

## Case : Right's of Mr . Beber

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Re Imaginary Case Concerning Rights

### *L Facts*

Here is the situation. **Mr.Beber**(an imaginary person) is an owner of company living in a democratic, capitalistic country called Azellia(an imaginary country). But recently, the ruling party has been changed into another party with very strong socialistic inclinations. Mr.King(an imaginary person), the head of the current ruling party, lays out new policies limiting the rights of individual under the social, public purpose.

Mr.Beber has been running his company for 40 years and recently has been ordered to forfeit his management of the company by the government. To fulfill the new policies, the government insists that it has to confiscate all of Mr.Beber's assets. Mr.Beber thinks that the confiscation by the government has neither legitimacy nor an appropriate reason. Mr.King's ruling party did not have any indications of socialistic aspects that the citizens would have predicted before the election. It is after the election that the party gradually changed into a socialistic country.

The government is undergoing transitional period from capitalistic country to socialistic country. Mr.Beber can claim different rights under such circumstance.

### *II. Issues*

1. Mr.Beber's social status in Azellia (Social Contract)
2. Mr.King's social status as a head of the party (Is there any limit in Mr.King's exercising power? The Concept of Power)
3. Legitimacy of the New Policies (Enjoying, Exclusive, Internal Orders, Continuous Way, Guarantee, Majority Rules)

### *III. Rules*

1. The Theory of Social Contract

#### (1) Meaning

The theory of Social Contract is one of modern political thought. It says that human being, who have the rights of life, freedom and equality from their birth, make a

contract to secure their rights and that man establish a society on the ground of the contract.

#### (2) Representative Scholars

There are three representative scholars and differences among their thoughts about the theory.

##### ① T. Hobbes

He thought that the state of nature was so chaotic that people made contract to protect people from the chaotic situation. He said that people give 'Leviathan' the power to control society.

## ② J. Locke

Locke insisted that people made contract to establish a community, and with that contract, they became civilians.

## ③ J. J. Rousseau

Rousseau criticized the system of law and monarchy of 18th century. He said that that system did not reflect the will of all the people and people, who are rational made the contract to reflect their will. That contract is shown in the institution like election and law.

## 2. Concept of Power

### (1) Definitions

- Max Weber : Power is the ability to achieve desired ends despite resistance from others.
- B. Russell : Power may be defined as the production of intended effects.
- H. D. Lasswell : Power is participation in the making decisions.

### (2) Power as Substance

Power is substantial concept so that the few who have power can dominate the many.

### (3) Power as Relationship

When we consider the fact 'time' , the concept of substantial power is uncertain. In other words, by guaranteeing people's obedience to a nation for a long time, we need to rationalize inter-relationship between the ruler and the ruled.

### (4) Power, Influence, Authority, Violence

#### ① Power and Influence

Influence implies the power of persons or things to affect others.

Power is included in Influence, and especially is a decision-maker having validity or legitimacy.

#### ② Power and Authority

The key to social stability is exercising power within a framework of 'justice', the concept of 'authority', which Max Weber as 'power that people perceive as legitimate rather than coercive'.

##### a) Traditional Authority

Preindustrial societies, Weber explained, relied on traditional authority, power legitimized by respect for long established cultural patterns.

##### b) Rational-Legal Authority

Weber defined rational-legal authority as power legitimized by legally enacted rules and regulations. Rational-legal authority is closely linked to 'government' or 'bureaucracy'.

Compared to traditional authority, rational-legal authority flows not from family background but from organizational position. Thus while a traditional monarch rules for life, a modern president accepts and give up power according to law, with presidential authority remaining in the office.

##### c) Charismatic Authority

Weber defined charismatic authority as power legitimized through extraordinary personal abilities that inspire devotion and obedience. However, unlike tradition and rational law, charisma is less a quality of social organization and more a dimension of individual personality.

#### (5) Efficient Ways to Exercise of Power : Ways to maximize power

##### ① What is Miranda of Political Power?

The word 'miranda' is Latin for 'admirable'. It appeals to people's emotion and makes the political power look sacred, mysterious, great, or admirable. In these ways, people are easy to feel that it is natural to obey to the power.

##### ② What is Credenda of Political Power?

The word 'credenda' is Latin for 'things to be trusted' and it originally means 'rule of God'. While Miranda appeals to people's 'emotion', credenda appeals to people's 'rationality'. The same story can be applied to a nation. In other words, it needs to be respected by its people. Credenda means an effort for a nation to convince its people reasonably and get their consents.

##### ③ Evaluation

Professor Merriam called the above two things 'the corner stone of the power situation'. If a nation fails in it, chances are a nation has to use compulsory methods such as military force or violence. That is a tragedy.

#### 3. Ground of Legitimacy

##### (1) Free Market System

###### ① Price Mechanism

In free market system demand and supply determine the price. Demand is the quantity of a good buyers want to buy at each price. The lower the price, the greater the quantity demanded. The law of demand means that the price is inversely proportional to the quantity of the product. Supply is the quantity of a good sellers want to sell at each price. The higher the price, the larger the quantity supplied. The law of supply means that the price is directly proportional to the quantity. The market clears, or it is in equilibrium, when the price is at the level at which the quantity demanded and the quantity supplied are equal. If the price is not at the equilibrium level, it will tend in a free market to move toward it. On the average, therefore, the price will be at the equilibrium level.

###### ② Adam Smith's Explanation - Invisible Hand

All the individuals make effort to derive the largest amount of values from their resources. They neither intend to increase public interests nor care whether their effort contributes to it. They only do economic activity for their own interests and well being. But even in this case they make tribute to the increase of public interests unintendedly led by 'invisible hand'. So the invisible hand would mean price function determined by self-regulatory demand and supply in the @ market.

##### (2) Rights

###### ① Definition of Rights

Right is a power, privilege, demand, or claim possessed by a particular person by virtue of law.

###### ② Types of Rights

According to Weber's definition about 'rights', rights can be divided into spiritual and material rights.

###### a) Spiritual Rights

Spiritual rights are closely associated with an individual's control over his mind and

living. Spiritual rights include right to privacy, freedom of speech, freedom of assembly, freedom of religion, freedom of abortion and etc.

## b) Material Rights

On the other hand, material rights are closely associated with an individual's control over his property. Material rights include the right to own, property rights, intellectual property rights and etc.

### ③ Rights to Own

In the modern ages, the collapse of the feudal system led to a high regard for private property rights. Modern society approves an individual to take complete control over his property and forbids people from infringing each other's property. Aside from controlling his property, an individual can also invest capital in his property and use it.

### ④ Freedom of Choice in Occupation

Freedom of choice in occupation is essential rights in democracy and capitalism. This freedom guarantees individual to choose any kind of occupation unless it's not against national security, the maintenance of public order or public welfare.

⑤ Rights cannot be realized unless a state plays a key role of securing rights of individuals. In addition, deciding limits and kinds of rights, which should be protected, is mostly influenced by capability of a state. Therefore, when we define the rights, a guarantee by a state must be considered. A state should always try to maximize the rights of individuals in order to maintain legitimacy.

## (3) The Majority Rule

The majority rule has democratic legitimacy under following premises.

### ① Equality among Participants of Decision

Equality among participants should be guaranteed. It is because we all have the equal rights of personality and that we can make our own decisions.

② Freedom of Speech and the Possibility of Free Opinion Formulation  
Free opinion formulation is necessary to democratic decision by majority.

### ③ The Homogeneity of a Community and Political Basic Agreement

Within a community, various relative confrontations can exist. But unnegotiable fundamental confrontation should not exist.

## IV. Analysis

### 1. Mr.Beber's Social Status

As a citizen of Azellia, he has made a contract(social contract) with Mr.King. There

are many controversies over the nature of social contract. According to the most reasonable theory of Rousseau, Mr.Beber can break off the contract. For social system reflects the will of all the people and the people make a contract to reflect their will.

### 2. Mr.King's Status

Mr.King has ability to achieve his desired ends despite of resistance from Mr.Beber. Therefore Mr.King can exercise power over Mr.Beber. However Mr.King fails to hold 'credenda' of political power' to Mr.Beber. If there are many people like Mr.Beber who do not respect Mr.King's policy, there is a possibility of public resistance.

### 3. Legitimacy of Mr.King's New Policies

As can be seen above, a country is obliged to protect people's interests and rights. But in this case by confiscating people's property, the government has impaired their rights. And the policies are considered to have no predictability because the party had never shown their tendency of socialism before the election. And lastly, the people of Azellia chose Mr.King as a president, but because the lack of full information about the party's tendency, the election does not have practical legitimacy.

### *V. Conclusion*

The state is obliged to give rights or obligations to its people. The rights of individuals may differ according to ability and policy of the state. In a case above, if Azellia is a state based on democracy and capitalism, Mr.Beber's property rights should be protected and Mr.King's such act would not have legitimacy. However, if Azellia has already been changed into socialistic state, whether Mr.Beber's property rights should be protected or not is in doubt.

Everyone is born equal with the right to live and desire to expand his interests and rights. But as we are living in the world with all kinds of different people, our society can be maintained through mutual relationship and understanding. There are always conflicts and disputes in our daily life. The maximization of exercising rights can have legitimacy only when it's not infringing other's rights and the state's role is to intervene and guarantee such atmosphere. What is the motive of the state's existence if it gives up to perform its role and instead infringe and suppress other people's rights.