

King Sejong's Confucian Rule by Law: Focusing on the relationship between law and rule by benevolence

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The era of King Sejong was a golden age of the Confucian statecraft in the Joseon dynasty. This paper will explore the characteristics of the Confucian “rule by law” during King Sejong’s reign. Focusing on the relationships between morality, law and politics, the structural characteristics of the Confucian rule by law will be examined. We will begin by reconstructing the functional meaning of the rule by law since there are various forms of rule by law. We will then approach the Confucian rule by law from a historical point of view. Finally, we will explore the characteristics of rule by law during King Sejong’s reign in the context of judicial administration, focusing on the relationship between law and politics and in the context of legislation, focusing on the Confucian way of answering the paradox of sovereignty.

Keywords: Confucian rule by law, mutual constitution of law and political power, benevolent rule, externalization of law from society, dilemma of sovereignty

Introduction

Questions are often raised as to whether rule by law can be discussed in relation to Confucianism since the term “Confucian rule by law” is used. There are two answers to this question.

First is the view that Confucian statecraft is not based on rule by law but an institution of absolute monarchy with tyrannical control. This is based on the modern Western concept of rule by law, which has established as its main task

the safeguarding of individual rights from the state due to its start as private statutes and not on public law. It is true that East Asian rule by law was not thought to be a mechanism for protecting individual rights from the state, but denying the existence of rule by law within Confucian statecraft would only reduce the concept to the western model. Rule by law in East Asia contains a unique aspect and has developed centering on public law such as the penal code and administrative law and not on the civil code as is the case in the West.

Second, even in cases where the tradition of rule by law is acknowledged in East Asia, it is often seen as merely a legalistic political perspective and putting it in opposition to the fundamental Confucian political perspective such as “rule by benevolence,” “rule by propriety,” and “rule by virtue.” This view is linked to the confrontation between Confucianism and Legalism which each of them individually emphasized to clearly distinguish itself from the other in the early history of Chinese politics. It is also linked with the fact that this confrontation is once again emphasized, but being compared with western Legalism this time in relation to the decline of Confucianized cultures, to criticize the powerlessness of Confucianism during the transition to modern times (Yi Seung-hwan 1998: 170-1). The dissociation between the factual execution of rule by law and Confucian normative self-awareness in Confucian statecraft probably abetted the propagation of this view as well. The attempt to eliminate rule by law from Confucian statecraft results from the misunderstanding which arises from not fully taking the following historical facts into consideration: the impossibility of excluding rule by law from Confucian statecraft at least after rule by law during China’s Qin period; the union of Confucianism and Legalism not only formed the center of orthodox Confucian legal thinking but also became the core principle of Confucian statecraft in practice.

This paper will examine King Sejong’s statecraft from the perspective of Confucian rule by law, and by so doing, to verify the structural uniqueness of Confucian rule by law from both the modern western one and the Chinese legalistic one. In order to avoid committing the same error of reductionism as is implicated in the misgivings mentioned above and to get closer to understanding King Sejong’s Confucian rule by law, the concept of rule by law will be reconstructed from a functional perspective as a hermeneutical point of departure. This will be followed by the general characteristics of Confucian rule by law examined in contrast with Chinese Legalism and the West from a historical perspective. Furthermore, unique characteristics of Confucian rule by law will be examined as they appeared in King Sejong’s execution of statecraft by focusing

on the relationship between benevolent rule and the law within the divided context of the judiciary and lawmaking.

Rule by Law as the Mutual Premise and Mutual Constitution of the Law and Politics (Political Power)

The concept of rule by law from a functional perspective must be established in order to avoid reducing it to a specific form. A functional perspective means to first clarify what the basic referential problem is being attempted to resolve through rule by law and functionally define what a rule by law is in relation to resolving this problem. Only then will the mistake of elevating one of the specific solutions of the referential problem to the norm for evaluating other solutions be avoided so that a comparison of various solutions of the referential problem as functional equivalents can occur.

In a rule by law, the relationship between law and political power is that law provides the form in which political power is employed and political power provides law with the coercing force it needs. The complex relationship between mutual premise and mutual constitution must be comprehended. In order to do so, the referential problem in politics and law must be examined.

Politics usually looks at the authoritative distribution of benefits and burdens and is an important political task. The problem in achieving this task is the production and reproduction of collectively binding decisions (Luhmann 1999: 103). Depending on how this issue is resolved, the authoritative distribution of benefits and burdens will be executed in different ways. This problem thus can be chosen as the referential problem of politics.

This referential problem is in with the perspective that understands politics as one of the communication networks, in other words, as the communication network of collectively binding decision. Communication network of decision means the formation of a recursive structure in which a decision considers preceding decisions to be its premise and at the same time preoccupies itself as a premise for succeeding decisions. Thus, the term "binding" in "collectively binding decision" means that a decision is accepted as the effective premise for other decisions (Luhmann 2000: 84). Political communication fails when this is not achieved.

But the possibility of this failure is structural, because structural disparity is always reproduced in communication of decision.¹ On the one hand, a decision

presents a claim to legitimacy in that there is no room for questioning it. But that claim to legitimacy is still raised in the form of a decision on the other hand. This means that the claim to legitimacy is raised contingently, which in turn refers to the lack of guarantee in its being accepted again tomorrow even if it was accepted today. Thus, the question of how to close this disparity is raised. When this disparity is not closed, the illocutor's decision cannot function as an effective premise that influences listeners' decisions and political failure of communication occurs. Hence political communication must dare to make a leap with its life on the line at every minute due to the structural disparity inherent in communication. The physical power to enforce decisions and the symbolic power to gain agreement is required in order to close the disparity and make one communication act as the premise of subsequent communications to form a network of communication, i.e., to reduce the danger of putting its life on the line. In this context, legitimacy and efficiency are important requirements which must be fulfilled by politics. Moreover, when viewed this way, these two political requirements of efficiency and legitimacy in a two-way relationship of tension are not just requirements that have harassed modern politics but are requirements that must be satisfied at anytime in order for politics to work as a network of collectively binding decisions.

Law also has its own referential problem. Regulations on behavior among at least two people are needed to make public social life possible, and this in turn requires stability of expected mutual behavioral. In other words, a person must be able to predict the behavior of someone else towards oneself with some accuracy, and this must also hold true for the other person. It is difficult for the law to stabilize the mutual behavioral expectations. To resolve this problem, each law generalizes mutual behavioral expectations on temporal, social and objective dimensions, and through this manages to secure the counterfactual stability of behavioral expectations (Luhmann 1985: 40-72).

Generalization of behavioral expectations occurs through the mechanism of normalization on a temporal dimension. When the mechanism of normalization

1. This disparity is also inherent in the general structure of communication itself. Structural gap is included in general communication. We can call this a gap between text and context of communication or a gap between information and illocution or between statement and illocution. This structural gap already emerges clearly in everyday experience in which the reliability of a communicated statement changes depending on the illocuted context, i.e., the illocutor and the circumstance of illocution.

is established, people tend to maintain rather than give up the disappointed behavioral expectations even if a disappointing behavior occurred. Second, there is a need to generalize behavioral expectations on a social level, and this need is satisfied by the institutionalization of expectations. The institutionalized expectations here do not speak for the expectations of specific individuals within a specific network of interaction but instead speaks on behalf of the expectations of a person. People control their behavior by considering the institutionalized expectations as a common direction toward which their behavior must be inclined. Moreover, institutionalized expectations maintain their effectiveness even if a specific individual does not agree with them. Lastly is the generalization of behavioral expectations from an objective dimension, which is related to the issue of how many expectations in behavior can be applied in general despite differences in specific actors or the circumstances of action (Yi Sang-don and Hong Seong-su 2000: 208). For example, when we have expectations in relation to a specific role, we expect the same role-playing, regardless of who the role-player is. In sum, the function of the law is to establish generalized expectations in behavior which conform to all three of the dimensions.²

Rule by law can be understood as an institution that results from the mutual need between law and politics in order to resolve the referential problem of politics and law. But one common problem, or the taming of violence, must first be resolved in order to satisfy the mutual need between law and politics. Due to this common point of reference, law and politics do not only need each other as its premise but also construct each other.

Previously, the ability to enforce and to gain agreement on decisions was said to be necessary in order to resolve the referential problem of politics called production and reproduction of collectively binding decisions. The primary requirement is the ability to enforce a decision, which refers to the ability to socially influence. In relation to political issues, the ability to execute influence through a negative mode of sanction is especially important. The less this negative mode of sanction is restricted by specific subject or circumstance and therefore the

2. Discordance among generalized mechanisms of these three dimensions frequently arises. Since overproduction of norms occurs in society, not all norms can be institutionalized (Luhmann 1985: 73-83). For example, expectations over a heroic act can be normalized but difficult to institutionalize. The law should not speak on behalf of expectations in heroic behavior. This also applies to expectations toward a ruler. Expectations on the act of governing such as those of Yao and Shun can be normalized, but it would be difficult to institutionalize these expectations.

more generally it is employed, the more its ability to enforce a decision increases. Negative mode of sanction containing such a possibility of general employment is indeed physical violence. From this perspective, the core of the ability to enforce a decision lies in physical violence. Max Weber's definition of a state, which stipulates that it is a body of monopoly on violence, also is based on the importance of physical violence in resolving the referential problem of politics.

It would be difficult to guarantee continuous reproduction of decisions solely through the monopoly on violence. There is no guarantee that a decision which is accepted on the basis of violence today will also be accepted tomorrow. Violence itself cannot guarantee the ability to reach an agreement which is required for the production and reproduction of collectively binding decisions, nor can it guarantee legitimacy of decisions. Because of this, law is called on to resolve the referential problem in politics. When violence is monopolized and monopolized violence is executed through a legal form, the basic resolution of that problem is achieved. And through this, violence is transformed into legitimate legal force, i.e., the state power as a legitimate power to enforce decisions. In this sense political power is constituted through law.³

Law not only changes violence into power, it also functions to regulate the context in which power is employed. Power is constituted only through repetitive use of it. This means that anticipation or expectation of employing power is the fundamental element of power, because the stabilized expectation of employing power is necessary for reproduction of power. If this expectation is not stabilized, then power will always be exposed to excessive instability and incur disorder. Thus, stabilization of expectations related to the execution of power to decide is required in order for power to be constructed and reproduced as the power to decide on employment of violence. This can be fulfilled by laws that consider the stabilization of behavioral expectations as its main task. In another words, law stabilizes anticipation and expectation of the use of power in recursive network of power. Its compensation, of course, is the guarantee from power to execute the law.

Violence is also central to resolving the referential problem of law, and the law forms an internal ally with political power based on this common relation to violence. This may be understood as the path of rule by law being constructed

3. This does not mean that all dimensions of politics are constructed through law, because the possibilities of politics external to law are numerous.

from the side of the law.

The relationship between law and violence is manifested in the popular understanding of the law as “punishment.” According to this, law is defined as the legitimate use of violence in response to the violation of norms. Such a way of understanding arises from the request that to secure the stability of expectations, not only behavioral expectations but also the way to recover disappointed expectations should be generalized temporally, socially, and physically when behavioral expectations breakdown. Physical violence reigns supreme as the negative sanction to fulfill this requirement (Luhmann 1985: 86-7). The reason is that physical violence as a negative sanction does not presuppose rank order, role context, or group membership; physical violence is given considerable autonomy due to this. Moreover, physical violence can be universally used irrespective of time, circumstances, object, and context. Thus physical violence follows law like a shadow. If not accompanied by physical violence, then law would not be able to remain as law. Of course, if law did not exist, violence by itself would not be able to secure the stability of expectations.

According to Luhmann, in the earliest phase of the history of law, physical violence was “a means of presentation of expectation, not of realization” (Luhmann 1985: 85). For instance, a blood feud, a common occurrence in ancient societies, was not simply to punish the offender but also a way to express the resolute will to maintain the injured's expectations. Through violent revenge people want to reassure themselves that their solidarity of expectations still functions.

Such a relationship between law and violence is historically re-structuralized. The most important moment for this re-structuralization is the monopolization of violence—to be more specific, the political concentration and centralization of the power to decide to use violence. Importance is placed on legal expectations in order to systemically organize decisions on using violence. The intervention of law compels politics to manifest itself no longer through the direct use of violence but through legal decisions and the execution of naked violence begins to retreat from the main political scene. The important point is that the transition from violence to decision occurs within the law as well. Of course, violence does not disappear but forfeits its meaning as a mode to express legal order. Law emerges as a coherent system of norms, and also manifests itself not through violence but through decision as is the case with politics.

In short, law on the one hand plays the role of transforming concentrated violence into legitimate state power in the process of achieving monopolization of

violence. Law constructs power in this way. On the other hand, law does not receive support from violence but rather receives support from the political power which is constructed by law itself. Law which receives the support of power now exists as a power to decide. In this way power can be said to construct law. Rule by law emerges from the circular process in which the mutual premise of and the mutual constitution of law and (political) power starts with the process of monopoly on and taming of violence.

Genesis and Characteristics of Confucian Rule by law

The origin of rule by law will be examined. Some characteristics of Confucian rule by law in general will be identified in contrast with both the legalistic rule by law in China and the western one.

The appearance of rule by law signifies an important change in the mode of differentiation of society and in the form of political organization as well as presupposing an important change. In the case of China, this change can be summarized as the downfall of the feudal regime of rule by propriety in Western Zhou, China. This feudal regime was grounded in segmentary differentiation of society. Society was constructed through linear lines of clans with the same organizational form or pyramid-like accumulation, and political space was located external to and on top of the clans as a mechanism to control disputes arising among these clans. In such a society, societal integration was achieved through clan code, and the political domain that controlled the relationship among the clans also followed the agnatic principle of organization.

In this mode of rule communication of political decisions was regulated on the basis of clan code, and violence was tamed into power by propriety. Power here was not concentrated at the top of the hierarchical network, but was scattered among various clans, and this scattered power was connected by the agnatic principle of organization. Therefore, a political system is not detached from the family but is deemed an extension of it, the political communicational relationship among the Son of Heaven, feudal lords, *ch'ing ta-fu* (卿大夫), and scholar-officials is organized in a repetitive and linear way between the relationship of superordinate and subordinate descent lines. Such a political system is not differentiated from society (the family, to be more specific) but rather originates deep within society.

This political regime broke down in the Age of Spring and Autumn and in

the Warring States period, whereby the feudal lords disparaging the Son of Heaven and *ch'ing ta-fu* usurping the power of the feudal lords became common occurrences. It may be difficult to say that all institutions and the principle of the rule by propriety had broken down based on these occurrences, but it had become clear that the logically predictable situation of no longer being able to regulate the relations outside the family according to the agnatic principle had come to pass. Along with this, an important transformation occurred in the relations between the state and society. The organizational principle of the state that was consolidated based on the agnatic principle was differentiated into the logic of the state and the logic of the family, and the logic of the family could no longer provide the logic of the state. There arose a requirement for a different political form from the rule by propriety, a new method of government administration that was clearly different from the operating principle of the family. The rule by law asserted by Legalism was an answer to this requirement made by the times.

Legalism saw the concentration of violence which had been divided among various families into the hands of the ruler and the efficient organization of the monopolized violence as the most urgent task to secure a state's survival and to achieve national prosperity and military strength in order to compete with various states. To do this, legalists considered law rather than propriety to be required because they believed that the political sector that appeared outside and between families could no longer be regulated in terms of the stability of expectations provided by propriety which was grounded in kin solidarity. Thus, Legalism advocated the establishment of a political order which was distinguished from the order of agnatic principle by substituting propriety with law as a stabilization mechanism of expectations. Thus, the emergence of Legalism went through an externalization process in which politics and law branched off from their social matrix.

But such a genesis of the legalistic rule by law reveals an important difference when compared to the formation process of the modern rule by law of the West. Law was already formed not in the political sector but in the private sector of society in the West. This law, which had a long history in the private sector, forms the rule by law by joining the political organization called the state that had achieved monopoly over violence in the early modern period. Because of this, law in the modern constitutional state of the West is charged with the task of regulating the use of the state power from the beginning so that the state power does not commit unjust malfeasance; an expansion of the market econo-

my further strengthens such function of the law toward a liberal direction. Due to such a context in origination, law and the state power not only need each other but are in a strained relationship as well in the Western sense of rule by law.

Legalism in China did not emerge in the form of law, which grew within the haven of society as is the case in the West. The historical origin of the legalistic rule by law in China is unique in that the two elements of rule by law, politics and law were simultaneously externalized from society. In other words, politics and law defined and constituted each other during their simultaneous process of seceding and externalizing from society in the case of the legalistic rule by law. In contrast to the strong trait of law and politics requiring each other after they became established separately from each other in the West, law and politics in the legalistic rule by law reveal the characteristic of mutual definition and/or mutual constitution more strongly. Law functioned as an element that constructed a new political form distinguished from rule by propriety, but this new politics simultaneously established law which was independent of the clan code. Law developed centered around criminal law and administrative law in regions that followed Chinese culture, and this historical context sheds light on the comprehension of law widely held, yet in these regions as a means to govern rather than as a means to secure rights.

On the one hand law broke off from propriety and formed into a new kind of normative system that escaped the constraints of the clan code as power became politically concentrated, while on the other hand a new political sector separated from society appeared as the law separated from the clan code held the task of regulating and organizing the concentrated political power. In other words, Legalism's rule by law emerged as law and politics, and constructed each other during their simultaneous externalization process from the social sector which was regulated based on the agnatic principle.⁴

So far the Legalistic rule by law has been explained but not the Confucian one. What characteristics does the Confucian one manifest? Confucianism took the revival of the rule by propriety in Western Zhou as its central task. Of course

4. This does not mean that rule by law is completely separate from the order of agnatic principle. Rule by law of Legalism is also influenced by the order of agnatic principle. But the organizational principle of politics is no longer that of agnatic principle. Thus, a rule by law can be said to contain not absolute autonomy but relative autonomy toward the institution of agnatic principle.

this project was not a simple matter of revivalism or going back to the propriety of Zhou because the propriety emphasized by Confucius was regulated according to the new inclusive principle of “benevolence” (仁). Confucius was aware of the necessity for fundamental principles to deal with new tasks in the public sector which expand outside of the sphere of the family and are no longer regulated simply through existing propriety, but suggested as an answer “benevolence” as an inclusive regulating principle of propriety instead of law. In a sense, law and morality have branched out and broken away from the same propriety through the hands of Legalism and Confucianism, respectively, when the rule by propriety of Western Zhou fell. Confucianism went the direction of moral principle “benevolence” and not “law” in this historical context because it began an attempt to control the political sector through the new organizational principle of society while acknowledging the structural change in the political sector without allowing the political sector to become independent of society.

Such a view of Confucius reveals the basic viewpoint of Confucian rule by law. By advocating “benevolence” as the universal principle of ethics and politics, Confucius presented a principle to resolve the dilemma of the rule by law in later times and to lead normatively the rule of law within the context of lawmaking and the judiciary. Moreover, Confucius was well aware of the function of law which is differentiated from propriety, and he pointed out that propriety and law must be used jointly in politics. “The people become negligent when the government is too tolerant; people must be corrected with a firm grip when they become too negligent. But the people become emaciated when the government becomes too fierce. The people must be handled with tolerance when they are too emaciated. Fierceness must be corrected with tolerance, and tolerance must be corrected with fierceness. Politics must be conducted in this harmonious manner.”⁵ In other words, propriety is important in politics but needs to be supplemented with punishment. Mencius took it one step further and showed the fundamental union of Confucianism and Legalism in Confucian rule by law by stating, “Virtue alone is not sufficient for the exercise of government; laws alone cannot carry themselves into practice” (“Li Lau,” *Mencius*).⁶ Despite this, the position of old Confucianism still put some distance between it and Confucian

5. *Spring and Autumn Annals and the Commentary of Zuo Qiuming* (春秋左傳), 20th year of the reign of Zhao Gong (昭公) (re-cited from Yi Seung-hwan 1998: 23).

6. “徒善不足以爲政，徒法不能以自行。”

rule by law. This was due to its inability to properly take into consideration the evolutionary result of rule by law and its functional advantage.

The concept of a Confucian rule by law can be validly applied only to Confucian government administration after the Legalistic rule by law of Qin. The rule by law of Qin contributed dually to the emergence of the Confucian one. On the one hand, it left behind a political legacy of a centralized power system, and rule by law thereafter became affixed as the administrative grounds that could not be denied by a centralized political system. On the other hand, it clearly revealed that law could not rule by itself, nor could politics be reduced to the legalistic rule by law. So, clear limitation of a rule by law was left as another historical legacy. The history of politics of China after Qin can be said to be the history of mixing and inheriting these two legacies in different ratios. Taking these two historical legacies into consideration, Confucian statecraft attempted to adopt rule by law as the foundation for statecraft with centralized power, and at the same time to regulate rule by law based on the principle of “benevolence” (or through propriety that is interpreted as benevolence) on the other hand. Thus, the Confucian rule by law may be interpreted as a statecraft that can transcend both the legalistic rule by law and the rule by propriety of Western Zhou. Law and morality which have each divided into Legalism and Confucianism after the fall of Western Zhou can also be said to have reunited within the Confucian rule by law.

Due to such a context of origination, the three elements of benevolent rule, estate order, and rule by law are intertwined in the Confucian rule by law. First, benevolent rule and estate order function here as mechanisms with which to check the rule by law. It was pointed out that law functioned as a social restraint against the state power in modern rule by law of the West. And it was also said that the restraint of power through law is weak in the legalistic rule by law because law and power are in a relationship of constructing each other. In comparison, Confucian rule by law acknowledges to some extent the social externalization of politics through a rule by law, but still contains a plan to control the political system through the institutional principle of society. Hence it contains a project to overcome a type of political alienation where a political system becomes independent of society and stays at the top of the head of society to enjoy its own unique life. Here propriety functions as the mechanism that prevents political alienation that is caused by law. Political idea of benevolent rule and estate order as the two elements that check the political system in the Confucian rule by law represent the aspects of political ethics and social order of

propriety. Hence when rule by law is regulated within the context of lawmaking and the context of the judiciary through the political idea of benevolent rule, for example, this regulation reflects the requirement made by estate order,⁷ and, depending on the situation, forms a tense relationship with the principle of rule by law.

Estate order and the notion of benevolent rule also can form a tense relationship. There may not have been tension between the two in a Confucian rule by propriety prior to being baptized by a rule by law, but the possibility of confrontation between the two arises when rule by law intervenes between them. Therefore, the occurrence of this tension in itself can be considered as one of the characteristics of the Confucian rule by law.

Benevolent Rule and Law from a Judiciary Context

The rule by law from a functional perspective and the general characteristics of a Confucian rule by law from a historical perspective have been described. What form does the Confucian rule by law of King Sejong take, which has provided a superior model of Confucian statecraft in the Joseon dynasty? In order to understand the characteristics of the Confucian rule by law during the reign of Sejong, one must first understand the tasks that Sejong had to resolve through rule by law. The first task was the stabilization of a centralized power system, and the second was the realization of the political principle of benevolent rule. The general goal of Confucian rule by law to realize the notion of benevolent rule on the basis of the system of rule by law with centralized power is also shown by Sejong.

Relative to law, the political idea of benevolent rule seems to mean the realization of the principle of benevolence in the application and execution of law in the judiciary and lawmaking context. Therefore, the characteristic of the Confucian rule by law of King Sejong will be examined in the judicial context (section 4) and in the lawmaking context (section 5). Focus will be put on how Sejong resolved the tension among benevolent rule, rule by law, and estate order.

7. This is the temporal limitation of a plan to prevent political independence of a Confucian rule by law. Political exclusion which the Confucian rule by law was attempting to prevent was the political exclusion of the scholar-officials, and the rank order of status was to have been protected from misuse of political power.

1. Monopolization of Violence and the Effort to Publish a Unified Code of Law

The new dynasty of Joseon continued Goryeo's lax political system characterized by a unified system of local magnates but declared the intent to establish a centralized power system. The most urgent task required to do so was the monopolization of violence. Monopolization of violence did exist before but it was insignificant. A case in point was that of private soldiers. Private soldiers played an important role especially during the transition from Goryeo to the Joseon dynasty (lit. "a revolution in surname change") and the Riot of Princes. King Taejong, who knew better than anyone the threat posed by private soldiers to the throne, believed the most important issue in devising the security of a new dynasty was to put private violence, which was scattered through society in various forms, into the hands of the throne and to eliminate potential threats to the throne. Taejong continued to maintain military power and pursued stable monopolization of violence even after abdicating the throne and Sejong ascending the throne. As a result of Taejong's effort, the monopoly over violence was established on a somewhat stable foundation although potential threat to the throne was not completely eliminated when Sejong came to power. But the stability of a centralized power cannot be achieved only through monopoly over physical violence. More than anything else, there was a need to systematically and efficiently organize monopolized physical violence into the upper-lower hierarchy of the power to decide control by law, and for this there was a need to compile a unified code of law.

In state monopoly over violence, there is an inherent paradox of exclusion of violence through concentration of violence. To resolve this paradox, the distinction between legitimate power and illegitimate power is mobilized. Violence that is concentrated in the hands of the state changes into state power as legitimate violence, and all other violence becomes illegal and the object of punishment. From this perspective, legitimacy is the fundamental element constructing the concept of the state power. Legitimacy of power at this point should not end but should continue to be used and created. The state power must not only persistently show response to violations of its rules with punishments but also continue to elaborate the legitimate ground for decisions to use power. To achieve these aims in a stable and efficient manner, the employment of state power must be organized and controlled according to law, and a unified code of law is needed for this.

This task was already recognized during Taejo's reign. King Taejo declared his will to compile a unified code of law in order to build a consistent system of rule by law, and *Criminal Code of Ming* was used as the reference statute book. As part of this effort, *Six Codes of Governance* was completed, promulgated, and enforced in December of the 6th year of the reign of Taejo. Revisions to these codes of law were continually made until *National Code*. Sejong also put his heart and soul into the project of compiling codes of law for approximately fifteen years, or around half the time he was on the throne. Below is a list of this important task in a journal format.⁸

January 29, 1420: A command to delete all statutes which contradict the statutes in the original *Six Codes of Governance* and actually valid statutes, and to discuss and classify them at the Ministry of Rite's Sangjeongso.

August 11, 1422: The Office for Compiling's *Amended Six Codes* is established to compile a more complete *Amended Six Codes* and appointed Yi Jik and Yi Won to the post of Director of Provinces and Maeng Sa-seong and Heo Jo to the posts of Director.

February 8, 1426: First draft of *Six Codes of Governance* is completed.

December 3, 1426: Six volumes of *Six Codes of Governance*, one volume of *Supplementary Records*, and *Registration of Original Codes* is presented by the Office for Compiling.

November 29, 1428: Five volumes of *Amended Codes* and one volume of *Registration* are presented by *Sangjeongso* after reexamining for duplication errors.

March 18, 1429: *Original Six Codes of Governance* as well as *Amended Six Codes* are printed and distributed after reexamination.

March 27, 1430: A lecture on *Amended Six Codes* is given at the royal lecture, and a command to examine it was given.

April 12, 1430: A command is given to investigate the execution of both *Original Six Codes of Governance* in regional dialect and *Amended Six Codes* in classical Chinese at the same time.

May 13, 1431: *Six Codes in Regional Dialect* is printed, distributed, and

8. See Park Byeong-ho (2001: 289-94) on the legal system and compilation of codes of law during the reign of Sejong.

executed, and a command is given to retrieve *Original Six Codes of Governance* which was improved by Ha Ryun.

January 4, 1433: Six volumes of newly compiled *Amended Six Codes on Economics* and six volumes of *Registration* are printed after continuously revising and examining *Amended Six Codes*.

November 20, 1435: A decision is made to examine the new *Six Codes* and add the 30-some missing clauses at the end of *Six Codes*.

Sejong not only pursued the task of compiling and revising on an ongoing basis, but he actively participated in revising, more than any previous kings. Thus each ordinance was passed through him, and he commanded that the codes of law be reexamined during discussions at the royal lectures. His will toward rule by law through improvement of the statute was that strong.

2. Nationalization of Judiciary Power

By steady revision of the unified code of law and by adopting *Great Ming Code*, Sejong's strong will to establish the foundation for rule by law was intertwined with his will toward nationalization of judiciary power. Taming of violence through law does not end with monopolizing military power into the hands of the state in a political context but requires the nationalization of judiciary power which is executed privately in a legal context. The state monopoly of violence will not be executed completely if judiciary power is executed by a body other than the state, which means that there is a sector other than the state where legitimate violence can be used and that unification of governing has not been achieved.

Thus, judiciary violence that had been executed by powerful families who relied on private violence in the form of the private statute within the family since the Goryeo period had to become concentrated into the state's hands. Sejong's thought on punishing a master who killed his slave is the best example of his intent toward nationalization of judiciary power.

In the 12th year of his reign, Sejong gave an order to try Choe Yu-won for felony on killing his slave and sent the following royal missive on punishment to the Ministry of Punishment: "A strict distinction is made between the superior man and the inferior man in the penal code that states, 'one who as a master kills his slave is not committing a crime'; another clause that considers human life valuable states, 'one who as a master kills his slave is punishable by a heavy

sentence.' A slave is human, and thus the crime committed by the master cannot go unpunished because he went against loving and caring humanity by privately deciding on the harsh punishment of killing a slave without determining the crime according to law even if the slave did commit a guilt" (*Sejong sillok* [Veritable Records of King Sejong], March 24, 1430).

According to *Veritable Records*, there were contradictory penal codes dealing with a master privately killing his/her slave. One code defines this act as non-criminal based on the logic of distinguishing hierarchical estates while another code defines the same act as criminal because human life should be valued. This is a good example of the possible confrontation that could arise between the normative principle of benevolent rule to which the Confucian rule by law should be oriented and the feudal estate order that is to be protected through the same Confucian rule by law. In this incident, tension seemed to be forming between the three moments of Confucian rule by law, i.e., the principle of benevolent rule, establishment of a rule by law, and estate order that is to be protected. So the historical form of the Confucian rule by law can change according to the ways to deal with the tension occurred among these three elements. Sejong showed an attitude of sacrificing Confucian estate order while joining the task of nationalization of judiciary power and the notion of humanity not only in this incident but in other similar incidents.

Sejong's decision that "the crime committed by the master cannot go unpunished because he went against loving and caring humanity by privately deciding on the harsh punishment of killing a slave without determining the crime according to law" is not merely based on the notion of humanity but also for establishing rule by law; this is clearly revealed in his royal missive on punishment to the Ministry of Punishment as follows.

"The law on slaves of our nation is to make a firm distinction between the superior and the inferior. Because moral codes depend on this, those who discuss a case of a master killing a slave for committing a crime conventionally praise the master and oppress the slave while calling this a truly good law with refined meaning. It is the prerogative of the one who is king to reward or punish, but even he cannot imprudently kill an innocent man by going against the laws of Heaven of blessing the good and visiting misfortune on what is improper. In particular, a slave is base-born but is one of the people gifted by Heaven, and as a vassal [of Heaven] one should be satisfied with simply commanding people birthed by Heaven.

Hence how can one carry out a punishment at one's own will and rashly kill an innocent man? Benevolence of one who is king merely should like to spare [lives], but how can it be right [for a king] to sit and watch many innocent people being killed without preventing it as if nothing is happening or praise their masters? I do not consider this to be correct.”
(Veritable Records of King Sejong, July 24, 1444)

Sejong makes it clear here that the issue of sparing or killing lives is the prerogative of the king. Thus, privately killing a slave is an act that infringes on the sovereignty as well as going against the notion of benevolent rule. Based on the principles of benevolent rule and rule by law, Sejong put a break on the conventional judiciary practice within the family.

Nationalization of judiciary power and the notion of benevolent rule in actuality coincide with the taming of judiciary violence. As mentioned above, the original relationship between law and violence arises when social externalization of law and politics is not achieved. Hence there is a strong tendency for law to take the way of violent self-manifestation where kinship and agnatic principles are dominant. Patriarchal judicature within the family is just such a case; and one can be caught up in frank emotion of revenge to the point where cruel punishments are meted out in many instances. Nationalization of judiciary power does not simply establish rule by law but has the effect of controlling revenge-filled violence by reconstructing this original relationship between law and violence. In this sense, it becomes an important tool in realizing the notion of benevolent rule in the judiciary context. Criminal policy can easily become wrapped up in the emotion of revenge and turn cruel when the principle of rule by law cannot be established, and it would be easy to fall into the danger of issuing heavy penalties without the political idea of benevolent rule even when rule by law is established. But Sejong shows a model of Confucian criminal policy by joining the notion of benevolent rule on top of rule by law. In other words, the widely discussed penal administration of jurisprudence of Sejong could be achieved based on the Confucian rule by law.

3. Confucian Rule by Law and Estate Order—A debate on the ban on complaints filed by provincial commoners

On the issue of a ban on killing a slave, a doctrine on moral codes for establishing estate order retreated for the moment when faced with the task of nationaliz-

ing judiciary power; it was pushed aside by the logic of benevolent rule and by the need for establishing rule by law. But this did not mean that moral codes were always in a relatively weak position in Sejong's Confucian rule by law. There was a tendency for the logic of rule by law to retreat at the union or compromise between the logic of benevolent rule and the moral codes for estate order, or rather, this could be said to be a somewhat more typical trend. This can be confirmed by examining another important legal debate during Sejong's reign, the debate on the ban on complaints filed by provincial commoners.

The ban was a measure that forbade "clerks and commoners from filing a complaint against their governors and magistrates." It was proposed by Heo Jo and promulgated and enforced in the second year of the reign of Sejong. This was a measure executed with the intent to strengthen the administrative control of local officials based on customs, but it was a conservative legislation that prevented a multi-trial system from a legal standpoint. It was contrary to the notion of benevolent rule in that it blocked the opportunity for the people to air their grievances. There was much debate surrounding this bill perhaps because of its inherent tension. Sejong himself agonized over this after putting the bill into effect, because the three elements of Confucian rule by law, the principle of benevolent rule, the mechanism of rule by law, and estate order clashed with each other in this bill. Below is Sejong's summary of this situation:

"How can it be justice of politics to not allow [the people] to express their feelings of unfair treatment and dissatisfaction? How can it be merely called making a charge when a provincial commoner requests for an appeal on the erroneous judgment to be overturned after a magistrate makes a mistake in judgment on a provincial commoner's paddy fields. Actually, one might say that it is unavoidable. If this is accepted and governed accordingly, how should the magistrate's crime of misjudgment be handled? A person cannot be disciplined if an act of crime is not corrected after the fact of the crime has been established, and permission must be given to file a complaint if the act of crime is corrected; earnestly discuss this matter again and supplement the previous day's text of the royal command." (*Veritable Records of King Sejong*, January 19, 1431)

First, the point of mentioning good customs by Heo Jo and others who proposed the ban on complaints filed by provincial commoners is summarized by Kim Hyo-jeong's appeal: "It is proper for the noble to reign over the base and the

base to uphold the noble, for those in a high position to command those in a subservient position and those in a low position to serve those in a superior position as the logic of Heaven and the moral duty of the people. This is the foundation for governing a state” (*Veritable Records of King Sejong*, May 26, 1428). In other words, an inferior filing a complaint against the superior contradicted the estate order and its moral codes which should be protected by Confucian politics.

Second, the fundamental point of those who desired to get rid of the ban on complaints filed by provincial commoners is that it was contrary to the notion of benevolent rule because errors in judgment and corruption among the magistrates will increase and the people will not have a way of relieving their feelings of unfair treatment and dissatisfaction because the path for reporting the conditions of the people’s circumstances are blocked. Sejong was also concerned about this. “There is a desire in the populace to do this, and a king is appointed without fail to rule because chaos would reign without a king; how can it not be harmful to the dignity of governing when complaints of unfair treatment are not heard?” (*Veritable Records of King Sejong*, June 20, 1431).

Thus the notion of benevolent rule and the moral codes of estate order collided with each other on this bill. The notion of benevolent rule is a guiding idea of Confucian rule by law pursued by Sejong. Confucian estate order is the goal of social integration to be pursued through the Confucian rule by law. Besides, the consolidation of estate order based on Confucian moral codes became a new and important political task for Sejong since a centralized system of rule of law was established to a certain extent, and accordingly the monopoly of violence was no longer the central issue. It was difficult to give up either the notion of benevolent rule or the estate ethics in this situation.

Third, Sejong suggested a plan of prohibiting accusations and charges but of making exceptions in cases of unfair treatments, as a solution to this dilemma. “The king said, ‘People would not be able to express their feelings of unfair treatment and dissatisfaction if one who is in an inferior position is prohibited from accusing a superior; what if cases of cruelty are heard and processed but accusations against bureaucratic officials are not heard?’” (*Veritable Records of King Sejong*, January 19, 1431).

But this suggestion created a new problem because this raised the issue of how to handle the crime of the magistrate who made the erroneous judgment when cases of unfair treatments are heard. As Sejong pointed out, “A man cannot be disciplined when the name of the crime has already been established but

the crime is not punished; if the crime is punished," it will not stop at making getting one's unfair treatment heard but "permit accusations." In other words, not punishing the magistrate who made an erroneous judgment contradicts the principle of rule by law, and punishing it would be a violation of the estate ethics.

Fourth, Sejong came to the following conclusion at the end as he faced the trilemma of Confucian rule by law. "Having given consideration to this matter, not accepting written documents to appeal one's unfair treatment would interfere with the justice of government due to not being able to resolve one's unfair treatment, and further, to punish the crime of misjudgment based on the complaint would not be proper because it would be a bad influence by seeming that an inferior can disregard a superior. Preserve individual positions by simply accepting written documents that appeal unfair treatments and correcting errors in judgment without punishing the bureaucratic official's misjudgment" (*Veritable Records of King Sejong*, October 24, 1433).

Sejong ultimately considered the mechanism of rule by law as a compromise between the two goals of benevolent rule and the consolidation of estate order. It was not necessary for these two goals to conflict with each other. They formed a tense relationship because the element of rule by law inserted itself into their relationship. Hence, this issue was resolved by putting aside the element of rule by law.

Of course this decision on the part of Sejong was a compromise based on political judgment. Sejong probably saw his compromise plan as giving the people a chance to air unfair treatment and assisting in maintaining control over local influential families by local magistrates at the same time. Moreover, this was seen as helping to establish Confucian social order which the new dynasty was pursuing. Finally, he probably saw the necessity of avoiding confrontation with yangban bureaucratic officials who were partners in statecraft. In short, a system of rule by law that formed through a certain externalization from society had to compromise with Confucian social order once again. From this perspective, this compromise by Sejong was not made based on an individual judgment but can be said to be a compromise logically forced by the notion of Confucian rule by law which plans to socially check the system of rule by law that is to a certain extent externalized from society.

Benevolent Rule and Law as Seen from the Context of Lawmaking— The paradox of sovereignty and benevolent rule

Within the context of the relation between law and power, Sejong organized monopolized violence into a legal form and gave rise to the hierarchical state power, and he proceeded to establish a national criminal justice system by integrating private judiciary power into the hierarchical bureaucratic system based on organized power as well. A certain amount of regulating lower levels of state power were achieved through such a mutual constitution process of law and power even if it goes through political compromise. A paradox that is difficult to resolve, however, emerges at the top level of state power. This is the paradox of sovereignty.

The paradox of sovereignty here comes from the fact that the existence of elements of arbitrariness of decision and self-will are inevitable at the zenith of the dominating system as a hierarchical decisive system. This self-will is inevitable, but it must be legally restricted and controlled since it contains the danger of misappropriation or abuse. This was the case with the Confucian rule by law that had the task of overcoming the abuse of rule by law like that of Qin. Its arbitrariness, however, could not be controlled by law at all. Therein lies the problem. In other words, the sovereign also must be bound by law, but the sovereign is above the law. This is the case of traditional legal culture of East Asia including Joseon where law acts as a sovereign's command or administrative method. According to Dasan Jeong Yag-yong, "Law is the command of the ruler, thus to not follow it is to not follow the command of the ruler. How can one who is a vassal [of the ruler] dare to do so?" (Dasan Yeonguhoe 1978: 219). Under such a perception, the sovereign cannot be controlled by law. Then how can the sovereign's self-will be restricted? How can the inevitability of restriction on self-will and its impossibility coexist?⁹

Why, if the self-will is inevitably included in the system of domination which is legally organized? Perhaps because the mutual constitution of law and power cannot completely create a legally controlled space, violence cannot be completely transformed into legal power, legal mode that controls the network of political decisions cannot completely tame the fortuitousness or self-will of

9. There is a need to consult this paradox to understand how a political system understands one and in what way it describes oneself. The history of self-awareness of the political system can be said to be the history of equivalent solutions to this question and paradox.

political decision, and the list of standards for political decisions cannot be completed through legal norms.¹⁰

Of course, self-will that was scattered all over is organized and becomes concentrated on the zenith and center of the domination as unification of domination is formed through a legal method. Hence self-will is likely to become concentrated as the sovereign's self-will, and other self-will is demoted to objects of legal punishment. Unification of domination can only be completed based on the self-will of the sovereign in this sense. But self-will is a huge void in the middle of unification of domination in that the self-will can no longer be ruled. The self-will of sovereignty is presented as an empty space inside the unification of domination, but this empty space is what makes the unification itself possible. Then the question of how to solve the paradox of sovereignty is equivalent to the question of how to fill this empty space and hide it from sight.

Many possibilities exist to resolve this paradox. The first may be to request for the sovereign to come under the restriction of the law. This is the easiest solution, but it is also the easiest solution to topple. This immediately raises the issue of who and in what way will they enforce such a request to the sovereign. If someone can enforce such a request on the sovereign, the position of the sovereign will already shift to the requestor. And if there is no one to enforce such a request, then the will of the sovereign will determine whether the request will be accepted or not, in which case the net of self-will is merely extended. Therefore this issue cannot be solved solely by a legal instrument and originates the dilemma of the Legalistic rule by law.

The second solution of the paradox of sovereign comes from the perspective of natural law. For those who are in favor of natural law, the self-restraint of a sovereign is a legally impossible task and a contradiction. So they seek to resolve the issue another way. The point of their solution is the distinction between law and morality. The general strategy to resolve a paradox is to distinguish the tangled dimensions, which appear here in the form of distinction between law and morality. This is a strategy to fill the structurally empty space of self-will located within the legal space of domination with morality. This means that the self-will of the sovereign is restricted by morality.

The first characteristic of Confucian rule by law in relation to the paradox of

10. Law transforms violence into power, but law itself is still located on top of established violence. Refer to J. Derrida's (2004) manuscript for more information.

sovereignty is that the division of morality and law by natural law was presented as a solution to the paradox. Confucianism requires the law to adapt to the mind of the people and to represent the Heavenly principle, and requires the ruler to have the highest level of moral self-cultivation. Such a request is the product of a solution to restrict the self-will of the sovereign in a moral way through the division of morality and law. The relationship between benevolent rule and law as shown by Confucian rule by law within the context of lawmaking appears here. The benevolent rule pursued by Sejong functioned as a mechanism to justify the rule by law with the moral principle of “benevolence” and to resolve the paradox of sovereignty.

The form of differentiation of society also greatly influenced the Confucian attempt to resolve the paradox of sovereignty by differentiating morality and law. In those days, the Joseon society was a stratified society with the distinction of center/top and periphery. This is distinguished from the segmented society in which same clan organizations parallel and the functionally differentiated society in which diverse spheres containing unique codes and functions exhibit relative autonomy.¹¹ Of course the family/clan still formed the foundation of society as a multi-functional organization, but the entire society was no longer the expansion and repetition of family; the entire society was stratified based on the horizontal distinction between center and periphery and the vertical distinction between upper and lower rank.

This form of societal differentiation provided a condition in which the distinction between the parts and the whole could display a dominant role as a central schema that interprets the world. People commonly express the relationship between the parts and the whole as the whole is more than the sum of the parts. The surplus element which is indicated by the expression “more than” corresponds politically to the sovereign at the top of the stratified society who exercises ultimate self-will, and at the same time politico-ethically corresponds to the highest moral principle that is distinct from law.¹² In other words, the moral principle of “benevolence” is overlapped on the self-will of the sovereign, and in this way the self-will is hidden and the paradox resolved.

But the distinction between law and morality was not the only means to solve the paradox of sovereignty in the Confucian rule by law. It could probably

11 See Luhmann(1997: 595-788) concerning the three forms of differentiation of society.

12. Offering the sage and king in the same light is not unrelated to this in a Confucian tradition.

provide a normative standard for criticizing the self-will of sovereignty but it in itself was not a mechanism that could realistically constrain self-will or solve the paradox. It would be difficult in reality to expect the self-will of the sovereignty to be restricted by morality. The practical constraint of sovereignty is achieved only through power relations inside the political elite and its institutional mechanisms. The division of morality and law has the full force only when it becomes interwoven with such power relations and institutional mechanism.

The power relations that bring realistic limitations of sovereignty ultimately emerge in the form of power relations between king and the *yangban* bureaucratic officials in a Confucian rule by law. The basic intent of a Confucian rule by law actually lies in controlling the political system of domination externalized from society with the organizational principle of society.¹³ To that extent, the tension between state and family and tension between king and the *yangban* bureaucratic officials are inherent in the Confucian rule by law.

We have examined above how such tensions manifested themselves in the context of applying the law but also appears in the context of lawmaking. It is already implied within the differentiation of morality and law. The moral principle “benevolence,” which was regarded as the principle of Heaven in Confucianism, was the product of naturalization of social ethics based on the agnatic principle. Thus, the notion of benevolent rule that restricts the sphere of legal domination with the moral principle of “benevolence” could not fail to reflect the perspective of Confucians that restricts the logic of the state based on the logic of society (organizational principle of the family’s agnatic principle at the time).

The two roles played by “benevolence” of benevolent rule can be distinguished in this context. Benevolence functions as a normative mechanism that restricts law and in this way gives a solution to the paradox of sovereignty on a semantic level. On the other hand, “benevolence” speaks on behalf of the feudal social order. Thus, the principle of benevolence reflects the requirements and

13. This is related to the sensitive awareness shown by Confucianism toward the issue of the political paradox of sovereignty in comparison to Legalism. Legalists who attempted to understand politics from a political perspective of practical movement inside the political system were reflectively weak in inquiring into the unification of a political system. In contrast, Confucianism, which has its start in the perspective of always controlling politics from a social view, is confronted with the issue on unification of the political system, and thus, the issue on the paradox of sovereignty, for which there were many chances to earnestly consider and had a strong motive for so doing.

expectations of yangban scholar-officials. A restraining influence of the yangban scholar-officials over sovereignty also operates inside the concept of “benevolence” as a principle that justifies and restricts law.

This point is also reflected in the principles of lawmaking during the reign of Sejong. According to Park Byeong-ho, five principles during the reign of Sejong can be summarized (Park Byeong-ho 2001: 295-302). First, a law must be old. Second, a law must be a good law. Third, a law must follow the beliefs and will of the people. Fourth, a law cannot be altered or abolished rashly. Fifth, even a king must follow the law. Not only the last principle but also the other four express the intent to restrict the self-will of the sovereign lawmaker.

The first principle confirms the way time is understood in a traditional society. It places ideal social conditions in the past rather than the future, interprets history as the origin of the history of corruption, and considers the old to be better than the new. But an even more important point is the fact that the old laws mainly point to clan codes like the rites of Zhou and their agnatic principle. Thus, the principle that law must be an old law has the effect of restricting the self-will of ruler by agnatic principle.

This also applies to the principle that a law must be a good and refined law. The modifiers “good” and “refined” were terms that mainly express the compatibility of law with the dominant ethics of estate. Sejong also used those words during the discussion about the ban on complaints filed by provincial commoners. “Lower and base people cannot trespass against high and noble superiors on the whole; to ban provincial commoners or clerks and petty officers from filing charges against the bureaucratic officials who are their superiors is a truly good law and refined law” (*Veritable Records of King Sejong*, October 24, 1433).

The principle that a law must follow the beliefs and will of the people also comes from the opinion that law should not be enacted according to the self-will of a king. This had an especially important role in the power relation between king and the scholar-officials because the power to interpret the beliefs and will of the people was in reality in the hands of the scholar-officials.

Finally, emphasis on the power of the minister and remonstrator is also an important mechanism with which the self-will of the sovereign is restrained from a perspective of a political institution. The power of the minister and remonstrator is emphasized in a Confucian rule by law because it is judged to be difficult to expect effective governance and restraint on the self-will of the sovereign by relying solely on the ruler’s moral character and self-cultivation. People expect sage-kings to restrain their self-will. The request to be a sage internally

and be a benevolent king externally in fact reflects this expectation. But this expectation for the sovereign can be normalized but not institutionalized. Restraint of self-will can be expected through the differentiation between morality and law on a normalized dimension, but this expectation cannot be expanded to the institutional dimension. This is due to the fact that a king with an average level of virtues and self-cultivation should be assumed at an institutional level. Hence to restrict the ruler's self-will and its negative result, it is necessary to establish a political institution which emphasizes the power of the minister and remonstrator by no means less than the sovereignty. This is the institution of co-governing of ruler and vassals (君臣共治). It may be understood as a necessary institutional mechanism to resolve the paradox of sovereignty within the framework of Confucian rule by law. This institution may be interpreted as a Confucian mode of division of power, which cooperates with the distinction between morality and law on the one hand and restrains the self-will of the sovereign while reflecting the tension between king and the *yangban* bureaucratic officials on the other hand. The brilliant achievements of the Confucian rule by law of King Sejong might be the result of fully utilizing the good aspects of this co-governing of ruler and vassals.

References

- Joseon wangjo sillok* (Veritable Records of the Joseon Dynasty), translated into Korean, on CD.
- Choe Jong-go. 1980. *Beobsawa beobsasang* (The History of Law and Legislative Thought). Seoul: Bakyongsa.
- . 1982. "Hanguk jeontongsahoeeseoui beop, dodeok, ye" (Law, Ethics, and Propriety in Traditional Korean Society). *Hangugui gyubeom munhwa* (Normative Culture of Korea). Seongnam: The Academy of Korean Studies.
- Cheong Kwok Wha, comp. 2003. *Jungguk beomryul sasangsa* (The History of Thought of Chinese Legislation), trans. by Yim Dae-hui, et al. Seoul: Acanet.
- Dasan Yeonguhoe. 1978. *Yeokju mongminsimseo* (Interpretation of "Admonitions on Governing the People") 1, original by Jeong Yag-yong. Seoul: Changjakkwa Bipyongsa.
- Derrida, Jacques. 2004. *Beobui him* (The Power of Law), trans. by Jin Tae-won. Seoul: Munhakkwa Jiseongsa.

- Fan Zhong Xin (范忠信) et al. 1996. *Jungguk beomryul munhwa tamgu* (Investigation of the Legislative Culture of China), trans. by Yi In-cheol. Seoul: Iljogak.
- Habermas, Juergen. 2000. *Sasilseonggwa tadangseong* (Between Facts and Norms), trans. by Han Sang-jin and Park Young-Do. Seoul: Nanam.
- Hart, H. L. A. 2001. *Beobui gaenyeom* (Concept of Law), trans. by Oh Byeong-seon. Seoul: Acanet.
- Kim Hyong-hyo. 2003. *Mulhak, simhak, silhak* (The Study of Materials, the Study of the Mind, the Study of the Practical). Seoul: Cheonggye.
- Luhmann, Niklas. 1985. *A Sociological Theory of Law*. London: RKP.
- . 1995. *Das Recht der Gesellschaft*. Frankfurt am Main: Suhrkamp.
- . 1997. *Die Gesellschaft der Gesellschaft*, Bd2. Frankfurt am Main, Suhrkamp
- . 1999. *Gesellschaftsstruktur und Semantik*, Bd4. Frankfurt am Main: Suhrkamp.
- . 2000. *Die Politik der Gesellschaft*, Frankfurt am Main: Suhrkamp.
- Nishida Daiichiro (西田太一郎). 1998. *Jungguk hyeongbeobsa yeongu* (A Study of the History of Chinese Penal Code), trans. by Cheon Jin-ho, et al. Seoul: Sinseowon.
- Park Byeong-ho. 1987. *Sejong sidaeui beomnyul* (Code of Law in the Era of King Sejong). Seoul: Sejongdaewang Ginyeom Saeophoe.
- . 1996. *Geunseui beopkkwa beopsasang* (Law and the Idea on Law in Modern Times). Seoul: Jinwon.
- . 2001. “Sejong sidaeui beop—beobjewa beobsasang” (Law in the Era of King Sejong—The legislation and the idea on law). *Sejong munhwasa dae-gye* (An Outline of the Cultural History of the Era of King Sejong) 3, compiled by Sejongdaewang Ginyeom Saeobhoe. Seoul: Sejongdaewang Ginyeom Saeophoe
- Sim Hui-gi. 2001. “Sejongui daemyeongnyul suyonggwa sabeobjedo gae-hyeok” (King Sejong’s Acceptance of the *Great Ming Code* and Reformation of the Judiciary System). *Sejong munhwasa dae-gye* (An Outline of the Cultural History of the Era of King Sejong) 3, compiled by Sejongdaewang Ginyeom Saeobhoe. Seoul: Sejongdaewang Ginyeom Saeophoe.
- Xiao Gong Quan. 1998. *Jungguk jeongchi sasangsa* (The History of Political Thought of China), trans. by Choe Myeong and Son Mun-ho. Seoul: Seoul University Press.

Yi Sang-don and Hong Seong-su. 2000. *Beop sahoehak* (Sociology of Law). Seoul: Bakyongsu.

Yi Seung-hwan. 1998. *Yuga sasangi sahoecheolhakjeok jaejomyeong* (Shedding Light Anew on Socio-Philosophical Thought on the Confucian School). Seoul: Korea University Press.

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