

9516016 Lee, sang young 99-05-27

1. Max Webers kid! jusuce

- Substantial irrationality of China and Islam
- Oriental despotism and Justice of substantive irrationality

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 #Opinion against Weber

11 Joyce S. Sterling and Wilbert L Moore

"Weber's Analysis of Legal Rationalization: A Critique and Constructive Modification," Sociological Forum 2, 1987

They indicate that Weber's mode of rationality is so vague, conservative, and strict that it is hard to adapt to any specific situation. Thus they tried to change that concept

2) ProfeSSer Parl(boug-hes OPINIOR

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 J.

- 1) The historical characteristics of the family system was resulted from the custom of matrilocal marriage and the system of equal inheritance by sons and daughters
- 2) Private ownership and the consciousness of ownership fundamentally nurtured through powerful legal protection and actualization of the system of equal inheritance
- 3) the provisions of the immutable code in the form of the royal ancestor's constitution which supported such institutions, and corresponding legal consciousness.
- 4) King's regime was not unlimited violence. There was The duty of king - increasing of people's welfare (ex

2. Nahm Pyoug-choon's opinion within Webers 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.

opinion against Nahm

1. According to Anthony T. Kronman, Max Weber, Stanford: Stanford University Press 1982 : Weber's concept of rationalism can be categorized 5 different ways. but R Hame did not mention which one did he use

2. 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"-. This 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.