

Property Rights Theory of Modern Corporation

现代公司 产权理论

(第二版)

赵晓雷◎著

现代产权理论以及其他一些对制度进行经济分析的现代理论，诸如公共选择理论、法经济学、合同理论等不仅拓展了经济学的内容，也提高了经济学的实用性。特别地，这些理论对于仍处于制度变迁、经济转型过程中的中国具有一定的参考价值。

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社会经济的发展是一个自然历史过程

THE DEVELOPMENT OF SOCIAL ECONOMY IS A NATURAL
PROCESS IN HISTORY

再版前言

现代产权理论或新制度经济学研究制度的经济功能的最重要分析工具是交易成本和外部性这两个概念。在制度经济学的论述中,“交易”一词的含义不仅仅是指一般的市场行为,更重要的是指人们之间的经济关系。制度经济学的早期代表之一康芒斯(J. R. Commons)将“生产”概念和“交易”概念相对应,认为生产活动是人对自然的活动;交易活动是人与人之间的活动。生产活动和交易活动共同构成了人类全部经济活动。据康芒斯(Commons, 1934)的分析,交易是制度的基本单位,制度的运转是由许多次交易构成的。他进而将交易分为三种基本类型:买卖的交易,即平等的市场进入者之间的交换关系;管理的交易,即上下级之间的命令和服从关系;限额的交易,主要指政府与个人的关系。这三种交易类型覆盖了人与人之间的经济关系和经济活动。

康芒斯的贡献在于将交易与制度相联系,着眼于人们之间的经济关系。在此基础上,产权经济学则进一步将交易与权利相联系。现代产权经济学不是将生产要素或经济资源视作实物,而是视为权利。产权经济学家科斯(R. H. Coase)指出,我们会说某人拥有土地,并把它当作生产要素,但土地所有者实际上所拥有的是实施一定行为的权利(Coase, 1960)。他还指出,美国联邦通信委员会分配给无线电台的是“发送信号的权利”,而不是“频率或以太的所有权”(Coase, 1959)。由于产权是人们相对于物时的行为权利,所以市场交易的实质不是货物的交换,而是产权的交换,也就是说,交易在形式上是货物的交换,但实质上是一组权利的互换。而且,有些交易甚至没有货物交换的形式,而纯粹是一种权利的让渡(例如,限制企业排放污染物的契约、企业主与雇工的雇佣合同谈判等)。在产权经济学的分析中,不仅各个厂商的效用函数与生产函数中的相互依赖关系是产生交易的根源,而且不同的人或不同的厂商之间对于权利的不同评估也是产生交易的根源。不论是潜在的交易者,还是实际的交易者,只要对他们本身的权利的评估有差异,就都会有动力来相互进行谈判,并且相互交换处置

资源的权利,以使资源按其最优价值的方向进行配置。由于任何一种资源的交易,其核心都是权利的交易,因此,合法权利的界定对交易结果是至关重要的。在将权利引入交易的基础上,经济学在分析人们的经济关系时,就不仅要看到资源约束,还要注意到制度和法律的约束。换言之,制度与资源一样,也存在着稀缺性。制度的核心是权利的界定,不同的权利界定影响了人们的交易行为、交易成本和交易结构,进而影响到稀缺资源的有效配置。所以,交易范畴在制度经济学的论述中与资源配置发生了直接的联系,因而被纳入了经济学的分析框架。

现代产权理论将制度解释为影响资源配置和经济绩效的重要变量,并运用“交易成本”(transaction costs)这一概念力图说明制度安排最优结构的状态。科斯在其《社会成本问题》中提出了一个核心论点,即在定义明确的产权下,自愿的交易为资源的有效配置(产值最大化)提供了一种充分条件。科斯是运用所谓“零交易成本”(定价制度正常运行)的修正条件来补充这一核心论点的。在科斯理论的影响下,其他一些制度经济学家从交易成本不为0的角度讨论制度效率问题。一种制度是否有效率,主要判断标准是看它在解决外部性(externality)问题上交易成本的大小。庇古(A. C. Pigou)在其《福利经济学》中指出,“某甲在为某乙提供一些服务的过程中(这种服务是有报酬的),附带地也给其他人(不是同类服务的生产者)提供服务或带来损害,这种服务得不到受益方支付的报酬,也不能使受害方的利益得到补偿”(Pigou, 1932)。由于受益效应或受损效应的费用(报酬或补偿)均不由发生相互作用的人们承担,因而就存在着外部性。一些新制度经济学家认为,外部性之所以产生,是因为交易成本超过了交易所得。菲吕博腾和配杰威齐认为,事实上,大量外部性的存在可以由较多的交易费用来解释(Furubotn and Peiovich, 1972)。据德姆塞茨分析,将一种受益效应或受损效应转化成一种外部性,是指这一效应对相互作用的人们的一个或多个决策的影响所带来的成本太高以至于不值得,这就是该词在这里的含义。“使成本和收益外部化的一个必要条件是双方进行权利交易(内在化)的成本超过内在化的所得”(Demsetz, 1967)。这些分析说明,制度效率是以在解决外部性过程中交易费用的高低为判断标准的。如果交易费用不为0,交易费用的高低就决定了交易效率的大小。产权明确界定减少了“不确定性”(uncertainty),交易的受益效应和受损效应由交易当事人直接承担,因而费用较低,效率较高。外部性一旦解决,产值将达到最大,即资源配置达到最优。所以,制度效率与资源配置优化直接关联。

现代产权理论以及其他一些对制度进行经济分析的现代理论,诸如公共选择理论、法经济学、合同理论等不仅拓展了经济学的内容,也提高了经济学的实

用性。特别地,这些理论对于仍处于制度变迁、经济转型过程中的中国具有一定的参考价值。本书于1997年第一次出版,此次再版,除了对一些文字作了勘误,以及根据新的学术著作出版要求增补了相应的参考文献,其他方面均未作变动。

赵晓雷

2012年5月于上海财经大学

再版前言注释:

1. Commons, J. R. (1934) *Institutional Economics*, Madison: University of Wisconsin Press.

2. Coase, R. H. (1960) The Problem of Social Cost, *Journal of Law and Economics*, 3: 1—44.

3. Coase, R. H. (1959) The Federal Communications Commission, *Journal of Law and Economics*, 2: 1—44.

4. Pigou, A. C. (1932) *The Economics of Welfare* (4th ed.), London: Macmillan.

5. Furubotn, E. G. and Pejovich, S. (1972) Property Rights and Economic Theory: A Survey of Recent Literature, *Journal of Economic Literature*, 10(4): 1137—1162.

6. Demsetz, H. (1967) Toward a Theory of Property Rights, *The American Economic Review*, 57(2): 347—359.

Preface to the Reprint Edition

In the research of modern property rights theory or new institutional economics, the most important analytical tools for analyzing the economic function of institution are the concepts of transaction costs and externalities. In the discussion of institutional economics, the meaning of the word “transaction” is not only refers to the general market behavior and more importantly, it refers to the economic relations between individuals. As an early representative of the institutional economics, JR Commons referred the concept of “production” to the concept of “transaction”. He indicated that production activities were the activities of man to nature and trading activity was the interaction between activities. Production activities and trading activities together constitute all human economic activity. According to the analysis of Commons (1934), the transaction is the basic unit of the system and the operation of the system is constituted by many transactions. The transactions were further divided into three basic types: sale and purchase transactions, the exchange relations between the equality of market access; transaction management, which is between different levels of command and subordination; limited transactions, mainly referring to the relationship between government and individual. Those three types of transactions have covered economic relations and economic activities between individuals.

Commons’ s contribution lies in linking trading with institution, which focuses on economic relations between individuals. On this basis, the trading and the right were further linked in the economics of property. In modern property rights economics, factors of production or economic resources are not regarded as in-kind, but as rights. Property rights economist Coase (1960) pointed out that “we would say that someone owns the land and treat it as a factor of production, but actually what the land owner own is the right to implement a certain behavior”. Coase (1959) also pointed out that the Federal Communications Commission assigned to the radio is “the right to send a signal, rather than

ownership of the frequency or the ether". Since property rights are the rights relative to the behavior, the substance of transaction on the market is not the exchange of goods, but the exchange of property rights. That is to say, transactions are conducted in the form of exchange of goods, but essentially they are a group of right to cross-exchange. And in some cases, transactions are not only in the form of an exchange of goods, but also purely a right of alienation, for instance, restrictions on the discharge of pollutants contract, contract negotiations between business owners and employees. In the analysis of property rights economics, the root of making transactions not only lies in interactions between various vendors' utility function and production function, but also in the assessment of rights made by different people and different manufacturers. For either potential traders or traders in practice, as long as there is difference in their assessment of rights, they will have the incentive to negotiate and exchange rights of utilizing resources, so as to configure resources at the direction of the optimal value. For any transaction of resources, the core is the transaction of rights. Therefore, the definition of legitimate right is crucial to transaction results. After introducing rights into the transaction, in the analysis of the economic relations between individuals, we do not only note the resource constraints, but also the institutional and legal constraints. In other words, just like resources, institution is also featured by scarcity. The core of the institution is the definition of rights. The difference in the definition of rights affect individual's trading behavior, transaction costs and transaction structure, thereby affecting the efficient allocation of scarce resources. In the research of institutional economics the trading areas are directly linked with the allocation of resources and thus they have been included in the analytical framework of economics.

In modern property rights theory, institution is interpreted as an important variable affecting the allocation of resources and economic performance. The concept of "transaction costs" is used to explain the condition of optimal structure affected by institutional arrangements. Coase made a core argument in his work "Problem of Social Costs": under the well-defined property rights, voluntary transactions provide a sufficient condition for efficient allocation of resources (output maximization). Coase used amendments conditions for the so-called "zero transaction costs" (pricing system for normal operation) to supplement the core

argument. Under the influence of the Coase theory, other institutional economists discussed the system efficiency from the perspective of non-zero transaction costs. The main criterion for an efficient institution is to examine transaction costs on the issue of solving externality. In the book of *Welfare Economics*, AC Pigou (1932) stated that “When A provides services for B (services are paid), A also provides services or brings about harm to other people (not the same type of service producers). There is neither remuneration paid by beneficiary nor compensation to victims”. Since the costs of beneficial effects and damage effects (remuneration or compensation) are not borne by the interactions between individuals and thus externalities occur. Some new institutional economists believe that because transaction costs exceed the benefits from transactions, externalities occur. In fact, the existence of a lot of externalities can be explained by the higher transaction costs (Furubotn and Peiovich, 1972). Demsetz (1967) indicated that the transformation of beneficial effects or damage effects into an externality means the effect has resulted in too high costs for one or many decision-making brought about by interactions between individuals, so that it is not worth a try. That is the meaning of the term here. A necessary condition for the costs and benefits externalization is that the costs of rights transaction (internalization) exceed the benefits of internalization (Demsetz, 1967). The analysis suggests that the efficiency of institution is assessed by the level of transaction costs in the process of externalities. If the transaction costs are not zero, the level of transaction costs determines the level of the transaction efficiency. The clearly defined property rights has relieved the uncertainty. The parties in the transaction should bear the benefit effect and damage effects and thus it results in a lower cost and higher efficiency. Once the externalities are solved, the output value will reach the maximum, that is to say, the allocation of resources will reach the optimal level. Therefore, the efficiency of institution efficiency is directly related to allocation of resources.

Modern property rights theory and other modern theories in the economic analysis of institution, such as public choice theory, law and economics, contract theory, have not only expanded the contents of economics, but also increased the usefulness of economics. In particular, these theories have provided some reference value for China which is undergoing institution changes and economic

transformation. The book was first published in 1997. In the second edition, we corrected errors in printing and added some references according to the new academic publishing requirements. All other parts remain unchanged.

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2. Coase, R. H. (1960) The Problem of Social Cost, *Journal of Law and Economics*, 3:1—44.
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序 言

新古典经济学一般将经济增长看作资本投入及技术进步的函数。在这类模型中,产权制度被视为一种既定因素或外生变量。产权经济学认为,产权制度的创新对经济发展有着重大的影响。由于经济资源的稀缺和劳动分工,就产生了如何协调人们的行为、如何生产、如何分配的问题。现代社会依靠产权机制或产权制度,能够为个人提供某种有效的激励或减少浪费的约束,使稀缺资源得到最优配置。美国著名经济学家保罗·萨缪尔森(P. A. Samuelson)将产权制度看成是经济结构中最基本的东西。他曾在 20 世纪 50 年代预言,经济发展最快的地区将是南美洲,因为南美洲资源丰富,劳动力受教育程度较高。但事实证明他错了。因为他原先的预期所依据的条件并不是经济结构中最基本的问题。战后欧洲和太平洋地区经济发展最快。尽管这些国家和地区资源相对贫乏,但由于产权制度合理、产权管理得当,引致了经济的高速发展。其他一些经济学家也认为,产权决定激励机制,影响竞争和宏观调控,因而对经济效率产生重要的影响。

美国经济学家 L. 戴维斯(L. Davis)和 D. C. 诺斯(D. C. North)对产权制度创新作了卓有成效的理论研究。他们将制度环境定义为一系列用来建立生产、交换与分配基础的基本的政治、社会和法律规则,以此为基点分析了制度创新与增长的关系。他们指出:“经济制度与产权在大多数经济模型中被设定为具有独特的和不变的价值,但是,在研究长期经济增长时,这些价值常常会发生根本变化。我们假定经济制度会被创新,产权会得到修正,因为它表现为个人或团体希望承担这类变迁的成本,他们希望获得一些在旧有的安排下不可能得到的利润。”^①按照他们的观点,只有当经济组织有效率时,才会发生增长。而有效率的经济组织可能要求产权的修正,以便降低创新活动中私人成本与社会成本的差别。

^① Davis Lance and Douglass C. North, *Institutional Change and American Economic Growth*, Chapter 2, New York: Cambridge University Press.

制度创新的动力来自收益的增加。如果预期的净收益超过预期的成本,一项制度安排就会被创新。例如,如果生产在大企业内完成比在小企业内完成的成本更低,则股份公司的经营就可能比小企业更为有利;如果在两个市场之间价格的差异较大,则通过组织第三市场将商品从低价市场运到高价市场就是有利可图的;如果一个企业家计划建设一个水坝以生产电力,这同时也减少了下游的洪水危害,则建设者可能通过事先购买下游的部分财产以占有这些收益的一部分,或者可能要求政府对下游的受益者征税,以补贴他的建设成本。

那些诱致人们去进行制度创新的新增收益称为“外部利润”,即在现有的经济制度安排给定的条件下,这些收益是无法获得的。戴维斯和诺斯根据对美国经济史的研究,将“外部利润”的来源归于四个方面:(1)规模经济;(2)外部性;(3)风险;(4)交易费用。如果一种制度创新成功地将这些利润内部化,那么总收入就会增加,创新者就可能在不损失任何人利益的情况下获取收益。

制度创新安排有两种极端的形式:纯粹自愿的形式及完全由政府控制和经营的形式。自愿的安排简单地说是相互同意的个人之间的合作性安排,任何人都可以自由地退出。政府的安排则没有提供退出的选择权,因此,行动并不要求有一致的同意,而只要遵从一些决策规则就可以了。对不同的形式如何选择,主要依据成本与收益的比较。在个人安排中,既没有与之相联系的组织成本,也没有强制成本,但是收益的增长只限于一个人。而在团体的或政府的安排中,却要支付创新的组织成本,这一组织成本将随参加者人数的增加而上升。另外,在政府安排下内含着一个追加的成本要素,即每个参加者都受制于政府的强制性权力,不管他对政府的强制性方案有多大的不满意,他都不可能退出。但是,政府可能利用其强制力,强制实现一个由任何自愿的谈判都不可能实现的方案,并可能会产生极高的收益。

一旦取得了外部利润,系统就复归均衡,这时,就不再有改变制度安排的压力,除非一些外在因素又产生新的外部利润,均衡重新被打破。

综上所述,西方产权经济学从支配产权规则的制度的创新角度讨论了经济增长的动因,认为制度变迁(而不是技术变迁)是收入增加(经济增长)的更本质的源泉。诺斯和托马斯(R. P. Thomas)反复强调了制度变迁比技术变迁更为优先且更为根本的观点。他们将更为集约的耕作制度(比如二圃制和三圃制)视为一种制度对相对要素价格变化而不是技术变迁的结果。他们进而强调,一个市场经济的扩张即使在没有发生技术变迁时也能为人均收入的提高作出贡献。^① 关于制度创新

^① D. North and R. P. Thomas, *The Rise of Western World: A New Economic History*, Cambridge: Cambridge University Press, 1973.

的原因,这一学说不是像马克思主义经济学那样,从生产力发展(技术变迁)与生产关系发展(制度变迁)之间的辩证关系着眼分析,而是归于人口对稀缺资源的压力以及对“外部利润”的追求,因而分析不尽周全和深刻。但是,产权理论一反将制度要素看作既定的或外生的传统分析方法,论证制度变迁不仅会影响资源的使用,而且它本身也是一种资源使用性的活动,进而将制度变迁作为一种内生变量引入现代经济学分析框架,这是相当具有理论启迪意义的。其实,从经济学说史角度看,西方古典经济学已具有制度分析的特点。亚当·斯密(Adam Smith)以及他以后的古典经济学几乎都论及社会分工和专业化,并将人们的经济行为(包括交易行为)纳入社会分工体系 and 专业化协作的经济关系(生产关系)框架中展开分析。有必要指出的是,分工在古典经济学中不仅仅是一个单纯的经济因素,而是一定社会经济制度在生产领域中的集中反映。斯密不仅论证了分工提高劳动生产率的效应,更重要的是揭示了分工对于促进发明创造、扩大交易规模与市场范围、增加社会福利的作用。所以,分工作为能够影响交易、影响整个经济增长的生产性制度的性质首次得到了阐述。但自从马歇尔(A. Marshall)之后,古典经济学这一理论特点被忽视了。经济学发展的主流变成运用边际分析这一工具,建立严密的数学模型,分析“理性人”的最大化行为及其向最大化目标的趋近。需求和供给的均衡条件及其向均衡点的运动与经济关系和制度、组织条件无关,无论是对于生产者还是消费者,市场条件是给定的、外生的。西方经济学的这一发展倾向直到 20 世纪中期产权经济学(新制度经济学)兴起之后才开始发生变化。

从中国的情况看,由于经济历史演进的跳跃式发展以及经济体制的历史性错位,中国经济发展的制度条件与西方发达国家有很大的不同。西方发达国家的工业化和现代化与市场经济制度及企业制度的发育和成熟是一个相生相成的自然历史过程,生产力的发展与制度的变革基本上是互相适应、循序渐进的,没有发生过大的跨越和大的错位。而中国历史上从未形成过统一的、完善的市场体系以及与之相适应的产权制度、企业制度,加之长期推行行政性的计划经济体制,所以经济发展遇到严重的制度障碍。在这种背景下,中国的经济发展进程就不仅表现为总量增长和结构转换,同时还要表现为制度的变革和创新。而且相对于边际的、增量的调节,改善制度供给条件对经济发展更具重要意义。这是中国也是其他一些后发工业化国家经济发展的显著特点。

现在,中国的经济体制改革正在深入发展。这是一场历史性的制度变革和创新,其实质在于变革不适应或阻碍生产力发展的制度和行为方式,推进社会经济的进步和现代化。社会主义市场经济体制的建立以及现代企业制度的形成和完善,将为中国的经济起飞提供强劲的动力。但是,由于社会历史、文化、观念及利益格

局等诸种因素的制约,这场改革将是长期的、艰难的。要使改革顺利进行,正确的理论指导是非常必要的。市场经济及公司制度在西方发达国家已经发展了几百年,它们的制度、理论、经验对中国具有一定的借鉴价值。本书采用现代产权经济学的分析方法,从产权理论的一些基本概念出发,对现代公司的产权范式及运作机制进行理论分析,以期使人们对现代公司的产权结构和行为规范有一个基本的了解。这一研究成果如能为中国的经济体制改革作出绵薄的理论贡献,将是作者莫大的欣慰。

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FOREWORD

Neoclassic economics views economic growth as the function of capital input and technological advance, in the model of which property system is regarded as a given factor or external variable. Property theory believes, however, that innovation made in property system has a considerable impact on economic growth. As is known to all, scarcity of resources and division of labor have given rise to the issues of how to coordinate human conduct, how to render production and how to distribute products. Modern society virtually relies more on property mechanism or property system to provide individuals with some efficient stir or restriction to reduce waste so as to achieve the optimal allocation of the scarce resources. P. A. Samuelson, a prominent American economist, considers property system the basis of the economic structure. He predicted in the fifties that the quickest development of economy would occur in the area of South America because of its abundant resources and high-educated labor. But facts have proved he is wrong. What he based in his prediction as conditions is not the basic matter in economic structure. In fact, it is Europe and Pacific areas that witnessed the fastest economic development. Resources in these states and regions were relatively scarce, but the property system and ownership management turned out to be rational and appropriate enough which resulted in the high economic growth. There are some others who also hold the view that property rights determine the motivation composition, affects competition and macroeconomic control, hence exerting a major influence on economic efficiency.

American economists L. Davis and D. C. North have done successful theoretic research on innovation of property system. They define the system environment as a series of basic political, social and legal rules and regulations used to establish the basis of productivity, exchange and distribution, and then analyze the relationship between institutional innovation and economic growth. They point out : "Economic system and property rights are assumed in most economic models as having a particular and unchanging value, but in the study of long-term growth

this value changes frequently and fundamentally. We assume that an economic system can be innovated and property rights may get modified in which individuals or institutions expect to accept such changing costs and they hope to get some profits they would not be able to have in old institutional arrangements.”^① In their view, economic growth will take place only when the economic organizations are of efficiency, which in turn may require the modification of property rights in order to reduce the spread between personal costs and social costs in innovation activities.

The drive of such institutional innovation comes from income increase. If the desired net income exceeded the expected cost, an institutional arrangement would be innovated. For instance, when production can be accomplished with lower cost in a larger industry, then a corporate operation may be more profitable than a smaller scale; if the price difference between two markets is great, then it will be profitable to shift goods from the lower-price market to the higher one by organizing a third market; if an enterpriser plans to build a reservoir to generate electricity, and meanwhile to reduce floods in lower reaches, then the builder may occupy part of the profits by purchasing in advance some property at the lower river, or he may request the government to tax those benefited there so as to get some compensation for his building expense.

Those increased income which attract people to innovate systems is called “external profits”, that is, they can not be obtained under the given condition arranged by the existing economic system. Based on their research on the history of American economy, Davis and North trace the source of these “external profits” back to four factors: (1) Scale Economy; (2) Externality; (3) Risk; (4) Transaction Costs. Once the innovation of a system succeeds in turning these profits internal, aggregate income will increase and the innovator may get profit without injuring others’ interest.

There are two extremes in arrangements of system innovation: the form of pure voluntariness and the form of official management and operation. The voluntary type simply involves cooperative arrangements and mutual agreement between individuals, from which any one can freely withdraw, while official arrangements provides no such selective right of withdrawal. For the latter, no agreement at all is required in action except some rules and decisions which should