

Market Economy: The Economic Basis of Private Law Autonomy

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Abstract: *The economic basis of the principle of autonomy of private law is market economy. With the continuous development of society, the limitations of the market economy itself have been exposed. The development of big data has greatly improved people's ability to obtain information, and thus the ability to plan as a whole. The "new planned economy" concept of managing economy with big data came into being. If the market economy gives way to the "new planned economy", the foundation of private law autonomy will be lost. But Hayek shows that although there are many defects in market economy, what it needs is supplement, correction, not replacement, through the inconsistency of preferences and the stimulation of self-respect and ability of personality. The market economy has its own inevitability, and the concept of autonomy of private law in line with it should also maintain its position as the "fundamental principle" in private law.*

Keywords: *Autonomy of private law; Market economy; New planned economy; Fundamental principles*

1. Introduction

The autonomy of private law is the spiritual core of civil and commercial law. Since ancient Rome, we have been accustomed to dividing law into public law and private law. Public law is represented by administrative law and criminal law, and private law is represented by civil and commercial law. An important difference between the two is that the public law insists that the law is prohibited without authorization, while the private law can be done without prohibition. The public authority regulated by public law protects public interests. On the one hand, public power is indispensable, on the other hand, it has a natural tendency of abuse. Therefore, public power organs can only do what people are allowed to do. Hayek called it "following the rules of organization", that is, public power organs are the products created consciously by human beings, and they must operate within the scope defined by human beings. Private law is the code of conduct of ordinary people. Man is the purpose, not the thing that must be useful and created like public power. Therefore, we just require that their behavior be harmless to others and society. As long as its behavior does not produce negative external benefits, we usually presume that its behavior is legitimate, which Hayek calls "the rule of due conduct". Therefore, the civil law not only takes the autonomy of private law as its core principle,^[1] but also requires that transactions in reality should, in principle, be carried out through legal acts as a tool of self-decision. Even gifts, according to Article 657 of the Civil Code, need to be accepted by the recipient.

Respect for human subjectivity is only the ethical basis of private law autonomy. As a law, we must also consider the feasibility and effectiveness of private law autonomy in the operation of human society. If private law autonomy only reflects respect for people, but cannot provide conditions for the continuous progress of the whole human society, and cannot meet people's needs in reality, then this respect is a castle in the air. In reality, everyone, as a rational person, wants to take rather than give. The real foundation of private law autonomy is the power that makes the respect for human subjectivity contained in private law autonomy operate and maintain.^[2] The development of capitalist society has verified Adam Smith's classical economic theory, that is, to allocate the flow of social resources through the "invisible hand" of the market. In short, it is to respect everyone's subjectivity and let everyone freely decide to exchange. When a transaction requires the consent of both parties, the exchange of the consent of both parties shows that the social resources can play a greater value in their own hands, and the other party is also the same. In other words, market economy is the exchange and flow of resources decided by individuals, and the success of capitalist development shows that this model is effective. This combines the respect for human subjectivity embodied in the autonomy of private law with the optimal allocation of resources, so that ethical values can be supported by economic practice.

But the problem is that human demand is rising rapidly, while resources cannot keep up with the pace of human demand development. The important purpose of law is to "exchange the minimum cost for the maximum possible overall satisfaction of human needs".^[3] Today, after hundreds of years of practice, it has been proved that the market economic system is not perfect. Its blindness, spontaneity and profit-seeking often lead to the mismatch between supply and demand, the waste of resources, and even bring heavy costs to the economy and society. Moreover, capital will often refuse to enter the infrastructure fields with large investment, high risk, long profit recovery period and low profit rate, which are extremely important for human survival and development, making its role in the field inherently incomplete.^[4] How to improve and supplement the deficiencies of market economy and private autonomy has become one of the topics of economic law and even traditional private law. Today, the success of the socialist market economy with Chinese characteristics has also led some people in the society to think that the unified planning and coordination of the country is the magic weapon for us to be better. The voice that emphasizes coordination, regulation and even regulation seems to be stronger and stronger.^[5] With the rapid development of information technology, the world has ushered in the era of big data. The enhanced control of information has led to a new sprout in people's ideological world - Andy Pollack, a western economist, proposed a "new planned economy". Some people in our society also recognize this concept. Market economy is not necessarily the best choice. Is the free market economy at the end of its tether?

We must pay enough attention to this new sign of ideological understanding, because "the transformation of ideas and the power of human will have shaped today's world," "the thoughts of economists and political philosophers are more powerful when they are right and when they are wrong than they are generally understood".^[6] Re-read "The Road to Slavery" and we will get the answer. The book elaborates the essence of market economy and planned economy and the role of government in economic development. We can draw the following conclusions from it: First, the reason why planned economy is not feasible is not only the problem of government information collection ability; Secondly, the superiority of the market as a means of resource allocation lies not only in economy, but also in ethics or social values. This is also the reason why the Third Plenary Session of the 18th CPC Central Committee decided to increase the fundamental role in the allocation of market resources to a decisive role. Of course, this does not mean that the market is the perfect means. The success of China's economic construction today is mainly to revise and supplement rather than abandon the market economy.

The effective combination of market economy with national planning and overall planning is indeed the trend of economic model development. The problem here is the rational division of labor, not just the competitive advantages brought by the overall national planning. The reason why this advantage can become an advantage is that we have first taken market allocation as the basic means of resource allocation. Therefore, we adopt a mixed framework, in which the market is the basic plate. Because the government will also fail, we believe that the autonomy of private law in civil law is still the core principle, and the market economy can still provide the most basic economic support for this principle. In order to avoid some scholars mistakenly judging the cooperative relationship between market and planning, the author, based on Hayek's statement, expounds that market economy is still a necessity from the perspective of practice and ethics, and is still the bottom logic most in line with the spirit of private law.

2. The inevitability of market economy in practice

With the advent of the era of big data, our information collection and processing capabilities will be greatly improved. However, as a means of resource allocation, the market is superior to the plan not only because the government's information collection capacity is insufficient.^[7] The economic human rationality of each natural person who formulated and implemented the plan, the diversification of people's value pursuit and so on all require the non-human market as the main means of resource allocation.

2.1. Big data cannot completely solve human ignorance

Professor Zhang Weiying put forward two preconditions for government intervention when arguing with Professor Lin Yifu in 2016: first, human ignorance (ability); The second is human shamelessness. Ignorance refers to the general belief that under the planned economy, the government does not have sufficient information collection capacity, and naturally cannot make correct decisions, that is, the

capacity of proper planning is insufficient. Even the smartest people can't know all the needs of all people, and make the most appropriate and effective arrangements according to the existing resource conditions and the priorities of the needs. In fact, the information we can understand and grasp is very limited. In particular, all needs and resources are related to various relevant factors, which are very complex and change at any time. How can we achieve "strategic planning"? Today, due to the application of big data technology, human beings have the possibility to collect a wide range of data, and can even conduct some information processing. However, we have to admit that in the deepening of information processing and information collation, decisions still need to be made by living people with limited rationality. However, under the planned economy, it is no longer the decision of countless individuals, and only one decision center replaces the individual decision, so the result must be either all right or all failed. From the perspective of the whole society, risks have increased rather than decreased.

In 2016, the "gas shortage" of winter heating in northern China is the best explanation. In order to control the haze, many provinces and cities require heating companies to modify their equipment and change the energy they use from coal to gas. But what these decision-makers often didn't think of was that when many provinces changed all energy sources at the same time, the natural gas was not enough after the sudden cooling in the north in winter. Not only the eastern provinces, but also the western provinces producing gas were also "short of gas". This is actually a relatively easy account to calculate, but we still haven't made a correct decision. Therefore, "big data" is only a tool. It is not necessary to use it. Even if it is used, it cannot guarantee the correct decision.

2.2. Economic rationality and human shamelessness

The last section mainly explained that even in the era of big data, the government's incompetence cannot be completely overcome, and a small mistake will have an impact on the overall situation. This section mainly describes a problem that is still insurmountable today: human shamelessness. Once the planned economy is implemented, all resources will be controlled by the authority, and more specifically, countless natural resources with economic rationality. Because "potential abundance" is impossible to realize - at least not yet discovered. In the case of limited resources, it is impossible to meet everyone's needs, and the competition for resources will not be eliminated. In the market economy, who can obtain resources and how much will need to go through the non-human market mechanism; Under the planned economy, when the authorities decide the acquisition of resources, there will inevitably be corruption such as favoritism and rent-seeking. Under the planned economy, this kind of corruption will be stronger and harder to control. Because under the planned economy, the government will control all economic resources, and the private property of individuals will no longer be owned. At this time, the survival of citizens and the realization of various goals need to obtain power or please power, relying on the grace of those in power. Under the market economy, "the world where the rich get rich" has become the world where "only the rich get rich" under the planned economy.

In China, due to the historical residue of the transition from the planned economy, our government departments, institutions and state-owned enterprises have a large amount of power - resources, and administrative monopoly is prevalent. As Hayek said, without the participation of power and the support of the government, monopoly is often impossible.^[8] However, the large amount of wealth captured by these monopolies is not attributed to the state, but enters private pockets through various corrupt channels. "Corruption has become the trademark of our era". Therefore, the state has constantly promoted "streamlining administration and delegating powers", and cancelled and delegated various approval items in order to curb corruption from the source - without power, there will be no rent-seeking chips. The Third Plenary Session of the 18th CPC Central Committee's Decision of the CPC Central Committee on Several Major Issues of Comprehensively Deepening Reform has upgraded the "fundamental role" of the market in resource allocation to "decisive role", which is also based on further reducing the excessive economic resources held by the government.

2.3. The inevitable conflict between pluralism and monism of value

"A guided economy must follow the autocratic line more or less." Because in the case of limited resources, there must be a variety of conflicting values - the pluralistic reality of values. In order to realize the plan, we must reach an agreement on our goal and the allocation of resources - the unification of the goal. To formulate an economic plan, it is inevitable to choose between various conflicts and the value and demand of competition. But the fact is that in an era of respecting the pursuit of individual's reasonable differences, even these ideas are strange. Then this kind of unification

cannot be realized. Although there will be so-called "social goals" to some extent, these goals will not be the ultimate goal. People only use these goals as a means to achieve their personal interests, and everyone will use them for different purposes. Once we put these plans and objectives into practice, they will again revert to "incommensurable value judgment". Our consensus is only limited to setting a common goal, but what exactly is the content of this goal cannot be unified. Just like we all agree that we should go to eat, but we have different ideas about which restaurant to eat and which dish to eat. Those strange people have strange pursuits, and can't satisfy everyone's "taste" by one standard. In human society, people need so many different things that they even need different things to meet people's needs through different permutations and combinations. Therefore, there is no way to translate human needs or preferences into a single indicator. But the complex indicators that can meet all the needs of all people do not exist in reality. Because, in fact, value must contain subjective elements, so uncertainty and versatility will be one of its essential characteristics. Therefore, as long as we do not try to turn our society into a unified military organization, the plan will inevitably collapse when it is implemented.

3. The ethical value of market allocation of resources

The choice of the market as the main means of resource allocation is not only because the economic plan is not feasible or the market is an inevitable means, but also because of its ethical superiority. If we choose to plan the economy by the government, it will inevitably damage these important ethical values.

3.1. Market economy respects independent personality

The ethical or philosophical basis behind the market economy is individualism, which is not very important whether it is self-interested or altruistic. Although individualism also brings externalities, lack of public services and other problems, on the whole, self-interest will not harm the society, on the contrary, it is just positive.^[9] People in life always need the assistance of the same kind, but they can't rely on the favors of others, but should arouse their self-interest and tell them to provide what we need for their own interests. Therefore, all the products we get are not gifts from others, but are produced and provided by them based on their own interests. Therefore, it is their self-interest rather than altruism that has created rich and colorful commodities in today's society. More importantly, this individualism will also encourage us ethically to "respect individuals as human beings". In the planned economy, "a person is respected only because he is a member of that group".

Moreover, under the market economy, it is a mechanism of making decisions by itself and by decentralization. The planned economy adopts a collectivist philosophy. Its two basic characteristics are: first, it needs a goal that is accepted by the whole group (whether it is feasible will not be discussed for the time being); Secondly, in order to achieve this goal, the collective will be given unquestionable power. That is to say, in such an environment, there is even no general rule that an individual must abide by. It often explains the legitimacy of the means with the purpose. The realization of the goal is regarded as the most important thing - so there is nothing absolutely impossible to do for the goal, because the goal of the overall interest is the only criterion for him to decide what he should do. The goals we pursue are alienated, and individuals are no longer goals, but become tools to achieve goals.

3.2. Market economy respects human personality

As the main means of resource allocation, the market often limits the scope of government activities to very limited areas: providing infrastructure; The construction of basic systems such as currency, information and law; Correction of negative externalities; Provide basic social security, etc. But these government actions must be carried out under the rule of law. The essence of the rule of law in the market economy is that the government needs to be bound by the predetermined, long-term and general formal rules. That is, these rules are only for general situations that anyone may encounter. It is like a road traffic rule, without directly telling you the direction, and anyone can benefit from it. The makers do not know who will apply these rules and who will benefit from them. Only individuals can make their own unique choices and judgments according to specific time, place and conditions. To sum up, the government only provides abstract rules - instrumental, but does not replace individuals to make what is right and what is the best decision. On the contrary, "it is paramount to admit his own views and interests within a personal range. Even though this range may be limited to a narrow range, he still believes that people should develop their own talents and hobbies", even if it is strange and difficult to

understand.

To sum up, the market economy will restrict the government from replacing individual decisions. It always tends to respect people's personality, even if their individual decisions may not be good. Because the market philosophy understands that the "public will" that is always fair and always represents itself does not exist in reality, but only the "public will" that represents countless private interests. In this case, we should believe that everyone is the judge of their own best interests. Even if people are sometimes deceived and corrupted, they will make wrong choices, which is the inevitable cost of ensuring people's personality and freedom. "If we are not willing to restrict power in ways that may sometimes hinder the use of power for desirable purposes, we will not be able to prevent the abuse of power."

3.3. Market economy stimulates people's sense of responsibility

A prominent feature of market economy is to recognize that people can legally own private property, which is the premise of human sense of responsibility. Although in order to pursue private property, people will also do things that are detrimental to the principle, but only if there is private property, every decision people make has the so-called moral problem. Because only when a decision is made by oneself, and its risks and losses are borne and responsible by individuals, can there be moral problems. Beyond the scope of personal responsibility, there is neither good nor evil. Only when we are responsible for our own interests and have the freedom to sacrifice them, can our decisions have moral value and a sense of responsibility.

In life, we often say that "who doesn't own what, who doesn't care" is the truth. In the past, in the era of the people's commune, there was no private property, but all collective property. This not only did not arouse our sense of responsibility, but also contributed to the phenomenon of not caring for collective property, wasting collective property, and idleness at work - this is not only a matter of efficiency, but also a matter of responsibility or morality.^[10] It is also related to the fact that state-owned enterprises are less efficient than private enterprises. In November 2013, the Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Comprehensively Deepening the Reform pointed out that one of the purposes of actively developing the mixed ownership economy is to revitalize state-owned enterprises by introducing the property incentive of private ownership, which is essentially to use the ownership of their property and the sense of responsibility generated by individuals to promote the maximum efficiency of the role of capital and supervise corruption and laziness, No one will allow their capital to be idle and wasted, and they will maximize their value.

3.4. Stimulate people's subjective initiative

Plan and market are just two alternative systems. One system is for a few privileged people to decide what others can have, and the other system requires individuals to do their best to pursue. At this time, although it is difficult for those who are poor and born with various disadvantages to succeed in the competition, they still have the opportunity to succeed through great efforts and costs, rather than completely unable to choose. Under the market economy system, a person relies on freedom and his own efforts to succeed, rather than the grace of those in power. Only under the competition system can no one hinder his efforts to become rich. That is, he has the opportunity to exert his subjective initiative to strive for. Under the planned economy, currency and price will be abolished and replaced by power and order. In the past, we achieved our goals by pursuing the general equivalent of money and money, but now it is the power of planning to determine the flow of all resources. At this time, power has become a new general equivalent. "Because only the compulsory power of the state can decide who should get what, the only power worth grasping is to participate in the exercise of this management power." Only by obtaining power can we be guaranteed. Honor and status can only be achieved by a state's salaried personnel. Our young people will prefer positions with stable salaries rather than the risks of enterprises, His right to get an annual salary is his qualification for marriage more than his confidence in achieving success. The richest person in China's big education industry has changed from Yu Minhong (New Oriental) to Zhang Bangxin (XRS) to Li Yongxin (Zhonggong Education). Hurun believes that this change is also a reflection of China's social changes.

In China, people favor the "iron rice bowl", which may not only be the factor of cultural tradition, but also partly the residual influence of the planned economy. When most of the young people in a country are eager to get the civil service, the spirit of struggle and adventure will disappear. Some are

just chasing for power, and innovation and creation will also be hindered.

4. Market economy is not a laissez-faire economy

Although Hayek has repeatedly reiterated and emphasized the market, competition and freedom throughout the book, it must be said that he is not a laissez-faire, let alone an anarchist. "Liberalism does not mean to let things go... In order to make competition work effectively, it will ask us to design an appropriate and effective legal system. It does not oppose it. In those areas where the market cannot produce results, we can choose other options to make changes." So Hayek opposed not all plans, but only those against competition. It is not a very necessary plan to make the competition as effective and beneficial as possible. In terms of negative externalities, public services, the ineffectiveness of competition and the institutional conditions of the basic competition operation, providing the maximum guarantee to encourage risk taking, the role of the government is worthy of recognition. It is only necessary to note that the government should follow the principle of market priority in the specific intervention of market activities. When regulating new things in the society, the government (in the broad sense, including the legislature) should not be too eager to legislate and regulate, but should keep restraint, wait for things to develop more mature, and then properly regulate according to the problems exposed, so as to avoid the premature formulation of inappropriate rules to curb the development of new things.

5. Conclusion

In the past, we chose the market rather than the plan, mainly considering that the market is more feasible in practice and more efficient in economy. Hayek has led us into a new world - market, competition and private ownership, which is not only an issue of efficiency, but also an ethical issue. Under the market economy, people's personality and needs will be respected as the highest standard, and people's struggle will still be meaningful without being related to power. However, as the best means of resource allocation, the market is not perfect. In fact, our civil law has also recognized this point. We understand that individual autonomy and equal opportunity under the market system cannot solve the natural and social differences between people. Therefore, the civil law has made many adjustments, such as the principle of prohibiting the abuse of rights, the green principle entering the Civil Code, the regulation of standard clauses, the compulsory contracting system of water, electricity and gas related to the necessities of public life, and the special protection of modern civil law for consumers. This shows that our civil law has been affected by the social and economic reality, and has begun to pay attention to the differences between people and the harmonious coexistence of people and society, which are often ignored under the market economy.

However, from the previous analysis, the market economy still retains its basic legitimacy, both at the practical level and at the ethical level. Therefore, the principle of autonomy of private law corresponding to our civil law is still the "fundamental principle" of civil law. In order to adapt to the limitations of market economy and the trend of social standard, civil law has made flexible adjustments, but does not change its nature of private law. The basic principle status of private law autonomy has not been shaken.

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