

Comparative Legal Cultures In Japanese Legal Philosophy  
On Max Weber's Rationalization of Law

Shigeki Tanaka, Osaka University

1 One hundred years ago Max Weber tried to describe rationalization of the modern western countries. He compared the western law with the eastern law. He wrote "Asian countries lack rational jurisprudence and strict legal schema of Roman Law" and "Only the Occident has witnessed the rise of the national economic system. He pointed out the usefulness of Roman jurisprudence to economic system of capitalism. He defined capitalism as "the earning chance through the use of exchange-chance".

2 From Max Weber's point of view Japan at that time was a good example to have received the western civil law and economic capitalism. At the end of the 19th century the Japanese civil code had introduced the western principles; (1) freedom of contract (2) private property (3) liability arising from negligence. Japan abolished the feudal mode of production. Freedom of choosing one's occupation or change of residence were prescribed in the Constitution of 1889.

3 I regret the Japanese jurisprudence and philosophy could not check the Japanese invasion against the other countries in the Asia since 1894. So I will now examine the Japanese ethical attitude to the modernization and the independence of nation. At the middle of the 19th century Japan was also under the colonization by the western countries just as China and Korea. The Japanese people united firstly the whole land under the traditional authority of emperor and developed secondly the capitalistic elements in the economy and the ethical life. Max Weber inquired into the spirit of capitalism. He said that the ascetic attitude of Puritanism or Benjamin Franklin's word "Time is money" or "Do not delay to pay debts" was the ethos of capitalism.

4 I do not know the doctrine of Puritanism but I can find the same words as Benjamin Franklin in the Japanese common people of the 18th century. For example Nakamoto Tominaga who was a son of merchant wrote "Save today's stock" or "Rich men stock for tomorrow". Such ethical attitude supported the modern principles of the western law. Nevertheless the democratic merchant class and peasant class did not lead the modernization of Japanese government. After the World War II the Japanese people changed the Constitution of 1889 which had the institutional defects to admit the emperor too wide governmental powers. The new Constitution of 1946 dismissed the aggressive military forces and deprived the emperor of his governmental powers.

5 I believe the most important task of the Japanese jurisprudence is to build the ethical foundation of this Constitution, for example dignity of human-being. Thank you.