On the nature of residual control rights

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ABSTRACT
In the debate on property as rights in personam or right in rem (e.g. Arruñada 2012), the meaning and nature of so-called residual control right (RCR) is not explored. This paper takes a step in this direction.

As Hart (1995) suggests, RCRs encourage investments within a specific relationship Hart. However, RCRs may affect also outside parties and relationships. This “dark side of ownership” (Rajan and Zingales 1998: 390) means that RCRs include also the right of exclusion over all. In this respect, the description of RCR as right in personam is too narrow.

Re-examining the most important textbook case of holdup—the acquisition of Fisher Body (FB) by General Motors (GM)—I argue that RCRs transformed not only the relationship between GM and FB (i.e. FB became a GM branch), but also the access to FB’s resource from other manufacturers such as Ford and Chrisler.

To better analyse RCRs as right in rem I propose as unit of analysis the transaction which was defined by John Commons and is endorsed by Williamson (e.g. 1985: 3, 6) rather than the jural relation as defined by Hohfeld and used by New Institutional Economics (cf. Merril & Smith 2001, 2011).

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References


