Topics in Microeconomics Assignment 2

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January 5, 2021

1 Reading Notes for Nunn (2007)

1.1 Core Ideas of the paper

Nunn's paper explores the positive effect of a country's contract enforcement on making relation-specific investments, which endows the country a comparative advantage in relevant industries. Theoretically, if contracts are imperfectly enforced ex post, participants would expect this ex ante, and this results in under-investment ex ante. Relation-unspecific investments are less prune to this negative effect, because the investors, if facing a contract default, can still sell the capital or goods in market.

In order to quantitatively measure this effect, the author estimates the following equation:

$$\ln x_{ic} = \alpha_i + \alpha_c + \beta_1 z_i Q_c + \beta_2 h_i H_c + \beta_3 k_i K_c + \varepsilon_{ic}$$

This equation measures how does a country's percentage export is changed by the interaction between contract enforcement and relation-specific investment. where x_{ic} denotes the specific export in industry i from country c; z_i is a measure of the importance of relationship-specific investments (i.e., contract intensity) in industry i; Q_c is a measure of the quality of contract enforcement in country c; H_c and K_c denote country c 's combined capability of skilled labor and capital, and h_i and k_i are the skill and capital intensities of production in industry i; α_i and α_c denote industry and country fixed effects.

The author uses market thickness as an indirect measure of the relation-specificity: the goods traded in exchange is considered to be the most general (thus require relation-unspecific investments). According to the author, automobile industry is the most contract-intensive, while poultry process is the least. The author also included several other measures of relation-specificity for more robust results. The primary explorations show a significant relation between x_{ic} and $z_i Q_c$.

However, this does not entail a causal relation $z_i Q_c \Rightarrow x_{ic}$. Given the significant result, the author must rule out two alternative models:

1. confounding variates (omitted variable): $OV \Rightarrow z_i Q_c$, $OV \Rightarrow x_{ic}$
2. reverse causality: $x_{ic} \Rightarrow z_i Q_c$

To address the first alternative, the author added country and industry fixed effects and control variables like income, TFP growth, skill and capital endowment, and financial market conditions. The coefficient β_1 is significant after these adjustments.

Another potential omitted variable is the vertical integration in different industries. Vertical integration, by providing 'law enforcement' with a single entity, may be able to solve the trust deficit issue for contract-intensive industries. The author finds that 1) even for industries in which vertical

integration is more feasible, contract enforcement still has a significant and positive effect on export, although this effect larger for industries in which vertical integration is more difficult.

The author also uses IV and propensity score matching to address the issue of reverse causality and further demonstrate the causal relation. He uses the categorical variable on legal origin as an instrument for contract enforcement, and the estimates are still significantly positive. However, although the legal origin obviously affect the quality of contract enforcement (relevance condition satisfied), it is not necessarily true that the exclusion requirement is satisfied, since the legal origin might influence the current export in channels unspecified in the equation. Thus, the author uses propensity score matching to eliminate the other possibilities. He compares pairs countries which one adopts the British common law system and the other adopts French civil law system, and uses variables like GDP, financial development, and trade to find the most similar pairs, then analyze how does exports in contract-intensive industries differ among those pairs. The estimates are still significant. Thus, the author claims to establish the causal relation from contract enforcement to exports in industries requiring relation-specific investments.

1.2 Comments and Suggestions

The paper provides a elegant way to empirically test a long-established relation, and uses a lot of tests to establish the robustness of his estimate. However, I believe the IV and propensity score matching parts are not entirely convincing. The problem of IV, as the author himself states, is that legal origin as a variable is likely to fail the exclusion condition of an instrument. However, the propensity score matching only concern the English common law and French civil law countries, while all other countries have been excluded, and the causal relation in those countries is not throughly examined.

One way to improve the strength of causal relations is to incorporate the temporal dynamics. The strength of contract enforcement change a lot in a country's history, especially for developing countries. For example, we could do a Difference-in-Difference between one country that recently experienced a legal reformation and another that kept its legal system, and measure the treatment effect on different industries.

The author also omits the results for independent countries. The traditional economic literature usually assumes a Western market-based environment, while the socio-political environment in developing countries, especially socialist countries, could be different. For example, the law enforcement in China in the 90s to early 00s is poor according to the Western standard, but it has surging exports in "Audio & video equipment manul", "Telephone apparatus manufacturing" and several other industries that are some of the most contract-intensive ones. The system of Soviet Union is another outlier. Without Western-style jurisdiction, it is able to produce, export, and master in nearly all of the most contract-intensive industries. I am not trying to make an ideological claim, but just to point out that promotion, power, and politics in a state-controlled economy could be another environment in which relation-specific investment can be efficiently made, without contract enforcement in the usual sense.

2 中国董事会结构的改革演进梳理

2.1 董事会作为一种现代公司制度

经过数百年的发展，现代公司形成了以股东大会，董事会和管理层为基础的制度结构。如果说股东大会是公司的最高权力机关，而管理层是执行机关，那么董事会是股东大会的业务执行机关，负责

公司或企业的业务经营活动的指挥与管理，对公司股东大会负责。 最高权力机关的常设机关，在股东大会不召开时行使以下几方面的权利：

1.

2.2 我国公司制度的初步发展

从 1949 年新中国成立至1978年之前，中国的企业立法十分稀缺，主要有1950年12月29日颁布的《私营企业暂行条例》和1954年9月5日公布的《公私合营工业企业暂行条例》。这两项规定与其说是现代公司制度，不如说是在计划经济体系下，用以配合社会主义公有制的建立的附属规定。到了1956年实行全行业公私合营，不存在现代意义上的董事会制度。在改革开放初期的八十年代，我国颁布的《中外合资经营企业法》、《外资企业法》等法律初步明确了有限责任公司的组织形态，包括公司设立与注册资本、董事会与管理层、财务与会计、解散与清算等具体制度。

不过，这个时期的相关规定还处于相对简陋的阶段，如参考 《中外合资经营企业法》中对董事会的仅有描述：

> 第十二条　合作企业应当设立董事会或者联合管理机构，依照合作企业合同或者章程的规定，决定合作企业的重大问题。中外合作者的一方担任董事会的董事长、联合管理机构的主任的，由他方担任副董事长、副主任。董事会或者联合管理机构可以**决定任命或者聘请总经理负责合作企业的日常经营管理工作。总经理对董事会或者联合管理机构负责。**
>
> 合作企业成立后改为委托中外合作者以外的他人经营管理的，必须经董事会或者联合管理机构一致同意，报审查批准机关批准，并向工商行政管理机关办理变更登记手续。

其中仅仅规定了董事会的大致职责，对其一般产生模式，工作方式，职务要求，进入、退出机制特别是权利义务都着墨很少。体现了该阶段我国股份制公司发展的初期特点。

在1993年《公司法》中，董事会的工作方式得到了相对具体的确认。

2.3 1993年《公司法》

随着我国经济不断发展，对于公司治理方面具体、明确的法律法规的需求也越来越强。国家在1993年正式出台并修改了《公司法》。其中相对具体地阐释了董事的产生、权利与职责。1993年《公司法》第四十六条说明了董事会的职权：

> 第四十六条　董事会对股东会负责，行使下列职权：
>
> （一）负责召集股东会，并向股东会报告工作；
>
> （二）执行股东会的决议；
>
> （三）决定公司的经营计划和投资方案；
>
> （四）制订公司的年度财务预算方案、决算方案；
>
> （五）制订公司的利润分配方案和弥补亏损方案；
>
> （六）制订公司增加或者减少注册资本的方案；
>
> （七）拟订公司合并、分立、变更公司形式、解散的方案；
>
> （八）决定公司内部管理机构的设置；
>
> （九）聘任或者解聘公司经理（总经理）（以下简称经理），根据经理的提名，聘任或者解聘公司副经理、财务负责人，决定其报酬事项；
>
> （十）制定公司的基本管理制度。

同时，第一百一十六条至第一百二十条规定了董事会的基本形态与召开方式。

作为第一部全面的公司法，1993年《公司法》也有其自身弊病，对现代公司治理中的种种细节缺乏体认。例如，它没有规定实际控制人的概念，给诉讼时的责任归属以及法院判决造成了许多争议。其次，股东会、董事会、监事会、经理层的权利义务，以及互相的关系没有详细阐明，公司的职权划分有模糊之处。第三，该法缺少对公司以及董事、监事、高级管理人员诚信义务及其法律责任的规定，不能满足建立信用制度、维护市场安全稳定的要求。最后，1993年《公司法》缺少对于股东，特别是中小型股东的权益保障。如其规定：

> 第一百一十五条　董事任期由公司章程规定，但每届任期不得超过三年。董事任期届满，连选可以连任。
>
> 董事在任期届满前，股东大会不得无故解除其职务。

经理人、董事会作为实权部门也因此掌握大量权力，对于公司长久的稳定运行有负面影响。

2.4　2005年《公司法》

在2005年《公司法》中，董事会相关的制度设计得到里的进一步完善。首先，它首次在正式规定了董事、监事和高管人员的责任归属，并通过信息披露等机制加强内部和外部监督。主要有以下几个方面：

1. 强调了股东选择董事的权力的绝对性，取消了1993年公司法中“董事任期届满前，股东会不得无故解除其职务”的规定。
2. 为防止董事、监事辞职带来公司机关停摆的风险，建立了看守董事、监事制度。
3. 健全对董事、监事、高管的约束机制，首次引入董监高对公司负有忠实义务和勤勉义务，对忠实义务不仅完善了具体场合，还确立了归入权制度。
4. 进一步加强对股东，特别是中小股东的权益。比如明确规定了股东的知情权、异议股份回购请求权、以及选举董事的累积投票权、提案权和质询权等。同时还阐明了股东诉讼机制，使得股东可以在自身利益受损时对董事会成员直接提起诉讼。
5. 在上市公司中特别引入独立董事制度，强化公司的监督。

同时，在公司治理的其他方面，2005年《公司法》也作了全面而系统的规定。至此，我国董事会制度的大致框架已经得到确立。

2.5　我国当代董事会制度的特点

由于我国经济体制是以公有制为主体、多种所有制经济共同发展的社会主义特色市场经济，相比于发达资本主义国家的董事会制度，我国董事会制度也有许多不同之处。

首先，不同于股东-董事会-管理层的一般架构，在我国董事会和党委会、监事会、管理层等组织机构，共同构成了丰富的公司治理体系。中国公司的章程已经明确写入了党建工作的内容，公司党委会也在公司治理中占据核心地位，与董事会形成互相配合的决策关系。

其次，在股东大会和董事会的关系上，我国法律规定股东大会为权力机关，董事会为业务执行机关。但在实际执行过程中该界限相对模糊，上市公司的股东大会干预董事会决策的情况时有发生，违反了董事会中心主义的普遍原则，无法保障董事会的独立性。而另一方面，公司法中对经理的职权进行了直接规定，是的公司经理享有多项职权，而且董事会可以进一步给经历授权。这个特点导致公司实际运行中，总经理的职权相对较大，从而进一步架空了董事会，使得它不能成为狗洞股东大会和公司实际运营人的桥梁纽带。

最后，在我国公司体系下，董事会成员可以兼任经理。这一方面可以让董事会与公司管理层的信息沟通更加顺畅，但同时也让董事会丧失了原先作为独立监督实体的作用。实践中，有许多上市公司

董事长兼任总经理，进而控制董事会，出现一人独占整个公司的几乎全部权利，导致大部分股东利益受损。

2.6 本部分参考文献

1. 陈彩虹，中国公司董事会制度的特点和完善建议
2. 朱慈蕴，中国公司法在本土化与国际化的融合中演进
3. 蒋大兴，公司董事会的职权再造
4. 沈四宝，董事会制度的基本法律概念
5. 邓峰，董事会制度起源、演进与中国的学习
6. 杨晓红，论我国上市公司董事会制度的完善

3 Extensions to *A Survey of Corporate Governance*

Andrei Shleifer and Robert Vishny in their 1997 paper provided a comprehensive survey to the topics related to corporate governance, in particular the ways to solve the principal-agency problem that how can the financier get paid. I first provide an outline of the topics discussed in this paper.

1. The problem explained
2. financing without real investor power
   (a) reputation-building
   (b) excessive investor optimism
3. Investor empowerment
   (a) legal protection to investors
   (b) concentrated ownership (creditor and shareholder)
4. Specific Governance Structure
   (a) Debt and equity
   (b) leveraged buy out
   (c) cooperative and state ownership
5. Cross-national comparison of different systems

These topics reveal how do the structure and governance of firms relate to its fiannce. Note that I do believe the authors have completed a very good join in answering their specific question, but based on my own interest, I hereby propose several extensions the paper could make.

3.1 Principal-Agent Problem in general

The crux of this paper is the Principal-Agent problem: the owner delegate the rights of control to the management, and would like to avoid management misconduct by designing different financial or legal systems. This issue is not only present between financier and firm managers, and is present in nearly every form of human organization:

- Within firms, managers want to ensure they their employees work diligently. Especially for firms like Tencent where executive power and even right of finance is distributed, how do the upper management ensure efficiency and honesty?
- in the pre-modern era, parents want to ensure that their children support when they get old
- high-level government/military officials would like their subordinates to govern efficiently and honestly

There are definitely differences between the problem of firms and the three examples above, or there would be identical mechanisms of finance within firms, families and governments. However, are the problems fundamentally different? And how are they mechanisms parents and government officials use to alleviate the problem similar/different to the mechanisms in this paper?

3.2 Decline(?) of Capitalism and The Rise of China

The 1990s is characterized by a general optimism on the liberal democracy and market economy. The Soviet Union collapsed (and the negative consequences are repeatedly emphasized in the paper), and Francis Fukuyama asserted 'The End of History' in 1992. This paper, written in 1997, is also filled with this optimism, and it basically wants to explain how does liberal democracy and ownership protection helps the firms raise efficiency and society more productive. From this perspective, they identify the main inefficiency in most economies as the lack of investment brought by the lack of investor confidence.

After more than 20 years, more deficiencies of this system is revealed, and the most notorious example is the 2008 subprime mortgage crisis. The profit-oriented system and the distribution of risk in firm finance might also contribute crises like this. In addition to legal protection to shareholders, more regulations are established to regulate corporate financial structures. How do these changes fit into the framework proposed by the authors?

Another issue is China. It has a very different economic system but also achieved rapid growth in the last 20 years. The authors claim that the main issue with developing countries is their insufficient legal protection to investors, and argued that reputation, investment optimism, and rapid actual growth are the three reasons why firms in developing countries get financed at all (used Korea as example). But in China, the government often directly help firms to grow. Local governments actively help firms get investment, offer cheap even free land, and assist the management in nearly all possible ways. The 'state-capitalism' is arguably the most important factor explaining China's growth. This direct government interference, as compared to the legal protection, is not addressed in the paper. I would be interested to know what benefits and costs this system have.

4 Thank you for your time reading!