혹은 이를 응용한 환권방식은 도시계획 및 개발의 제도적 수단으로 활용하기에 이점이 크다. 따라서 노후한 기성시가지의 정비하거나, 새로운 시가지를 형성하는데 이를 활용할 실익이 충분하다. 이 논문은 크게 두

가지를 논한다. 첫째, 토지구획정리사업 혹은 환지에 대한 그간의 국제적인 논의를 법학적인 관점에서 비판적으로 재정리한다. 환지는 소유권과 행정권한을 다루는 것으로서 법적인 문제임에도 불구하고 국제적으로 도시계획 혹은 행정학에서의 논의가 주를 이루어왔던 탓에 법적 관점에서의 분석을 담은 논문이 많지 않았다. 둘째, 한국에서 환지가 어떻게 변용되고 있는지를 분석하고 소개한다. 특히 타국에서 기존의 환지방식 사업에 대하여 기성시가지 내에서의 적용이나, 공유인 환지의 개발에 관한 한계가 제기된 것에 대해, 한국의 환권이론이나 집단환지가 어떻게 작용해 왔는지를 법적인 관점에서 분석하고 제시하고자 한다. 이를 통해 환지에 대한 해외의 비교연구에서 한동안 그 경과가 갱신되지 못하였던 한국의 제도에 대한 비교연구의 기초를 제공하고자 한다.