

WEBER'S DEFINITION ABOUT RIGHTS

<"Be guaranteed">

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* Points to think about.

1. Mutual Social Relationship, Negotiation - Social Contract Theory
2. Utility, Incentive - Application of Economics
3. Free Market System, Market Failure - Role of government
4. Internal Order, Continuous way - Role of government
5. Government and Legitimacy.

*Introduction.

What is the meaning of "Guaranty" or "Guarantee"? In related with the concept of Right, Being obvious to the meaning of these words will be preconditions].

From Dictionary, "Guaranty" means a contract that some particular thing shall be done exactly as it is agreed to be done, whether it should be done by one person or another, and whether there be primary or principle contractor or not.

Also, legally the word means a collateral agreement for performance of another's undertaking. : An undertaking or promise that is collateral to primary or principal obligation and that binds guarantor to promise.

"Guarantee" is a promise made on the grounds that it will be fulfilled and maintained by the party or parties who generate it.

For the total view of the concept of right, we can reflect on the social contract theory, mutual social relationship, exclusiveness, Utility, Incentive, Internal order, etc. these concepts will be helpful for us to make whole picture about right.

*Legitimacy of Government

By the social contract theory, All kinds of political system including Governments, laws, and public assembly exist for protecting people's right. And also when these protect the right, they has "reason for its being" : protecting the rights(life, freedom, property etc.)

Now here, we can think about the legitimacy. why do the people discuss about the legitimacy? or why is the legitimacy so important?

Historically, government did its role as a protector of people's right and the concept that the people have sovereign and all legislative power and administrative power are originated from people became the cornerstone of the democracy.

In a continuous way, government has given reliances to the people, the people have made laws, social orders, traditions. of course, with the changes of the times, the roles of government has changed. However, this point is obvious that since long long time ago, people have did actions for maximizing the utilities with incentives for their right.

Legitimacy means that government is recognized as the correct and proper ruling party. We can find the base of the legitimacy of government from the people. But in real life, this story sounds very abstract.

We can confirm this theoretical limit in our history also. For example, In Park, Chun and Noh periods, their arrogances was done under the name of the legitimacy.

Therefore, for evaluating the legitimacy and overcoming the limit, still many modern theories study different measures such as public elections for leaders, measures of public consensus and a regime's willingness.

The granting of legitimacy must not yield to many outside or opposing forces. The guarantee of legitimacy need not be connected with any type of government nor need its people grant it. What is needed for legitimacy is to sure that government must be recognized as a servant of the people and the power of it must be originated from people.

Until now, we studied about the role of government and here we will see about the contents of legislative power and administrative power of government.

- Guarantee of Peace & Order

Keeping peace and internal order is one of the most important roles of government. For example, Government applies laws to people and exercises power against outcasts who do not follow laws for the purpose of maintaining this internal order and peace.

Under such a surroundings where internal order and peace are maintained, people can enjoy more freedoms and protect rights in a good and continuous way. And also, this government's conduct can have legitimacy from the self-regulation concept that the people have made the laws for themselves.

- Guarantee to Protect Against Outside Enemy

Another of the most important roles of government is national defense service. It is obvious that treats of outside enemy disturb people's pursuit for freedom and rights in one country.

We can think about our colony era under control of Japan. In the colonialist Japanese era known as Taisho democracy, it controlled colony of Korea and at that time, our people can not pursue any kind of interest, freedom and right.

As well as, protection against an outside enemy can be provided for most simply through implementation of military force.

- Promote Welfare

Especially, in this modern time, Guarantee of Welfare became very important role of government. And also, the role of government is increasing from sociological and economic view. We can know about this fact in public goods or market failure area.

And then the concept of Welfare-State comes out. this means promoting welfare is final and ultimate role of government. In this point, government has more important meaning than protector of people's right as it was before.

However, the criterion should not be placed on the simple provision of welfare, But on the economic, social and so on various kinds of factors.

In the Roman example, the over extended welfare system was supported by increasing the expenses of the empire. In the Soviet case, sales of resources such as diamonds helped the state to maintain high levels of military spending and low levels of economic development.

Welfare for everyone is not easy to realize and, also it is the final and ultimate questions for government to solve. Therefore, government needs to be more prudent in harmonizing between welfare and the other roles.

REFERENCES

Choi, Mun Hoan. 1976. 6. studies on M.Weber" Seoul National Uni Pub.

Cha, Gi Byuk, The social science. hangil pub,

Roger A. Arnold, the economics, "Economics" 5th Ed.

Ji Chak Sa, "Welcome to philosophia" in Web URL:
"http://my.dreamwiz.com/chim777/webpage/ph-contract.html