

2001. 4. 3. Tues.

Max Weber's Definition of Right

Group 5 "Spiritual, and Material Interests"

Spiritual Interests

- ① Right of Privacy
- ② Right of Speech
- ③ Right of Assembly
- ④ Right of Religion
- ⑤ Right of Abortion

Material Interests

- ① Right of Own Property Right
- ② Right of Intellectual Property Right

Eun Jee Kim,	2001150025
Janet Choi,	2000150142
Eunah Seo,	99140279
Minkyung Kim,	2001110261
Moonhee Chung,	200030371
Haejin Kim,	9811100
Yoonhee Lee,	9711038
Youjung Kim,	9711166

2001150025 Political Science and Economics dept. (정경학부) Eun-Jee Kim (김은지)

1. Max Weber's View on the Right of Privacy

Through out his whole theory on protestant ethics Weber emphasizes independency. He opposed the dependency of people to the church, priesthood, and rituals. He believed that people should break free from that link and find their own callings and ways of life. This emphasizes of individualism led to a strong belief in the right of privacy.

2. Privacy Rights in Today's World

① Corporate Privacy on the Internet

A. The Sharing of Customer Information by Companies

Privacy groups told federal regulators on March 13th that companies should better explain how they share customer information with other firms and then let consumers decide if they want their names and addresses given to other companies. The advice was part of a Federal Trade Commission workshop on how Internet and advertising businesses gather and trade data to created customer profiles. Companies like Amazon and DoubleClick, which control much of the advertising on the World Wide We, gather information on the likes and dislikes of their customers. Data transfer issues have been particularly pressing these days with scores of Internet companies going out of business. When a company closes, the information it gathers becomes a company asset for sale.

B. The Role of Congress

Even as corporate foes of federal privacy regulation champion the release of new data detailing the cost of such rules to businesses and consumers, behind the scenes the industry remains fractured as ever on the issue. For example, the Online Privacy Alliance has not taken a position about whether Congress should write privacy regulations, but many of its members have. The divisions can be seen even in congress, as House Majority leader Dick Armey said in a statement that the government should get its own house in order before turning its attention to private companies.

② Debate on Scan Camera

At this year's Super Bowl the faces of the football fans were scanned and compared to mugshots of common criminals. The fans were outraged, but officials say this procedure is not out of the ordinary. In the United States face scans are used by various organizations for various reasons ranging from casinos to look for cheats to the drivers' license bureaus to reduce ID forgers.

③ Medical Privacy Laws

The health industry wants the Bush administration to rewrite medical privacy rules issued by the previous White House, arguing the regulations would delay help to patients. The regulations are designed to prevent doctors and insurers from sharing confidential information about patients and to punish them if they do. Health groups want the administration to reconsider rules requiring patient consent for using or disclosing oral or written communications as well as electronic records.

Right of Speech

1. Definitions

- A. Background History
- B. Shift in Concept
- C. Freedom of Expression
- D. Classic Examples:
 - 1) English Bill of Rights (1689)
 - 2) American Declaration of Independence (1776)
 - 3) French Declaration of the Rights of Men and of the Citizen (1789)
 - 4) First 10 Amendments of the Constitution of US (1791)
 - 5) Universal Declaration of Human Rights of the UN (1948)

2. The First Amendment

- A. The Meaning
- B. The History
- C. The Supreme Court and the First Amendment
- D. Protected Speech

3. Cases/Examples Regarding Freedom of Expression

- A. 1987 Tinker by Night incident at Duke University
- B. Harmful Websites: Bomb making, suicide sites
- C. Libel, celebrities suicide

4. Censorship

- A. Political
 - 1) Child Online Protection Act
- B. Educational
- C. Everyday Practice
 - 1) Movie ratings
 - 2) Music CD- Parental Advisory label

Right of Religion

A. Marx Weber's idea of religion

1. Provisional definition of religion

- Parsons defines it as "the grounds of meaning" or an interest of the basic perspective of what organizes each person's community or society.

2. Marx Weber who has seen the life of two men, insisted that behind a religion and many transformed beliefs, there lies the position that describes reality which is explained as "meaningless".

B. The role of the idea of religion of Marx Weber

1. Weber already pointed out that men have an intention to act in a dignified manner. Most of the cases, these tendencies mean that they want to believe something that can justify their present lives. To prove this justification or compensation is the first function of the idea.

2. The second function is to pursue the first function.

C. Fundamental Human Rights

In the beginning, Human Right entirely meant civil liberties. Freedom of Idea, Freedom of Religion, Freedom of Press, etc. were included.

D. Toleration Act

(May 24, 1689), act of Parliament granting freedom of worship to Nonconformists (i.e., dissenting Protestants such as Baptists, Congregationalists, and Methodists). It was one of a series of measures that firmly established the Revolution of 1688 in England. It allowed NONCONFORMISTS (also called DISSENTER OR FREE CHURCHMAN, any English Protestant who does not conform to the doctrines or practices of the established Church of England) their own places of worship and their own teachers and preachers, subject to acceptance of certain oaths of allegiance. It did not apply to Catholics and Unitarians and maintained the existing social and political disabilities (including exclusion from political office) for dissenters.

E. Thomas Jefferson

The son of Peter and Jane Randolph Jefferson, was born at Shadwell, Virginia in 1743..Jefferson's Bill for Religious Freedom

Virginia: Freedom of Religion

While serving in the House of Burgesses, Jefferson became a leader in moving the Old Dominion toward

a position of non-importation of British goods. In 1774, he wrote A Summary View of the Rights of British America, which effectively articulated the colonial perspective on the emerging conflict with Great Britain. While in the Virginia legislature, Jefferson was instrumental in removing some of the weakened remnants of aristocracy from the Old Dominion. He was in the forefront of the movement that

successfully abolished entail and primogeniture, practices which legally bound fathers to provide estates only for eldest sons. These bills commenced a more equal distribution of land and had the effect of expanding the electorate in Virginia. Equally important, Jefferson drafted the Statute of Religious Freedom to abolish the special privileges that the Anglican church enjoyed in the Old Dominion.

-JEFFERSON'S DRAFT (1779)-

(A Bill for Establishing Religious Freedom)

SECT. I.

Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds

SECT. II.

We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief

SECT. III.

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right

The Declaration of Virginia Rights

XVI. That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

F. United Nations Universal Declaration of Human Rights, 1948

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, either alone or in community with others and in public or private, to

manifest his religion or belief in teaching, practice, worship and observance.

G. RFRA(Religious Freedom Restoration Act)

On June 25, 1997... The United States Supreme Court, in a 6 to 3 decision, declared the Religious Freedom Restoration Act of 1993 unconstitutional as applied to the states. The majority opinion in the case of City of Boerne, Texas, v. Flores was handed down by Justice Anthony M. Kennedy. In response to the High Court's decision, members of Congress as well as state legislators across the country are considering ways in which to restore the protection of religious rights.

H. The Role of RFRA

To protect the free exercise of religion.

I. The Law of Alabama which applies to RFRA stipulates as follows;

(State RFRA Law -- Alabama)

1. Governments should not burden religious exercise without compelling justification.
2. Federal and state laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise.

Assembly rights

2000130371 English language&lit Mun hee Jung

The main function of the assembly is its ability to debate and publicize issues openly with protection against arrest at least while the assembly is in session. The constitution guarantees the assembly the right to summon members of the government to answer questions about government policies.

※The Cruikshank Case

▶ (The Enforcement Act- The 6th section) "That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provisions of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court, - the fine not to exceed \$5,000, and the imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the constitution or laws of the United States."

▶ "The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States."

※The Hague case

▷ Per ROBERTS, J., with whom BLACK, J., concurred. The CHIEF JUSTICE concurred in part (p. 532). - 3. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

▷ Per STONE, J., with whom REED, J., concurred. The CHIEF JUSTICE concurred in part (p. 532). -1. Freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment. P. 519.

Right of Abortion

College of Law, 9811100, Haejin Kim

2000. 4. 3. Tues.

I. Introduction

When we think about abortion there is a major conflict between the fetus's right and the woman's(mother's) right. Are we going to save the fetus's life or give the mother privacy and personal liberty? In order to find a solution to the conflict we are firstly going to look at the right of life (생명권) and whether the fetus is a person whose life is guaranteed and therefore have legal rights. Secondly we are going to look at the mother's constitutional right of privacy and whether it encompasses her decision to terminate her pregnancy. Finally taking the courts' decisions into consideration, we are going to search for solutions concerning the conflict of rights.

II. Fetus' Right of Life and whether it's a person

1. Right of Life

Whether it's written down in a law book or not every human being's life is guaranteed and therefore deserves the legal rights including right of life.

2. Is fetus a person?

If we treat a fetus as a person, abortion would be equivalent to murder, however if we don't abortion would be just like other surgical procedures extracting a part of woman's body. So anti-abortion forces argue that the fetus is a person whose life is guaranteed by constitutional law. The Germany's Federal Court of Constitutional Law also saw the term person prenatally accepting the potentiality of fetus. However the Supreme Court of the US divided pregnancy into three trimesters (three twelve weeks periods) to provide a time frame to determine at what point the interests of the state begins to emerge. In short, the Court saw fetus only after 6months of pregnancy as a person whose life is guaranteed by constitution. This issue of 'whether a fetus is a person' and if so, 'since when' is a very controversial problem, but I believe that fetus after a certain period of time (ex/ since the second trimester) should have legal rights of its own and deserves legal protection.

III. Woman's Right of Abortion(Privacy)

Whether to give a birth or not is certainly a crucial matter to a woman, especially if she is pregnant against her will and unmarried. On top of that if the state bans abortion the woman's life would

no longer be under her control and having abortion would make her a criminal. And in fact abortion, except when deemed medically necessary to save life of the woman, was a statutory crime in every jurisdiction of the US until the 1973 landmark supreme court's decision in Roe V. Wade. In the Roe V. Wade the Court recognized a constitutional right of privacy that encompasses a woman's decision to terminate her pregnancy and also found that the fetus is not a person in common law or under the constitution.

IV. Fetus' Right of Life V. Woman's Right of Abortion

Now that we have recognized both the fetus' right of life and woman's right of abortion, how are we going to satisfy both or come up with a conciliatory solution? In Korea, fetus' right of life seems to be considered more important than the woman's right of privacy, because right of life is a right that can't be given up or taken away for its importance. So the criminal law bans abortion unless the mother's life is or likely to be at risk, or she is impregnated through rape, or she has a serious genetical problems. However in reality abortion often takes place without being punished.

V. Conclusion. (Search for solutions)

Both rights of the fetus and the mother are so important and crucial but at the same time contradictory that it's really hard to come up with a good solution. However I feel Korea's solution is too loose because in spite of the strict law people do not abide by the law. So I would rather propose a more flexible but specific and realistic solution something like that of the US. I think this would be more effective in controlling illegal and abusive abortions.

***Right of Own Property Right**

Youjung Kim 9711166, Law

I. Definition of Property Right

The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel). The things may be tangible, such as land or goods, or intangible, such as stocks or bonds, a patent, or a copy right. In other words, it is the right of ownership.

II. Types of Property

1. Personal Property

Also referred to as movable property, is anything including stocks, money, notes and choses in action, as well as intangible property. The term personal property is frequently referred to as chattels.

2. Real Property

Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. The term real estate and real property generally refer to land. Land in its general usage includes not only the face of the earth but everything of a permanent nature over or under it, including mineral oils and gases.

3. Difference Between Real Property and Personal Property

III. Property Law

1. Characteristics of Property Law

- 1) articulates principles, rules and policies to resolve and avoid disputes
- 2) deals with the allocation, use, and transfer of wealth and the objects of wealth
- 3) protects the acquisition of private property

2. The Development of Property Right

1) Classic Roman Law (A.D 1- 250)

dominium, proprietas- the sum of rights, privileges, and powers that a legal person could have in a thing

2) Medieval English Legal System

similarly shared the tendency at critical points to agglomerate property rights in a single individual

3) Western Law Today

concept of "new property"

3. Acquisition of Property

- 1) "Acquisitive Prescription"
- 2) "Derivative Acquisition"

▷ Intellectual Property Right ◁

Yoon-Hee Lee, 9711038, Law

I. What is intellectual property?

Traditionally, the terms 'industrial property' and 'intellectual property' were used to defined as follows in art.1(2) of the Paris Convention for the Protection of Industrial Property 1883.

Art.1(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of service or appellations of origin and the repression of unfair competition.

By contrast, the term 'intellectual property' was used to refer to rights in literary and artistic creations and associated subject matter, or what common law legal systems described as 'copyright'. In more recent times, however, 'intellectual property' has come to be used as a term that includes all the rights enumerated in art.1(2) above as well. This is reflected in art.2(iii) of the Convention Establishing the World Intellectual Property Organization 1970, where 'intellectual property' is defined as including the rights relating to :

II. Matters defined as Intellectual Property

- literary, artistic and scientific works,
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavour,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

III. Constitutional responsibility for intellectual property rights in Korea

Primary form of intellectual property rights was defined as the protection of works of author, inventors and artists in the pre-reformed constitutional law. However, Korean Constitutional Law was fully reformed in 1987, legislators added the protection of the works of scientists in art.22(2).

IV. International Constraints

The impetus for many changes to our domestic intellectual property laws comes from sources external to Korea, chiefly as a result of our membership of a number of international conventions.