

经济 管理 博士 文库

The Contract of Enterprise Property Rights and Corporate Governance Structure

企业产权契约 与 公司治理结构

—— 演进与创新

Evolution and Innovation

郭金林 著

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内容摘要

本书的基本思路是从企业产权契约及其演进的分析入手,研究公司治理结构的创新原则与方向。

企业的性质是什么？企业为何存在与发展？根据新古典的企业性质定义，企业不过是一个投入产出的生产函数。新古典的企业定义使我们很难把握企业演进的本质。科斯等人所开创的新制度经济学从企业的契约性质入手，为我们分析企业演进的本质提供了一个新视角。但是科斯等人关于企业契约性质的阐述是有缺陷的。已有企业契约理论的缺陷在于它忽视了企业产权，因而使得人们无法正确地从业契约的角度定义企业。产权是企业契约的前提，同时又是企业契约的内容。我们认为只有从产权入手才能正确地从业契约的角度定义企业。但是，企业产权有两种产权，一是完全契约定义的特定产权，二是不完全契约定义的剩余产权。我们认为建立在不完全契约基础上的企业剩余产权（企业所有权）更能反映企业产权的本质。本书提出，企业产权契约是以企业家为中心签约人的、拥有特定产权的企业参与者通过企业剩余产权的配置来实现企业产权的创造与分配的契约。

由于人力资本与非人力资本的特点不同导致了二者存在不同的交易机制。非人力资本与其所有者的可分离性等特点决定了非人力资本交易可以由市场交易机制完成,而人力资本与其所有者的不可分性等特点决定了人力资本交易不可能由市场机制完成,而需要由企业交易机制予以再定价。非人力资本市场交易机制的

特点是虚拟化,非人力资本市场交易从实物市场交易到债券市场交易、股票市场交易、期货市场交易等,是一个虚拟化演进过程。非人力资本市场交易的虚拟化使得拥有企业所有权的非人力资本所有者从少数大投资者发展到成千上万中小投资者。显然,非人力资本市场交易机制的虚拟化是导致企业产权契约演进的重要原因。而人力资本的企业交易机制的特点是专用化机制。随着人力资本知识积累与专用化程度提高,人力资本的抵押特征增强,克服了人力资本的劣势。在人力资本企业专用化交易中最初分享企业所有权的只是经营者与技术专家等人力资本所有者,但是随着企业交易专用化不断增强,整个生产者人力资本所有者的专用性与其资产抵押特性也增强了。因此,从人力资本的企业交易机制专用化来看,也反映了企业产权契约的演进。基于这种分析,本书提出,古典企业产权契约向现代企业产权契约演进的特征是从一元激励到多元激励。

传统的股份公司治理结构并非完美无缺。其严重的代理问题与内部人控制问题导致了 20 世纪 80 年代以来公司治理研究的兴起。如何控制内部人控制,激励与约束经营者是公司治理的核心。公司治理结构本质上是一套设计激励与约束经营者的正式与非正式的制度安排。不同的企业产权契约论导致了公司治理结构创新的不同范式。哈特等人论证了非人力资本产权契约论的股东主权治理结构的合理性,认为把企业所有权对称配置给股东,把股东看做公司惟一或最主要治理主体的治理结构创新具有最优性。伯利—米恩斯、加尔布雷斯和钱德勒等论证了企业家人力资本企业产权契约演进论与经理主导的公司治理结构创新趋势。马克思与艾勒曼论证了工人人力资本企业产权契约论与工人主导的公司治理结构创新范式。前者从劳动价值论出发论证了工人拥有企业所有权的合理性,并设计了其工人主导的公司治理结构,其

典型形式是南斯拉夫工人自治制度。后者从劳动财产理论出发论证了工人拥有企业所有权的合理性，其主张的工人主导治理结构的典型形式是蒙德拉贡合作社治理结构。布莱尔等人依据现代企业理论，从企业财富创造、风险分担等出发，论证了利益相关者的企业产权契约论与共同治理结构创新范式的最优性。这些企业产权契约与公司治理结构创新的不同范式都存在局限性。

企业产权契约的演进分析表明，共同治理结构创新是必然趋势。但是对共同治理结构创新范式的分析又表明其仍然存在弊端。如何修正已有共同治理结构范式的弊端？本书一方面从企业产权契约的演进、企业团队理论与内部信息机制等角度分析了实行共同治理原则的合理性。另一方面从市场有效性理论、外部信息机制角度分析了用金融主导治理机制修正共同治理结构的合理性。在此基础上提出了金融主导的共同治理结构创新原则。

金融主导的共同治理结构创新原则可以从发达国家公司治理结构创新的实践予以验证。美国公司治理结构创新特征表现为非银行的金融主导的共同治理结构创新趋势；日本公司治理结构创新特征表现为主银行相机主导的共同治理结构创新趋势；德国公司治理结构创新特征表现为全能银行主导的共同治理结构创新趋势。

我国国有企业产权结构改革与公司治理结构创新经历了一个从放权让利、经营承包制到股份制的变迁。传统国有企业产权结构具有古典企业所有权与经营权高度统一的特点，其弊端在于不适应现代企业规模巨大化对于分散决策权与分散所有权的要求。我国股份制的建立是产权结构的根本改革。但是，我国国有企业股份公司治理结构创新中的国有股东主权特征及其缺陷，是我国目前严重的内部人控制产生的根源。本书认为修正我国目前国有企业公司治理结构创新的弊端，应该实行金融主导的共同治理创

新原则。在国有企业战略调整中，国有企业的退出与非国有企业（民营企业）的迅速成长，使得民营企业也急需进行公司治理结构创新，而民营企业治理结构创新也可实行金融主导的共同治理结构创新原则。

Abstract

The basic idea of the thesis is that we should analyze the contract of the firm property rights and its evolution in order to grasp the principle and direction of corporate governance structure.

What is the nature of the firm? What does the firm exist or develop for? According to the neo-classical definition of the nature of the firm, the firm is just a production function. However, it is difficult for us to grasp the essence of the evolution of the firm by it. New Institutional Economics (NIE) initiated by Coase and so on, starting with the nature of firm, provides a new angle of view for us to analyze the essence of the evolution of firm. But their elaboration is defective. The defects of those theories of firm contracts are in that ignored the property rights of the firm. So people cannot define the firm correctly from the view of contract. Property rights are the premise of the firm contract and the content of the firm contract. We consider that only to start with the property rights can we define the firm from the view of contract correctly. But there are two kinds of firm property rights. One is the special property rights by the complete contract, the other is residual property rights formulated by the incomplete contract. We consider the residual firm property rights based on the incomplete contract can embody the essence of the firm property rights of the firm. So, we consider that the firm

property rights contract is the one holding the special ownership of the asset refer to the firm residual property rights.

The different features between the human capital and the non-human capital cause different institutions of transaction. The separation between the non-human capital and its owner indicates that the non-human capital contract can be finished by market contract institution. However, the non-separation between human capital and its owner results in that it is impossible for human capital transaction to be completed by the market institution. Human capital needs to be repriced by the transaction institution. On the one hand, the feature of non-human capital transaction is fictitious. The market transaction of non-human capital has evolved fictitiously from the market transaction of material object to the market transaction of the bond, stock, and options. It is the fictitious non-human capital market transaction that makes the non-human capital owner who owned the firm ownership to developed from a few big investor to thousands of smaller ones. Obviously, the fictitious market transaction institution of non-human capital is the important reason that results in the contractual evolution of the firm property rights. On the other hand, the feature of human capital transaction is specialized institution. With the intellectual accumulation of the human capital and the promotion of the specialized level, the feature of mortgage of the human capital is intensified and its insufficiency is overcome too. Those who sharing the ownership of the firm initially in the transaction of human capital firm-specific only include the marketing member and the owner of high-level technological human capital. But with the increase of the specialization of the firm transaction, the firm owner-

ship of all the production members is increased, too. Moreover, the feature of the mortgage is also reinforced. In a word, the evolution, which the ownership of the firm shifts from the marketing member and the high-level technological member to the production member, reflects the evolution of the property rights contract if we examine it from the specialization of the firm transaction institution of the human capital. The feature of the evolving from the property rights contract of the classic firm to the modern firm property rights is from one-incentive to plura-incentive.

The traditional corporate governance structure is not perfect. Its serious agency problem and insider control problem leads to the production of the corporate governance in 1980's. How to control insider control and how to stimulate and constrain the marketing members are the core of the corporate governance, especially the evolution of corporate governance structure. Corporate governance structure is essentially a formal and informal institution of making incentive and constraint for marketing members. Different contracts of firm property rights result in different models of the corporate governance structure. Hart and others offer the classical demonstration for the contract of non-human capital property rights that reflect the contract of the non-human capital property rights. It is the governance structure of stockholders' sovereign rights. According to the structure, it would be the optimal structure that disposes the firm ownership among stockholders symmetrically and the stockholder is regarded as the sole main body. Berle-Means and Chandler demonstrates the contractual evolution tendency of the entrepreneur owning the firm ownership and entrepreneur-centered governance struc-

ture. Marx and Ellerman put forward two models about the property rights contract of workers' human capital and worker-centered corporate governance structure. According to the labor-value theory, Marks demonstrates the reasonability of workers' owning from owning firm ownership and designs its worker-centered corporate governance structure, such as Yugoslavia workers' self-governance institution. According to his labor property theory, Ellerman demonstrates the reasonability of worker owning firm ownership and designs his worker-centered corporate governance structure, such as Modelagong governance structure. Blair and others demonstrates that stakeholder owning firm ownership is optimal.

The contractual evolution of the firm property rights manifests the inevitable tendency of the co-governance structure. But the analysis of the co-governance structure reflected that it has deficit. How can we modify the deficit of co-governance structure? We offered the creative principle of the finance-centered co-governance structure according to the firm team theory and the interior information institution. On the other hand, it is reasonable to modify the co-governance structure from efficient market theory and exterior information institution.

The innovation discipline of the finance-dominated co-governance structure has been verified by the practice of developed countries. In America, the feature of the innovation tendency of the corporate governance structure is embodied in the non-bank-centered co-governance structure. In Japan, the feature of the firm governance structure is embodied in bank-centered co-governance structure. In Germany, the innovation of the firm governance structure

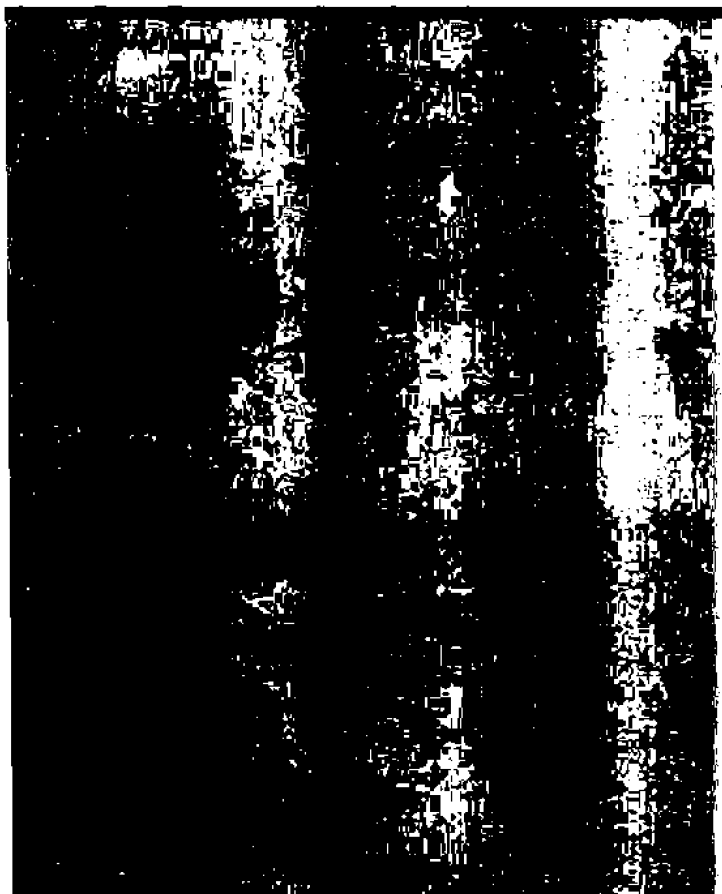
Abstract

is embodied in bank-centered co-governance structure.

In our country, the reform of the property rights structure in state-owned firm and the innovation of the firm governance structure have experienced three stages. The first stage was rewarding manage rights and sharing profits. The second stage was the reform of the manage-contract system. The third stage has been to set up modern corporate system. The traditional structure of the SOE property rights, unifying the ownership and the management rights highly, has the defect that it isn't fitted to the decentralization between decision right and managing right. The establishment of the modern corporation in China is the result of the basic reform of property rights structure. But the feature and defect of stockholders' sovereign rights in our SOE reform of property rights resulted in serious insider control recently. To modify the default we should carry out the discipline of the finance-centered co-governance innovation. SOE-exiting and non-SOE-taking-off in the strategic adjustment of SOE make it necessary, not only should SOE reform corporate governance structure, but also non-SOE should reform corporate governance structure. The innovation of non-SOE governance structure should carry out the discipline of finance-centered co-governance structure.

作者简介

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