

罗夫永◎著

Critical Variance of Sys-
The Construction of Chinese Rural Land Sys-

变迁临界

中国农村土地制度的构建



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内容摘要

本文是笔者攻读博士期间研究问题的深化,也是笔者博士毕业论文《产权组合——中国农村土地制度构建》的继续。我国还处在社会主义初级阶段,是一个拥有近9亿农民的国家,农业、农村、农民问题仍然是我国实现工业化过程中最为重大的问题,在中国社会经济高速发展的进程中,“三农”问题始终牵动着中国民众的心弦,而农村土地问题又始终是“三农”问题的核心,我国当前所处的社会环境和改革发展的特殊阶段决定了必须重视并深入研究农地和农地制度。本文的研究目的在于,通过研究中国农村土地制度变迁问题,探索新的研究领域、新的研究工具、新的研究视角,厘清中国土地制度变迁路径、变迁动因、变迁时机,为中国土地制度建设提供新的理论支持平台、新的理论分析工具、新的理论架构模式,进而推动新农村建设、促进农村经济体制改革、加速农村经济社会发展。

本研究涉及制度经济学的一个崭新研究领域,即探讨制度变迁的临界问题,对制度变迁总规律中阶段性、关键性的问题进行再认识和再深化。自然科学的

概念和分析方法对社会科学有着重要的意义和巨大的启示。作为社会科学的研究领域,制度变迁也有临界问题,它包括:制度的变迁临界状态、制度的变迁临界条件、制度的变迁临界点、制度的变迁临界特征等。当一个社会体中的某一社会制度由一种制度形态变为另一种制度形态时,可能存在于一个过渡的转折点,这时这种仍保留着原社会制度某些特征,又具有新社会制度的某些萌芽,并向新的社会制度转变趋势明显的状态,就是制度的变迁临界状态。制度的变迁临界问题作为一种特殊社会现象,其实质是以制度失调为表现的生产关系与生产力的不相适应。制度的变迁临界问题具有鲜明的社会历史特征,与一定历史时期的社会背景、社会环境相联系,是该历史时期社会背景、社会环境的综合产物。本研究提出了制度变迁临界研究的指标体系,并运用该指标体系分别对新中国成立以来农村土地制度的历次变迁和现行农村土地制度现状进行了新视野、新角度的分析。制度的变迁临界问题研究的意义在于用新的视角对新中国制度变迁进行分析和阐述,能够对每一次制度变迁发生的原因、趋势特别是征兆作新的、有益的反思。制度的变迁临界问题研究能够使我们在制度变迁总规律下更好地促进制度的适应性变迁,阻止逆向性制度变迁的发生,从而把握和顺应历史前进的潮流。

本研究涉及我国农村土地制度变迁创新研究中的一个薄弱环节,用“临界”的思维,全面、深入地研究了“小产权房”问题。“小产权房”蕴涵着重要的制度变迁信息,本文从产权组合、城乡互动、制度锁定、路径依赖、制度引擎等五个方面就农村土地制度变迁临界问题作了实证性研究,明确了当前我国现行的农村土地制度已经处在制度变迁的临界点上了。一是从产权组合角度进行分析研究,产权权能随着分工和社会、科技、以及人的认识的发展而不断拓展、重新组合的趋势是不可改变的,而产权的拓展、重新组合和明晰及对经济社会的促进作用,又促进了制度不同层次的变化。“小产权房”问题是产权组合的具体表现,其存在有着现实合理性,是继家庭联产承包制后中国农民自我城市化进程中的一场发源于农民自身的革命,“小产权房”的规范和政府的职能创新等是当前需要重点研究解决的关键问题。二是从城乡互动角度进行分析研究,城市人口比重是城市化最重要的指标,阻碍该比重提高有户籍、社保、土地产权等诸多原因,在这些原因中核心是土地二元结构问题。而“小产权房”在破解城市化进程以及社会和谐发展诸难题中具有革命性作用,是城乡互动的重要推进器,是以帕累托最优为客观结果的综合解决问题的方案,是以农民“自我城市化”为特征的又一场土地革命。三是从制度锁定角度进行分析研究,有效农地制度能使生产在可能性边界上进

行。新中国成立以后,低效农地制度逐渐被锁定,改革开放与家庭联产承包责任制是对原有制度锁定的破解。然而,按照当时综合环境所设计的制度随着时间的推移和综合形势的变化,表现出了明显的不足和缺陷。现行农地制度的再次锁定,其原因可从“国家悖论”等六方面进行分析。特殊国情背景下产生的“小产权房”则从“制度环境”等七个方面,破解了现行农村土地低效制度的锁定。四是从路径依赖角度进行分析研究,农村土地制度表现出了明显缺陷,却沿着既定的低效路径在变迁。农地制度变迁路径依赖的产生有着现实国情前提,本质是没有从市场经济角度进行设计和安排,破解这一困境是和谐社会建设面临的难题。在特殊背景下产生的“小产权房”从“市场与计划”、“经济与社会”、“农民与国民”、“集体与国家”、“内力与外力”、“农村与城市”等六对关系上摆脱了原有农村土地制度变迁的路径依赖。五是从制度引擎角度进行分析研究,制度在促进经济发展中起着重要的作用。经济发展和制度变迁是一个相互联系、相互制约、相互作用的有机系统。“小产权房”是对阻碍社会发展的“二元土地制度”的适应性创新。在分析了“小产权房”产生的原因和推动者之后,文章又深刻阐述了其所代表并引发的制度引擎效应和制度变迁的革命性意义。

本研究涉及我国经济社会发展的一个重大课题,即农村土地制度的重新构建,走出了一条新的研究路子:从制度变迁主体(国家、集体、农民个人)在土地制度变迁过程中的权利空间的大小和演变趋势进行定性研究入手进行理论重构。通过土地→中国土地→中国农村土地研究思路和研究脉络,渐进地研究了我国农村土地制度变迁的模式构建。一是从国内外土地制度变迁历史角度,提出并研究了构建土地“所有占有,二元并重”模式的课题——是指农村土地权利制度包括独立的农村土地所有(归属)制度和农村土地占有(利用)制度,两者相互依存、相互作用、平等共处。这一模式主要包括以下内容:首先,我国的农村土地权利制度中应该有两个中心,一个是农村土地所有制度,另一个是农村土地占有制度。其次,农村土地权利制度体系中,土地的所有制度和占有制度是两个独立的制度体系。农村土地所有制度的规则有自身的理由和特点,而农村土地占有制度的规则也有其特有的内容。再次,农村土地所有制度和农村土地占有制度相互尊重和利益平衡。在这一理论体系和制度安排中,不存在传统财产权理论和制度所谓的“所有权是其他土地财产权利的来源”的认识和思维,这种观点主张把占有权也作为最完全的“物权”来进行立法保护。二是从中国土地制度变迁趋势角度,提出并研究了构建中国土地“国家所有,动态分治”模式的课题。认为

一个国家的各种土地资源,不论其制度表象上是属于国家所有,还是集体所有、私人所有以及各种复合(混合)所有制等,但其制度(制度创新和变迁)底线始终是国家意志的最终控制权,其制度本质是在不超越国家意志底线、在国家可接受范围内,为了人民的利益、社会的利益亦或是国家(统治者)的利益,而由国家采取适合当地和当时社会和自然条件的不同土地治理方法。首先,各种土地所有制的创新和变迁必须体现的是土地最终属于国家;其次,各种土地所有制的创新和变迁是国家在当时当地环境下进行的最适合的制度改革(改良);最后,各种土地所有制的创新和变迁是当时当地各种力量(国家、农民、统治者、各种利益集团等)博弈的结果。三是从中国农村土地制度现状角度,提出并研究了构建土地“国家所有,农户占有”模式的课题。这实质上是“国家限权”、“集体废权”、“农民扩权”的一个模式。在具体土地制度模式方面,通过变迁主体权利空间的大小“限制”、“扩大”或“取消”,进而构建制度模式,同传统先构建制度模式再分析主体可能具有的权利思路、方式有着较大的区别。这也是本文在农村土地制度变迁临界启示下进行的探索和尝试。从农地所有权和占有权发展趋势、乡(镇)和村委会已不能成为农民集体的代表、解决农民现实问题等方面探讨了取消农地集体所有制的可能性,得出了我国农地制度改革的模式,提出了以“一废、二扩、三限”为实施思路,以“所有权明确财产归属制度,占有权明确财产利用制度”为主要内容,以“法定实施原则、立体推进原则、配套改革原则”农地“国家所有,农户占有”二元结构为实施原则,运用权利空间定性分析的新的研究手段,构建出了我国农村土地制度全新的理论模式框架。

关键词:制度变迁临界;农村土地制度;小产权房;产权组合;二元结构

Abstract

This article is the author's further research during studying for doctorate degree, it is also a continuation of his doctorate graduation thesis — *Property Portfolio — the Construction of China's Rural Land System*. China, a country with nearly 9 million farmers, is still in the primary stage of socialism. Agriculture, rural areas and farmers (namely “the three issues of agriculture”) are the most vital issues existing during China's industrialization. In the process of China's social and economic high-speed development, “The three issues of agriculture” has always struck a chord of the Chinese people. However, the issue of rural land has always been the core of “the three issues of agriculture”. China's current social environment and the special developmental stage of the reform urge the government to pay special attention and to do in-depth study on the farmland and the rural land system. This article aims to explore new areas of research, new research tools and new research perspectives through studying the issue of China's rural land system variance,

to clarify the way, the motive and the timing of Chinese land system variance, thus providing a new platform to support the theory, new tools to do theoretical analysis, new theoretical framework for China's land system construction, then it will promote the new rural reconstruction and the rural economic system reform, and accelerate the rural economic and social development.

This study involves a brand-new research area of systematic economics, namely discussing the issue of critical variance of system, furthering understanding and deepening the key issues of system variance. The concept and the analysis methods of the natural science have vital significance and huge enlightenment to the social science. As a research area of social science, system variance is also critical, which includes: critical states, conditions, points and characteristics of system variance. When a social system changes into another form in a society, there may be a turning point in the transition. This kind of state, which contains certain features of the original social system, also beginning to turn to the new social system and having obvious tendency of transforming to the new social system, is the critical state of system variance. The issue of critical variance of system as a special social phenomenon, its essence is in the form of system disorders as the productive forces which do not adapt to the relations of production. The issue of critical variance of system with distinct characteristics of the social history relating to social backgrounds and social environments of a certain historical period, is an integrated product of social backgrounds and social environments of the historical period. This study proposes the indicator system of studying the system variance, and uses the indicator system to analyze respectively the variances of the new China's rural land system in the past and present and the current status of the rural land system from a new vision and angle. The issue of critical variance of system analyzes and elaborates system variance of the new China from a new point of view, thus making new and helpful reflections on the causes and tendency, especially the symptoms of each system variance. Studying the critical variance of system can help us promote adoptive variance of the system under the general rule of system variance, prevent reverse system variance from happening, thus grasping and conforming to the historical trend.

This study involves a weak link on the innovative study of China's rural land system variance. Through "critical" way of thinking, it studies the issue of

“uncompleted-right houses” comprehensively and thoroughly. The issue of “uncompleted-right houses” contains important information about system variance. In this article, the author does the real diagnosis research on the issue of rural land system variance from five aspects: the property portfolio, the interaction of urban and rural areas, system locking, path dependence and the system engine, clarifies that the current China’s rural land system has reached the critical point of system variance. First, conduct the analytical study from a property portfolio point of view, the tendency that the property rights expanding and reorganizing along with the developments of the division of labor, the society, science and technology, as well as human understanding, is irreversible. And the expansion, reorganizing, clarifying of property rights and the promotion of social economy also further the changes of the system at different levels. The issue of “uncompleted-right houses” is a concrete manifestation of property portfolio; its existence is of realistic rationality. It is a revolution originated in farmers themselves since after the household contract system in the process of Chinese farmers’ self-urbanization advancement. The standardization of “uncompleted-right houses” and the innovation of government functions and so on are the key issues needed to be focused on presently. Second, conducting the analytical study from the interaction between urban and rural areas, the proportion of urban population is the most important indicators of urbanization. The factors obstructing the proportion to increase are household registration, social security, land property rights and so on, and among these factors the two-tier model of land is the core. The “uncompleted-right houses” plays a revolutionary function in the process of urbanization, the harmonious development of the society and more. It is an important promoter in interaction between urban and rural areas; it is an approach under which problems can be solved comprehensively taken Pareto as the objective result; it is another Agrarian Revolution characterized by “self-urbanization” of the farmers. Third, conducting the analytical study from the perspective of system locking, the effective rural land system can enable the production to carry on the possible boundary. After the founding of New China, the inefficient rural land system has gradually been locked; the reform and opening up policy and the household contract responsibility system is a breakthrough to the previous system locking. However, the system designed in accordance with the integrating

environment displayed its obvious shortcomings and deficiencies with the passing of time and changing of the overall situation. The reasons for the relocking of the existing rural land system can be analyzed from six aspects basing on the “national paradoxes”. The “uncompleted-right houses”, which came into being under special national situation, explains the locking of the ineffective rural land system from the “system environment” on seven aspects. Four, conducting the analytical study from perspective of depending on the path, the rural land system shows obvious flaws, but changes along its low-efficiency path. The coming into being of the path of rural land system variance relies on the realistic national condition premise. Essentially, it does not design and arrange from the perspective of market economy. How to explain it is a problem that constructing a harmonious society facing. The “uncompleted-right houses”, which came into being under special situation, has got rid of the dependent path of the original rural land system variance from six pairs of relations, “the market and the plan”, “the economy and the society”, “the farmer and the national”, “the collective and the country”, “the external and the internal forces”, “rural and urban”. Five, conducting the analytical study from the perspective of system engine, a system plays an important role in promoting economic development. Economic development and system variance are an organic system which is mutually connected, restricted and interacted. The “uncompleted-right houses” is an adoptive innovation to “the dual land system” which is impeding social development. After having analyzed the reason why the “uncompleted-right houses” came into being and the promoters, the article also elaborates the revolutionary significances of the system engine effect and the system variance which are represented by it profoundly.

This research involves a major issue on China’s economic and social development, namely, the reconstruction of rural land system, thus opening a new research path: To do theoretical reconstruction by a qualitative research method and analysis on the power and evolution tendency of the main body (national, community and individual farmers) of system variance in the process of the rural land system variance. Through the research ideas and research vein: land → China’s land → China’s rural land, progressively studies the construction model of China’s rural land system variance. First, from the historical perspective of the land system variance at home and abroad, proposes and studies the mode of land

construction—“occupied all, both binary”. This mode indicates that the rural land right system, including the independent rural land ownership system (ownership) and rural land tenure system (to use), are mutually interacted, dependent and coexisted. This model mainly includes the following contents: First, there should be two centers in China’s rural land rights system, one is rural land ownership system, and the other is rural land tenure system. Second, the rural land ownership system and rural land tenure system are two separate systems. The rule of the rural land ownership system has its own reasons and characteristics, and the rule of the rural land tenure system also has its unique content. Third, the rural land ownership system and the rural tenure system respect each other and have balanced interests. In this theoretical system and system arrangements, there is no so-called system “the property rights are sources of other land property rights” as existed in the traditional system of property rights theory, it regards the occupation right as the most complete “property rights” to carry on the legislative protection. Second, from the perspective of the tendency of land system variance, proposes and studies the question of constructing China’s “state owned, the dynamic sub-rule” land mode. Thinking that various land resources of a country. No matter it is owned by the state, community or private outwardly, as well as all kinds of complex (mixed), and other forms of ownership, its system (a system of innovation and variance) bottom line is that the state has the ultimate control of it, the nature of the system is not go beyond the bottom line of the state, within the acceptance of the country; and the state can adopt different land management methods according to the current social and natural conditions for the people’s, the social and state’s(the rulers’) interests. First of all, all kinds of innovations and variances must reflect the fact that the land belongs to the country ultimately; Second, various innovations and variances of the land ownership must be the most suitable system reform which carried on by the country under the local environment at that time (improvement); Finally, each kind of innovation and variance of land ownership is the results of struggling of various local forces (country, farmer, ruler, each special interest group and so on) at that time. Third, from perspective of present situation of China’s rural land system, proposes and studies the question of constructing “state owned, farmer household held” land mode. This is essentially a model of “the country limits the power”, “the collective wastes the power”, “and the farmer expands the power”. In the specific

model of the land system, the construction of the system model is by the “limit”, “expand” or “cancel” the main body’s powership of the system variance. Comparing with the traditional way, namely constructing the system model first, and then analyzing the main body, there exists huge difference in thoughts and means. This is also an exploration and an attempt that the author did under the enlightenment of the rural land critical variance of system. The author discusses the possibility of abolishing rural land collective ownership from the following aspects: The development tendency of rural land ownership and occupation right; township (town) and the village is no longer the representative of the farmer community, and it will not solve practical problems of the farmers any more. The author constructs a new theoretical model of framework of China’s rural land system by using the new research method of powership qualitative analysis, which uses the ideas of “abolishing”, “expanding”, “limiting” as the guided thoughts; uses “property rights clarify the property ownership system, possession rights clarify property using system” as the main content; uses “the principle of the legal implementation, the principle of promoting in three-dimensional, the principle of series of reforms” and “the two-tier model of ‘state-owned, farmer used’ land system” as the implementation principle.

Key words: critical variance of system; rural land system; uncompleted-right houses; property portfolio; two-tier model

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