

Spiritual and Material Interests

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Introduction

Spiritual Interest

1. Right of Privacy

Korean Constitutional Law Article 17 : The privacy of no citizen shall be infringed

2. Right of Speech

A. Definition

* Korean constitution

Article 21 [Speech, Press, Assembly, Association, Honor, Public Morals]

(1) All citizens enjoy the freedom of speech and the press, and of assembly and association.

(2) Licensing or censorship of speech and the press, and licensing of assembly and association may not be recognized.

(3) The standard of news service and broadcast facilities and matters necessary to ensure the functions of newspapers is determined by law.

(4) Neither speech nor the press may violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of other persons, claims may be made for the damage resulting therefrom.

* Japanese constitution

Article 21 : Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. 2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

* U.S. constitution

Amendment I : Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

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-Right to know

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-Right to access

D. Limiting the right of speech

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A juvenile delinquency case. Japan, 1997.

3. Right of Assembly

* Korean Constitution Article 21

All citizens shall enjoy freedom of speech and the press and enjoy freedom of assembly and association

(2)Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized.

* The Function of right to assembly

1.Right to assembly helps people to communicate each other and deliver their opinion with more powerful voice by bind together with a common goal.

2. It realizes the principle of democracy; pluralism, Modern democracy has to accept and respect diverse groups in its society.

3.right to assembly protects the minority. In these days, the media dominate the public opinion and people pay attention to some particular powerful party. Thus minorities' opinion can be easily ignored. Thus Minorities can express themselves by binding together and exercising their right to assembly.

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Korean Constitutional Law Article 20 : (1) All citizens enjoy the freedom of religion, (2) No state religion may be recognized, and church and state are to be separated.

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1. Industrial property right

- (1) patent
- (2) utility model
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- (4) trademark

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- (1) Up-to-the minute industrial property right
 - 1) Semi-conductor circuit arrangement construction right
 - 2) Life-science technology right
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- (3) Information property right
 - 1) management secrets
 - 2) database right
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- Patents
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conclusion

Introduction (서선영)

Right of Privacy(유보라)

The constitution of the Republic of Korea secures its people's right to privacy as stated in the Article 17: The privacy of no citizen shall be infringed. The word 'privacy' itself contains the concept of being unshared, personal and confidential; therefore the freedom and secrecy of one's private life should not be interrupted by anyone else. In other words, people can protect themselves legally from being forced to open their private lives to the public. They also have a right to enjoy their private life without disturbance.

The right to keep one's life private and unopened prescribes that one's privacy and individuality should not be invaded. In detail, an individual has a right to have his/her confidence, reputation and generic traits remain untouched; moreover, he/she doesn't have to share his personal matters with the public. The right to enjoy a free lifestyle guarantees the maintenance of peaceful personal life and autonomy of one's life.

As stated above, the right to privacy doesn't only protect one's privacy from being uncovered but it also protects information about his/herself. It protects one's personal information from being intentionally collected and disposed by others and if there is a fallacy in the information, he/she has a right to demand correction.

This autonomous information control right is noteworthy in that it contrasts with people's right to know sometimes. Celebrities such as politicians and stars are the targets of media so their private life easily becomes unveiled to the public. The media including cyberspace sometimes abuse people's right to know and encroach upon people's privacy too much. In the age of information technology where the issues of defamation and efflux of private information are embossed as a serious social problem, the concept of 'right to privacy' and 'right to know' should be correctly established among people so that the balance between the two can be well maintained.

Right of Speech(Daiki)

Many countries guarantee the right of speech in their constitution. I took 3 countries; Korea, Japan, and U.S as examples. You can read these countries' constitutions on the handouts.

However, even though these countries list right of speech in their constitution, none of them define what kind of right it is. Actually this is very difficult to define..

People often use the words “freedom of speech” to describe right of speech. However, right of speech does not mean absolute freedom of speech. Sometimes saying something can have a big power so that it invades rights of others. Especially, right of speech often conflicts with the right of privacy. If we take this fact into consideration, we can define the right of speech as the right which allows people to express themselves by any means within limitation.

As I've said before, article about right of speech is found in almost all countries' constitutions. In this sense, it can be said that right of speech is universal human right. The reason for this is that there is a strong relation between democracy and right of speech. Democracy is a political system in which a state is run by people. In order to run a state in democracy, the voice of people is necessary.

Now let's look at the four pillars in the right of speech. The first is the freedom of expression. Freedom of expression means that you can speak up your opinion in public without any interference. In other words, this freedom consists of 2 important rights. The first one is the right not to be prevented by any public influences. The other is the right to join the formation of public opinion. Then, there is a very important issue we should think about. “Is the mere spread of the facts regarded as freedom of expression?” The answer is NO. According to some constitutional scholars, freedom of expression is confined to expression of evaluating opinions.

The second pillar would be the right to know. If there is no information you got, there is nothing you say. In order to enjoy the right of speech, you have to have information so that the right to know should be well protected. If you don't have enough information to make a reasonable decision, you tend to misjudge some issues and situations. Hence, people should be allowed to demand to know the information as long as the information is not about national security or public welfare because it can bring bad effects to people in a group.

Next comes the freedom of mass communication

This means that you have the freedom to participate in the formation of public opinion through publication or radio-wave media. Whenever we talk about right of speech, the topic of mass communication comes up. It has strong effects to the right of speech. Mass communication covers the other 2 pillars I mentioned previously. It is a medium which gives people the place to speak up their opinion and information.

The last would be the right to access. This means that your access to any information sources should be guaranteed. The right does not only focus on access itself but on making environment in which people can easily access the information sources. This right is becoming more

important because of the birth of the internet.

So, we've looked at the four pillars that ensure the right of speech. But the right of speech can not be respected at all times. Right of speech without any limitation can invade the other human basic right. So it should be limited somehow. The problem is "how". How do we limit the right of speech? What can be the standard for it? Here, I would like to mention 2 examples: libel and censorship.

English dictionary suggested that libel means the act of printing a statement about a certain subject that is not true and that gives people a bad opinion of them. People can be sued for libel. There are many countries which use the concept of libel as a standard of limitation of right of speech.

Censorship means removing the parts of books, movies, news articles and so on which are considered offensive, immoral or politically dangerous. Information which can harm public welfare or national security should not be open to the public. In this sense, censoring is not always bad.

It is true that some information should not be exposed to the public. But misuse of libel or censorship can be used to limit the right of speech. It depends on the situation. So, it is important to maintain balance between over censoring and censoring for public welfare.

Now, I want to take a look at an example regarding the right of speech.

A juvenile delinquency case happened in Japan, 1997. The criminal was 14 years old at that time. Because of its brutality, many press and mass communication organizations publicized his personal information such as his picture, address, etc. In Japanese law, it is not allowed to show the picture of criminal under age 20. Besides his photographs, they invaded his privacy as well as his family's. Government ordered the press to collect their publication which shows his picture. However the government could not do anything for the other privacy infringement. His information is still on line

Some insisted that press did not have the right to take away the juvenile's future even if the case was so brutal. Some are just curious to know his detail information. And some claimed that he might do again so that they should know about him to protect themselves.

This case tells us that how much power the right of speech has, and how difficult keeping balance between right of speech and right of privacy is.

Saying something, especially saying something publically has power. Through conversation, we can make mutual understanding, but at the same time, it can worsen the situation.

We have desire to express what we have. That is an instinct. Banning free speech puts stress on people very much. History proves that. The countries which banned freedom of speech did not

last long.

The right of speech brings benefit. If there are many opinions, there are many choices. We can go on better way. This is the reason why the right of speech, which can effect the group both well and badly. In order to make up the weak point of the right of speech, we need to limit it.

Right to Assembly(홍정훈)

You have a **natural right**, long-recognized in common law, as a man/woman to assemble with others on public land (since you are a member of the public) to discuss, to sing, to demonstrate your opinions. You *don't have a right* to impede the progress of other people in their travels on the public lands or on the public ways.

In a word, Right to assembly can be defined as the freedom of people's right to get together or bind to achieve their common goal.

Let's look at the functions of right to assembly. First of all right to assembly helps people to communicate each other and deliver their opinion with more powerful voice by bind together with a common goal. Second, it realizes the principle of democracy; pluralism, Modern democracy has to accept and respect diverse groups in its society. Also, right to assembly protects the minority. In these days, the media dominate the public opinion and people pay attention to some particular powerful party. Thus minorities' opinion can be easily ignored. Thus Minorities can express themselves by binding together and exercising their right to assembly.

Freedom of Assembly enables people who have a common interest to get together and magnify to express their opinion.

However, Sometimes right to assembly conflicts with other rights in constitution. There is many cases which assembly right inflict other rights.

Here are some examples: Crowds for Assembly might make a loud noise thus impede others' right to enjoy their peace. If they do their assembly on the street it might be barrier to transportation which impede the freedom of movement. Assembly itself also could bother sales persons who run shops or business around the place where assembly take place.

Thus, Korean law requires people who plan assembly to report the assembly plan in ahead to minimize the damage of other right. Korean Constitution Article 21 (2) forbids permit of assembly. On the other hand, people who ask for perfect freedom of assembly argue that this report system might actually play role of permit system rather reporting the assembly. Thus they assert that report system should be abolished.

Right of Religion (유보라)

In the medieval times, European countries did not recognize any other religion than the state church and people did not have a choice to choose a religion. People who doesn't follow its rules and stand against the state church, they were punished strictly. People in opposition to the power of the state church struggled to gain the freedom of religion and believed that acquisition of the freedom of religion will eventually bring them spiritual liberty. The right of religion that we enjoy now is the result of our ancestors' strife for freedom. Religion became separated from politics and the privilege or discrimination for a certain type of religion was abolished. In this respect, Korean constitution also states in the Article 20 that: (1) All citizens enjoy the freedom of religion, (2) No state religion may be recognized, and church and state are to be separated.

The right of religion is basically the freedom of choosing a religion they want and in a way they want. The freedom of religion can be divided into two: the choice of having a religion and not having a religion. This choice of having a religion includes the abandonment, change, confession, silence of a religion and of course people are entitled to select a religion they want.

People also have a right to perform their religious beliefs. Religious services such as praying, worshipping and collecting contributions are all permitted. People can promote their religion to the public and they can gather to establish an organization for religious purposes. The special schools and institutions that were established on the basis of religious beliefs can practice religious education; however, public schools are excluded from religious education for the government's observance of neutrality.

As you may have noticed, the article 20 consists of two ideas. First it guarantees the freedom of religion and the second ensures the separation of the religious power from the governmental system; however, a believer can start his/her political activity if not indicated by his/ her attached organization. In order to adhere to its neutral position, the government prohibits religious activities or education at public schools and institutions. It can't force its labors and members to join or withdraw from a certain religion. The government should not bestow an economical support on a certain religious group either.

In respect with the right of religion, whether religious education at high schools and universities should be abolished or not and whether to recognize military traverse with a strong religious beliefs are the main societal issues these days. At present, the religious education at high schools is banned and at universities that people actually have a choice to choose which to go is allowed. Traverses are also getting people's attention in a positive way too.

Right of Abortion (서선영)

Abortion, being a much talked about issue, I'm sure that everyone here is quite familiar with the idea. We can start our discussion on the subject of abortion by looking at article 10 of the Korean Constitutional Law. It is written on the handout.

“All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.”

So, from this piece of information, we know that the Korean law ensures the basic human right to live and seek happiness. The right to live, I believe is the most basic right of all. All the complicated legal stuff would be nothing if the human right to continue life were not acknowledged.

-In order to enforce this right of life, Korean Criminal Law chapter 27 talks about the penalty of abortion. Termination of pregnancy in many situations is mentioned, and each situation is punished with imprisonment or a penalty fee.

So the right of life for the unborn baby is well protected by the criminal law.

-But there may be extreme circumstances that do not allow pregnancy to continue. Pregnancy by rape is a typical example that arouses conflict between abortionists and those against it. The main point of those against abortion is that the matter of life and death is not in the hands of humans. They believe that this is beyond our area, human area and life in any form is precious and cannot be tempered with. We can see that they are respecting the right of life. Abortionists, on the other hand are more practical. Based on the fact that giving birth is possible only with the female body, and the fact that all that is gained and lost through the process of giving birth will belong to the women, they argue that the decision whether or not to deliver the baby should be given to the pregnant women. Also, considering the social context, the woman will be most affected by giving birth, which strengthens their point. In other words, abortionists are placing the right to pursue happiness before the right of life of an unborn child.

The constitutional law article 12 says, All citizens shall enjoy personal liberty. Article 17 states the privacy of no citizen shall be infringed.

The Korean law recognizes this, and there exists something called Parent-child Health Measure. Fourteenth article of this law states circumstances that allow abortion. Hereditary transmitted diseases, pregnancy by rape, pregnancy between incest relationships, and in cases where continuing pregnancy harms health of the mother critically. This law is admitting that there can be exceptions where the right of life could be placed after right to pursue happiness.

-Some argue that the right of life can never be overlooked to satisfy the right to pursue happiness or the right of privacy and personal liberty. But then again, some say that the unborn child, fetus, cannot be considered to be a human being, therefore not having any rights at

all. Then comes the question when do we accept the fetus in the womb as a human being? The moment it's conceived? When do we think of it as a human being that has right of life? This is another controversial area within abortion that has not yet come to a conclusion.

Right to own property(백세현)

Democracy has been established on the foundation of money and individuals' interest among other things. Democracy cannot exist without guaranteeing personal interests. Why do we need democracy? Why should our rights to speech, assembly, privacy, religion, abortion, and properties ought to be guaranteed? To what end? I'd like to ask you this very question, which might be too easy for you. More than anything else, realization of human dignity and materialization of our lives as human beings can be thought as the reasons.

Right to own property plays a pivotal role. People make all-out efforts every single day. Later on, however, if they find out that they are not going to be paid for what they have achieved, their motivation to live and to work hard will decrease dramatically. Hence, right to own property is one of the very indispensable factors to keep democracy going forward.

Today, I won't discuss what kinds of properties there are at great length. This is not the property law class. I could talk about real property, personal property and how differently those are regulated by law if I wanted to. Instead, the importance of right to own property will be the main subject.

I will start by defining the term, "Right to own property".

Korean Constitutional Law Article 23, 1 reads, "Every **national** right to own property is guaranteed. The scope and the limit of the right should be set by statute" That is, literally, both natural and legal persons are entitled to right to own property.

Right to own property is that you can possess, utilize and relish tangible or intangible estates such as land, goods, copyrights, and so forth.

Now lets look at the functions of the right to own property. If someone wants to be free, he should be financially capable. Without right to own property, you have to spend a great deal of time working endlessly. For instance, let's say you are happy whenever you ride a bicycle. And you have no money enough to purchase or no time enough to relish it. Although you want to exercise your right to pursue happiness, since you have to work day and night, you have to relinquish your right to pursue happiness. Of course, you can pursue your own happiness through something less expensive, due to lack of money; you have to give it up. In other words, to be free you have to own property at your disposal.

The second function, Capitalism can be maintained in accordance with right to own property". Democracy and capitalism are inseparable. People continue to create benefit through a variety of activities, which would be impossible unless right to own property is secured.

All human beings have their own interest. To maximize it, they go to work everyday. What if you were told you would not be allowed to own property regardless of how much work you did? Hence, a society can make progress with the expectation of the ownership of property. Then, people would not want to work anymore. In short, "a society can make progress only if there is a hope to own more properties"

Even though right to own property should be considered as a very important element enabling individuals' freedom, there is a limit. Exercising right to own property should be confined mainly to public welfare. As we learned from the first presentation concerning marginal utility, people's rights cannot always be satisfied 100 percent. Occasionally, some people abuse their right to own property. This is mainly caused by excessive greed or wrong agenda that are not adequate for public welfare. Consequently, exercising right to own property should be acceptable only if it is not detrimental to public welfare.

"Eminent domain" means government may take private property without his permission in return of just compensation for a public purpose.

According to Korean Constitutional Law Article 23-3, eminent domain should be possible only if three requirements are met: one, that the taking be for a public purpose, two, that just compensation be paid, and three, that the taking should be possible only through statute.

Intellectual Property Right(홍정훈)

As the expansion of the Internet and the digital formatting of all kinds of creative works move us further into the information age, intellectual property issues have become paramount. Computer programs costing thousands of research dollars are now copied in an instant. People who would recoil at the thought of stealing cars, computers, or VCRs regularly steal software or copy their favorite music from a friend's CD. Since the Web has no national boundaries, these issues are international concerns. The contributors-philosophers, legal theorists, and business scholars, among others-address questions such as: Can abstract ideas be owned? How does the violation of intellectual property rights compare to the violation of physical property rights? Can computer software and other digital information be protected? And how should legal systems accommodate the ownership of intellectual property in an information age? *Intellectual Property* is a lively examination of these and other issues, and an invaluable resource for librarians, lawyers, businesspeople, and scholars

Types of Intellectual property right

An intellectual property right is broadly defined as the exclusive ownership of an original product of the thought processes. The Korean government registers four broad categories of intellectual property:

However, the Korean law does not give a clearly defined recognition to a trade name since it is not yet regarded as an intellectual property right internationally established.

Patent is issued to protect novels and useful inventions in accordance with the Patent Act. Patent is issued by the Korea Intellectual Property Office usually for a term of 20 years and are not renewable, except by special legislation.

A trademark is a design, slogan, or brand name, used to identify products or services as coming from a particular source and is protected as provided in the Trademark Act. A trademark can be registered with the Korea Intellectual Property Office for a renewable term of 10 years and thus protected for as long as it remains in use. If a bona fide intention to use the trademark is shown, registration can be applied for, but it must be in use before the registration is granted.

A copyright protects original creations of authorship, such as books, music, original paintings, sound recordings, motion pictures, sculptures, and computer programs. Copyrights may be registered with the Ministry of Culture and Tourism, for a non-renewable term consisting of the life of the author plus 50 years. Works made for hire (created for an employer) are copyrightable by the employer for a term of 75 years from publication or 100 years from their creation, whichever comes first.

A mask work is, in essence, the design of an electrical circuit, the pattern of which is transferred and fixed in a semiconductor chip during the manufacturing process. Mask works may be registered with the Korea Intellectual Property Office for a non-renewable term of 10 years.

IPR can be considered on as having both qualities of property right and personality right, but on this study it is concentrated on the side of property right. Considered the special qualities of IPR to ordinary property right, we can discover the similarities between intellectual

property right and ordinary property right. IPR is the same as a real right in which the rightholder has the authority of dominating the object exclusively at his will without anyone's interference. So IPR is similar to a right of ownership which is a exclusive possession right. But IPR is different from a real right in that the object of intellectual property right is an invisible spiritual work, so IPR has some different qualities from ordinary property right's.

First, a IPR can not have the concept of the direct management and occupation because it is a formless, ideal, and abstract existence. Second, principally, IPR whose terms of protection is limited for the public interest. Third, in the right decision process, IPR(in the case of copyright) acquires a original right with the birth of the work and doesn't need a right decision process or a performance of a principle. Fourth, on the term of protection, IPR should be entered into the public domain a public right if the terms of protection is ended.

Even though IPR has above mentioned special qualities, a relationship between ordinary property right and IPR is related, that is to say, a ordinary property right to a intellectual property right is a general law to a special law.

So, we need the more essential study on the IPR compared to the ordinary property right, and the more positive access to the problems which would be occur to the border line between intellectual property right and ordinary property right

Conclusion

We will open the conclusion for the student to think about. We have talked about types of Spiritual and material interests and their similar and different aspects. Hope our presentation may give you the insight to understand the concept of Right which max weber defined. There are two types of interest: Spiritual and material interest. We draw our conclusion that the right to protect spiritual interest is intangible and it should be fundamental principle to maintain the material interest.