

Review Article

In Pursuit of Truth and Justice: The State of the Field of Chosŏn Legal History

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On a sweltering summer day in 1867, the magistrate of Chunghwa County in Chosŏn Korea (1392–1910) began a special investigation into the rumored murder of an unnamed woman, the mother of Kim Chiryong and his two brothers.¹ Suspecting a concealed murder, he gathered witnesses in situ and interrogated their complicity. The Kim brothers, the story goes, were itinerant “singing boys” (*ch’angdong* 唱童) who had found temporary lodging in a remote village. One night, they faced a local ruffian named Yun Myŏngp’ae who drunkenly demanded their performance and quarreled with their elderly, ailing mother. The next morning, the mother passed.

Despite the investigation, the cause of Mrs. Kim’s death was elusive. Suspiciously, the village leaders did not report it to authorities, and by the time the magistrate had begun probing, long gone were the brothers and the body of the deceased. While “truth” remained at large, “justice” was administered regardless. Despite escaping murder charges, Yun was imprisoned for ruffian behavior while other “disorderly elements” (*nanyu* 亂類) in town received beatings. This case, as recounted in the inquest records of Chunghwa County,

1. Chunghwa-bu ogan 中和府獄案 (Inquest records of Chunghwa County), Harvard-Yenching Library Collection, TK 4899 4352, 215–229. For a detailed explanation of the source, and compilation of selected translations, see Sun Joo Kim and Jungwon Kim, *Wrongful Deaths: Selected Inquest Records from Nineteenth-Century Korea* (Seattle: University of Washington Press, 2014).

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poses various questions: without plaintiffs and a confident “truth,” how and why was “justice” administered in the village? How did the performance of justice relate to local governance and its aims at maintaining social order? What was the logic of Chosŏn legal practice? Answers to these questions in turn funnel out to the booming field of legal and socio-legal history in Chosŏn studies.

Publications on Chosŏn’s legal system have burgeoned during the last decade. In Korean scholarship, Chŏng Kŭngsik and Hong Sunmin probed proliferation patterns of legal texts and revisited Chosŏn’s evolving “rule of law” as manifestations of royal power and personality.² Complementing the study of legal governance, scholars such as Kim Ho and Sim Chaeu discovered inquest records as important materials for examining social structure and mentalité in the late Chosŏn.³ Starting in 2012, Western academia also bustled with successive publications on legal history.⁴ Articles by Anders Karlsson, for

2. Chŏng Kŭngsik, “Pŏpsŏ ūi ch’ulp’an kwa pogŭp ūro pon Chosŏn sahoe ūi pŏpchŏk sŏngkyŏk” [Essay on the legal aspects of Chosŏn society by publications and spread of Legal Books], *Pŏphak* 48, no. 4 (2007): 88–123; and Hong Sunmin, “Chosŏn hugi pŏpchŏn p’yŏnch’an ūi ch’ui wa chŏngch’i inyŏng ūi pyŏndong” [Changes in the compilation of legal books and shifts in political management during the late Chosŏn period], *Han’guk munhwa* 20 (June 1998): 165–205.

3. Kim Ho, “Kyujanggak sojang ‘kōman’ ūi kich’ojŏk kōmto” [Basic evaluation of criminal investigations from the late 19th century to the early 20th century in the Kyujanggak archives], *Chosŏn sidaesa hakpo* 4 (1998): 155–230; and Sim Chaeu, “Charyo sogae: Chosŏn hugi inmyŏng sakŏn ūi ch’ŏri wa kōman” [Source introduction: processing and investigation of murder cases during the late Chosŏn period], *Yŏksa wa hyŏnsil* 23 (1997): 215–233. For more recent studies on inquest records and interrogation documents, see Kim Ho, “Kōmko,” 19 segi chŏnbŏn chibangkwan ūi kōmsi chich’imsŏ” [*Kōmko*: an autopsy manual for local officials in the early nineteenth century], *Chosŏn sidaesa hakpo* 72 (2015): 385–416; and Ch’oe Chongsŏng, trans., *Yŏkchu yosŭng Ch’ŏgyŏng ch’uan: sara saengjŏn e saengbul ro ch’uang patta chugŏsŏ mudang ūi chesa rŭl padŭm pulsŭng Ch’ŏgyŏng ūi sam* [Annotated trial documents of a wicked Buddhist monk, Ch’ŏgyŏng: the life of the monk Ch’ŏgyŏng who was revered as Living Buddha in his lifetime and ritualized by a shaman after death] (Seoul: Chisik kwa kyoyang, 2013).

4. For books, see Sun Joo Kim and Jungwon Kim, *Wrongful Deaths*; and Jisoo Kim, *The Emotions of Justice: Gender, Status, and Legal Performance in Chosŏn Korea* (Seattle: University of Washington Press, 2015). For articles, see Anders Karlsson, “‘Scions of Wealthy Families Do Not Die in the Marketplace’: Death Penalty and Hyosu Punishment in Seventeenth and Eighteenth Century Chosŏn Korea,” in *Capital Punishment in East Asia*, ed. Tomiya Itaru (Portland, Oregon: Kyoto University Press, 2012), 152–193; Anders Karlsson, “‘Must We Really Cut People’s Toes Off To Uphold the Law?’: Confucian Statecraft, Punishment and the Body in Chosŏn Korea,” *Tasanhak* 24 (2014): 107–147; Jungwon Kim, “You Must Avenge On My Behalf: Widow Chastity and Honor in Nineteenth-Century Korea,” *Gender and History* 26, no. 1 (2014): 128–146; and Jungwon Kim, “Deeper than the Death: Chaste Suicide, Emotions, and the Politics of Honour in Nineteenth-Century Korea,” in *Honour, Violence, and Emotions in History*, ed. Carolyn Strange et al. (London: Bloomsbury, 2014), 163–182. This essay focuses on the two books by Sun Joo Kim and

instance, studied the relations between penal law and governance, arguing that after the seventeenth century the Chosŏn deployed corporal and capital punishment in response to changing demographics and border situations. Draconian punishment, as shown, constituted a crucial “supplement to sagacious kingship and Confucian statecraft” and continued into the late Chosŏn despite reforms and debates about the relative role of penal rectification and moral edification in judiciary practice.⁵ Importantly, Karlsson revisits the legal arena as a site of ideology construction, and examines the role of body politics in Chosŏn’s mode of governance and power production.

Due to space constraints, this review essay focuses on American historiography, specifically on two book-length studies with particular attention to their methodology and historiographical niche. Namely, three scholars sharing the surname of Kim—Sun Joo Kim, Jungwon Kim, and Jisoo Kim—have advanced the field of Chosŏn legal history by probing how non-elites and women exercised agency as full legal subjects in premodern Korea. Collectively, they explore the underlying logic of Chosŏn’s judicial system, and clarify the role of status and gender in legal practice. Within Western academia, they also complement William Shaw’s pioneering work, which revealed the complex practice of criminal law in the late Chosŏn: continuing Shaw’s spirit, they dispel any lingering myth that the dynasty ruled only by moral suasion rather than law.⁶

The impact of this sub-disciplinary boom also percolates outside the confines of legal history. It constitutes a methodological intervention against the Great Tradition school of Chosŏn history,⁷ which stressed the overarching

Jungwon Kim, and Jisoo Kim.

5. Karlsson, “Must We Really,” 142.

6. William Shaw, *Legal Norms in a Confucian State* (Berkeley: Institute of East Asian Studies, University of California, 1981).

7. Anders Karlsson aptly coined the term to refer to scholarship that was influenced by the work of Edwin O. Reischauer and John K. Fairbank, who focused on state ideology and the educated elite in their search of a common Sino-centric Confucian civilization in East Asia. While Karlsson does not cite the scholars that comprise the “Korean version of the Great Tradition scholarship,” I herewith include in his category the pioneers of Chosŏn history, such as Edward Wagner, James Palais, and Sohn Pokee. Trained in North America and specializing in political and institutional history, these scholars engaged with totalizing theories, such as Oriental despotism, the “microcosm theory,” and the modernization theory. Looking for governance models and societal structures, they gazed at the dynasty from the top and examined how Chosŏn’s educated elite—the aristocratic *yangban*—organized the state, checked the monarchy, and propagated Neo-Confucian orthodoxy. Anders Karlsson, “Beyond the Great Tradition: Recent European Scholarship on the History of Chosŏn Korea,” *Yŏksa wa hyŏnsil* 90 (2013): 383–410. For examples of the Great Tradition school,

impact of ideology and the educated elite, and assumed that Neo-Confucianism defined the Chosŏn state and society *in toto*. Instead of gazing at the dynasty from the top, the three Kims underscore instead the varied, microscopic realities of the marginalized, as reflected in their use of primary sources such as inquest records and petitions. As such, they are able to expose the yawning gap between ideology and practice in the dynasty's judicial realm.

In *Wrongful Deaths*, Sun Joo Kim and Jungwon Kim compiled and translated eight inquest records from the aforementioned Chunghwa County to probe how marginalized individuals of different status and gender negotiated their interests in court. Using microhistorical approaches, the authors reveal the realities of Chosŏn's legal practice as it operated in contention with the confines of Confucian ideologies, and adapted in response to various social actors and their agendas. As such, they exposed the "potential for accommodation, negotiation, and reproduction between ideas and actual practices in nineteenth-century Korea" and showed how "complex constellations of constraint and opportunity" shaped the lives of the non-elites, including slaves, peddlers, and women of different statuses.⁸ Funneling out from this granular view, the authors suggest that Chosŏn's legal system was fluid and functional, capable of negotiating Confucian confines and adjusting to the needs of the marginalized. This view eschews macrohistorical paradigms that are inevitably reductive, and suggests a "profound departure from the conventional picture of nineteenth-century Korea."⁹

Although *Wrongful Deaths* is not a monographic study, its historiographical intentions are clear: despite the usual narratives of economic decline and social crisis for Chosŏn's last century, the dynasty's legal system continued to uphold social order, which was not so much dissolving as inherently fluid, and endorsed marginalized individuals to appeal to official justice. This historiographical stance finds support in the various death cases that demonstrate Chosŏn's fluid legal practice, which preserved Confucian moral values while allowing non-elites agency to navigate status and gender gaps. For instance, in Case 3, where

see Edward W. Wagner, *The Literati Purges: Political Conflict in Early Yi Korea* (Cambridge: East Asian Research Center; distributed by Harvard University Press, 1974); James B. Palais, *Politics and Policy in Traditional Korea* (Cambridge: Harvard University Press, 1975); James B. Palais, *Confucian Statecraft and Korean Institutions: Yu Hyŏngwŏn and the Late Chosŏn Dynasty* (Seattle: University of Washington Press, 1996); and Sohn Pook, *Social History of the Early Chosŏn Dynasty, the Functional Aspects of Governmental Structure* (Seoul: Jisik-sanup Publications, 2000; originally a PhD diss., University of California, Berkeley, 1963).

8. Kim and Kim, *Wrongful Deaths*, 21–22.

9. *Ibid.*, 22.

slave Yi Pongdol tussled with yangban Sin P'ilho, and committed suicide in defiance of the latter's repressive behavior (i.e., violating Yi's usufruct of his fish farm, invading his home and breaking his sauce jars), the magistrate ruled in favor of Sin and upheld Confucian propriety.¹⁰ Yet, the magistrate still punished Sin with one round of beating and denounced his "excessive and unreasonable" behavior, in deference to the state's efforts to regulate abusive yangban. As such, this case shows not only that the law was at once adherent to Confucian norms and malleable, but also that non-elites exercised significant agency in the legal realm: Yi used suicide, a form of legal defiance, to jeopardize Sin while his sister reported his "unjust" death to the authorities. This case and others in the compilation are indicative of how, in practice, both the legal process and the social status system were fluid and that the dynasty's social order remained intact and responsive to increasing "criminal incidents resulting from people crossing long-established social status lines...in the eighteenth and nineteenth centuries."¹¹

The authors of *Wrongful Deaths* also focus on women, dedicating half of their compilation to pertinent cases. This historiographical decision delivers effective justice to the women of traditional Korea, who had been grossly underrepresented in historical archives and modern research. Rather than secluded and subdued by Confucian confines, the women in these cases were integral, agentive members of local society: they actively negotiated their socio-cultural niche within the patriarchal system and practiced legal action. For instance, in Case 4, where a quarrel between two widows—Madam Chang and Ms. Ŭn—over the purchase of a house resulted in the former's defiant suicide, both women had pursued personal interests beyond the confines of Confucian widowhood.¹² Madam Chang jeopardized Ms. Ŭn through her suicide while Ms. Ŭn defended herself in court and filed petitions to reclaim her land. Beyond the legal realm, the two widows interacted broadly in local society and engaged in economic transactions, all of which countered Confucian expectations for virtuous widows to lay low and follow their husbands to death. In the practice of everyday life, Korean widows were socially active and legally assertive.¹³

10. *Ibid.*, 55–61.

11. *Ibid.*, 55.

12. *Ibid.*, 62–71.

13. Kim Jungwon published a separate article chronicling this case in detail and with focus on Confucian widowhood and the "meanings and politics of widow chastity." She argues that the choice by women such as Madam Chang to commit "chaste suicide" was not simply a function of their fulfilling a wifely duty but of exercising honorable agency, empowered by the socio-political-familial environs that accepted and celebrated the act. Kim Jungwon, "You Must Avenge On My

The study of Chosŏn women as agentic legal subjects finds culmination in Jisoo Kim's *The Emotions of Justice*. In her tantalizing study of petitions and legal performance, Kim argues that the emotions of *wŏn*, or the sense of being wronged, were most critical to appealing grievances and administering justice in Chosŏn's distinctive legal culture; and that women petitioners actively performed the pathos of *wŏn* to pursue personal and familial interests at court. Contrary to the view that Confucian ideas relegated women to the "inner-quarters" and silenced them in the public domain, Chosŏn women exercised full legal capacity, writing petitions on matters as varied as seeking legal knowledge, arranging land inheritance, complaining against secondary sons, and thanking the king and redressing various grievances on behalf of imprisoned or dead family members. In fact, women were formative legal agents, at times more salient than their male counterparts, due to their craft in deploying gendered constructions of *wŏn*: they used narrative strategies of pity, vulnerability, and desperation, and appropriated Confucian rhetoric of womanly virtue to empower their pathos. Their vibrant legal activities attest to the yawning gap between idea and practice in Chosŏn's social and legal realms, particularly between Confucian notions of domestic womanhood and actual practices of women petitioners.

In addition to probing the pathos of *wŏn*, *The Emotions of Justice* focuses on the linguistic practice of petitioning, particularly its two modes—oral and written. When non-elite subjects addressed grievances to the state, they could either submit written petitions or perform oral petitions directly to the authorities. Regarding the former, non-elites and women who were illiterate in classical Chinese could textualize their complaints through scribes or, in the case of women, write directly in vernacular Korean. As for oral petitions, verbal performances of grievances were conducted in a "pre-textual mode" only to be subsequently textualized by authorities.¹⁴ In both processes, producing petitions was a "collaborative, dialogic, and jointly orchestrated affair," one that included a multitude of voices and agents; yet, as Kim argues, still retained the kernel of the petitioner's original intentions and strategies.¹⁵ Particularly noteworthy is Kim's study of the exclusive use of vernacular Korean by women: female petitioners extended vernacular Korean into the realm of public writing, thereby contesting the "official literary space dominated by classical Chinese" and elevating "that which was seen as vulgar script by the literary culture of the

Behalf."

14. Kim, *The Emotions of Justice*, 17.

15. Ibid.

Chosŏn to an officially recognized option for legal documents.”¹⁶

Beyond the issue of women, *The Emotions of Justice* highlights the distinctiveness of Chosŏn’s judiciary practice and engages broadly with the historiography on legal cultures across the world. First, Kim understands the distinct logic of Chosŏn’s legal system. Through her analysis of emotions and the Neo-Confucian correlative cosmology, she shows that Chosŏn Korea perceived pent-up *wŏn* as the source of cosmic imbalance, social disorder, and natural disaster. The relieving of *wŏn*, thus, was critical to royal governance, which sought to “restore moral order damaged by injustice.”¹⁷ Second, Kim shows the distinctiveness of Korean legal culture even among countries influenced by Neo-Confucianism, particularly its emphasis on ensuring egalitarian access for addressing grievances. Unlike in Qing China (1644–1911) and Tokugawa Japan (1603–1868), the Chosŏn state “officially allowed every subject to directly petition the sovereign during his royal procession.”¹⁸ Further, unlike in medieval Europe, “one’s gender or status did not affect one’s ability to display hostile emotions in [the Chosŏn legal] court.”¹⁹ In other words, the pathos of *wŏn* flattened gender and status gaps in Chosŏn’s judicial domain, which was perhaps the only place where the “non-elite could publicly challenge the elite.”²⁰ Third, in hopes of “bring[ing] the Korean case into global historical and interdisciplinary dialogues on justice,”²¹ Kim suggests a new historiographical paradigm, one that eschews Eurocentric biases (i.e., Cartesian dualism, Kantian separation of reason and emotion); avoids the “hollow debate” of identifying Korean sprouts of Western customary law; and explores integrative models of emotion and reason, drawing on Neo-Confucian legal cosmology and the

16. Ibid., 73. Further comparative work is imperative to understand parallels and divergences between legal cultures of East Asian states, particularly on issues of petitioning and status. In Qing China, presenting unauthorized petitions along the route of imperial processions was illegal and could result in severe punishment, such as exile to a military labor camp on the frontier, or even death. Michael G. Chang, *A Court on Horseback: Imperial Touring and the Construction of Qing Rule, 1680-1785* (Cambridge, MA: Harvard University Press, 2007). In regards to status, Tokugawa Japan serves as an important comparison. According to Daniel Botsman, status was a central organizing principle in its judiciary realm, determining the severity and type of punishment as well as jail conditions. See Daniel V. Botsman, *Punishment and Power in the Making of Modern Japan* (Princeton: Princeton University Press, 2004).

17. Kim, *The Emotions of Justice*, 101.

18. Ibid., 43.

19. Ibid., 74.

20. Ibid., 13.

21. Ibid., 154.

cognitive turn in scientific studies of emotion.²²

Wrongful Deaths and *The Emotions of Justice* are seminal works in legal historiography and the broader field of Chosŏn studies. Most valuable is their methodological intervention that foregrounds the use of unconventional primary sources and stresses the salience of practice over ideology.

First, the books each center a different archive as the superior material to study legal practice. *Wrongful Deaths* utilizes inquest records that contain direct quotes of testimonies by non-elites and argues that although “testimonies were simultaneously being edited to meet judicial guidelines, and some alteration of nuance inevitably occurred,” they “transmit[ed] the intact statements and realities of people from every corner of Chosŏn society,” thanks to the expressivity of clerk’s writing (*idu*) in inscribing “oral testimony in colloquial form.”²³ On the other hand, *The Emotions of Justice* foregrounds petitions as the prime archive of the various emotions and narrative strategies deployed by legal subjects. It also denies the potential of inquest records on the grounds that they subscribe to an “emotion-less architectonic” form.²⁴

Nonetheless, far from a “precarious endeavor,” inquest records can certainly be used to detect emotions. While petitions mainly convey the petitioner’s emotions, inquest records reveal a constellation of sentiments by the accused, the various witnesses, and even the investigative officer who occasionally laments and empathizes with the wrongful deaths.²⁵ Further, editorial insertions by writers of inquest records seem no more present than those by scribes of petitions. As such, the utility of both legal archives—inquest records and petitions—seems contingent less upon their natural limitation than upon the historian’s creative interpretation.

Second, recent works by the three Kims have notably advanced our understanding of legal practice. As articulated by Karlsson, this methodological concern with practice in contradistinction with ideology is a vital commitment to uncovering the “multifaceted reality of actual practices, processes, and

22. Ibid., 11.

23. Kim and Kim, *Wrongful Deaths*, 9.

24. Kim, *The Emotions of Justice*, 18.

25. Take for example, the inquest officer for case 4, where the officer empathizes with the deceased Madam Chang, saying, “I, a passerby, lament [this] with a sigh [because Madam Chang’s chastity deserves to receive much higher recognition than an ordinary commemorative arch]. Ms. Ŭn is a truly pathetic sort of person who made up baseless stories. She had already swallowed the excrement and apologized. Why on earth did she, audaciously and full of evil intention, hang bones to slander Madam Chang again?” Kim and Kim, *Wrongful Deaths*, 71.

mechanisms” that transpired in history and everyday life.²⁶ Thanks to this methodology, these two books have shown clearly that despite the dynasty’s hierarchical and hereditary social structure, the reality of Chosŏn’s judiciary practice was fluid and responsive to the dynamic agendas of marginalized subjects from all walks of life. Peddlers, slaves, and women exercised full legal capacity in the late Chosŏn court, and contested the dynasty’s stratified and gendered society with strategies as varied as petitions, emotive performance, suicide, and testimonies.

26. Karlsson, “Beyond the Great Tradition,” 387.

