

Mutual Social Relationship

(1) The concept of "Mutual social relationship"

The concept of "Mutual social relationship" according to Weber;
Social group A < - ----- > Social group B
Social Interaction

The application of Weber's concept of "Mutual social relationship" into the relationship between the state and the people;

State <- ----- > People
Relationship: social contract

Here, as in the case of two social groups where there exists a mutual social relationship, there exists a mutual relationship between the state and the people. Mutual social relationship is where each social group has some kind of influences and exercises certain degree of power over one another. The mutual relationship that exists between the state and the people can be defined as social contract, and the social contract theory is recognized as the foundation of the current democracy.

(2) Weber's fundamental point of view

Weber has defined a number of concepts that are now representing his fundamental point of view on the subject of mutual social relationship. According to Weber, "modern society" is the "new way of thinking". He saw that the ideas, especially the beliefs and the values, have transforming power, and thus he saw the modern society as the result of not just the new technology and productive system, but a new way of thinking. Weber also used the phrase "rationalization of society" to denote the historical change from tradition to rationality as the dominant mode of human thought, and stressed that the "development of industrial capitalism" involved a host of factors, including the economic and the legal forces, in addition to a distinctive world view. Finally, Weber's point of view on the modernity centered on types of people he considered as the typical of their age; the scientist, the capitalist, and the bureaucrat. Here, the scientist is committed to the orderly discovery of the truth, the capitalist to the orderly pursuit of the profit, and the bureaucrat to the orderly conformity to a rational system of rule.

(3) Democracy and Social Contract Theory

Many scholars tried to define the "democracy" in a variously different ways. According to Aristotle, democracy was the society ruled by the many, and his definition emphasized the importance of citizen participation in government through debating, voting, and holding office. Such speculation is recognized as the "classical democracy". On the other hand, the "liberal democracy" emphasizes the value of the individual. This principle has roots in the Judeo-Christian beliefs that every individual is equal and worthy before God.

Such scholars as Hobbes, Locke and Rousseau developed social contract theory. Despite little difference in their thoughts, they considered the meaning of social contract as the freedom from the nature and the government made through the social contract as the method to keep the natural rights of human beings. According to social contract theory, people sacrifice some of their liberty and right for government so that as a result, it can protect them, and with the remainder of their liberty and right, people pursue their individually defined visions of good life.

The Possibility

A central concept of the possibility is politics. Politics or the polity is the major social institutions by which a society distributes power and organizes decision making. Since politics is about power, we begin by examining the role of power in societies

Power is the ability to achieve desired ends despite resistance from others. (Max Weber). Power is a substantial concept so that the few who have power can dominate the many. (Hobbes, Hume, Marx, Stalin, etc) But when we consider the fact "time", the concept of substantial power is uncertain. In other words, for guaranteeing people's obedience to a nation for a long time, we need to have rational interrelations between the ruler (the person in power) and the ruled. So we can conclude power consists of substance and relationship as Karl J. Friedrich mentioned.

Then we need to know the difference of zero-sum & non-zero-sum concept. In a power game between A and B, if A gets power over B, A is sum but B is zero (Zero-sum). But existence of power itself can make the public good of society. For the benefits of both, the cooperation between the ruler and the ruled can be needed (Non-zero-sum)

Max Weber explained that three social contexts transform coercive power into legitimate authority:

1) tradition 2) rationally enacted rules and regulation and 3) personal charisma of a leader. Traditional authority is common to pre-industrial societies; industrial societies legitimize power through bureaucratic organization and law. Charismatic authority arises in every society; if charismatic leaders are to perpetuate their organization, they must routinize charismatic authority into traditional or national legal authority. To maximize power or to justify exercising of power, miranda and credenda of power is needed.

Bureaucratic organization expands in modern society to perform many complex tasks efficiently. Bureaucracy is based on specialization, hierarchy, rules and regulations, technical competence, impersonal interaction, and formal-written communications. Ideal bureaucracy may promote efficiency, but bureaucracy also generates alienation and inefficiency, tends to perpetuate itself beyond the achievement of its goals, and contributes to the contemporary erosion of privacy. Humanizing bureaucracy means recognizing people as an organization's greatest resource. To develop human resources, organizations should spread responsibility and opportunity widely.

UTILITY THEORY

I PSYCHOLOGICAL AND PHILOSOPHICAL PERSPECTIVES

1. DEFINITION OF UTILITY

Utility is the principle of greatest happiness. It is that which promotes the greatest pleasure and the least amount of pain for the greatest number of people possible.

2. CALCULATING UTILITY

Philosopher Jeremy Bentham developed a method for evaluating utility called hedonic calculus.

3. UTILITARIAN APPROACH TO ETHICS

Bentham claimed that by using hedonic calculus one could ascertain what was morally right and justifiable. The morally right action is that which promotes the greatest utility.

4. PROBLEMS WITH CALCULATING UTILITY

There are a few problems with this method. Most of all...

How can we compare the costs of items such as money with the value of time or human dignity?

5. DISPROVING UTILITY THEORY

Psychologists' Tversky and Kahneman show that there are flaws in making decision using utility theory. Kahneman says that we cannot assume decisions based on utility theory are correct because judgements themselves may be flawed.

II. ECONOMIC APPLICATIONS

L. BACKGROUND

William Stanley, the founder of the present form of utility theory, elaborated on the existing utility theory by using a physiological approach and expressing his results in a mathematical form.

2. UTILITY THEORY

Jevons thought that economics relies on the fundamental premise that people tend to choose those goods and services they value most highly. People consume those goods that provide them with the greatest utility. The economic application of utility theory is evaluating the effects that excess consumption of goods brings.

Spiritual and Material Interest

According to Weber, the term "spiritual and material interest" is used to describe the specific contents of rights guaranteed to the members of a society. Whether they are the rights inherent in all human beings or rights indigenous to a certain social system, they are all guaranteed by the law, especially the constitution. Weber tried to divide such rights into two categories, namely spiritual and material, where the rights such as right to privacy, speech, assembly, religion, conscience, and press are under the category of the "spiritual", and the rights such as the right to own property, have jobs, choice of occupation, collective bargaining are under the category of the "material". However, certain rights lie in-between the two categories and require more specific categorization. Here are some of the cases dealing with the rights under each category;

A. Cases concerning spiritual interests;

(i) Case on abortion : fetus rights

"Fetus" is a form of life from the period of conception through the point where it is considered a full legally capable person. However, the period to define the life form as the fetus is rather undefined at the moment. "Right to live" is a premise to personal liberty, and a logical basis to all fundamental rights, which is guaranteed by the constitution. Generally, the fetus' right to live and human dignity are recognized, and in such case, it becomes debatable whether the abortion should be prohibited as it infringes upon the right to live of the fetus. According to the cases in Germany and the USA, the laws prohibiting abortion were ruled unconstitutional, as they encroach upon the justified right of the women to terminate their pregnancy. In Korea, on the other hand, abortion is illegal according to Criminal Law, articles 269 and 270. However, Maternal Sanitary Act provides five occasions where abortion might be carried out legally, which include; the case of the pregnancy where the parent to the fetus suffer eugenic or hereditary mental disorder, physical disability, or suffer contagious diseases; case of pregnancy by rape, case of pregnancy among relatives legally prohibited to marry; and case of pregnancy where further pregnancy threatens the health of the mother. Here, it becomes debatable which right, between the "right to live" of the fetus and the "right to choose" of the mother, comes first.

(ii) Case on capital punishment : legal restriction on right to live

It is possible to limit one's "right to live" by the law, but only to protect other values that are as important as the value of life. The main issue over debates on capital punishment is whether the "right to live" is an absolute right, and thus cannot be restricted in anyway. Those who view capital punishment as constitutional regard the "right to live" as an adjunctive right and subject to limitation and restriction as stated in article 37 of the Constitution. On the other hand, those who view capital punishment as unconstitutional think the "right to live" is an absolute right and restricting it in any way is a violation of the

essential aspect of the human right". Thus, it becomes debatable whether the "right to live" is absolute thus making the capital punishment unconstitutional, or whether there are cases where such right could be restricted.

B. Cases concerning the material interests;

(i) Case on property right : Green Belt case

Property right refers to every right in public or private law, which has economic value regardless of its amount. In Korea, the property right is not only being protected and guaranteed, but also socially restricted in exercise by article 23 of the Constitution. The aim of the Green Belt system is to preserve

green-zone around major cities, including Seoul, since the excessive expansion of urban areas during the '70s-'80s. However, this regulation has a problem in the point that the property right of landowners is adversely affected. Korean Constitutional Court viewed Green Belt as an acceptable level of social regulation, which is inherent in the property right. Additionally, in the angle of legal interest, the advantage contributing to the security of the state and public welfare is bigger than the disadvantage of the landowners. As a result, it becomes debatable whether it is better to continue Green Belt in the light of "public interest", or to modify it to satisfy individuals' property rights.

(ii) Case on Screen Quota system

In Korea, it is mandatory that the managers of theaters show domestic movies over 2/5 of their total business days in a year, which is the rule prescribed in Movie Act article 26, whose object is to protect domestic film industry against that of the foreign. Lately, the USA has begun to demand abolishing this kind of regulation and to leave showing of foreign movies up to the free will of the theaters owners. The "right to free choice of occupation" is a comprehensive right that encompasses all aspects of rights related to one's occupation. Specific contents of such right include the right to choose one's occupation, the right to conduct one's occupation, the right to terminate one's occupation. The debate over Screen Quota system, among other rights, involves the owners or managers of the theaters to freely conduct his/her business. Therefore, here it becomes debatable whether if the ' of the Screen Quota system is the protection of Korean film industry, it is the most effective method to accomplish the aim, while putting proper and proper and minimum limitations on one's right. Furthermore, it is also questionable whether the protection and support of the Korean film industry serve enough public interests to restrict individuals' rights.

The internal order

1. Political background

The absolute state- the preparation for the modern state

Revolution- ex) the French revolution- the typical civil revolution, the declaration of the Rights of Man and Citizen, Enactment of constitution, Victory of bourgeois

The liberal constitutional state

2. Economical Background- Capitalism

--Development of cities, Accumulation of capital, The emergence of the third class, bourgeois

3. Cultural background

Philosophy- emphasis on reason

--Empiricism, Rationalism, The enlightenment

Science- The symbol of human progress --the establishment of modern science frame, The law of gravitation(Isaac Newton) The 18th century philosophers --Hume, Montesquieu, Rousseau

The legal theory of Max Weber

Weber's four classes of legal processes

-- Formal irrationality, Substantial irrationality, Substantial rationality, Formal rationality

Rationalization of law

-- Shift from substantive to formal rationality

Rule and law

-- 3 types of rule, Rule by law and bureaucratic administrative system

Legality and Justice

--Weimar republic and Hitler

PREDICTABILITY

I INTRODUCTION

1.WEBERS SPECTRUM

LEGAL STABILITY--certainty of social regulation--PREDICTABILITY

2.CONCEPT

PREDICTABILITY-the possibility to foresee and tell the future in advance

LEGAL STABILITY-the condition that there are belief on the law by people so that the social life is stable

II.THE NECESSITY OF THE PREDICTABILITY

THE REASON WE NEED THE PRIDICTABILITY in our lives is for freedom.
without PREDICTABILITY - unsuitability of life - fear - LIMIT OF FREEDOM

III. THE MORDERN PROJECT FOR THE PREDICTABILITY

LAW - codifying the law - fastening national power on law -LEGAL STABILITY

PREDICTABILITY - maximize the freedom of civilian

IV. CONFIRMATION

1.CRIMINAL LAW (code 12,13 I

LEGISLATURE - principle of certainty, prohibition of retroactivity JUDGE - prohibition of customary law, analogical construction

2.CIVIL LAW (code 1,245,246,247,248,249)

as a protection for the trust of third party

DUTY OF THE NATION

I . INTRODUCTION

1.NATION

PEOPLE -- TERRITORY -- SOVEREIGNTY

2.LEGITIMACY OF THE NATION

CONSENT OF THE PEOPLE

3.DUTY OF THE NATION

OUTSIDE - protection against the enemy

INSIDE - making and keeping peace and order , promoting the welfare

II. PROTECTION AGAINST THE OUTSIDE ENEMY The government has the obligation to protect the land and people from alien attack.

III. MAKING AND KEEPING PEACE AND ORDER

1. MAKING ORDER

Constituting the national organization making law

2. KEEPING PEACE AND ORDER

Legislature-making, amending, abolishing

Executive-regulation and protection against disorder

Judiciary-resolution of conflicts

IV. FREEDOM AND STATE(PROMOTING THE WELFARE)

1. FREEDOM BY THE STATE

People are only free by the states' self-restraint in its exercise of power.

Focus on "output" of the states. Passive.

2. FREEDOM FROM THE STATE

Freedom is something inherent on people, and they have rights to defend it from the states' aggression. Focus on defense against "output" of the states.

3. FREEDOM TO THE STATES

A state is created through people's active exercise of freedom and rights. Focus on "input" by the people to the states. Active.

CONSISTENCY OF PERSONALITY

I . WHAT IS PERSONALITY?

The most basic assumption of personality is that it is something hard to change. The word personality comes from the Latin root 'persona' meaning 'mask'. The impression we made on others or the mask we present to the world determines how people feel about us. A complete picture of personality includes a look at thoughts and feelings, the unconscious, genetics and society.

11. THE CONCEPT OF BEHAVIORAL CONSISTENCY

During the 1960s and 1970s, a group of psychologists challenged the notion that behavioral traits exist. The basic argument against behavioral traits was that we adapt our behavior to the requirements of specific situations. Critics also pointed out that people too often use small bits of information to jump to premature conclusions about traits.

Traits are relative, not absolute.

III. THEN HOW STABLE?

1. CONSISTENCY FROM DAY TO DAY

Personality psychologist Seymour Epstein had his students rate their emotional states at the end of each day for 30 days. What Epstein found was that if you compare moods, or behaviors from one day to the next day, you'll find you little consistency. However, he found high levels of consistency when he summed ratings for a particular mood or behavior across all the odd-numbered days of the months and compared this to the sum across even-numbered days of the month.

2. CONSISTENCY OVER THE LIFESPAN

Studies showed that personality does remain reasonably stable over the life span. The studies provided evidence suggesting that personality is stable over decades of time.

Defense Mechanisms

According to Freud, ways in which the ego unconsciously tried to cope with unacceptable id impulses or frightening or stressful situation, as in repression, projection, reaction formation, sublimation, rationalization and denial.

Our mind naturally wishes to avoid anxiety. We therefore react to anxiety by anticipating and fighting the causes of the problems. Our reaction can occur in the real world, or if this fails(some problem are physically insurmountable) on a psychological basis.

We can think 8 explanation of those defense mechanisms.

- 1 . Repression: Involuntarily removing an unpleasant memory from consciousness or barring disturbing sexual aggressive impulses from consciousness
2. Projection: Attributing one's own undesirable trait or impulses to another
3. Denial: Refusing to acknowledge consciously the existence of danger or a threatening situation

4. Rationalization: Supplying a logical, rational reason rather than the real reason for an action or event
5. Regression: Reverting to a behavior characteristic of an earlier stage of development
6. Reaction Formation: Expressing exaggerated ideas and emotion that are the opposite of disturbing, unconscious impulses and desires
7. Displacement: substituting a less threatening object for the original object of an impulse.
8. Sublimation: Re-channeling sexual and aggressive energy into pursuits that society considers acceptable or even admirable

Understanding of Korean traditional legal mind

1. Max Weber's kadi justice

Where modern European legal systems were held to be secular, impersonal, and rational, Chinese law was said to remain subordinated to the individual moral insights of the judge and his desire to administer law by taking people and circumstances into account in a particularistic fashion. Confucian thought made the matter worse, it was argued, by making the use of moral suasion the paramount tool of monarchical leadership and calling a pall of Legitimacy over the use of laws and punishments. Hahn Pyong-choon's opinion within Weber's concept of rationality

Traditional Korean political philosophy, in both its institutional and theoretical aspects, was based on "Confucian" precepts, and hence law and legal institutions were undervalued and despised. The primary mechanism for government at all levels was presumed to be the force of the moral example of those in authority. Moreover, the hierarchical structure of Korean society undermined the growth of law, as particularistic distinctions of social status and official position and the force of social convention precluded the possibility of predictability in judicial decision-making.

2. Another opinion

Professor Park, bung-ho's opinion

In the Chosun Dynasty, there was no concept of "rights" in the sense of today's legal concepts. Nevertheless, various concrete legal provisions guaranteed the enjoyment of exclusive interests by certain persons. Though the sociologists or the scholars of sociological jurisprudence try to understand the real society or law, an objective comprehension is impossible if historical conditions are ignored.

The different understanding of Confucian

Korea's inherited traditional legal system based on his history and philosophy. Confucian scholars believed that Institution and laws and transformation are not separate entities. Rather ethical transformation is the "end" of good government, and institution and laws are the "means". These kinds of

belief had blueprinted by "Chong do-ton" and have maintained during Chosun-Dynasty. Confucian ideology, which is summarized "legislation entails evils" and "good law and fair sense" made Stability of the law. The concept of "circumstances" which means "determining intent and the state of mind" was generally used to subjectively manipulate judgments. If neighbors were involved a certain crime, people usually made a false statement because they thought family value was more important than justice. Most people sought to avoid involvement with the courts and with the legal process at all costs. Also Confucian propriety and statutory law encouraged the cultivation of a spirit of vengeance, not reconciliation. The Western concept implied by the phrase "rule by law" would have signified to Chinese or Korean thinkers simply a virtually immoral use of naked force in punishing.

What is Hahn?

Most Koreans have little hesitation to regard Hahn as a part of their lives and their history, while both Koreans and foreigners alike do not exactly understand the real essence of such unique feeling that is limited to Korea.

Some people tried to define Hahn theoretically by analyzing the Chinese character representing the word. They say Hahn is the heart of Kan, a Chinese symbolic sign representing the trigram and signifying the action of keeping still or standing fast, and also the youngest son, whose image is the mountain, according to the Chinese myth. Furthermore, this symbol represents Korea, as it stands in the northeast, in other words, the northeast of the Mainland China.

On the other hand, others tried to approach Hahn with a different point of view, and tried to define Hahn as an emotional condition emerging specially in Korea when oneness or togetherness of a community could be separated or destroyed. The reason behind such definition is based on the ideology of Han, one of the Korean traditional thoughts, meaning oneness, togetherness or harmony.

One terminology which should be overlooked when discussing Hahn, is Won, which is usually used with Hahn to form word Won-Hahn. Won alone means a fierce fury or strong grudge outwardly against someone who should be paid back, and Hahn alone means an immanent piety or intrinsic bitterness inwardly against oneself. Thus, both characters combined Won-Hahn means malice or antipathy.

The attribute and characteristic of Hahn lie at inward aggressiveness or repentance lasting for one's life, and this feeling can be found far too often in women than men, and in the poor than the rich. Therefore, Hahn is a special emotional condition of Korea in an oriental philosophical point of view, and should be understood as an innate and unique defense mechanism in a psychological sense not only in Korea, but in all mankind, that are suppressed and depressed against his/her free will by the society or other outside force.

BEHAVIORISM

I . BEHAVIORISM

The doctrine, which asserts that human behavior, can be understood in terms of stimulus responderelationships without necessarily referring to underlying mental states.

II. PAVLOV EXPERIMENT

Pavlov noticed that one of his dogs was slivering before its' food was brought to it. Pavlov decided to experiment to discover why the dog salivated before the presentation of the food, in response to stimulus other than the actual food.

Pavlov concluded that the dog had been conditioned to associate the bell with food. It was thus understood that the dog's 'salivating' behavior could be analyzed in its' responses to stimulus.

III. SKINNER'S WORK

Skinner's famous experiment-"The Skinner box", formed the other important theory behind behaviorism.

Skinner concluded that the rat's behavior could be understood by the outcome that it chose, or it's chosen behavior. This became known as Operant Conditioning.

IV. CONCLUSION

The behaviorist doctrine has been important, but is now generally discredited because the methods, by which it claims to unlock the secrets of the human mind, are too simplistic.

Capitalism

Capitalism also calls "free market economy" or "free enterprise economy", is economy system, dominant in the Western world since the breakup of feudalism, in which most of the means of production are privately owned and production is guided and income distributed largely through the operation of markets

In the ethic encouraged by the Protestant Reformation of the 16th century, traditional disdain for agriculture effort was diminished, while hard work and frugality were given a stranger religion sanction. Economic inequality was justified on the grounds that wealthy were also the virtuous. Beginning in the 18th century in England, the focus of capitalism development shifted from commerce to industry. The steady capital accumulation of technical knowledge during the industrial Revolution. The ideology of classical capitalism was expressed in Adam Smith's "Inquiry into the Nature and Causes of the Wealth of Nations", which recommended leaving economic decisions to the free play of self-regulation market forces. After the French Revolution and the Napoleon Wars had swept the reminders of feudalism into oblivion, Smith's policies were increasingly put into practice.

All modes of accomplishing the basic tasks of production and distribution rely on social rewards or penalties of one kind or another. Tradition-based society depend largely on communal expression of approval or disapproval. Command system utilize the open or veiled power of physical coercion or punishment, or the best owl of wealth or prerogative. The third method-the market- also brings pressures and incentives to bear, but the stimuli of gain and loss are not usually within the control of any one person or group of persons. Instead, they emerge from the "workings" of the system itself, and on closer inspection, those workings turn out to be nothing other than the efforts of individuals to gain pecuniary rewards by supplying the things that others are willing to pay for.