

Discussion on the Community Rights Theory of Characteristics of Stock Ownership

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Abstract-This article is based on the community rights theory which plays the dominant role in the contemporary academic debates about the nature of stock ownership, including the theory's crucial points and ideas, its advantages as well as the disadvantages, then express the writer's personal view about it.

Keywords- stock ownership; community rights; independence; property; one man's company

I. INTRODUCTION

The stock ownership is used to definite shareholder's a series of equities about the economic interests and operating management based on contribution to the investment. The Article IV in Corporate Law of china also regulate the shareholder's rights. There are widespread debates and discussions about the characteristics of stock ownership for it's significance to solve the problems with in the government-owned enterprise and the shared corporation, especially after the reformation in 1990s [1]. The community rights theory holds most supporters, and it's being taken as a popular theory.

II. GENERAL SUMMARY AND SUPERIORITY OF COMMUNITY RIGHTS THEORY

This theory holds the view that the identity of community member in profit community is the fundamental prominent of shareholder's rights, namely that shareholder's rights is one of the community rights. The community rights theory was proposed by German scholar Renaud in 1875, and it divided into two main streams (single rights theory and the collective rights theory), acting as a significant academic theory in the continental legal system.

The nature of equity always links to the characteristics of corporation property rights. All the investors gather their capitals to form the corporation, thus consisting of corporation property rights, the shareholder gets equity according to their donating. The equity and the corporation property rights born at the same time, they are all the legal consequences of investment. The born and setting up of the company divide and separate the property of shareholder and that of the company.

The personality of shareholder and the company separate from each other. As a result, it comes to the independent but balanced complex relationship between equity and corporation property rights. Some people advocate that the equity is part of the corporation property rights. The concrete concept and appearance of equity, no matter it contains components about property or not, it's all decided by the corporation property rights [2]. The shareholder lost the independent control on the company's property, thus the equity rely on the existence of corporation property rights, it don't have its own independence, this theory combines equity and corporation property rights. The community rights theory concentrates on the independence capacity for civil rights of the shareholders and the corporation aggregate. Both of them are equal civil subjects, share civil rights and interests. when the shareholders assign the property to the corporation, the corporation itself gets independent legal property, while the shareholders acquire the equity by assign property ownership.

The equity stands for the interests and rights of shareholders, while the legal property put lights on the rights of corporation aggregate. Since they pay attention to two distinctive aspects, it fairly hard to mix them up. Second, from the prospective of the history, as the development of capitalism, large quantities of capital holders appear with the worry for taking excess risks. The *jus reale* focus on absolute ownership, thus has *erga omnes*. And because its ossification, it prevents capital from effective flowing to meet the goal of dispose resources rationally. On the contrast, the transferable of obligatory rights are accompanied by huge risks. As a result, the self-profit right and common-profit right emerge as the time require. Also, the equity could balance the legal property, solving the inter-corporation conflicts, improving the productive efficiency, providing opportunity for scale development [3].

While the legal property was settled step by step following the process of the development of commodity economy. The legal property is the result of satisfying the inner request of market economy.

At last, from the prospective of individual theory, no matter the single theory or the collective theory, they both pay attention to the independence of equity instead of mixing them up. That's the superiority of community theory compared with others.

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III. THE INFERIOR OF COMMUNITY RIGHTS THEORY

First, scholars hold various kinds of viewpoints about the nature and connotation of community rights. Some scholars equal it to right of personality, right of personal status, or even property rights. But, these three rights have different characteristics. So, if we couldn't point out the reasonable meaning of community rights, we will bring potential problems into the identification of equity. According to Mr. Wang Liming, the community rights is to describe the various rights a member might attain by following law as well as the rules and regulations of the community. The community rights is produced among the community, and it's totally diverse from other general civil rights.

The community rights based on the community membership and depend on its existence to function. If we consider the community rights as rights of personal status, the basis of community rights is the membership, that is to say the community itself could dismiss the members. And the community rights mostly fit the personal company. While the equity mainly include rights of control, dividend rights, of which the rights of dividend rights are supposed to belong to property rights, so the community rights also contain the aspect of property rights, it is surely inconsistent with the premise.

If we take community rights as property rights, that is to say that the community rights have nothing to do with community member's personal aspect, as a consequence, it couldn't be considered as right of personality or rights of personal status. While the equity was generated from the investment property ownership within the field of real right, based on the control of corporation, realizing its profit goal through the right of claim of obligatory right. So it's composed of both the feature of real right and the obligatory right. But, some part of equity, such as the voting power is hard to be considered as property rights, so it conflicts with the premise either.

In addition, since the final judgment of *salomanv.saloman co. ltd* in 1897 indicated the one-man company acquired approval in the law field, one-man company has been developed extremely rapidly in the eastern countries. The one-man company is the company registered by one single investor, and it's a special form of LLC and Ltd. The one-man company holds the corporate property rights of the entire company. Meanwhile, the shareholder has all kinds of rights of a common shareholder[4]. The manager namely the shareholder (only one person) has the management power, limited liability, and right to yields.

The traditional theory of corporation law focuses on the group characteristics of the company, and the general continental legal system also include corporation into legal body of mass organization instead of legal body of financial group. In addition, when it comes to the need to capital rising, the group characteristics are the most crucial factor of a corporation. And the trend that one-man company is supposed to abuse the company system also calls for the existence of legal body of mass organization. In the practical field, the

German, France, EU, Japan as well as Taiwan set up law to regulate the one-man company. And it's a great threat to the traditional theory to community feature of corporation. Facing the reformation boom of one-man company, some scholar points out that the modern company management system cast more light to the employee participant in the organize of company, and some firm has already focus on the restrain functions of creditors as well as the relevant parties.

So, we could enlarge the community nature of corporation into shareholders even the employees. In that condition, the one-man company could satisfy the requirement of person's number. But there are some disadvantages.

At last, there are other companies that hold the stock of one company. So the nature of these companies is still under questions.

IV. THE FURTHER DEVELOPMENT OF COMMUNITY RIGHTS THEORY

It has been about 100 years since the proposal of the community rights theory. And during this process, there are some social practice which could challenge this theory (such as the one-man company)[5]. The rapid boom of modern society also let the background of it become outdated. How to adapt the old theory into the require of the modern advance has become the most important task for scholars who hold this point of view.

When it comes to the disadvantages mentioned in the third part of this article, I think that, first, we should understand the nature of community rights clearly by answering the question that what kind of right the community rights are belonged to. That is the time stone of all further illustrations such as the explain about the characteristics of equity. Or we will face logic conflicts. The shareholder of the one man company has already been supposed to have the nature of collective man.

The shareholder himself or herself doesn't exist single as a mere individual. During the lasting time of this company, it will be a certain amount of people to keep the company functioning. So, the community rights of the corporation, the one man company is maintained and kept. Meanwhile, we depend our researches a lot on the discussion of the nature of community rights. Second, we must combine the management feature of one-man company with the community rights of corporation.

The reason why community rights are essential lies in the points that it concentrates on the decision between group and individual, if the property of a shareholder of one-man company could separate from the company's property, we could approve it and it also realize the inner goal and require of the community rights. In the contemporary era, while the further explanation, which include the one-man company is the best choice for the stability of the entire society.

To be frankly, there are still quantities of difficulties and missions to be solved when it comes to the one-man company's community characteristics, but, as the successive development, the nature of this concept will be much clearly as time passed.

In that case, the conclusion made by us could finally make sense, or it will just be a tiny prospect in a large background.

V. CONCLUSION

In conclusion, the status of community rights theory become unstable due to the fact that the superior as well as its disadvantages appear continually, and other theories have already began to spread and being advocated. But, the thinking view and the research method it supplied to this field of study couldn't be replaced. And the depth of its consideration on the concept of nature of the equity couldn't be denied. Meanwhile, we have to believe that in the near future, the community rights

theory will overcome its conflicts and come up with the division consistent with the current social practice.

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