

[Max Weber's definitions about rights]

## The Possibility

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Special Topics about Constitution

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## I. Even if not exercised, still your right is there. What does it mean?

### 1. Weber's definition of 'Right' By Jason Park

Definition of "Right":

"The state of mutual social relationship in which the possibility of the members of a social group enjoying exclusive spiritual and material interests under its internal order in a continuing way is guaranteed."

The above sentence containing 8 subjects is a complex description of rights according to his philosophical aspect by Max Weber.

Among many types of rights as discussed in the previous class, under general consensus a right is an abstract idea of that which is due to a person or governmental body by law or tradition or nature to which one has a just claim (like **a**: a power, privilege, or condition of existence to which one has a natural claim of enjoyment or possession, as in the *right* of liberty **b**: a power, privilege, immunity, or capacity the enjoyment of which is secured to a person by law as in one's constitutional *rights*.)

In legal term, a *right* is the legal or moral entitlement to do or refrain from doing something or to obtain or refrain from obtaining an action, thing or recognition in civil society. Generally speaking a *right* corresponds with a complementary obligation that others have on the same object or realm; for instance if someone has a right on a thing, simultaneously another party or parties have an obligation to do something (or to abstain from doing something) in order to respect that right or to give concrete execution to that right. Property rights provide a good example: society recognizes that individuals have title to particular property as defined by the transaction by which they acquired the property granting the individual free use and possession of the property. In many cases, especially regarding ideological and similar rights, the obligation depends

on the [legal system](#) in its entirety, or on the [state](#), or on the generically universality of other subjects submitted to the [law](#).

Other interpretations consider the right as a sort of [freedom](#) of something or as the object of [justice](#). One of the definitions of [justice](#) is in fact the obligation that the legal [system](#) has toward the individual or toward the collectivity to grant respect or execution to his/her/its right, ordinarily with no need of explicit claim.

## **2. According to Weber, how can we answer to the question? By Jason Park**

To answer “Even if not exercised, still your right is there?” the short answer is a “yes.” Unlike other rights, the right defined by Max Weber falls more into the category of natural rights of a human. Other rights may diminish its legitimacy as mostly exercised in property laws, but not the rights as in right to liberty, freedom or pursuit of happiness. A right in many aspects is a power and it is a part of legitimate authority of the people in mutual social relationship which is a bare foundation of the modern society and civilization under Max Weber’s theory. Hence, one’s right will still remain by the law which will be enforced by the government, even it is not exercised. A good example would be your voting right. You may never exercise your right to vote, for various reasons, but it will always remain as your right as long as you exist because it is guaranteed by the constitutions.

An important theme about our rights is that a **right is not [something that somebody gives you](#)** - it **is [something that nobody can take away](#)**.

## **3. Still useful in present society? By SW Kim**

We live in such a complicated and highly sophisticated society that collides a diversity of interests among units of the society both internal and external: i.e.

- Petitions between people or governments as to who is eligible for just right or which country execute its sovereignty that is consistent with the international rules, etc.
- Especially the power that one country can use or influence in the internal society is getting importance.

According to Weber’s definition of possibility, it closely conjuncts with a right that is guaranteed.

- I think that a right under Weber's definition applies in place in the present society.

For instance, we cannot but underline the importance of fundamental rights that are guaranteed under the constitution or other supplementary laws. These rights are so much important to the social order, community joint goal, individual welfare, and therefore we can see many endorsed rights under social contracts and laws:

- Such includes right to free movement, right to free speech, freedom of thought, freedom of assembly, right to democracy and right to a fair trial, etc.
- These very important fundamental rights should be kept in place, and made indefinite in duration and even developed towards extension.

Having said that, there can happen in the present society that right is void if not exercised properly in time.

- With respect to the property law, if one occupies the land with predator behavior over a certain period, the real owner can lose his right to claim the ownership.

More importantly the right of the country in the international society can be protected through the promulgation of legislation that is consistent with the international rules.

## **I. What is the power?**

### **1. Weber's definition of power. By Jenny Yoon**

#### 1) Weber's definition

“ Possibility to achieve one's will against the resistance of particular group or individual in social relationship.

\* Examination of Weber's definition on power

“ Weber's definition of power can be built through the notion of Intention & Conflict. To achieve the desired ends ( intention ) + despite resistance from others ( conflict ) . Three fundamental element to the concept of power is as follow

--- Class : the outcome of the distribution of economic power

---- Status : normatively defined a kind of social power

--- Party : political groups active in pursuit of various

interests.

## 2) Power as Substance

- ⌚ Holding power
- ⌚ Regarding power as substance, the minority as power holder who have this substance dominate the large mass of the people
- ⌚ On the premise of the minority of rulers and the majority of the ruled, it's considered that the ruler is aggressive and active factor

## 3) Power as Relationship

- ⌚ Political power is the rational interrelations or relationship between the ruler ( the person in power ) and the ruled, not coming into existence without the ruled's agreement or obedience
- ⌚ Obedience make the ruler

## 4) A compromise on conflicting view

- ⌚ Power is relationship that the ruler and the ruled achieve the same purpose through the compulsion and agreement
- ⌚ Substance + Relationship

# **1. Limitations on power. By Soon-Youb Kwon**

- Mainly on the system of checks & balances in U.S. Constitution

## 2.1. Introduction

The system of checks and balances is an important part of the Constitution. With checks and balances, each of the three branches of government can limit the powers of the others. This way, no one branch becomes too powerful. Each branch "checks" the power of the other branches to make sure that the power is balanced between them.

In this part, we will review the details mainly on the system of checks & balances in U.S. Constitution.

## 2.2. Historical background

In 1787, after finishing the Independence War, leaders of the states gathered to write the Constitution-a set of principles that told how the new nation would be governed.

The leaders of the states wanted a strong and fair national government. But they also wanted to protect individual freedoms and prevent the government from abusing its power. They believed they could do this by having three separate branches of government: the legislative, the executive and the judicial. This separation is described in the first three articles of the Constitution.

### 2.3. Checks & balances between three branches of government

- **Legislative Branch**

The Congress checks the power of the executive branch as follows.  
①makes laws. ②can pass laws over the president's veto. ③can impeach the president. ④controls the budget. ⑤approves president's nominations of the Cabinet and ratifies all treaties.(Senate)

The Congress also checks the power of the Judicial branch as follows.  
①can impeach Judges and remove them from office. ② confirms the president's nominations of judges.(Senate)

- **Executive Branch**

The President checks the power of the legislative branch as follows. If the bill goes to the executive branch, the President decides whether the bill is good for the country. If so, he signs the bill, and it becomes a law. If not, he does not sign it. This is called a veto. (But the legislative branch gets another chance.)

The President also checks the power of the Judicial branch through nominating the judges.

- **Judicial Branch**

If someone believes a law passed by the legislative branch is so unfair, a lawsuit can be filed. Then, the Court can declare the law unconstitutional.

The Court also can declare the presidential acts unconstitutional to check the power of the executive branch.

### **I. If you exercise power excessively, what will happen?**

## **1. What does the excessive power mean? By Hun jip**

The Separation of Powers devised by the framers of the US Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist. Based on their experience, the framers shied away from giving any branch of the new government too much power, or excessive power. The separation of powers provides a system of shared power known as “Checks and Balances”.

For example, the President appoints judges and departmental secretaries. However, these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution. By forcing the various branches to be accountable to the others according to the Checks and Balances, no one branch can usurp enough power to become dominant excessively.

## **2. When we encounter the abusive power, how can we react? By Hun jip**

### **(1) Checks and Balances: Enhancing Executive Power through Deploying U.S. Military (Historical Example)**

The Constitution of the United States does not explicitly define the extent of the President’s authority, or power, to involve United States troops in conflicts with other nations in the absence of a declaration of war. Instead, the question of the President’s authority in this matter falls in hazy area of concurrent power, where authority is not expressly allocated to either the President or the Congress. The Constitution gives Congress the basic power to declare war, as well as the authority to raise and support armies and a navy, enact regulations for the control of the military, and provide for the common defense. The President, on the other hand, in addition to being obligated to execute the laws of the land, including commitments negotiated by defense treaties, is named commander in chief of the armed forces and is empowered to appoint

envoys and make treaties with the consent of the Senate. Although this allocation of powers does not expressly address the use of armed forces short of a declared war, the spirit of the Constitution at least requires that Congress should be involved in the decision to deploy troops, and in passing the War Powers Resolution of 1973, Congress has at last reclaimed a role in such decisions.

Historically, United States Presidents have not waited for the approval of Congress before involving United States troops in conflicts in which a state of war was not declared. One scholar has identified 199 military engagements that occurred without the consent of Congress, ranging from Jefferson's conflict with the Barbary pirates to Nixon's invasion of Cambodia during the Vietnam conflict, which President Nixon argued was justified because his role as commander in chief allowed him almost unlimited discretion over the deployment of troops. However, the Vietnam conflict, never a declared war, represented a turning point in Congress's tolerance of presidential discretion in the deployment of troops in undeclared wars. Shocked by the human and monetary cost of those hostilities and showing a new determination to fulfil its proper role, Congress enacted the War Powers Resolution of 1973, a statute designed to ensure that the collective judgment of both Congress and the President would be applied to the involvement of United States troops in foreign conflicts.

The resolution required the President, in the absence of a declaration of war, to consult with Congress "in every possible instance" before introducing forces and to report to Congress within 48 hours after the forces have actually been deployed. Most important, the resolution allows Congress to veto the involvement once it begins, and requires the President, in most cases, to end the involvement within 60 days unless Congress specifically authorizes the military operation to continue. In its final section, by declaring that the resolution is not intended to alter the constitutional authority of either Congress or the President, the resolution asserts that congressional involvement in decisions to use armed forces is in accord with the intent and spirit of the Constitution.

**(2) Checks and Balances: Enhancing Executive Power through Political Controls on Information (Historical Example)**

*("The Political Economy of Information" Vincent Mosco &*



Janet Wasko)

U.S. government information policy has become quite complex. It spins the wheels of the nation's economy, and its domestic and foreign policies and determines the extent to which civil liberties are upheld.

By the time Reagan had been office three years, It was clear that he and his advisors had little respect for the traditions of local activism and robust debate. Rules of secrecy were increasingly embedded in American politics as the administration invoked "national security" claims to justify the imposition of unprecedented restrictions on the flow of information. These included visa denials to authors, dramatists, and political leaders from foreign countries intending to visit the United States, a ban on travel to Cuba, the regulations that weakened access under the Freedom of Information Act, etc...etc....

Government refusal to disclose information can be traced back to the country's early years. Historically, official policy on citizen access has changed with political climate and has included a combination of open procedure, espionage laws, spy activities, and ad hoc censorship. During the last 20 years, the tug of war between openness and secrecy has intensified. In 1968, Congress passed the Freedom of Information Act (FOIA), a law that upheld the public right to access to information about the activities of government. Only a few years later, President Richard Nixon conducted a secret war in Cambodia. This and other abuses of executive power soon led Congress to strengthen the FOIA. Then in the 1980s, the Reagan administration moved to tip the scale on the side of government secrecy, going much farther than any of its predecessors.

The particular restrictions introduced during the period are extremely important. They proved effective in centralizing control in the White House. In addition, pervasive secrecy, including the selective disclosure of information and misinformation, undermined the oversight powers of Congress and limited the possibility of effective public response to government programs.

### **3. What is the efficient exercise of power? By Chang no**

If we want to stop an abusive exercise of power, we must let a political system

democratic. According to Russell, he said democracy does not guarantee good government, but it prevents some evil.

The best systematic way to prohibit the abusive exercise of power is democracy. But we can not say it is functional automatically. When we operate it efficiently, we can say it is functional.

For an example as an efficient exercise of democracy, above all, we require the rule of majority. When we have to make a solution in group decision, we must consider the group wholly; therefore we must know uniformity is not inevitable.

As long as not instigating a destruction of law, we should tolerate all critics. About propaganda conditions, we are able to make a complaint and dissatisfaction known socially. In this respect, we require the balance of power. Even if political power is divided, the weak one can not constraint the strong if the dispersed power is not too strong equally. We can not come to social justice by way of moral and rational persuasion. Collision is inevitable and power must be challenged by power. Here, power is not personal power but organized power. There must be an equal power between the challenger and the acceptor. If the challenger is weak, it can not defy or will fail. Conversely, if the acceptor is weak, it can not cope with the challenge.

Therefore, in order to operate the democracy efficiently, we should require the balance of power.

### **Similar Concepts of Power by Sung Jin**

#### **1. Power (權力)**

- M. Weber - " Possibility to achieve one's will against the resistance of - particular group or individual in social relationship".
- B. Russell - " the production of intended effects "
- H. D. Lasswell - " power is a special case of the exercise of influence": it is the process of affecting policies of others with the help of actual or threatened severe deprivations for nonconformity with the policies intended.

→Capability or force to move group or individual regardless of their will by particular group or individual **in** social relationship of human being. It must

entail compulsory elements and sometimes physical forces to support and validate the compulsory elements. The key concept of power can be described as " domination by power " and does not doubt whether the power of the dominator over the governed is conceded by the society or not.

\* Different Theories of Power T.Hobbes, J. Locke, Carl J. Friedrich

## 2. Influence(影響力)

1) Distinguishing the concept of Power and Influence

2) Using the concept of Power and Influence interchangeably .

- Result of influence by an actor regardless of any reactions by others .
- Unlike power, compulsory elements and promise of compensation s are unnecessary .
- So if the exercise of influence threatens to deprive the values or entails compulsory elements, it develops into power.

Ex) President persuading people to reduce spending to overcome economic crisis.

## 3. Authority(權威)

- Robert MacIver - " Authority is established right to lead people, solve the controversy, make decisions over certain issues and making policies social relationship. Authority has at least the characteristic of legitimacy and impersonality. " .

→Authority can be defined as legitimate power conceding the exercise of power to be just in certain social relationship.

## 4. Violence (暴力)

1) Psychological Violence

By using the principle of conditioned reflex, it makes people to obey when inflicted with psychological violence. It is a means to dominate people by driving them under fear and anxiety with threatening, blackmailing or any other invisible violence.

Ex) Hakenkreuz

2) Physical Violence

It is an ultimate means (ultima ratio) to dominate by political power. It can be conducted under an extreme condition with no alternatives to dominate active rebellions.

Ex) Military forces, Police, Prison

Narrow Concept ..

→ Violence is a form of power with illegitimate compulsory elements.

Ex) Exercise of power by gangs or illegitimate violence group

## 5. Right (權利)

Through the history the term right has been changing .It is much rare adequate to define the term right within the background.Many scholars have defined right in different ways,but let us try to find out how Max Weber defined.

"The state of mutual social relationship in which the possibility of the member of social group enjoying exclusive spiritual and material interest under its internal order in a continuous way is guaranteed intellectual property right etc.  
"