

Thinking with Chinese Cases: *Crime, Law, and Confucian Justice in Korean Case Literature**

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Abstract

Heumheum sinseo (*Toward a New Jurisprudence*) published by Dasan Jeong Yak-yong (1762-1836) in 1819 clearly shows that Joseon legal specialists endeavored to manage judicial affairs by bridging the huge gap between imported Chinese legal system and indigenous customs. Their efforts, however, were not limited to merely pointing out the affinities and divergences, which existed between Chinese law and Korean law. In particular, Jeong Yak-yong adopted Chinese forensic science and reinterpreted Chinese case narratives in the context of Korean legal culture. His Heumheum sinseo is one such case, which attempted to reconstruct the Korean legal tradition within the Chinese tradition of thinking with cases or an 案. The main goal of this article is to examine how Korean legal specialists reestablished a way of judicial thinking through Chinese legal cases, with a focus on Heumheum sinseo. Furthermore, this study will illustrate how a genealogy of specialist knowledge was constructed in the East Asian tradition in which legal norms were rooted in Confucian ethics.

Keywords: Dasan Jeong Yak-yong, *Heumheum sinseo* (Toward a New Jurisprudence), King Jeongjo, case, Confucian justice, *Daminglu* (Great Ming Code), *qing-li-fa* (sentiment, principle, and law)

* This work was supported by the National Research Foundation of Korea funded by the Korean Government (MEST) (NRF-2007-361-AL0014).

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Producing Legal Literature in the Korean Legal Tradition

It is undeniable that the influence of Chinese law in Korean legal culture appeared consistently throughout the Joseon dynasty (1392-1910) since the adoption of China's *Daminglu* 大明律 (Great Ming Code), by the founder of the dynasty, King Taejo 太祖 (r. 1392-1398). Reception of the *Daminglu* as the model law code was well-suited for and consistent with the overall policy pursued by the early Joseon government: that is, to uphold the Confucian principles of government.

The codification of Chinese law led by the founding emperor of the Ming dynasty Zhu Yuanzhang 朱元璋 (r. 1368-1398) reflected the emperor's desire to eliminate "barbarian" influences and revive Han values.¹ What the emperor saw as Han values, or the essence of Chinese culture, was by and large based on Neo-Confucian doctrines. To the emperor, the restoration of the Confucian order through moral reform meant the revival of Chinese culture. In achieving this, law codes would play a significant role. On this account, the emperor placed great emphasis on the establishment of law codes and legal institutions when founding the new dynasty.

The *Daminglu* reflected an increasingly frequent legal tendency of the time, which might be called the "Confucianization of law" (Qu 1965, 267-279). The Confucianization of law means that the Confucian principle of *li* 禮 (propriety) is applied to universalistic legal norms. Confucian jurists, on the basis of *li*, tended to prefer relativism and the principle of differentiation in social status over the Legalistic universalism in pursuit of political stability and social harmony. The regulations of the Confucian *li*, hence, were eventually incorporated into the legal codes. Zhu Yuanzhang proclaimed the Confucian *li* as the essential part of the *Daminglu* as well (Huang [1368-1644] 1961, 8: 176).

Without doubt, the legal principles espoused by the Ming elite had a profound impact on Korean lawmaking when the *Daminglu* was adopted by the elite in the early Joseon period. As William Shaw (1981, 19) has pointed out, the interaction between the newly imported Neo-Confucian

1. Concerning the codification of the *Daminglu*, see Jiang (2005, xxxiii-civ).

social standards and a highly developed law code might have appeared even more intense in early Joseon society than in Ming China, in which the subtle reflection of Confucian norms on the law gradually took shape.

One of the most marked tendencies in Korean legal policy was a preference for moral influence in government leadership, rather than legal pressures. Law and punishment were usually downplayed as a “necessary evil” in Confucian government, that is, a minor means to maintain social harmony and moral order. Moral suasion and the implementation of Confucian leniency in judicial administration were constantly stressed, while the abuse of punishment and torture at legal courts was prohibited by law. Thus, a shift from private and irregular punishments to public and regular punishments, or the institutional implementation of Confucian leniency (*heumhyul* 欽恤), in the penal system became even more visible after new legislation and the amendment of existing laws during the reign of King Yeongjo 英祖 (r. 1724-1776), who intended to reinforce the Confucian influence in government by means of institutional rectification.²

However, it seems obvious that the Joseon dynasty showed much interest in law despite its overt abhorrence toward the excessive use of law or punitive devices in government. Joseon kings, ever since the adoption of the *Daminglu*, had more often than not promulgated legal rules in varied forms such as royal edicts (*sugyo* 受教), case decisions, and statutory material to regulate discrete affairs of state and to solve the problem of lack of consistency in law enforcement or decision-making. The principle of a veneration for “the complete institutions of the royal ancestors” (*jojong seongheon* 祖宗成憲) would not remain a permanently insuperable obstacle to systematic legislation, despite the reluctance of Joseon kings to revise the law.³ Accumulated legal rules inevitably resulted in the publication of new legal codes in an attempt to unify and integrate complicated

2. Concerning the process of lawmaking and the later development of legal policy in the Joseon dynasty, see Shaw (1981, 3-42). For the transformation of legal policy during the late Joseon period, see Sim (2009).

3. Jo Jiman (2008, 305-359) points out that periodic publications of law codes eventually showed a strong tendency for eclecticism in Korean lawmaking to accept the practical demand on law revision.

and even conflicting bodies of law.

The *Daejeon songnok* 大典續錄 (Expanded National Code) of 1492 and the *Daejeon husongnok* 大典後續錄 (Later Expanded National Code) of 1542 were published by the government after the promulgation of the *Gyeongguk daejeon* 經國大典 (National Code) in 1485.⁴ Those *songnok* editions, in which ad-hoc edicts were compiled, were published as a supplement to the main law code so as to reflect social and economic changes during the early Joseon period.

However, it was during the late Joseon period that codification efforts to make major improvements over the previous dynastic code became even more marked. *Sokdaejeon* 續大典 (Supplement to the National Code) was promulgated in 1746 after the publication of proliferating ad-hoc statutes and supplementary codes, such as the *Sugyo jimnok* 受教輯錄 (The Compilation of Royal Edicts). *Daejeon tongpyeon* 大典通編 (Comprehensive Edition of the National Code) promulgated by King Jeongjo 正祖 (r. 1776-1800) in 1785 was intended not only to supplement the two earlier dynastic codes but also to unify different forms of law, such as *daejeon*, *songnok*, and *jimnok*. Along with the *Daejeon hoetong* 大典會通 (Comprehensive Collection of the National Code) promulgated by King Gojong 高宗 (r. 1863-1907), four major dynastic codes made appearances throughout Joseon in response to the demand for legal reform. However, what concerned Joseon kings and legal specialists most in the course of legal reform was how to reinforce Confucian norms: how Confucian morality and social values could be institutionalized and specified in legal rules.

Apart from the government's close attention to codification and law revision, however, it was not an easy task to prevent the misinterpretation of legal codes or judicial malpractice in adjudication. Alongside a growing number of lawsuits in late Joseon, there was also an increasing demand for legal manuals and court case collections to assist judicial officials in understanding legal matters and in making rational judicial decisions.

4. The earliest indigenous code of the dynasty, however, appeared in 1397: the *Gyeongje yukjeon* 經濟六典 (Six Codes of Governance). On the compilation process of the *Gyeongguk daejeon*, see Jeong (2008, 239-304).

Legal handbooks such as the *Sasong yuchwi* 詞訟類聚 (Collection of Judicial Cases) (1585), the *Gyeolsong yuchwi* 決訟類聚 (Collection of Case Decisions) (1649), and the *Gyeolsong yuchwibo* 決訟類聚補 (Supplement to the Collection of Case Decisions) (1707) were published by local officials on the basis of their personal experiences.

Undoubtedly, government efforts to rationalize the laws and standardize legal procedures culminated during the reign of King Jeongjo. The *Chugwanji* 秋官志 (Records of the Board of Punishments), containing a number of legal provisions, edicts, and procedural guidelines along with illustrative case summaries, was published in 1781. However, one of the most comprehensive case records published in Joseon was the *Simnirok* 審理錄 (Records of Judicial Reviews), containing 1,112 murder cases reviewed by King Jeongjo himself between 1776 and 1799. Each case record, consisting of a case summary, autopsy reports, legal analyses drafted by judicial officials, and the king's final verdict, in the *Simnirok* showed how Joseon kings reached their final verdicts.

Given that King Jeongjo showed great interest in legal matters, it can be assumed that it was not an accident that *Heumheum sinseo* 欽欽新書 (Toward a New Jurisprudence) was published in 1819 by Jeong Yak-yong 丁若鏞 (1762-1836), one of the greatest Korean thinkers of the Silhak 實學 (Practical Learning) School, who earned the king's confidence as a reformist government official. Not surprisingly, the book reflected King Jeongjo's legal policies by focusing on the murder cases reviewed by the king.

Most remarkably, however, *Heumheum sinseo* was not just a casebook or a legal handbook: by combining both, it was designed to provide a contemporary readership with analytical yet practical approaches to the law. In fact, it contained over 500 cases along with the summation of original judicial documents. Yet, the book's main concern was not regarding how to sort out each criminal case and draft a wide variety of legal writings, but rather regarding how to analyze each case in order to reach a judicial ruling conforming to "sentiment, principle, and law" (*qing-li-fa* 情·理·法; *jeong-ri-beop* in Korean pronunciation). For the basis of judicial reasoning, in particular, Dasan 茶山 (Jeong Yak-yong's courtesy name) relied not only on Korean legal rules and precedents but also on Chinese law cases.

Korean case literature seldom pointed out the affinities and divergences existing between Chinese law and Korean law by referring to Chinese cases, even though Korean legal specialists and judicial officials showed great interest in the Chinese legal tradition.

In this sense, it is remarkable that *Heumheum sinseo* clearly shows how Korean legal specialists built their own understanding of law and justice by bridging the gap between imported legal norms and indigenous legal practices. The author attempted to reconstruct the Korean legal tradition within the Chinese tradition of thinking with *an* 案 (case).⁵ However, in this regard, the book has hardly received its due attention. Thus, my main concern is to examine how Chinese case literature was reinterpreted in *Heumheum sinseo* in an attempt to reestablish a way of analyzing Korean legal cases. Furthermore, from a broad perspective of comparative history, I hope this study will illustrate how a genealogy of specialist knowledge on law and justice was constructed in the East Asian tradition, in which legal norms and judicial practices were fundamentally based on Confucian ethics.

The Compilation of *Heumheum sinseo* and Chinese Case Literature

Heumheum sinseo consists of five chapters and 30 volumes in total, including 549 entries of case summaries along with Dasan's detailed commentaries on law and justice. As mentioned above, the book is not just a court case collection or a legal manual for judicial officials. It seems that the author intended to encompass a wide range of legal problems in his book. Pierre-Étienne Will (2007, 63) has divided Chinese legal handbooks into three categories: expositions of the penal code and related regulations; guides to the judicial procedure providing advice on how to handle forensic evidence, conduct investigations and interrogations, and control subordinate personnel; and anthologies of *pi* 批 (judicial opinions; *bi* in Korean pronunciation) and *pan* 判 (sentences). His categorization is

5. For more discussions on *an*, see Furth (2007, 1-30).

Table 1. *The Structure of Heumheum sinseo and Its Sources*

Chapter	No. of volumes	No. of entries	Subject	Sources ^a
<i>Gyeongsa youi</i> 經史要義 (The Gist of Classics and History)	3	130	Confucian legal interpretations of the exemplary criminal cases collected from Confucian classics, historical records, and case histories (including both Chinese and Korean cases)	Confucian classics such as <i>Chunqiu</i> 春秋, <i>Liji</i> 禮記, <i>Mengzi</i> 孟子, <i>Shujing</i> 書經, <i>Yijing</i> 易經, and <i>Zhouli</i> 周禮; <i>Chinese dynastic histories</i> such as <i>Dongdu shilue</i> 東都史略, <i>Lun heng</i> 論衡, <i>Mengxi bitan</i> 夢溪筆談, <i>Ouyangongji</i> 歐陽公集, <i>Tangyin bishi</i> 棠陰比事, <i>Yiyu ji</i> 疑獄集, <i>Yutang xianhua</i> 玉堂閑話, and <i>Zheyu gujian</i> 折獄龜鑑; and Korean dynastic histories such as <i>Gukjo bogam</i> 國朝寶鑑, <i>Munheon bigo</i> 文獻備考, <i>Sunam jeongyo</i> 順庵政要, and <i>Yusan chonghwa</i> 西山叢話.
<i>Bisang juncho</i> 批詳雋抄 (Excellent Examples of Judicial Opinions and Case Reports)	5	70	How to draft legal documents such as case reports, judgments, court opinions, and judicial reviews	<i>Xinke huangming zhushi lianming qipan gongan</i> 新刻皇明諸司廉明奇判公案, and <i>Xinzheng zizhi xinshu quanji</i> 新增資治新書全集
<i>Uiyul charye</i> 擬律差例 (Case Decisions Based on the Code and Analogous Regulations)	4	188	Case examples decided by closely analogous articles in the Qing code	<i>Qinglu tiaolie fujuan futu</i> 清律條例附見撫題部覆
<i>Sanghyeong chuui</i> 詳刑遺議 (Further Discussions on the Discreet Use of Punishments)	15	144	Case records and additional commentaries on selected criminal cases reviewed by King Jeongjo	<i>Sanghyeonggo</i> 詳刑考
<i>Jeonbal musa</i> 剪披蕪詞 (Solving Criminal Cases by Candlelight)	3	17	Criminal cases solved by the author himself and his additional commentaries	<i>Myeongcheongnok</i> 明清錄
Total	30	549		

^a Dasan did not always reveal the sources he used. For a further study of the literary sources used in *Heumheum sinseo*, see Sim (1985, 31-62).

useful in understanding the genre of Korean legal literature as well. In the case of *Heumheum sinseo*, which ambitiously deals with a wide variety of subject matters, all the three categories of legal handbooks are covered.

The book's structural complexity also derives from the fact that Dasan worked on it for decades, revising his earlier manuscripts concerning Korean law cases. *Heumheum sinseo* was allegedly completed in 1819, but its earliest version *Saan* 事案 (Court Cases) made an appearance as early as 1794. It was likely that Dasan began to write the *Saan* in 1790, documenting criminal cases contained in 100 volumes of the *Sanghyeonggo* 祥刑考 (The Inquiry of Discreet Use of Punishment).⁶ Chapter four "Sanghyeong chuui 祥刑追議" (Further Discussions on the Discreet Use of Punishments) is considered to be a revision of the earliest manuscript of *Saan*.

Furthermore, chapter five "Jeonbal musa 剪跋蕪詞" (Solving Criminal Cases by Candlelight) was based on the *Myeongcheongnok* 明清錄 (An Examination of the Ming and Qing Legal Codes) and the *Heumhyeong jeonseo* 欽刑全書 (A Complete Book of Discreet Punishments), in which criminal cases analyzed by Dasan himself were documented (Yu 1991, 186-190). All of these manuscripts written by the author were incorporated into the later version. As a result, the last two chapters were composed of the most recent Korean law cases.

The latter part seems marked in that it contains various judicial documents submitted by Korean judicial officials to superior offices, especially compared to the *Simnirok* centered on final verdicts with case highlights. Each entry starting with the key elements of a criminal case includes detailed autopsy reports, case records, and judgments, most of which suggest a specific penalty on the basis of legal rules and judicial reasoning. It more often than not ends with authorial analyses or comments on the judgments and judicial opinions submitted by King Jeongjo or judicial officials. Most interestingly, however, chapter five is, for the most part, devoted to narrative reconstruction, recounting the author's personal expe-

6. Jeong ([n.d.] 2002, 286: 98a). The *Sanghyeonggo* contained the judicial reviews and verdicts delivered by King Jeongjo. It has not survived into the present, but many of the cases were recompiled in the *Simnirok*. For more detail, see Yu (1991, 181-214).

riences. These case narratives, as Will (2007, 64) has accurately pointed out in his study of Chinese forensic literature, are “not simply about fact finding—about ‘solving the case,’ as in detective stories.”

The former three chapters contain a wide variety of Chinese law cases apart from the latter concentrating on Korean law cases. The main focus in the introductory chapter, “Gyeongsa youi 經史要義” (The Gist of Classics and History), lies in Confucian principles, specifically how Confucian norms could be realized in criminal justice. Viewing Confucian classics and historical accounts as primary legal sources was not at odds with the Korean legal tradition in the least. For instance, the *Gyeongguk daejeon* was rooted in the *Zhouli* 周禮 (Rites of the Zhou) (Jeong 2008, 265-276). Chapter one, “Gyeongsa youi,” clearly shows that Korean legal specialists understood legal principles well enough through a wide variety of Chinese legal literature, including not only Confucian classics but also Ming revisions of casebooks such as the *Zheyu guijian* 折獄龜鑑 (Precious Mirror for Solving Court Cases) and the *Tangyin bishi* 棠陰比事 (Parallel Cases under the Pear Tree). The case examples carefully selected by the author in the first chapter are closely linked to Confucian principles and legal problems concerning capital crimes such as parricide, treason, incest, and revenge. Dasan pinpoints the significance of reading Confucian classics as legal literature in the preface of the chapter:

The basis for solving a criminal case lies in *heumhyul*. What *heumhyul* means is to deliberate on a criminal case and have compassion for the person. Furthermore, as far as how to solve a criminal case is concerned, one should be flexible by considering both principle and relevant circumstances. In case no proper legal rules are offered, old precepts and history should be used for judgment. This is why I have picked out the gist of classics and history in order to prepare for such use (Jeong [n.d.] 2002, 286: 6a).

The principle of *heumhyul*, or the great emphasis on the significance of human life in criminal justice, also coincided with the Confucian legal policy constantly emphasized by King Jeongjo.

Apart from chapter one concerning legal standards and principles for

judgment, chapter two, “Bisang juncho 批詳雋抄” (Excellent Examples of Judicial Opinions and Case Reports), concentrates on practical issues: that is, how to draft legal documents. A convergence of law and literature appears more marked in this section:

Pi 批 is a judicial opinion prepared by a superior court, while *xiang* 詳 is a case report submitted by a local court. In our country, the latter is called *cheopbo* 牒報 and the former *jesa* 題詞. Other than that, there are *shen* 審 (judgments), *bo* 駁 (arguments), *yan* 讞 (court opinions), and *ni* 擬 (verdicts). By and large, these different forms of legal writing are similar to one another. Yet, each writing form is well-structured, detailed, and precise by using the literary style of *siliuwen* 四六文 (parallel prose) and keeping consistency in logic. On the other hand, our legal documents such as *cheopbo* and *jesa* are vulgar, incoherent, and tedious. Even vulgar jokes appear in some texts. Such sarcastic tones make legal documents so frivolous that they do not coincide with the intention of making a judicial decision with circumspection, compassion, and respect. The *guanhua* 官話 (standard-language) phrases used in formal writing are highly profound, making them difficult to understand, but they would not be entirely unintelligible if we thoroughly studied the writing examples (Jeong [n.d.] 2002, 286: 30a).

As a matter of fact, a huge gap existed between Chinese legal writing and the Korean counterpart in the aspect of using legal jargons or standard-language format. The *idu* 吏讀, a system for writing Korean phonetically with Chinese characters, was incorporated into Korean legal writing in a complex yet standardized way.⁷ Despite the extensive commentaries on Chinese legal jargon provided by Dasan, however, this chapter is most concerned, not with different forms of Chinese legal writing, but with legal rhetoric, that is, the art of persuasion. By and large, literary recon-

7. The writing system of *idu* 吏讀 used Chinese characters to transcribe phonetic sounds or to express Korean syntax. Since the emergence of the *idu* system presumably in the sixth century, it was continuously used by government functionaries in drafting official documents, even after the invention of the Korean script Hangeul in the fifteenth century. On the forms of legal writing, see Sim (1985, 37-38).

structions in both Chinese and Korean legal writing were taken for granted in that they were rewritten to fit fixed formulas. In particular, both Chinese and Korean legal writers were engaged in reediting the relevant information for case reports and rewriting extensive oral testimony by eliminating local dialectal expressions.⁸ Dasan also focuses on how to create clearly convincing arguments in a literary fashion without distorting truth or violating formulas. Indeed, the difference between law and literature in the use of rhetoric is minimal at best, as Robert E. Hegel (2007, 81) has argued.

The case examples in chapter two were drawn from Ming-Qing case collections such as *Xinke huangming zhushi lianming qipan gongan* 新刻皇明諸司廉明奇判公案 (Finely Carved New Edition of Celebrated Case Stories Solved by Upright Judges of the Ming Dynasty; hereafter, *Lianming gongan*) and *Xinzens zizhi xinshu quanji* 新增資治新書全集 (Complete Collection of New Writings on Government; hereafter, *Zizhi xinshu*). Far more interesting is that the former is composed of fictional case narratives. These *gongan* (court case fiction) stories are less akin to actual case reports than to “detective” stories. The *Lianming gongan* was published by Yu Xiangdou 余象斗 in 1598.⁹ Yu was not only a popular writer and editor who worked on quite a few Ming *gongan* collections, but also a renowned publisher who owned a printing house at Jianyang of the Fujian province.

Chinese *gongan* was first introduced to Korean audiences in the early seventeenth century. The earliest reference to *gongan* fiction—in particular, Judge Bao story collections—is found in a private letter that King Seonjo 宣祖 (r. 1567-1608) wrote to his married daughter Princess Jeongsuk 貞淑 in 1603.¹⁰ Unlike popular historical romances such as the *Sanguozhi yanyi* 三國志演義 (Romance of Three Kingdoms), it seems that Chinese court case fiction never gained a wide readership. Elite interest in this genre, however, persisted in Joseon. We can find the evidence of this in *Heumheum*

8. On the use of rhetoric in Chinese legal writing, see Hegel (2007, 81-106).

9. For this text, a photocopied reprint is available. See *Guben xiaoshuo jicheng*, vol. 273.

10. See Kim (1986, 184). In reference to the circulation of Judge Bao story collections in late Joseon Korea, see Bak (1999, 39-70).

sinseo, in which *gongan* was well read as a genre of legal literature.¹¹

The *Zizhi xinshu* was published by a renowned dramatist and novelist Li Yu 李漁 (1611-1680?).¹² He compiled over 1,200 pieces of official documents written by Ming-Qing officials in 20 volumes of the *Zizhi xinshu*. Thirty-eight case examples contained in *Heumheum sinseo* are drawn from the entry of *renming* 人命 (murder cases) under the section of “Panyu 判語” (Judgments) in the *Zizhi xinshu*. These examples drawn by Dasan are less concerned with sentencing and rather focus on the rationalization of arguments by a subtle use of legal rhetoric, as in the *Lianming gongan*.

Apart from the former two chapters, however, chapter three, “Uiyul charye 擬律差例” (Case Decisions Based on the Code and Analogous Regulations), shows particular attention to legal rules. In this chapter, each case consists of brief case summaries and decisions based on analogous articles. The focal point in the 188 cases drawn from the *Qinglu tiaolie fujian futi bufu* 清律條例附見撫題部覆 (Case Reports Submitted by Governors and Judicial Reviews by the Board of Punishments Appended to the Qing Code and Itemized Regulations)¹³ is the questions of how to decide a case when there are no exact statutory rules and how to map a judicial decision onto the rules.

According to Dasan, “The law would be more than enough if the murderer should be punished by the death penalty” (Jeong [n.d.] 2002, 286: 65a). Yet, he subsequently adds that pardons as well as capital punishments are subdivided into five degrees according to the *Daminglu*. On this account, the utmost concern in Chinese judicial reviews was the cau-

11. Before the publication of the *Heumheum sinseo*, it is hard to find any evidence concerning the reception of the *Lianming gongan* by Korean readership. In reference to the reception of traditional Chinese fiction by the Korean readership, see Min (2001). However, there is no reference to the *Lianming gongan* in this book.

12. For the *Zizhi xinshu*, see Li ([n.d.] 1992, vol. 16, 7).

13. According to Sim Huigi, (1985, 50) the *Qinglu tiaolie fujian futi bufu* seems to have been the appendix to the *Daqing luli* 大清律例 (The Great Qing Codes). There exist several recensions of the *Daqing luli*, but the edition used in *Heumheum sinseo* has not been found so far. Dasan indicated that the majority of the murder cases were recorded during the Qianlong 乾隆 (1735-1795) and Jiajing 嘉慶 (1796-1820) periods.

tious application of capital punishments with a thorough examination of the relevant circumstances of the crime. However, Dasan deplorably explains, “(in contrast) our law was of such simplicity and brevity that there existed no capital punishment other than beating to death, as only exile for leniency” (Jeong [n.d.] 2002, 286: 65a). In the context of Korean legal culture, Dasan calls more attention to the significance of strict and rational adjudication in accordance with specific legal standards, although he condemns the Chinese Legalist tendency, or heavy reliance on the law, for consequently leading to the proliferation of capital crimes such as adultery and parricide in Chinese society. Apparently, he never doubted the centrality of seeking Confucian leniency in adjudication. From a Confucian perspective, coercion by elaborate legal rules was not considered an effective means to prevent social evil as observance of old customs was.

Notwithstanding the author’s apparent disapproval of expanding the existing legal mechanism, it seems remarkable that the third chapter containing Qing criminal cases and the Qing code is closely linked to the following chapter, “Sanghyeong chuui,” in which the murder cases reviewed by King Jeongjo for final sentencing were thoroughly reexamined. The author employed similar legal criteria in categorizing both Chinese and Korean murder cases in these two chapters. For instance, in chapter four, 7 out of 24 entries of Chinese murder cases are identical with their Korean counterparts (22 entries in total) in regards to certain factors such as: the distinction between ringleader and conspirator, between suicide and murder, and between injury and disease; judging intentional or unintentional killing; pleading insanity; inquiry of revenge; and spouse-killing cases, while five entries for Chinese manslaughters such as parricide and killing bondservants are closely akin to at least two Korean cases.

The crime categories defined by the author in chapter three appear rather unique and complicated. On closer examination, however, it can be understood that the categorization of Chinese capital cases reflects the overall legal discourse commonly shared by Confucian jurists whose focus in sentencing was on criminal intent, moral standards, psychological states, kinship, status, etc. The use of similar legal criteria is not limited to

chapter three, but found fairly consistent throughout. This clearly demonstrates the complex interaction between Confucian ideology, judicial reasoning, and rhetoric in adjudication.

Despite Dasan's critical assessment of Chinese legal culture, his interest in wide-ranging Chinese capital cases appears persistent in *Heumheum sinseo*. Undoubtedly, his true intention was not just to emulate Chinese legal culture as a model but also to illustrate how to practice Confucian policies of leniency "within the limits of the law" through Chinese legal literature. As contemporary Chinese legal historian Thomas Buoye (2007, 122) has observed in eighteenth-century Chinese legal culture, it seems remarkable that Dasan saw "the abiding tendency to seek leniency within the limits of the law" and "the rational adjudication of capital crimes" in Chinese law cases.

The Use of Chinese Cases in Korean Legal Literature

By and large, legal reform during the reign of both King Yeongjo and King Jeongjo was intended to reinforce Confucian humanitarianism by prohibiting the abuse of punishment and torture and by advocating an extensive policy of leniency. On the other hand, however, the rational expansion of law through codification efforts eventually increased the tendency for procedural standardization, which also undergirded the link between Korean legislation and Chinese law. *Heumheum sinseo*, hence, was aimed at mitigating a growing tension between Confucian principles and legalist standardization, as well as between sentiment and law, in the context of late Joseon legal culture. In particular, though Dasan agreed with King Jeongjo's legal policy in general, what he considered problematic about the king's policy was the imbalance between sentiment and law. His main concern was that the overemphasis of Confucian ethics over law might override the entire legal system and consequently lead to the undermining of state power.¹⁴ To resolve this, Dasan suggested the determina-

14. For more detail, see H. Kim (2010, 233-267).

tion of the legal limits of leniency in the context of Korean legal culture and the restoration of balance between sentiment, principle, and law by using an approach similar to Chinese law cases.

How did Dasan use comparative law to call for precision in legal reasoning and the rational application of law in Korean law cases? The basic premise suggested by Dasan was relatively simple and clear: “If the circumstance of the crime is verified, we must abide by the national code; if not, we need to apply the Ming code by analogy” (Jeong [n.d.] 2002, 286: 171d).

In fact, even aside from Dasan, most Korean judicial officials followed this premise in adjudication. In *Heumheum sinseo*, Dasan refers to the premise in relation to the case of Bak Bong-son reviewed by King Jeongjo. Bak So-sang had a fight over a sack of grains with his adopted son Bae Jong-nam. In seeing Bae punch Bak in the chest, making him bleed, Bak’s biological son Bong-son beat Bae severely. Bae died four days later. The magistrate suggested that Bak Bong-son be sentenced to exile, reducing the death penalty in accordance with the *Sokdaejeon*. The crime report submitted by the provincial governor in 1784, however, infuriated King Jeongjo, who thought this case should not have been tried as manslaughter. “Bong-son is a natural son, while (Bae) Jong-nam is an adopted son. . . . Bong-son who witnessed this situation could not help but tackle Bae to block his attack, punching and kicking him with all his strength. Bong-son’s actions were spontaneous, in conformity with the heavenly principle and human sentiment. For what reason was this case tried as a manslaughter case in the first place? The article cited by the provincial governor from the *Sokdaejeon* is unclear as well. How would the adopted son’s assault on his adoptive father be tantamount to the assault on a passerby? The paramount consideration in promulgating the law is teaching morals to the people. To decide this case, there is no need to cite the national code or the Ming code. Release Bak Bong-son immediately,” said King Jeongjo.¹⁵

15. MOLEG (1968, 1: 354-355); Jeong ([n.d.] 2002, 286: 171d). An English translation and summary of the *Simmirok*, though it is partial, is included in Shaw’s 1981 book. For this case, see Shaw (1981, 246-247).

Interestingly enough, the king affirms the greater importance of Confucian morality over law in his verdict. However, in his final verdict on a similar capital case from 1785, he is even stronger in his declaration that the ultimate goal of government is “to sacrifice the law to inculcate morals” (*gulbeop donsok* 屈法敦俗), rejecting the legal opinions submitted by judicial officials, which, from the king’s point of view, seem to overemphasize the legal rules (MOLEG 1968, 1: 386; Jeong [n.d.] 2002, 286: 171a). Yet, King Jeongjo was not alone in this thought. In fact, it is said that Zhu Yuanzhang also “sacrificed the law to promote sentiment” (*qufa shenqing* 屈法伸情), pardoning the criminal who was the only son of his elderly parents (Huang [1368–1644] 1961, 8: 3519–3520; Jiang and Wu 2007, 46).

The divergence between King Jeongjo and Dasan is revealed at this point. Though Dasan agrees with the king’s verdict on the whole, he rationally argues how to reflect particular circumstances in adjudication by making the distinction between the Ming code and the national code. Therefore, instead of insisting on “sacrificing the law,” Dasan concludes that the national code must be applied in the case of Bak Bong-son whose circumstances of his crime have been verified.

Capital cases such as Bak Bong-son’s served to illustrate how to mitigate the tension between sentiment and law in Korean legal culture. In particular, Dasan collectively introduces eight such cases under the entry of *jeongni ji seo* 情理之恕 (“granting leniency on the basis of sentiment and principle”) in chapter four. These cases illustrate that, as Jiang Yonglin and Wu Yanhong (2007, 45) put it, “overriding legal rules by appealing the practical reasoning implicit in the sentiment or circumstances of a case” was an age-old issue, not just in Chinese, but also in Korean legal culture.

A prominent example is the case of Jeong Dae-won reviewed by King Jeongjo in 1784, in which Jeong killed his friend for spreading vile slander against Jeong’s deceased mother (Jeong [n.d.] 2002, 286: 172d). According to the *Gyeongguk daejeon*, leniency could be granted if an individual had committed a manslaughter to rescue the parent from imminent danger. However, there were no applicable legal rules in the case of Jeong who committed a murder to protect the deceased parent’s reputation. The peti-

tion writer turned to a historical narrative drawn from Zhu Xi's (1130-1200) *Xiaoxue* 小學 (Lesser Learning) in order to portray the offender as filial and righteous. In the final verdict, the phrase of "sacrifice the law" is used again to take the circumstances of the case into consideration. More interestingly, however, Dasan also agreed wholeheartedly with the legal decision at the time, writing, "To protect a parent from being beaten and injured is a trivial matter. To vindicate the parent's honor, however, is far more significant. Could the case of Jeong Dae-won be judged by this?" (Jeong [n.d.] 2002, 286: 172d). By paying close attention to the individual circumstances of each case, Dasan drew a conclusion on how to adjudicate between sentiment and law in the context of Korean legal culture.

A tendency to "sacrifice the law" for the sake of Confucian indoctrination appears even more marked in celebrated Korean cases such as those of Kim Eun-ae and Shin Yeo-cheok, which are introduced in chapter four.¹⁶ In parallel to the case of Jeong Dae-won, the legal writers who crafted the case reports on Kim and Shin portrayed these offenders as moral examples and legitimized their actions as *uisal* 義殺 (righteous manslaughter) by relying on historical narratives rather than the sources of formal law. For instance, with regard to the case of Kim Eun-ae, a persuasive legal writer laid stress on her virtue by referring to "Youxiazhuan 游俠傳" (Biographies of Knight-Errants) from Sima Qian's 司馬遷 (ca. 145–86 BC) *Shiji* 史記 (Records of the Grand Historian). As can be seen, most legal writers never relied on legal rules alone, but rather attempted to appeal to human sentiment regarding one's circumstances as the basis for legal reasoning. When coming to decisions in court cases that were difficult to adjudicate in accordance with the law codes, not only was it com-

16. Kim Eun-ae killed an old woman who doubted her chastity and publicly insulted her in order to vindicate her own honor. The crime report says that Kim cold-bloodedly stabbed the victim as many as eighteen times (Jeong [n.d.] 2002, 286: 174c). Shin Yeo-cheok inadvertently killed a man while chastising him for abusing his own younger brother (Jeong [n.d.] 2002, 286: 175c). Yi Deok-mu (1741-1793), a prominent scholar of Silhak (Practical Learning) School, wrote biographies of Kim Eun-ae and Shin Yeo-cheok to praise them for their virtue.

mon practice to refer to authoritative texts such as Confucian classics, official history, and literary anthologies, but it was also considered vital to overcome the limitations of written law.

On the other hand, though Dasan did not completely deny the need to sacrifice the law for the sake of the Confucian order, he endeavored to draw attention on how to determine the limits of the law. By emphasizing specialized legal discourse over ethical discourse, Dasan rationalized the basic legal process including examining and using evidence, analyzing the relevant circumstances of the crime, selecting and interpreting legal rules, and reasoning judicial decisions.

Compared to the capital cases centered on moral considerations of the circumstances under the entry of *jeongni ji seo* (“granting leniency on the basis of sentiment and principle”), discussions of legal problems appear far more intense in some capital cases, such as the case of Kang Wa-jeong. The case of Kang is introduced under the entry of *goo ji byeok* 故誤之劈 (“judging intentional or unintentional killing”) found in chapter four (Jeong [n.d.] 2002, 286: 143a). Kang Wa-jeong, a thirteen-year-old boy, was accused of inadvertently killing a neighbor’s child Kim Seok-bong. The victim was riding on his cow when the cow was frightened by Kang. As a result, the victim was flung on the ground, and died from internal injuries overnight. In the case of Kang, it seems obvious that leniency should be granted for the accused. To request for leniency, the magistrate noted the absence of intent and the lack of any clear indication of violence, citing the *Sokdaejeon* that permitted consideration for underage youths involved in *huisal* 戲殺 (inadvertent manslaughter during sports or games).

Of the case, Dasan wrote, “Only the two words, ‘*naeson* 內損’ (internal injuries), are enough to explain the true cause of death. Is the phrase noted above not redundant? There appears to be a tendency to give a tedious explanation for the cause of death whenever a strange murder case is encountered. The problem with such careless writing is too common” (Jeong [n.d.] 2002, 286: 143a). Accordingly, he begins his discussion with pinpointing the lack of clarity in legal writing. For Dasan, however, the effective writing of crime reports was far from a trivial matter, espe-

cially in Joseon society, in which a huge gap existed between written and oral language. To illustrate this, Dasan argues that the determination of causation and fault is seriously affected by one word incorrectly translated into literary Chinese in a Korean law case.¹⁷ Therefore, it is likely that this is the reason the author strove to introduce a wide range of Chinese law cases covering a vast array of possible circumstances in his book. What Dasan was concerned with in terms of legal writing was not just the imposition of the appropriate punishment but also the precise usage of legal language revealing specific legal points: that is, how to precisely rewrite the relevant information including oral testimony, while reflecting the basic legal process.

Yet, what Dasan was most concerned with in the case of Kang Wa-jeong was the failure to make a clear legal distinction between *huisal* 戲殺 and *gwaosal* 過誤殺 (involuntary manslaughter). He argues that it is a big mistake to consider the case as *huisal*, citing the *Daminglu*, which classifies three categories of capital crimes: *xisha* 戲殺 (inadvertent manslaughter during sports or games; *huisal* in Korean), *wusha* 誤殺 (accidental manslaughter), and *guoshisha* 過失殺 (negligent manslaughter) (Jeong [n.d.] 2002, 286: 143a). According to the *Daminglu*, the punishment for a *xisha* should be comparable to that of *dousha* 鬪殺 (manslaughter that occurs during a physical fight) on the grounds that the individuals involved could foresee the harm that might be caused by their actions. On the other hand, manslaughter that is not premeditated but rather accidentally incurred at children's play cannot be considered as a *huisal* in that the latter is foreseen, while the former is not. By confusing *huisal* with the *gwaosal* during children's play, "now people say a *huisal* should not be taken as a murder case, but I think it is all too irrational and shortsighted" (Jeong [n.d.] 2002, 286:

17. See the case of Kang Mun-haeng contained in chapter five, "Jeonbal musa." After carefully rereading the autopsy report, Dasan argued that the indetermination of the main offender in this case was eventually derived by using an inaccurate verbal expression of "push" instead of "throw" in delineating Kang's action. Dasan believed that such an inaccurate expression in legal writing, minor though it may seem, could lead to grave consequences. See Jeong ([n.d.] 2002, 286: 211c).

143a). In his long and painstakingly detailed arguments, Dasan illustrates how to draw a clear line between a *huisal* and *gwaosal* by introducing a few case examples from the *Zhouli* as well as the Ming and Qing codes. “The case of Kang Wa-jeong is a *gwaosal*. How could it be considered as a *huisal*? According to *Sokdaejeon*, . . . the article, though the term ‘play’ (*hui* 戲) is used, does not refer to *huisal*, but rather to killing in affray,” Dasan conclusively puts it (Jeong [n.d.] 2002, 286: 143a).

As such, Dasan more often than not used Chinese sources of formal law as well as authoritative texts for legal definitions. Furthermore, it would have been extremely helpful for a Korean judge to have access to Chinese resources of law as an abundant repository of historical precedents and particular circumstances. This is probably why Dasan included a considerable number of Chinese case summaries drawn from the addendum to the Qing code as crossreferences in his book. These Chinese cases might function as a wide-ranging and well-selected database in which to find a great variety of situations applicable by analogy. For instance, a reader who had interest in the legal discourse argued by the author in the case of Kang Wa-jeong could have found cross references under the entry of *goo ji pan* 故誤之判 (“judging intentional or unintentional killing”) in chapter three.¹⁸

In this way, Dasan strove to reinforce the legal foundation for Korean legal policies in which the appeal to sentiment and principle became an integral part. In *Heumheum sinseo*, he successfully established the legal basis by bridging the gap between Chinese law and Korean law and building a realm of comparative legal history in the East Asian legal tradition.

Concluding Remarks

Heumheum sinseo compiled by Confucian scholar and legal specialist Jeong Yak-yong appears intricate yet scrupulously organized. In chapter

18. Twenty-seven Chinese cases are introduced under this entry. See Jeong ([n.d.] 2002, 286: 67a-70d).

one, Dasan examines a wide range of Confucian classics and historical texts in an attempt to construct the solid bedrock for legal reasoning. In the following chapter, his particular concern is with rhetoric and the art of persuasion in legal writing. Chinese case examples including *gongan* fiction are introduced to illustrate the significance of literary reconstruction in legal writing: the narrative of legal circumstances in legal writing appears inseparable from legal reasoning. These introductory chapters, when considered alongside the Qing murder cases contained in chapter three, clearly show that there was a close link between the Chinese and Korean legal traditions, despite the apparent gap between the two. They also show that applying the legal foundation of the Chinese cases to the Korean legal tradition was not impossible at all.

Through an extremely wide selection of criminal cases in *Heumheum sinseo*, Dasan ultimately hoped to reestablish rigorous legal standards to balance sentiment, principle, and law. Though Joseon kings tended to put more emphasis on moral influence in government, the Korean legal system was based on legal rules as it was on the moral norms of sentiment and principle, similar to the Ming-Qing legal system.¹⁹ Not unlike Korean judges, Chinese judges were accustomed to adjudicating between sentiment and law. In some sense, Chinese casebooks were nothing but “books of sentiment and principle,” as Shiga Shuzo 滋賀秀三 puts it (1984, 284). Nevertheless, Chinese judges tended to seek leniency only within the limits of the law, as Buoye (2007, 122) has correctly pointed out. In his book, Dasan consistently emphasized this abiding tendency for the rational adjudication of capital crimes.

However, although Dasan called for the precise and rational application of the law, he never relied on legal rules alone in determining punishments in criminal matters. For Dasan, not only rule-based legal reasoning, but also circumstance-based reasoning, reflecting the ethical implications of human relationships, was of central significance in sentencing. In this respect, Dasan’s legal thoughts were firmly rooted in Confucian relativism rather than in Legalist universalism. In comparison with contem-

19. For a further discussion on the Chinese legal system, see Jiang and Wu (2007, 31-61).

porary Korean judges, Dasan's legal thoughts were marked by his attempt at negotiating between moralizing effects and rationalization of law. By analyzing both Korean and Chinese cases, Dasan successfully illustrated how moral considerations of the circumstances of the crime could be achieved without sacrificing the law.

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