

Possibility

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This presentation will mainly deal with the possibility as a part of Max Weber's definition of rights. First, we will analyze the difference between rights and power and look at Max Weber's own definition of power. Then we will see what happens both to rights and power once they are not exercised. After that, we will have a closer look at power and its proper use. We will end by analyzing which consequences abuse of power can have.

So what do rights have to do with possibility? At first, this may seem strange or even paradox. Why should a right, something with a connotation of being granted, guaranteed have anything to do with possibility, which implies a notion of being uncertain and probable, but just not sure?

To answer this question, we will have to enlarge the question by taking into account what power and possibility have to do with each other. This again raises the question of how rights and power are linked to each other. So let's try to answer this question first.

1. Rights and Power

Instinctively, we feel that there is a link between these two terms. And it does not take us long to figure out that one would be pretty useless without the other.

If, for example, Woo-Seung has worked for me for a whole month, he has been making coffee for me, doing my presentations and has done my laundry. We can assume that he has a right to be paid for his services. But this right alone does not really help him get his money if I just refuse to pay him. I may be stronger or have my money well hidden somewhere where he will never find it and maybe he will be waiting for his payment for the rest of his life.

So, what can he do?

Woo-Seung can sue me. After a (probably relatively short) process, I would be sentenced to pay him his money. If I don't, a bailiff might come to my apartment and take from it whatever is worth the money I owe Woo-Seung, for example my TV.

So power is what gives rights the strength to claim something successfully. To put it into more legal terms, we should consider that there are some categories of rights.

a. Different types of rights

i. Private rights

First of all, there are the rights that regulate the relationship between individuals within one society, such as between me and Samsung when I buy myself a new TV, or between Woo-Seung and me when he is working for me. I have a right to get the new TV set from Samsung electronics or to have my work done by Woo-Seung and they both have a right to be paid for their respective services.

The State itself does not have anything to do in there. The Republic of Korea does not care whether or not I buy myself a new TV or who makes my coffee. Yet, the state can also act as a private person, i.e. by buying things it needs, for example paper and pens for its ministries and departments.

ii. Public Rights

Secondly, we have rights which regulate the relationship between a state and its citizens. Here, we have to deal with two different types of rights. On one hand, we have the citizens' rights,

which are mainly their fundamental rights such as the right of free expression, of religion, of gathering or of vote. These are rights of every single citizen which the state has to grant every single one of them.

On the other hand, we have rights of the state towards its citizens. These include the right of the state to judge and punish criminals, to levy taxes and to conscript its citizens to military service.

You will certainly have noticed that this last right is the one we would also call power. It is the right that allows the bailiff, as a representative of the state, to enter my apartment and to take away my TV to pay my debt towards Woo-Seung.

b. Weber's definition of power

Max Weber has developed an own definition of power, which is relatively close to what we just learned. According to him, power is

the chance of a man or a number of men to realize their own will in a communal action even against the resistance of others who are participating in the action.

At first sight, this definition may seem completely different from what we just explained, but in fact, it is not. Weber developed a very general definition that fits to any power exercised in any group. I will explain the keywords of this definition and find more simple words for what Weber was trying to explain.

Communal action is a group of people sharing the same interest. In general, this is just living together peacefully, so this can be a society in our case.

A man or a number of men having power is very simple to understand. These are the state and its representatives.

So we get the modified definition that power is the chance of the state to realize its own will in a society against other members of the society. This means that the state can do its duty even though some in the society do not approve it.

Please watch the use of the word "chance" at the beginning. Doesn't it have a similar meaning as possibility?

Considering this, we find this definition to be very close to Weber's definition of rights, which reinforces our assumption that power is a special kind of right.

But what exactly does the possibility imply?

2. Non-Use of power and rights

The possibility, or the chance (as it is used in Weber's definition of power) implicates a notion of choice. Everyone is free to use or not to use one's right.

Every right also contains the right not to use the right. In our example, if Woo-Seung chooses not to use his right of being paid, he can renounce to this payment and simply not ask for being paid or not sue me.

In the same way, a state can choose not to exercise its power in certain cases, for example not to prosecute some kinds of crimes (for example for consumers of soft drugs in the Netherlands, for prostitution or gambling in most other European countries) or criminals (for example kids under a certain age or mentally disordered people).

But what happens to these rights in such kind of a situation? The answer to this is quite simple. The fact of not using a right in a given moment does not hinder you in another, when you feel more comfortable about using it for whatever reason. The right does therefore not simply disappear once you renounce to it. It is still there and can be used at any other moment.

a. Rights and Prescription

However, there are some limitations for this rather theoretical possibility in legal practice. After a certain amount of time, your right does in fact disappear if you do not make use of it. This time, depending on the country and the kind of right can be between 2 and 35 years.

b. Power and potential

The word “power” itself etymologically includes this notion of choice, as it is derived from the Latin noun “potestas” related to the verb “potesse”, which also engendered the word “potential”. Potential itself has a meaning once again closely linked to possibility as it has a meaning implying a certain unused capability to do something.

This leads us directly to the next topic of this presentation. How has power to be exercised in order to be efficient and accepted?

3. Political power

We will try to answer this question by closely looking at Weber’s opinion on this point.

Max Weber discerns between three kinds of authorities that can exercise power: traditional (Daiki believes I have the right to exercise power because I always had it and should keep it), charismatic (Daiki believes I have the right to exercise power because I have certain attributes that qualify me as a good leader, such as holiness or exemplariness) and rational (Daiki believes I have the right to exercise power because he believes in a stable inner order that gives me this certain right).

Weber considered the last one as being the most developed one and we will focus on this one as it fits best to most modern societies.

The rule of rational power requires some premises.

First of all, there have to be fixed jurisdictional areas, ordered by rules and regulations, which limit the power of the ruler.

Then what Weber calls bureaucracy occurs. There is an administration which works according to the following features:

- Continuity of the administrative work
- Rule according to certain fixed rules limiting the power of each single bureaucrat
- Hierarchy of positions
- Separation of charge and person
- Prohibition of ceasing your own charge
- Written communication.

This is what – according to Weber – is the most sophisticated of all systems of rule and whoever has experienced public authorities anywhere in the world will certainly agree.

However, Weber was aware of the fact that bureaucracy is and stays a model which basically never works in reality.

As he stated, once it is fully established, bureaucracy is among those social structures which are the hardest to destroy.

Yet, the advantages of bureaucracy and the rule of rational authority are not to be forgotten. Bureaucracies seem to try to keep the superiority of professionally informed by keeping their knowledge secret. The concept of the "official secret" is the specific invention of bureaucracy. This also prevents from power being abused by a single group of persons, as the effective power is divided to so many charges.

The bureaucratic organization is technically superior to all other forms of organization. Bureaucracy is also a system that comes along with many benefits, such as economic growth and democracy.

Perhaps, you have to see it from Weber's perspective to better understand what he was trying to tell. Like Marx, he tried to understand and to make understandable the implication of the industrial revolution. That is why he compared the efficiency of bureaucracy to a machine compared to non-mechanical modes of production.

4. Conclusion.

So who has the right? Who has the responsibility?

If you look at this common situation, you might notice that there aren't many things going on. Wooseung has a right to get paid for working for Daiki for a month and Daiki has a duty to pay. (Draw two circles and write down the names. Wooseung and Daiki. Put Right below Wooseung and Responsible below Daiki)

In real life, Daiki will have to pay Wooseung 700,000 won for his noble work. However, what would happen if Daiki did not honor Wooseung's rights to his wage and simply refused to pay him?

-So there are situation that can arise from this simple situation. First situation where Daiki honors Wooseung's rights and the other situation where Daiki refuses to pay.

-Let's talk about some common sense. Situation where Daiki honors Wooseung's rights. This is an ideal situation that we expect to have in every day life. In this situation, we would expect that Daiki would pay Wooseung for working as an intern. Why is that? When someone has a

right, we expect that right to have some kind of an effect. The right itself has power. In this case, we do not know the reasoning behind Daiki's decision to pay Wooseung. Daiki could have paid Wooseung out of pure goodness of his heart. However, if he didn't, there probably would be ways to enforce him to pay.

In other words, under the normal circumstances, we expect that the right to have some kind of power. Then provides the power to those rights?

Here, we can start discussing about a situation where Daiki refuses to pay. What would you do? I would suggest you to take him to court. Sue him. Which tells us that to enforce, or secure your right, you need some kind of power. Meaning that there should be a legal or court system of some sort. So there is a right that has power asking someone to perform some kind of a duty, but that power comes from the internal order.

From this, we have just discussed a very important point of our presentation. The fact that the possibility of a exercising a right is protected through the internal order.

Now we've learned that right has power. Since, a person holding the right has the power. that person can make decisions whether or not the person will use the right or not. The person can also make decisions when they are going to use the right. So let's say for instance, in the situation above, that maybe Wooseung does not want the money right now. Then he can make such decision. Why? Because he has the right to do so. However, if Daiki cannot afford to pay Wooseung, he will have to be excused by Wooseung to do that. That is because Daiki does not hold the power.

Let's now have a little experiment. Or an interview. Could I have a volunteer from the class room please? (pick anyone you want.)

Questions

Do you understand what we've been explaining so far?

Okay. for the real questions.

Do you have a right to freedom of speech? (YES)

Can you tell me what it is about?

So it's a freedom to speak. As what the right says.

Then why aren't you speaking now? Now? Now? Now?

Let's think about this. From this little experiment, we learned that having a freedom of speech also means that you have the right not to speak. Therefore, the non use of the right should also be protected.

It is same in the other cases. Just because you have the right to property does not mean that you must have property. Having a right to religion does not mean that you must have a religion. However, we thought that the freedom of speech makes the best example of them all.
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From this we have distinguished the difference between the right and the use of right and the non use of right.

Now let's talk about protecting the rights. We have seen that through internal order the right has power. However, what would happen if the ruler abused the power. Well, think of it this way. What is internal order? Whatever court system that we have is influenced by the sovereign when the ruler abuses the power. Therefore, there is a close link between the internal order and the sovereign. In this situation the right is jeopardized because the right is

given power through the internal order. So, the right is under the complete control of the Sovereign.

However, we must look into what determines the abuse. For example, there maybe a small distinction between the term abuse and limiting the rights. Abuse is going over the limit and limiting is staying under the limits. So how can we tell?

Well, for protecting the rights. Let's say the Daiki the king decided not to have freedom of religion and freedom of press. By getting rid of the right completely, it would normally constitute abuse of right.