

# 经营权论

覃天云 主编



四川人民出版社

ON MANAGERIAL AUTHORITY

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## **经 营 权 论**

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## 序

我国自本世纪70年代末开始的经济体制改革，是社会主义制度自我完善的大事。而增强全民所有制大中型企业的活力，则是这一改革的中心环节。为了解决这一问题，中国共产党十二届三中全会于1984年10月21日作出的《关于经济体制改革的决定》，正式提出了全民所有制企业实行“所有权同经营权适当分开”的原则。从此开始，民法学、经济法学工作者以极大的精力投入了“经营权”的研究，并发表了大量的专著和学术论文。覃天云同志主编的《经营权论》，就是其中一个值得人们重视的研究成果。该书的特点是：

1. 博采众长。它考察渊源，广罗众说，比较分析，撷其精华，使全书资料翔实而内容丰满。

2. 颇有创意。它在坚持科学态度的基础上，勇于提出新的概念，或对已有理论作出新的阐述，表现了作者的理论勇气。书中对“中介经济关系”、“法定经营权与约定经营权的界定与衔接”和企业改革方案的研究，均有一定的理论深度和较高的学术价值。

3. 密切联系实际。它贯彻马克思主义的学风，致力于解决全民所有制企业所有权与经营权分离的实际问题，而不是避开实践空发议论。

当然，这本书也难免有不足之处。甚至，它所论及的个别问题可能还会引起争论。但这是理论探索中的正常事情，是不足为怪的。

我热烈欢迎《经营权论》的问世。我希望它能给人以启发，并能引起更多的人对经营权乃至整个企业改革的深入研究。

**王家福**

1992年2月10日于北京

## PREFACE

The reform of economic structure which has begun in our country since the end of seventies of this century is a great event of self-improvement of the socialist system; and to strengthen the vitality of large and medium-sized enterprises owned by the whole people is just the key link of this reform. In order to solve this problem, the Decision on Reform of the Economic Structure, adopted in October 21 1984 at the Third Plenary Session of the 12th Central Committee of the CPC, officially put forth the principle of practising in enterprises owned by the whole people an "appropriate separation of ownership from managerial authority". From then on, workers of civil and economic jurisprudence threw themselves with great efforts into the study of the "managerial authority", and have published a lot of treatise and academic essays. Among these, *On Managerial Authority* by Qin Tianyun, author and compiler in chief, is a research result worth paying great attention to by the public. Features of this book are:

First, extensively adopting multitudinous strong-points. It widely collects various views and opinions concerned, traces to their sources and, through comparison and analysis, selects their essence, thus making the whole book abundant and accurate in its data and substantial in its contents.

Second, possessing a lot of initiative ideas. This book insisting on scientific approach, being bold in setting forth new concepts or making new expositions of existing theories, shows the author's courage in theory-founding. The studies of "intermediate economic relation", "definitions and links of legal managerial authority and contracted managerial authority" and the plan of enterprise reform in the book, are all of a certain theoretical depth and a higher academic merit.

Third, maintaining a close link with practice. Sticking to the Marxist study style, the book is directed to the solution of practical issues with respect to the separation of ownership from managerial authority in enterprises owned by the whole people. It does not evade practice and show off arguments aimlessly.

In this book, of course, deficiencies are hard to avoid. Even controversies would possibly be evoked on individual questions it deals with. But this, as a normal phenomenon in theoretical exploration, should not at all be surprising.

I warmly applaud the publication of *On Managerial Authority*. I hope that it will give people inspiration, and arouse more people to an intensive study of the managerial authority, and even of the whole enterprise reform.

Wa Jiafu

Beijing

February 10 1992



## POSTSCRIPT

There has been a process in the subject selection and idea formation of this book, *On Managerial Authority*. Firstly, it is a development based on one of Sichuan's key research subjects in the Seventh Five-Year Plan period, "A Study of Legal System: Separation of Government Bodies from Enterprises". The researching practice of this subject prompts us to realize that the "separation of government bodies from enterprises" under the condition of China's socialist public ownership system, is merely an organic part of the "separation of ownership from managerial authority" in state owned enterprises; apart from the latter separation—the achievement of economic base reform, the former one would fall abstract. Secondly, once the appraisal of "separation of ownership from managerial authority" and the academic argument about the nature of "managerial authority" have ever been extremely active and heating. This made it possible for us to obtain a lot of data and new viewpoints therefrom, and to take advantage of them to conduct comparison and analysis. Especially, at the annual meeting of the National Association of Civil Economic Jurisprudence held in Shanghai in the summer of 1988, I sponsored and presided a panel discussion with "managerial authority" as its theme. Among

those present at this discussion were Prof. Tong Ru, Prof. Yu Shutong, Research Fellow Wang Baoshu and others. Beyond my expectation, they, and Tong in particular, took a profound interest in my ideas. Then, at Tong's suggestion, the discussion was held once more with both our names as the co-speakers. It was with the aid of Tong's authoritativeness that the attendants at the discussion took the floor one after another. Judging by the age, they were mostly old and middle-aged scholars; but there were some young persons, such as Associate Prof. Meng Qingguo of Guangxi University, Dr. Sun Xianzhong of the Chinese Academy of Social Sciences and Dr. Shi Jichun of the Chinese People's University, who also expressed their consent to my viewpoints. These animating discussions have deeply impressed me and greatly inspired me, and as a result, have brought into being the state-fund subject: "A Study on Managerial Authority of Enterprises Owned by the Whole People". Therefore, this book, On Managerial Authority, is in fact a combined research fruit of the above-mentioned two subjects.

What I need to mention with emphasis is that, during the Shanghai meeting, I have already initially formed some of the major viewpoints of On Managerial Authority. As the questions and doubts raised in wide academic exchange activities largely touched on the "separation of ownership and managerial authority" and the managerial authority itself, and satisfactory answers were difficult to find by resorting to

only existing theoretical systems, I began to set foot in the interrelations of civil-economic jurisprudence and economics. Proceeding from the point that ownership does not directly and mechanically reflect ownership system, I strive to prove that ownership (even containing *jus in rem* and *jus in personum* as a whole) possesses an abstract characteristic differentiating from ownership system. I propose that supposing we take an overall view of history and reality, there will come clearly before our eyes a picture, in which one kind of ownership system is often manifested in different kinds of ownership; and the same, one type of ownership is also allowed to apply to different types of ownership system. Hence between the ownership system and the ownership, there must exist an intermediate economic relation that originates from ownership and has gone through changes. The direct legislative ground of ownership is just this intermediate economic relation, but not possibly the ownership system that constitutes the basis of material social relations. This, particularly to the commodity economic relation that exists universally in every social system hitherto known and has its basic laws in common, is of indisputable provability all the more. Thus, it appears to me that the managerial authority resulting from the "separation of ownership and managerial authority" is not only the existence form of the social capital that takes the system of corporate *legalis homo* as its prop in the times of monopoly capitalism; and what is more, it is of sci-

entific practical value to the solution of property-right problems in the commodity relation of socialist public ownership system. Consequently, for the managerial-authority system's features of *jus in re aliena* and epochal economic basis, there has possibility of explaining the reasons of their material social base, thus laying a necessary theoretical foundation for the inevitability of the *legalis homo* system of state-owned enterprises as a historical phenomenon, I'll never forget that Prof. Tong was much concerned about these superficial views of mine, and gave them much support. He highly praised me for my application of the general knowledge of political economy to the research of jurisprudence and even asked me, in a very modest and somewhat regretful mood, to persist in going deep into the research, so as to make up what the scholars of older generation were difficult to complete. I am much moved whenever recalling this sight. I should say that even a tiny bit of the exploration I have made must be a tribute to the memory of Prof. Tong.

In recent years, press circles have provided full conditions of media for works on managerial authority. Articles with brilliant insight are not rarely seen. But such works as methodically dealing with the managerial authority system from the inner links of commodity economy under the modernized mass-production with the monopoly capitalism and the socialism, from the historical identity of managerial authority and corporate *legalis homo* system, and from the com-

prehensive analysis of jurisprudence and political economy, if any, at least I myself haven't consulted. Part I of On Managerial Authority, the theoretical part, is what I have acquired from learning once again K. Marx's Capital and learning the works of many contemporaries in academic circles, and yet its system and a lot of theses in it are belonging to myself.-I'm gratified with them. But just because they are something of my own, I feel it a heavy burden to bear social judgement and practical test on my own. At this very moment, I can only keep waiting with a mood of trepidation. If it is still of some value, that's only an extremely meager attempt, but if wholly repudiated, I will also take it willingly. Indeed, in social sciences, just as in natural ones, failure is the condition to breed success. I don't expect that I should fail, but I wonder what would the destiny actually happen to be. Moreover, owing to the limits of levels, materials, time and circumstances, no matter whether the lot of this book's publication will be good or bad, I can only say that I have done my utmost.

I should especially state that On Managerial Authority is a collective result, wherein joint researching and writing of comrades Zhou Yousu, Hou Shuiping, Li Kaiguo and Lin Gang are included; that Hou also participated in part of the draft-finalizing task; and that comrades Kou Mengliang, Wu Weiguo and Zhong Jiling, as well as the secretary of the subject-panel Xiao Min, all have ever jointed the discussing

activities of the panel, so the book should also be called our common product.

Furthermore, I should avail myself of this opportunity to express my sincere and heartfelt thanks to Research Fellow Wang Jiafu, Professor Zhong Mingzhao, Research Fellow Lin Ling, the late Deputy Chairman of the Sichuan System Reform Committee Qi Yang and Deputy Secretary-General of the People's Government of Sichuan Province Lei Yuyi, who have trusted and supported me in my taking on this subject, and Wang also have especially written for me the Preface of this book; to Associate Research Fellow Luo Shilie, who has translated the book's Contents, Preface and Postscript into English; to comrades Yao Zhanhau, Yang Fangjie and Yuan Jiuyong, who have toiled at their task to support the publication of this book; and to the Southwest Institute of Political Science and Law and the Law Institute of our Academy for their close cooperation.

Last, wish readers of this book would oblige us with their valuable comments and criticism.

Qin Tianyun

Chengdu

Dec. 17 1991

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