

## < Weber's definition on "Rights" >

### \* Introductory comment

This is what we have done about during this semester first by analyzing it into several major concepts and second by trying to find out the connections between the concepts in the perspective of laws which we learned previously in other classes. Though Max Weber isn't an important figure in legal history and his teaching has no direct connection with law, for his teaching can provide the basic knowledge about society and insight into it which can't exist even a day with no presence of law, it can be said to be quite meaningful and helpful for law major students to have a chance to get the general picture of his philosophy. While most legal students are well informed of legal knowledge and good at its application to actual cases, when it comes to the question of why we need law, then they may find it not easy to give an insightful answer except that law is an effective means to deal with conflicts. But what is it that makes it an effective means or in the first place why those conflict situations come to happen? In fact we are hardly asked these kinds of questions because they are often thought to be too abstract and too philosophical for a person majoring in law to answer whose best virtue lies in the pursuit of practicalness and concreteness. Of course this doesn't mean that law major students are simply too far behind understanding philosophical or social issues compared with other major students. They just have been provided less chance to think about the essential quality of law too busy learning a variety of laws and applying them to actual cases. Before taking this subject, I was taught legal history and legal philosophy but none of them did focus on the socioeconomic aspects of legal phenomena, so this can be said to be the first time that I was actually introduced into socio-legal field of knowledge. Every concept was relatively new and defined differently from the way we did in any law classes. Therefore, when not enough research was made on a certain topic, it was hard to talk about even the basic aspects of the concepts presented. Besides, language barrier made some of the students rather unwilling to join in class activity, and the unfamiliarity of the subject itself I think made some of the students rather reluctant to join in the active discussion. However, the content that we covered during this semester was deep and insightful in many aspects because it led us to the question of substantial quality of law, the existence of law though still many things are left unanswered. However, I think those could be explained to ourselves when we are learning and making more study of law.

## < Weber's definition about Rights >

### I. Introduction

Weber defines the rights as the state of mutual social relationships in which the possibility of the member of a social group enjoying exclusive spiritual and material interest under its internal order in a continuous way is guaranteed.

The sentence presented above though it's seemingly made up of only one single sentence, it includes lots of important and complicated concepts related to economics, sociology, philosophy and other fields of social science. Therefore, to understand what the sentence means in an accurate and correct way, first we need to break it into several parts and analyze every important concept of each broken part:

1. The state of mutual social relationships
2. in which the possibility of
3. the member of a social group enjoying
4. exclusive

5. spiritual and material interest
6. under its internal order
7. in a continuous way
8. is guaranteed.

In a numbering order, review on each part based on what we did in class and what I personally found out doing research, will be made.

## II. Analysis of the major Concepts

### 1. The State of mutual social Relationships

Man live in society and this will remain as the true statement about the conditions of human existence whatever changes are made in the future. Not necessarily quoting the old and famous comment of Aristotle, "man is a social being." no man can live completely by and for himself for man's living is grossly dependent on others both in mental and in physical way. Since childhood, correctly speaking since we were born, we have belonged to various social groups with no our own serious consideration of joining or not in particular groups. One's family, school, friends, neighbor, community, nation are the examples of the social groups one is supposed to belong to. These

groups exist separated and mixed in some way and the individual of each group also has the several different status in different groups, sometimes within the same group. All those groups interact one another in a harmonious and conflicting way. The individuals in each group also interact each other and sometimes are in a conflict situation for the different interests involved in about some particular matters. Conflict existing between the two parties, whether they are groups or individuals, is what law has to deal with and settle in the end when it's required. Talking more about conflict situation in many cases moved to court for settlement, it always happens when there are two confronted parties whose relationship isn't working harmonious way. Unlikely when they are in a good relationship, when the two groups are in a conflict situation, their power relationship is shown to others much more evident way and need fair settlement by laws.

### 2. the Possibility

Regarding the concept of Possibility, two questions can be meaningfully asked: first, in the relation with the rights which its concept has some close connection with and etymologically is thought to have originated from the same latin word "potentia", when one doesn't exercise his own rights, should his rights still be respected and guranteed? If then why it is? Here, we need to look more closely into the major characteristics of rights or power to answer the question.

#### 1) the Concept of Power in Sociology

Power is defined as 'the probability of persons or groups carrying out their will even when opposed by others. When legitimate power is given to each individual, it's called the rights. In Korean legal theory, rights is thought as the interest or benefits offered and protected for the individuals by laws. Then a question may be raised on the reason why law should

be the major source and means in protecting and guaranteeing the people's rights. what in the world gave the power to law to force and guarantee people to exercise their rights? According to Max Weber, this is explained by the concept of authority. When there are more than two confronted parties in society, one with more power will be able to insist on its interest upon the others. However, if the ruling party has no other means to have the other under its influence except physical force, then its superiority can be easily threatened by other more strong groups, which will result in dog-eat-dog situation. So, to break up this vicious and futile circle and make one's dominance over the others stable one, the

1) oxford dictionary of sociology. Marshall, Gordon. Oxford: Oxford University Press, 1998. p. 519.

ruling party needs to have legitimacy or authority. Max Weber listed three bases of authority: traditional, rational-legal, and charismatic. law has something to do with the second one and especially in Korea, the authority of law is thought to come from the consensus of the whole nation according to the scholars whose specialty is the Constitutions. Compared with the other two sources the rational-legal one has the distinctive characteristics in its coerciveness, so when there is violation of laws, it can bring about a counter-effect or punishment and when one is exercising his legal rights, no one can infringe upon it except the rare occasions the constitutions predetermined because though not manifested it's still guaranteed by no other means than law, just as the natural rights such as human dignity is not allowed to yield to the others so the rights given to individuals, unless he agrees to concede them to the others with their own decisions for a reasonable reason, it can't be taken over to anyone So it's proved here legal rights are not to be given up or to be infringed upon by the others just because it is not in active manifestation.

2) in Case of Overexercise

The second question is if one exercises power too much, then what will happen? Law also like the other social norms has made based on the agreement of the people. Though the coerciveness of laws is above the other kind of social norms, it also still needs the consensus of the people to have a righteous authority. This then can be interpreted into this way: law should serve all the people, the whole nation, so though it tries to maximize the individual rights, also it has to consider the public interest for the whole. If it lets a particular individual or individuals exercise their rights in their own ways not caring about the others, then social conflicts will be developed and again dog-eat-dog situation will be something inevitable. So, two things should be considered at the same time, that is to say while law should be able to maximize the right of individuals, it also should conduct its actual exercise within the limit of the interest of all, the public interest.

3. the Member of a Social Group enjoying

This part is about utility in terms of economics.

1) Utility

In economics theory, utility is defined as 2) the benefit or satisfaction which is derived from the consumption of a commodity. it is an inevitable part of maximization of one's rights for men's desires are basically materialistic ones and its exercise can be manifested in the way of using or sharing those materials. But the problem still

remains: while people's desire is never completely satisfied and in fact it tends to

2) Oxford Dictionary of Sociology. p. 686.

grow bigger and bigger, the amount of those commodities is limited and therefore may be hard to share them equally with the others. Here again, another conflict situation gets to be developed. However, in this case, a different treatment is required though law also surely can provide some solutions, it is desirable basically to be ruled by economic rules. To restate this, there exists some conflict situation as to the matter of sharing and enjoying utilities, but this conflict is something different what we have seen so far in that it needs an economic solutions not a legal one. Then it's required to know what economic rules have set up to deal with and prevent economic conflict situations. it will be described in the following.

#### 4. exclusive

When it comes to materials, there are two categories of them -- public goods and private ones. To understand the major differences between the two, it's needed to define those and find out the major characteristics first.

##### 1) Public Goods vs. Private Goods

The economist Paul Samuelson defined it as those where person A's consumption of the good did not interfere with person B's consumption in his book titled "the pure theory of public expenditure". This is distinguished from private goods according to the standards such as the possibility of excludability and divisibility in the rivalry relationships. Let's take one example to make the concept more clear. About property rights, we can say that it's mostly about private goods which are excludable, available in the market and have rivalry in consumption unlike public goods. Public goods are in essence understood as something given all of the nation with no discrimination, the problematic situation can hardly occur. But when it comes to private goods, it's not the case and is run by other economic rules such as the rule of demand and supply, and invisible hands. Of course, when the conflict which is not easy for the parties involved to settle happens, legal solutions can be applied to settle the case, but basically this belongs to another area and people tend to follow the economic rules with no other's enforcement because they know it in the end will work favorably for them.

#### 5. Spiritual and Material Interest

Let's check out some of the rights to these interests guaranteed by the Constitutions and laws.

##### 3). the Definition of "Right"

3) All the concepts are cited from the handouts distributed in class.

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

##### 1) 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.

## 2) 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 right, intellectual property right, and etc. These include the right to own, property and intellectual property Right etc.

### 6. under its Internal Order

#### 1> Internal Order and Rights

in Max Weber's definition of rights, the "internal order" of society is stressed as a precondition to realization and protection of its own members' rights. Internal order in a society is achieved when the members' behaviors follow a common set of rules and are standardized within the boundaries of social norms. The existence of law provides these rules to set a standard for what ought to be, but in maintain social order, an institution to enforce the law and regulate the actions of people is necessary. As conformity is rewarded and reinforced, while nonconformity is penalized and sectioned, the integration of members into a single social order becomes possible.

#### 2> Legality as a Means of attaining Social Order

The concept, "rule of law" is a basic foundation in attaining social order. Although it is possible to maintain social order by means other than law, such as large resource of intimidation or use of coercion, such order based on forced submission is usually short-lived and subject to revolt. The "internal order" as used in Weber's definition is a "legal order", and a strong legal order is the product based on people's consensus and willing obedience, less dependent on the machinery of coercion. Thus, a strong regime might command a strong social order, but not necessarily strong legal order. In a developed legal order, authority transcends coercion, and accepts the restraints of law as means of maintaining social order. "Rule of law" provides legitimacy to the powers exercised by the authority, and evoke willing submission and acceptance of the people to the sanctions put upon them.

3> Rule by Law not Rule by a Person, a Dictator The ruling political party or government always has tried to achieve the stability by the

strong measure such as laws. But as mentioned previously, to be acknowledged as authentic law it has to be authorized by the whole nation. This means law has to meet both procedural and practical standards. Unless laws doesn't meet both of the qualifications, the rule by this law can't be considered as the rule of law. When we say ruling by laws, we don't mean laws is nothing but a means to make the ruling stable. We presume it has a kind of authority which is given and supported by the whole people, the ruled people, not by the ruler himself. However, looking back on the world history, especially in the first part of 20th century, there had been lots of unthinkable happenings, two times of the world wars, during that period, the Weimar Constitutions was established in Germany though it went thorough the regular procedure preordained by the Constitutions with no fail, in reality, its content was not considering the whole people, the justice for all. Instead, it was designed to serve the Nazi's so called grand plan of construction of the whole new world for the Germans. So even though they used the laws and made their ruling based upon the laws because it didn't have the authority which should come from the people under the ruling, it can't be said to have been the rule of law in any sense. Neither it was not the rule by law in a broad sense because we think of law as the synonym of justice, which Nazi's Constitutions and laws lacked.

### 7. in a continuous Way

This part is as to how to guarantee the predictability. However well all the standards and rules of economy and law have made, unless the content of it is well known and clearly understood by the people who would be under its influence, then it won't be able to avoid being brought to nothing. Another consideration should be taken into its consistency which means all the decisions are to be made carefully not tentatively and its change should be allowed only when it has a just reason and necessity agreed upon by all the nation. Especially in the field of criminal law, this is to be carefully considered and respected because it infringes upon one's dignity and freedom to the most extent, in most cases unrecoverable.

8. is Guaranteed.

For this, the legitimacy of government is required.

### III. Conclusion

Again, back to Weber's definition of "rights", based on the argument made so far, we now can get the relatively concrete picture of what it is and why it is important not

only in the socioeconomic point of view but also in the legal perspective. Those eight parts divided for a closer analysis are considered as important in that they include all the important issues and concepts in the various fields of knowledge to understand better the concept of "rights" and those eight parts also are thought to be as the necessary conditions, none of which should be omitted in any way to be consistent with the concept of rights. In other words, for instance, if the 7) in a continuous way or the matter of predictability isn't assured, then no matter how well all the other conditions are met, we can't say one's right is fully guaranteed or is able to exercise because "rights" is not a static or abstract concept which is argued only in pure philosophical level, instead, it's more practical and active concept needed to be exercised in real life. So, the government as the subject of guaranteeing the rights of people should be reminded of all these eight conditions making an effort to none of these not being violated or left out.