



# East Asian History

NUMBER 42 · MARCH 2018

[www.eastasianhistory.org](http://www.eastasianhistory.org)

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Design and production	Lindy Allen and Katie Hayne Print PDFs based on an original design by Maureen MacKenzie-Taylor  This is the forty-second issue of <i>East Asian History</i> , the fifth published in electronic form, March 2018. It continues the series previously entitled <i>Papers on Far Eastern History</i> .
Contributions to Back issues	<a href="http://www.eastasianhistory.org/contribute">www.eastasianhistory.org/contribute</a> <a href="http://www.eastasianhistory.org/archive">www.eastasianhistory.org/archive</a>  To cite this journal, use page numbers from PDF versions
ISSN (electronic)	1839-9010
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Contact	<a href="mailto:eastasianhistory@anu.edu.au">eastasianhistory@anu.edu.au</a>
Banner calligraphy	Huai Su 懷素 (737–799), Tang calligrapher and Buddhist monk

Published by  
The Australian National University



# THE DEATH OF HŎ HAMJANG: CONSTRUCTING A DILEMMA FOR OFFICIALDOM IN EIGHTEENTH-CENTURY CHOSŎN

Matthew Lauer

## *Episode I: The Initial Complaint and the Magistrate's 'Moment of Suspicion'*

Hŏ To 許壽 (dates unknown) was the elder brother of Hŏ Hamjang 許咸章 (dates unknown) and a resident of the Western District of Namwŏn 南原.<sup>1</sup> A serious case involving these brothers began on 2/2/1736, when To reported to the local magistrate that his younger brother had been viciously assaulted and verged on death.<sup>2</sup> In that report, To identified two assailants: Kim Sŏngdae 金成大 (dates unknown) and Kim Munŭi 金文儀 (dates unknown), two cousins who lived in the same village as the Hŏ brothers. The magistrate apprehended the two suspects and interrogated them, concluding that further investigation and more conclusive evidence were needed. He dispatched a local military official to conduct an exploratory investigation. The military official's report included some basic observations on Hamjang's condition. The official had arrived at Hamjang's house just as dusk was passing and noted that Hamjang's breathing was extremely belaboured — indeed, Hamjang seemingly verged on death. The magistrate notes that his dispatched official spent no time inspecting any of Hamjang's wounds.<sup>3</sup>

Though the military official's observations may seem superficial, they were actually of considerable legal significance. Once an assault received the attention of local officials, a principle referred to as the 'period of criminal responsibility' (*kohan* 辜限) came into effect. This principle stipulated simply that the assailant bore responsibility as a murderer for the death of the victim if the victim died within a prescribed period of time following the attack.<sup>4</sup> The records provide certain indications that the magistrate began to treat Sŏngdae and Munŭi differently after receiving the report on Hamjang's condition, perhaps in conjunction with onset of the period of criminal responsibility. For example, the magistrate uses new terminology to describe the incarcerations of the Kim cousins. Whereas the magistrate simply uses the term 'incarcerate' (*sugŭm* 囚禁) to describe their initial apprehension and interrogation, he designates their

1 Namwŏn — currently a mid-sized city in Northern Chŏlla province, South Korea — was a major administrative region during the Chosŏn period (1392–1910).

2 The name of the magistrate is never revealed in the case records from the source (the *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek* 南原縣牒報移文成冊) from which this paper derives. As will be discussed in a subsequent section, certain aspects of the compilation of this document and its conditions of production are unclear because the magistrate and his editorial team provide no introductory remarks.

3 *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek* 南原縣牒報移文成冊, in Yi Yŏnghun 李榮薰, ed., *Han'guk chibangsa charyo ch'ongsŏ 1 poch'ŏp p'yŏn 1* 韓國地方資料叢書 1 報牒篇 1 (Sŏul: Yŏgang Publishers, 1987), p.135. (This particular source is formatted without independent pagination; however, Yi Yŏnghun 李榮薰 has provided modern pagination as part of his compiled volumes of sources for Korean local history. Therefore, this paper will reference these documents using the pagination provided by Yi.)

4 The actual duration of the period of criminal responsibility (ranging between twenty and fifty days) varied according to the implement (or lack thereof) used to inflict the wounds. These criteria are spelled out in the *Da ming lu* 大明律, upon which Chŏng Yagyong commentates in his *Mongmin simsŏ* 牧民心書. For more on this topic, see Chŏng Yagyong (trans. Byonghyon Choi), *Admonitions on Governing the People: Manual for All Administrators* [*Mongmin simsŏ*] (Berkeley: University of California Press, 2010), pp.737–39.

5 *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek*, p.135.

6 *Ibid.*, pp.135–56.

7 Sun Joo Kim and Jungwon Kim, *Wrongful Deaths: Selected Inquest Records from 19th-Century Korea* (Seattle: University of Washington Press, 2014), p.12.

8 *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek*, p.136.

continued incarceration after the military official's return as 'strict incarceration' (*ŏmsu* 嚴囚).<sup>5</sup> Though we find here no definitive indication that a standardised connection existed between these legal categories, the change of character clearly indicates an added degree of severity.

The details of the case appear clear and uncomplicated to this point. The divisions between guilty and victimised, assailant and attacked seem firmly established. That clarity and transparency all but evaporated on 8/2/1736, when To newly reported that Hamjang passed away on the night of the initial inquiry.<sup>6</sup> Several aspects of this report proved puzzling for the magistrate. First, the six-day gap between the date of death and the date of the second report seemed particularly odd. Villagers bore a responsibility to apprise the local officials of assaults promptly, whether the assault was fatal or not, so that the investigators might not lose any opportunity to collect valuable evidence (especially if derived from examination of the corpse).<sup>7</sup> How much more inexplicable must it have seemed to the magistrate, then, that To would be tardy in reporting Hamjang's decease? The authorities had already involved themselves in the case and anticipated the death of Hamjang, the timing of which held crucial legal ramifications.

The magistrate's confusion only deepened when To began to explain Hamjang's death in terms that contradicted his initial statement. He provided an alternative theory of Hamjang's death that effectively absolved Sŏngdae and Munüi of any responsibility. The words of To's elderly mother (*nomo* 老母) figured prominently in that explanation. The magistrate summarises To's statement as follows:

To's elderly mother said [to him]: 'Hamjang's death resulted from the increasing severity of his chronic illness, it did not necessarily result from the attack. Do not report this to the authorities [and initiate] a autopsy examination!' Because she spoke with great firmness and resolve, [the Hŏ family went about] dressing the corpse for burial and, [in fact], completed the mountainside burial itself. Also, now, [To] requested that Sŏngdae and all those [implicated in his actions] be released. This whole situation has grown extremely strange.<sup>8</sup>

To hoped to overturn his previous, confident indictment of Sŏngdae and Munüi with an unexpected explanation based on the hastening symptoms of Hamjang's chronic illness. The magistrate himself suspects this new interpretation from the very beginning. What could account for such a complete reversal within a span of six days? What happened to all that righteous anger that To displayed during his first report? And what was the significance of the dressing and burial of Hamjang? The magistrate ordered the drafting of a set of interrogation questions to help demystify To's new statement.

### *Episode II: The Impassioned Dissuasion of Hamjang's Elderly Mother*

From this point in the case, the magistrate viewed Hŏ To not as a victim and 'bereaved family member' (*sich'in* 屍親), but rather as a suspect guilty of unexposed criminal activity. For that matter, he seems to have applied this designation to the Hŏ family in its entirety. What else but illegal activity could have motivated such a radical reversal of their argument in so short a window of time? The magistrate focused his interrogations on To primarily because that member of the Hŏ family submitted the reports in both instances — clearly, To occupied a central position within the family and in the handling of the case.

In his testimony, To fully corroborated his mother's earlier statements. He even elaborated on those statements in an attempt to thicken the smokescreen that the Hŏ family hoped to create. He first addressed the topic of his brother's chronic condition. To described Hamjang in blunt terms, revealing the full extent of his brother's debilitation and disfigurement. The magistrate writes:

Within To's statement: 'My brother Hamjang, [having suffered] from "summer heat disease" for ten years, constantly wailed and moaned with pain. The disease eventually worsened to the point of being chronic. His skin sunk down into his bones, and he no longer resembled a normal, healthy person. For people high and low in this village, this is a matter of common knowledge.'<sup>9</sup>

To provides an alternative, plausible explanation for the observations that the military official made about Hamjang's condition during the initial inspection. In introducing this information, the Hŏ family attempted to force a choice between two opposing theories of death. Their argument revolves around the notion of 'summer heat disease' (*poksŏ-byŏng* 伏暑病), the malady that To cites as the reason for Hamjang's worsening condition. The basic theory of the illness drew from notions of the way that the human body interacted with changes in seasonal temperatures. Specifically, it held that certain people retain the heat of the summer season within their bodies and organs, only to release it spontaneously as the cooler fall or winter months began. The expulsion of heat subsequently resulted in a wide variety of violent bodily reactions ranging from stomach aches, to vomiting, to diarrhoea.<sup>10</sup> Deaths were sometimes attributed to 'summer heat disease' (as is obviously attempted in Hamjang's case). The family also seemed at least partially confident that an autopsy, if ordered, would fail to help in that determination. In short, the Kim cousins' attack was not to blame — Hamjang's pre-existing condition was.

To then provides specific reasons for the six-day delay. The magistrate records To's testimony as follows:

On the thirteenth day of this month, an argument erupted between Hamjang and Sŏngdae because of a [longstanding] issue between them. As for Sŏngdae, he ultimately picked a fight [with Hamjang]. At the same time, Munŭi, who is Sŏngdae's cousin of the same surname, threw himself into the fray. And so, in an uncontrolled fit of passion, I restrained Sŏngdae and Munŭi and requested that the local authorities apprehend them. Indeed, upon my brother's passing, I should have informed the authorities once more; however, since [Hamjang] already suffered from a severe illness that was virtually untreatable, it would not have been possible to adjudicate [the case as a murder solely on the basis that] he sustained grave wounds [in the altercation].<sup>11</sup>

This passage strongly suggests that the magistrate detected a self-recriminatory tone in To's testimony. The underlined portion above provides a key clue to discerning this tone. To avoids asserting that he acted decisively in requesting the apprehension of Sŏngdae and Munŭi following their (vaguely described) 'altercation' with Hamjang. Instead, To presents his prior report as the result of a 'fit of passion' that he could not suppress. To further admits that he knew of the legal requirement to inform the authorities of his brother's death; however, he asserts that the result of any such report was foreordained — that any further pursuit of a murder conviction would be fruitless because of the complicating factor of his brother's disease. In short, To's initial report was simply a mistake of haste.

We thus come to the final component of To's recorded testimony. After asserting that he made several missteps in the handling of his brother's case,

<sup>9</sup> *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek*, p.136.

<sup>10</sup> 'Poksŏ' 북서 伏暑 in *Hanŭihak taesajŏn* 한의학 대사전 (Seoul: Chŏngdam, 1998), <<http://terms.naver.com/entry.nhn?docId=2334540&cid=51276&categoryId=51276>>.

<sup>11</sup> *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek*, pp.136–37.

12 *Ibid.*, p.137.

13 Yi Subong 이수봉, *Changnye munhwa ūi ihae* 장례문화의 이해 (Sŏul: Kyŏngin Publishers, 2008), p.155.

To appeals to higher principles to justify his lateness — he portrays his laxity with the law as necessitated by the demands of ritual and filiality. To do this, he once again invokes and elaborates on the prior statements of his elderly mother. In the quoted material that follows, the magistrate records how To acquiesced to his weeping mother's request not to let any aspect of the investigation disturb the funeral preparations:

My eighty-year old mother, crying and weeping, said: 'He is dead, and that is all [there is to say]. Now, if we were to relay these things to the officials and fully adjudicate the matter as a murder case, then not only will I lose the opportunity to act during the normal [ritual] period for dressing the corpse for the mourning and burial rites (*yŏmsi* 殮屍), but also I will not be able to bear hearing and seeing all of the things [that will be revealed during] the many autopsies [that will surely] be performed on him. If it comes to this, then I will have difficulty going on. [I implore you], do not under any circumstances report this to the authorities and initiate a murder inquiry.' She strongly and repeatedly attempted to deter me. However, had I *not* been deterred, truly [we would have had to] delay beyond the designated days the [performance of] such rituals as the corpse dressing (*susi* 收屍), the placing in the coffin (*ipkwan* 入棺), and the mountain burial (*sanbin* 山殯).<sup>12</sup>

Timing is the central issue here. The mother mentions the time limitations to emphasise her profound sense of concern about adhering to proper standards of ritual. Some of the rites that she mentions were, indeed, highly time-sensitive — just as any funerary ritual is, by necessity, time-sensitive, given the inevitable decomposition of the body. Had the investigation continued unabated, the family's window of opportunity almost surely would have closed. The corpse dressing presents a particularly illustrative example here. To properly perform the corpse dressing, the family of the deceased had to acquire, prepare, and lay out the body before *rigor mortis* fully set in. After first plugging the deceased's ears, nose, and mouth with cotton, the bereaved then had to massage and rub the fingers, toes, hands, and feet in such a way that they were left straight and uncurled. The same applied to the legs and arms. The gender of the deceased determined the final positioning of the hands about the body. The family completed all such preparations in anticipation of the eventual wrapping and shrouding of the corpse (*yŏmsŭp* 殮襲), the proper execution of which required a body without any severe contortions. The placing of the body in the coffin immediately followed the rite of shrouding.<sup>13</sup> In sum, it seems entirely plausible that the constraints of time weighed heavily on the heart and mind of Hamjang's elderly mother.

One further strategy informs the rhetoric of To's argument. If To's mother felt such a profound sense of ritual duty, then To would have had to support her convictions by virtue of the filial relationship. Note that the magistrate never explicitly frames this quotation in filial terms; however, without the implication of filial obligation, it becomes difficult to explain why a personal request from To's mother held any legal significance. To found himself in an insoluble situation where he was forced to weigh his legal responsibilities against his own ritual responsibilities and filial obligations to his mother. In turn, he attempts to saddle the authorities with a 'dilemma of their own making' by generating a sense that *their* legal stipulations (that is, autopsy procedures, responsibility for reporting, etc.) and *their* ritual norms (that is, the timeline for all the various rites) placed contradictory demands on the family. The basic demands of the filial relationship thus were threatened.

The attempt of the Hŏ family to divert the attention of the authorities away from the investigation is plain to see. They presented three distinct arguments to that end: one concerning Hamjang's illness, one concerning To's hastiness, and one concerning their mother's fretfulness. Of the three, the mother's plea seemed to hold the greatest weight. In the coming sections, we will see that the magistrate suspected from the very beginning that Hamjang's family harboured ulterior motives. After collecting further testimony, the magistrate finally shed some light on those motives.

### *Episode III: The Private Restitution Agreement*

After sitting with To for a second round of interrogation, the magistrate concludes that the Hŏ family's plea did not represent a genuine expression of concern about ritual. Rather, they presented their new, three-pronged argument to distract from some private dealings that transpired during the six-day gap. The magistrate discovered that the Hŏ and Kim families had forged a private restitution agreement (*sahwa* 私和) in that time. The families, therefore, hoped that the magistrate might cease all official involvement in the incident, close the case early, and let them return to their normal lives.

In cases involving serious crimes during the Chosŏn period, families often forged settlements to avoid the various risks associated with the investigation process. The family of the victim often faced the greatest financial burden in these cases,<sup>14</sup> as the law demanded that they provide for many of the expenses incurred by the officials. Private settlements were not considered legal in cases pertaining to major legal infractions like murder. Officials viewed restitution settlements as avenues for circumventing the law and denying the satisfaction of justice,<sup>15</sup> though one finds exceptions where local magistrates treated private restitution agreements with greater laxity (or sometimes even approved of them) depending on variations in time and circumstance.<sup>16</sup> Given the commonality of such settlements, it is likely that the Namwŏn magistrate suspected one from the very beginning.

The *circumstances* of the restitution settlement in Hamjang's case are not entirely common, however. Families ideally agreed to private restitution settlements *before* the authorities gained word of the crimes in question. In Hamjang's case, the private restitution agreement was concluded *after* To had already made an initial report. The Namwŏn magistrate reflects on this fact and notes that circumstance forced the Hŏ family to concoct an argument for distraction. He writes:

At first, Hŏ To had reported Sŏngdae's attack on his brother Hamjang to our office. However, even after [the assailants] were apprehended and incarcerated, and indeed even after Hamjang had died, To did not again report to us. Furthermore, he took it upon himself to conduct the burial rites! How peculiar this situation is. Had we never heard of [Hamjang's case] from the first, then there would [have been nothing to say of this matter]. [However], people have already been incarcerated. To simply drop the matter because the bereaved family of Hamjang forged a private restitution settlement would be to make light of a [potentially serious] matter of law related to murder. Moreover, To testified this time around to a fracas [between Sŏngdae and Hamjang] and yet did not immediately report [that encounter] to the authorities and pursue it as a murder case on account of his elderly mother's impassioned pleas. This suggests that there are some hidden [circumstances] here.<sup>17</sup>

14 This point is mentioned explicitly in the notes to Hamjang's case. *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek*, p.141.

15 Kim and Kim, *Wrongful Deaths*, pp.99-100.

16 For example, Cho Yunsŏn argues that magistrates in the late Chosŏn period developed a more favorable attitude toward private settlements as the sheer volume of lawsuits reached unmanageable proportions in that period. Cho Yunsŏn 조윤선, *Chosŏn hugi sosong yŏn'gu* 조선 후기 소송연구 (Sŏul: Kukhak Charyowŏn, 2002), pp.277-78.

17 *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek*, pp.137-38.



18 *Ibid.*, pp.140–41.

19 *Ibid.*, p.139.

20 *Ibid.*, p.139.

21 *Ibid.*, p.138.

The magistrate concluded that the Hǒ family had been caught in a difficult situation to navigate. They therefore had to confect justifications for their behaviours. The aforementioned self-recriminatory language of To gains added meaning in light of these developments.

Hǒ To revealed the exact terms of the settlement during a second round of interrogation. After some wrangling, the two families reached an uncomplicated agreement: the Kim family agreed to provide the materials for building one coffin to be used in the burial, while the Hǒ family presumably agreed to cease pursuing a conviction. The Hǒ family accepted the terms of the deal and apparently used the coffin in the burial rite. The magistrate sees this particular development as the solution to the mystery of To's delayed report, as he writes in the following passage:

Sǒngdae's father had provided the boards [with which to construct] a coffin, which makes the evidence of a private restitution settlement difficult to conceal. However, since Hamjang already [struggled with] a chronic health condition, his bereaved family members [claim that they] could not fully attribute Hamjang's death to the beating. [Perhaps more accurately, though], after all murder cases, the need of the family to bear so many unnecessary expenses can place them in considerable difficulty. Among the bereaved family, there would have been nobody without grievances. [Therefore], Hǒ To's obfuscation and [delayed] reporting, as well as his mother's impassioned dissuasion all amount to a ploy to clean up the whole situation.<sup>18</sup>

The truth, as the magistrate understood it, thus emerges: the previous testimony presented by the Hǒ family all amounted to a rhetorical ploy to deflect attention away from the private settlement and to avoid the burdensome expenses of an investigation. With that mystery solved, the question of how to apportion guilt among the parties to the crime (and the exact degree to which they should be punished) was the only one that remained.

#### *Episode IV: Preliminary Determinations of Guilt and Complicating Variables*

The Namwǒn magistrate had to assign blame and punishment for two crimes: the assault on and subsequent death of Hamjang, as well as the private restitution settlement itself. After gathering new witness testimony, weighing evidence, and re-interpreting the case in light of relevant legal principles, the magistrate encountered several legal snags that were not easily disentangled.

Several pieces of newly gathered evidence caused the magistrate to doubt his initial assessment of the attack on Hamjang. To begin with, an autopsy conducted on Hamjang's body yielded inconclusive results.<sup>19</sup> The magistrate previously dismissed Hamjang's illness as a factor in his death; however, after applying the relevant standards for autopsy to this case, the magistrate could not summarily rule out the impact of that illness. Moreover, new witness testimony emerged that cast the confrontation between Sǒngdae and Hamjang in a new light. A man named Cho Hanhǔng 曹漢興 provided testimony that Sǒngdae never actually struck Hamjang during the altercation.<sup>20</sup> Sǒngdae himself testified in his defence that Hamjang had conspired with another man to sexually assault his widowed sister.<sup>21</sup> The confrontation with Hamjang arose entirely because of that prior incident. All of these new developments forced the magistrate into an internal debate about which legal principle — the *kohan*, the rules guiding autopsy procedures, or the laws governing the punishment of assault — to follow in distributing blame for Hamjang's death.



The magistrate faced similar difficulties when deciding how to adjudicate the private restitution agreement. He includes a curious passage later in the case records, where he reveals the source of his confusion. For reasons pertaining to the role of emotional expression in official legal procedures, the magistrate wonders whether the Hŏ–Kim settlement held any legal significance *at all*. The explanation appears as follows:

[It might seem that] the reason the bereaved family member Hŏ To did not inform the authorities immediately upon his brother's death and [also carried out the procedures] for the rites of shrouding and mountain burial owes to the fact that [the Hŏ family] received and used wooden boards from Sŏngdae's father [to make] a coffin. As such, it appears that he tried to remedy the situation in private, which is incredibly bothersome. However, if you base [your determination] on all of the various witness testimonies [after] examining them carefully, then [you might conclude] that To's hesitation and failure to immediately report the murder case resulted from his elderly mother's forceful deterrence. Even though [the Hŏ family] accepted and used the coffin planks [from the Kim family], the [Hŏ family] did not simply forget their animosity toward [the Kims] at the start [of this case]. Understand that it is typical of restitution settlements [forged within a] murder case [for the involved parties to seem as though] they have settled their differences through a bribe and thereby reached a state of reconciliation. When such measures intend to [erase memory] of the initial animosities [between the involved parties], then the relative lightness and severity of the crimes should rightly be judged.<sup>22</sup>

The Namwŏn magistrate's overriding concern in this passage is the 'remembering and forgetting of animosities'. In his mind, the greatest danger of a private restitution agreement lay in the possibility that families might not *publicly* reveal their tensions with other families (as well as the specific criminal histories that created those tensions). In Hamjang's case, however, those animosities had been expressed once already. The requirement of public revelation had already been satisfied. Therefore, that prior act of articulation largely – if not entirely – diminished the significance of the Hŏ–Kim agreement for the Namwŏn magistrate. He appeared almost completely uninterested in addressing the bribe between the two families. The provincial governor himself seemed satisfied with the magistrate's interpretation: in his own, separate adjudication, the governor accepted the magistrate's explanation and recommended that To be released without any further prosecution. The grounds for that decision rested on the notion that the restitution agreement To arranged was atypical, that he did not simply attempt to acquire goods and forgo legal matters.<sup>23</sup>

By this point in the case, the magistrate had lost interest in prosecuting Munŭi. He saw Sŏngdae's cousin only as minor accomplice who, according to later testimony from the Hŏ family itself, had not contributed much to the attack. With all of these matters out of the way, the magistrate focused all of his energy on sentencing Sŏngdae. Those determinations represent the final component of the magistrate's case notes.

### *Episode VI: The Final Sentencing of Kim Sŏngdae*

Sŏngdae previously attempted to exonerate himself of any responsibility for Hamjang's death. To do this, he argued that his fistfight with Hamjang came in response to Hamjang's violent advance on his widowed and chaste sister-in-law. The circumstances justified his aggressive response and rendered the death of Hamjang an unfortunate but legally unimpeachable one.

<sup>22</sup> *Ibid.*, pp.178–79.

<sup>23</sup> *Ibid.*, p.180.

24 *Ibid.*, pp.525–27.

25 Yi Yŏnghun notes that it would be exceptionally difficult to date the compendium accurately if not for the fact that, in one record, the scribe decided to include the reign title of the Qianlong emperor. If not for that inclusion, it might not have been possible to accurately date the volume, given that the rest of the entries use the sexagenary cycle. Yi Yŏnghun. *Han'guk chibang-sa charyo ch'ongsŏ 1 poch'ŏp p'yŏn* 1 韓國地方資料叢書 1 報牒篇 1 (Sŏul: Yŏgang Publishers, 1987), p.16.

Sŏngdae also appropriates the previous argument of the Hŏ family that Hamjang's chronic illness directly caused his death, not the attack. These arguments only partially benefited Sŏngdae: Sŏngdae avoided any prosecution on the murder charge, but did face charges for the assault itself (irrespective of its connection with Hamjang's death).

In the final adjudication, it was determined that the period of criminal responsibility could not be reliably applied in Hamjang's case. The autopsy concluded that Hamjang's wounds had apparently already begun to heal, meaning that, if there were to be any charges in the case, they would have to come from some other legal principle. Sŏngdae may have escaped from that more serious charge, but he did not escape punishment for the assault on Hamjang, for which he was to receive 100 lashes and three years of hard labour. Sŏngdae was transferred to Hamyang in neighbouring Kyŏngsang province and there awaited his punishments.<sup>24</sup>

### *Questions in the Interpretation of Hamjang's Case*

In the course of Hamjang's case, the Namwŏn magistrate encounters three separate issues that he finds difficult to resolve, or at least difficult to interpret in light of relevant legal standards. Those three issues are: (1) the inconclusive physical evidence gained from the autopsy of Hamjang's body, (2) the legal implications of the Hŏ family's participation in a private restitution agreement, and (3) the argument of the Hŏ family concerning the relationship between the state's ritual and legal standards. Each of these matters provides an opportunity to reflect on aspects of the law, culture, and society of the Chosŏn period. After providing a brief discussion on the source materials in which Hamjang's case appears, I will address these three issues in turn. The inconclusive physical evidence provides an opportunity to discuss the rules of autopsy procedures during the Chosŏn and their application to this case. The Hŏ family's participation in the private restitution agreement opens a discussion about the politics of publicising such agreements in local society. Finally, the Hŏ family's culminating argument about law and ritual invites a re-evaluation of the relationship between those two concepts during the period in question.

### *A Note on Sources*

Hamjang's case derives from a compendium called the *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek* 南原縣牒報移文成冊. Though various factors make it difficult to ascertain the exact years of this volume, Yi Yŏnghun calls attention to one clue that reveals the events of the compendium to have occurred between the years 1736–37.<sup>25</sup> This volume provides detailed accounts of local correspondence about conflicts, issues, and court cases that emerged in the region. It would be tedious to enumerate every type of event treated therein; suffice it so say a wide variety of matters appear in the case records, ranging from conflicts between slaves and their owners, to murder investigations, to details of local construction projects, to interactions with local religious communities, to cases of village intrigue, to problems with the collection of taxes, among many others.

The text provides no explicit description of the Namwŏn magistrate's motivations for compiling all of his correspondence. The *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek* lacks an introductory section that might reveal something about the conditions under which it was produced. Nevertheless, the very

organisation of the compendium and the formal elements of its individual entries reveal some aspects of the compilation process in the absence of an introduction. To begin with, the handwriting frequently changes throughout the compendium, as one proceeds from case to case. This suggests that the magistrate did not pen the records himself, but rather with the aid of an editorial team that involved itself directly in local issues to varying degrees. The Namwŏn magistrate likely reviewed several drafts of each potential entry in the compendium before giving his final authorisation. Once a scribe entered a particular case record directly into the compendium, the magistrate reviewed the entry once more. Each page eventually received the magistrate's stamp to indicate final approval. (The magistrate's stamp appears on virtually every page throughout the compendium.) In sum, the *Namwŏn-hyŏn ch'ŏppo imun sŏngch'aek* was the product of a tightly guarded process that allowed the Namwŏn magistrate to control the form, content, rhetoric, and overall argument of each particular entry. The compendium does not represent a collection of 'case notes' so much as it represents a series of carefully argued 'formal reports'. Even though the Namwŏn magistrate did not pen the case records on his own, he had full control over their content.

The magistrate's motivations for arranging the compendium are a bit more difficult to discern than the actual process of compilation. I will suggest two plausible explanations here. The compilation may have been undertaken for posterity and for the reference of any future bureaucrats who accepted positions as the magistrate of Namwŏn. The records provided a series of case studies about how to negotiate with the various local communities and social groups in Namwŏn — not to mention the sort of adjudications any particular magistrate might expect from the provincial governor. Another explanation lies in the possibility that the magistrate compiled the volume simply as a record of his own personal accomplishments during his tenure in the region. Perhaps some incidents described therein might be included, in some fashion, in any posthumous publication of his writings and works. As far as the specific records for Hamjang's case are concerned, there may be several different reasons the magistrate included them, whether a desire to demonstrate his ability to handle a complicated case, or to prove his ability to communicate effectively with the governor, or perhaps even to generate a record of past tensions between prominent local families and the local authorities.

Most of the case records in the compendium take the form of an administrative report issued either to the provincial governor, neighbouring magistrates, or, on rarer occasions, local officials and representatives within Namwŏn itself. Several types of administrative reports appear in the text. The specific form taken by Hamjang's case records might best be translated as a Situation Report for Superior Officials (*ch'ŏppo* 牒報) — a standardised document that lower ranking administrative organs used when reporting to more highly ranked offices. This form mirrored that of the Situation Communique to Superior Officials (*ch'ŏpchŏng* 牒呈), which was also used for communication with higher ranking official organs. Precise guidelines for formatting were specified in state legal codes such as the *Kyŏngguk taejŏn* 經國大典 and *Chŏnyul t'ongbo* 典律通補.<sup>26</sup> When writing Situation Reports for Superior Officials, officials often seem to have explained the facts of the cases with as much economy as was possible; however, the particular value of these records derives from the fact that they do provide narrative accounts of everyday encounters and, therefore, present a useful source for understanding the unfolding of local relationships.

26 Ch'oe Sŏnghŭi 崔承熙, *Han'guk komunsŏ yŏn'gu* 韓國古文書研究 (Sŏul: Chisik Sanŏpsa, 1969), p.186.



the conduct of autopsies between Song and Yüan China.<sup>35</sup>) In Hamjang's case, therefore, a new set of evidentiary considerations needed to counterbalance these findings in order to reach a definitive conclusion.

More general concerns about the quality of Hamjang's health hovered over the autopsy results. In fact, several passages from the magistrate's notes strongly suggest that Hamjang's persistent illness increasingly weighed on the mind of the magistrate and his investigative team. For example, the following passage, which is drawn from the governor's adjudication at the end of the second report, reflects such an effort:

[Based on the reported testimony], all pointed to the fact that Hamjang came from the house of the Hŏ literary licentiate (*chinsa* 進士) family having suffered an extremely violent episode of defecation. This one matter should have been re-examined immediately, however the re-investigation was completed sloppily. Therefore, though I wished to investigate the matter carefully, I could not.<sup>36</sup>

This is the first instance in the report where any official takes interest in the measure of Hamjang's gastrointestinal fortitude. The passage demonstrates the difficulty the local officials experienced in trying to disentangle and reconcile the results of the autopsy and the testimony given during the investigation. It seems that the guidelines for these inspections were applied quite rigidly in Hamjang's case and discouraged loose interpretations of the relevant facts.

### *The Local Politics of Publicising Private Restitution Settlements*

Local authorities discouraged private restitution settlements. They excluded local officials from conflict resolution processes. In the eyes of local officials, serious criminal incidents *required* official intervention. Without a guiding hand, locals might not adhere to the standards encouraged by law — or so the local officials thought. As Hamjang's case itself demonstrates, those who pursued private restitution settlements risked legal punishments. How, then, does one make sense of a group's decision to publicise their own participation in a private restitution settlement? What motivations might spur such a revelation? What effects did those revelations have on local society?

The answers to these questions reside primarily in the realm of practice. Concrete circumstances dictated whether a particular group might find it advantageous to reveal their private settlements to the authorities. This means that our discussion will be most effective if we compare specific historical cases. In this section, I will compare Hamjang's case with another incident from the late Chosŏn period discussed by Sun Joo Kim and Jungwon Kim in their book *Wrongful Deaths*. We will see how any decisions to publicise a private restitution settlement involved careful consideration of a wide variety of concerned parties — in effect, there were broad social concerns underlying those decisions.

When Hŏ To presented testimony to distract from the private settlement, he targeted a wide and diverse local audience — not just the Namwŏn magistrate alone. Various local groups held stakes in the Hŏ-Kim settlement and its possible exposure. Therefore, To's message had to speak, in some way, to the concerns of each of those groups. Beyond the magistrate, I see at least three targets of To's testimony: the Kim family, the rest of the extended Hŏ family besides To and his mother, and other local élite who were not members of the Kim or Hŏ families. The following paragraphs detail each of these messages individually, but let me simply state the conclusion at the outset:

35 Ch'oe Haebyŏl has conducted a comparative analysis of the *Hsi yuan chi lu* (a document of Song China) and the *Muwŏllok* (a document of Yüan China) to determine how thinking on procedures for autopsy examinations developed throughout those two periods of Chinese history. There are many continuities between these two tracts, including general categorisations of deaths and the general organisation of the tracts themselves. However, the *Muwŏllok* explicitly states that its purpose lay in presenting the necessary upgrades to the knowledge presented previously in the *Hsi yuan chi lu*. Therefore, it exhibits greater specificity in its categorisation of deaths from time to time. Ch'oe finally argues that this text is more systematised and professionalised than the former document by Song Ci. Ch'oe Haebyŏl 최해별, 'Song ·Wŏn sigi kömhŏm chisik ūi hyŏngsŏng kwa palchŏn: 'siwŏn chimnok' kwa 'muwŏllok' ūl chungsim ūro' 宋·元 시기 檢驗지식의 형성과 발전: '洗冤集錄'과 '無冤錄'을 중심으로, *Chungguk hakpo* 中國學報 69 (2014): 79–103, at pp.80–81, 86–88, 99–100.

36 Namwŏn-hyŏn *ch'ŏppo imun sŏngch'aek*, p.180.



that this case cannot be read simply as an internal procedure of the Namwŏn magistrate's court, but rather as a process that mediated various local social elements *through* that same court.

Risk management was the underlying principle of Hŏ To's testimony. He knew from the outset that the Namwŏn magistrate might not be fooled by his argument. Hŏ To had to prepare for the event that the Namwŏn magistrate discovered the settlement and pressed forward with the case — a strong possibility given the fact that the case was opened before the two families even *considered* a private restitution agreement. To those other three groups mentioned above, To had to include in his testimony words of assurance, solidarity, and commitment. If not, those same groups might have decided to break with To because of some perceived insufficiency in his efforts to disguise the agreement.

To begin with, To had to demonstrate to the Kim family that he was serious about shielding them from the investigation. Only an impassioned and well-crafted performance before the magistrate might cool the anger and disappointment of the Kims if the agreement became known. Absent such a performance, To risked turning the Kims into legal enemies of a sort. That is to say, the Kims may have been more willing to co-operate with an investigation to incriminate To and the rest of the Hŏ family if they felt the *sahwa* was a sham. In sum, though the settlement obligated the Kim family to the Hŏ family (through the transfer of materials for the coffin), it also obligated the Hŏ family to the Kim family (through the mechanism described just above).

Next, To's testimony sent a very clear message to his own family. They were almost certainly concerned about the considerable expense of an investigation, even if the magistrate was the only person to mention that fact explicitly. The burden of that expense might have extended beyond Hŏ To's immediate household, depending on his personal level of wealth (which is never mentioned in the records). Were other households within the family line saddled with some of those expenses, To may have become the object of unfavourable internal family politics. An investigation might even have encouraged action and support from any local mutual aid associations in which the Hŏ family participated — on that count, too, To likely hoped not to overburden those groups. Therefore, when To argues that he made his initial report in a fit of passion and haste, he is speaking not only to the Namwŏn magistrate, but really to his family as a whole.

Finally, the broader group of local elite in Namwŏn figures as a crucial target audience of To's testimony. Other families in the area may themselves have forged a private restitution agreement at one point in their own history. If not, they may have been willing to settle in theory. Failing that, they may still have held strong sympathies for families that pursued restitution agreements out of necessity. All of this generated an atmosphere that placed considerable pressures on To: if he failed to give his utmost when distracting the magistrate from the settlement, he may not have been viewed favorably by other local families. Indeed, if it ever seemed that To actually *hoped* the magistrate might discover the agreement, other families in the area may have found the agreement deceptive, ultimately blaming the Hŏ family for dishonest practices. In short, an inadequate defence of the Kim family risked making the Hŏ family into local pariahs.

Once To agreed to the restitution settlement, he faced many concerns beyond his own self-preservation from the punishments of the magistrate (although, as we eventually saw, the magistrate graciously forgave To of any



potential charges). Rather, diverse social groups held stakes in the settlement and the testimony designed to hide it. This case was not simply a self-contained legal matter within the Namwŏn magistrate's court. Rather, it held strong social implications as well, requiring To to tailor his message carefully and represent it in court with a seeming wholeheartedness. Only in this way could he minimise the potential repercussions of exposure.

Similar considerations figure into a case that Kim and Kim translated and analysed for *Wrongful Deaths*. In the sixth case analysed in that book, 'A Widower Seeks Private Settlement', they relate the story of an impoverished, itinerant merchant (*pobusang* 裸負商) whose wife died after sustaining a kick and miscarrying. Village elders subsequently intervened on his behalf and forged a settlement that involved the transfer of some of the offending party's land deeds. Despite the legal risks, the local itinerant merchant co-operative eventually decided to report the private settlement to the local authorities. Kim and Kim puzzle over this decision and finally conclude that the declaration of the existence of the private settlement actually came as a *public warning*. The merchant co-operative lived by an explicit code of mutual support and mutual defence against the exploitation of the Chosŏn elite. Since the details of this particular case necessitated action in both of those areas, the co-operative's leaders intended the public revelation of the private settlement to serve as a display of their solidarity before the law and local society.<sup>37</sup> In comparing the responses of the Hŏ family and the merchants in these two cases, we observe how the legal politics of publicising settlements interfaced with the interests of a variety of local audiences in different ways.

### *The Testimony of Hŏ To and the Relationship between Ritual and Law*

When Hŏ To first testified before the Namwŏn magistrate, he presented an elaborate argument to discourage the magistrate from continuing the case. The centerpiece of his argument lay in the claim that Hamjang's case had exposed a glitch in the state's ritual and legal systems. Hŏ To argued that the timing of burial rites and autopsy examinations overlapped irreconcilably. The goal here was to force the magistrate to make a choice: between ritual and law, which would he privilege? The argumentative strategy of the Hŏ family raises questions about received understandings of the relationship between the concepts of ritual and law during the Chosŏn period. Can the Hŏ family's argument be explained through established notions of that relationship?

The Confucian notion of ritual (*ye* 禮)<sup>38</sup> was, both in its philosophical origins and in the political discourse of Chosŏn, a conceptual instrument for ordering the state and everything that the state oversaw. It prescribed proper standards of behaviour for relationships that existed at various levels of society. Ritual was a concept that presented an ideal vision of sociality where interpersonal relationships naturally adhered to certain normative standards — extensive reinforcement from the state in the form of recourse to punishment was discouraged.<sup>39</sup> The concept presupposed a society of hierarchical divisions between those of varying ranks, while the concrete implementation of ritual involved reflecting these relationships in official state structures.<sup>40</sup> Finally, the ritual concept also designated concrete rites, the contents of which reflected the ideal social order. Rites expressed and reinforced the ritual agent's position in a particular relationship.<sup>41</sup>

The Confucian concept of ritual was not a completely static one, though it certainly held onto the basic meanings listed above. Confucian think-

37 Kim and Kim, *Wrongful Deaths*, pp.100–102.

38 The operative word in this phrase is 'Confucian'. The concept of ritual pre-dated the Confucian tradition; however, the term's meaning shifted within the Confucian philosophical context. The ritual concept became increasingly conceptual between the early Zhou period and the immediate context of Confucius himself, moving from a simple notion of 'rites performed' to a fuller notion of 'behavior and the ordering of society'. For a full discussion, see Michael David Kaulana Ing, *The Dysfunction of Ritual in Early Confucianism* (New York: Oxford University Press, 2012), pp.20–22.

39 Im Minhyŏk 임민혁, *Chosŏn ūi yech'i wa wangkwŏn* 조선의禮治와왕권 (Seoul:Minsok wŏn, 2012), p.54.

40 Im Minhyŏk, *Chosŏn ūi yech'i*, pp.18, 70.

41 Ing, *Dysfunction of Ritual*, p.8.

- 42 Pak Tongin 박동인, 'Sŏnjin yuga yepŏpkwan ūi chonghapcha: sunja ūi yepŏpkwan' 先秦儒家禮法觀의 종합자: 荀子の禮法觀, *T'oeqye hakpo* 퇴계학보 131 (2012): 191–228, at p.194.
- 43 Kurtis Hagen, 'Xunzi and the Nature of Confucian Ritual,' *Journal of the American Academy of Religion* 71.2 (June 2003): 371–403, at pp.371–73.
- 44 Pak Tongin, 'Sŏnjin yuga yepŏpkwan,' pp.191–93, 197–208.
- 45 JaHyun Kim Haboush, 'The Ritual Controversy and the Search for a New Identity,' in JaHyun Kim Haboush and Martina Deuchler, eds. *Culture and the State in Late Chosŏn Korea* (Cambridge: Harvard University Asia Center, 1999), p.49.
- 46 For more on the process by which this document gained traction in Chosŏn, see Martina Deuchler, *Under the Ancestors' Eyes: Kinship, Status, and Locality in Premodern Korea* (Cambridge: Harvard University Asia Center, 2015), pp.187–98.
- 47 Henry Em, *The Great Enterprise: Sovereignty and Historiography in Modern Korea* (Durham: Duke University Press, 2013), p.37.
- 48 Song Chiwŏn 송지원, 'Yŏngjo dae ūirye chŏngbi wa 'kukcho sok oryeŭi' p'yŏnch'an' 영조대 儀禮 정비와 '국조속오례의' 편찬, *Han'guk munhwa* 한국문화 50 (June 2010): 201–28, at pp.206–08.
- 49 Yi Kibaek, *A New History of Korea* (Cambridge: Harvard University Press, 1984), p.219.
- 50 Chi Tuhwan 池斗煥, 'Chosŏn sidae ūirye kaenyŏm ūi pyŏnch'ŏn' 朝鮮時代 儀禮概念의 變遷, *Tongbang yehak* 동방예학 1 (1998): 1–27, at pp.24–27.

ers subject to different social and historical conditions — or even to simple differences of opinion — provided unique interpretations of the concept. For example, one finds particular nuances in the definitions provided by such formative Confucians as Mencius (孟子 (c. 371–c. 289 BCE), Xunzi 荀子 (c. 300–c. 230 BCE), and Confucius 孔子 (551–479 BCE) himself. Confucius understood ritual largely in the terms outlined above: the promotion of the political and social class system, a set of guidelines for effective political rule, and a set of moral codes for interpersonal behaviour. Mencius, in no way denying Confucius' understanding, nonetheless also understood ritual both as an innate impulse to moral goodness and as the outward expression of that impulse.<sup>42</sup> Xunzi took a different position, seeing ritual as a necessary corrective to the flaws of human nature, which he saw as defective. In short, people had work at ritual to ensure that they developed out of their ingrained tendencies to wrongdoing.<sup>43</sup> To be sure, Xunzi also adhered to the previous viewpoints of ritual as the stratification of society, the stipulation of moral guidelines for human relationships, and the securing of stable politics.<sup>44</sup>

Confucian thought and practice occupied an important position in the lives of the Chosŏn élite. Confucian officials and philosophers attempted to order society according to the principles of Confucian ritual. The central court hosted recurring debates about the concept of ritual and its application to society during the Chosŏn period. As a consequence, the notion of ritual did not remain static throughout the Chosŏn — different philosophers offered various interpretations in response to emerging political, social, and intellectual trends. Though it is well beyond the scope of this paper to provide details on all of these developments, a general sketch of the contours of these debates follow.

Different ritual programs were developed for the Chosŏn Royal House and the social élite. Rites for the former were outlined in the *Kukcho oryeŭi* 國朝五禮儀, which specified five separate categories of rituals to be performed on appropriate occasions.<sup>45</sup> Rites for the latter were spelled out in the *Chuja karye* 朱子家禮. That document, penned initially by the Song dynasty thinker Zhu Xi (1130–1200 CE), described the proper procedures and constituent rituals for the four broad rites of capping, marriage, funerals, and ancestor memorials.<sup>46</sup>

To be sure, the specific contents of the notion of ritual did not remain static throughout the Chosŏn dynasty. Some of the fiercest political debates in this period focused on the interpretation and performance of various rituals under divergent circumstances — a phenomenon that Henry Em interprets as part of Chosŏn's constant effort to define its own position within an international tributary system that hinged on China.<sup>47</sup> Moreover, the ritual manuals listed above were amended, revised, or re-interpreted over time. Nearly three centuries after the publication of the *Kukcho oryeŭi* (1474), King Yŏngjo (r. 1724–76) published a revision in the form of the *Kukcho sok oryeŭi* 國朝續五禮儀 in (1744), introducing important changes into the state's ritual program.<sup>48</sup> Commentaries and addenda to the *Chuja karye* likewise emerged alongside new questions concerning the concrete application of certain rituals to the Chosŏn context. Kim Changsaeng's *Karye chimnam* 家禮輯覽, completed in 1599, provides a formative example in that it helped encourage the serious and formal study of ritual at the time.<sup>49</sup> With such continued debate about the application of Confucian rituals to the Chosŏn context, present-day scholars such as Chi Tuhwan have taken particular interest in that developmental process and the various intellectual conflicts that arose because of those changes.<sup>50</sup>

The concept of law (*pŏb* 法), as articulated by early Chinese thinkers, concerned formal regulations to determine and execute punishments. In this sense, law was a limited concept that did not positively prescribe behaviours and practices for subjects of the state — a function common in modern positive law.<sup>51</sup> Confucius himself did not speak of punitive law or concrete punishments in terms of *pŏb* (C. *fa*), but rather in terms of *xing* 刑 (K. *hyŏng*) — that term later developed into the philosophical tradition focused on the category of *pŏb*.<sup>52</sup> *Pŏb*, though distinct from ritual, simultaneously shared much with ritual. For example, law was also considered a ‘scripted performance’ meant to bring order to society.<sup>53</sup> However, a key difference lay in the fact that law worked *on* a person rather than *with* and *through* that person. Therefore, law’s social effects were not integrative in the same sense as ritual.<sup>54</sup>

What sources and guidelines form the corpus of law in the Chosŏn period? Chosŏn law was characterised by its centralisation and standardisation. The state developed, printed, and revised law codes to suit emerging conditions within the boundaries of the state. There is a long history of legal development throughout the Chosŏn, beginning with the initial adoption of the *Da Ming Lu* 大明律, continuing on to the creation of the *Chosŏn Kyŏnggukchŏn* 朝鮮經國典 shortly thereafter, passing through many other iterations before concluding with the publication of the *Taejŏn hoet’ong* 大典會通. The *Da Ming Lu* served as a prototype for penal law in Chosŏn but was sporadically revised to suit local conditions.<sup>55</sup>

Early Confucian thinkers expressed varying positions on the relationship between ritual and law. Confucius, though not expressing his view through the term ‘law’ itself, saw punishment as a legitimate response to a violation of ritual, provided the punishment was proportionate to the offender’s position within society. Mencius’s view largely mirrored that of Confucius, seeing the execution of law as response to a failure of ritual. Mencius further discouraged the excessive use of law and advocated for the curtailing of punishments, seeing them as less desirable than the force of moral suasion. Xunzi, on the other hand, advocated for both ritual and law as constructive tools for the ordering of state and society. Xunzi further supported the notion that law and punishment itself was based in ritual.<sup>56</sup> Note the contrast with the position of Confucius, who argued that the ideal for any government was the sparing use of laws, that any state could consider it a mark of distinction if they rarely resorted to punishment.<sup>57</sup>

Chosŏn-era scholars held similarly varying views of the relationship between ritual and law. A comparison of the views of two scholars — Sŏngho Yi Ik 李滉 and Tasan Chŏng Yagyong 丁若鏞 — yields a workable overview of those viewpoints. Yi Ik took the viewpoint that law and punishment played a supporting role to ritual. For him, ritual guided the person’s heart toward proper social conduct, while the latter was called on to regulate the person as an external force when necessary. In effect, his approach recognised the limitations of the human condition, that both methods might be necessary from time to time.<sup>58</sup> On the other hand, Chŏng Yagyong understood ritual and law as equivalent forces rather than distinct and complementary ones. Chŏng still viewed ritual as a ‘civilising idea’ and law as an ‘exhortation to good behaviour based on the threat of punishment’; however, he also pointed out that such formative figures as the Duke of Zhou 周公 (c. 11th century BCE) viewed law as a form of ritual in itself and espoused that same outlook.<sup>59</sup> In

51 Wang and Solum argue that many of the functions of modern positive law were actually encompassed by the concept of *ye*. Ritual predominantly served the function of dictating what actions people ought to take and what claims and responsibilities law placed on the behaviour of individuals. Therefore, the concept of modern positive law refers to a broader set of guidelines than the notion of *pŏb* (or *fa* in Chinese). For a full discussion, see Linghao Wang and Lawrence B. Solum, ‘Confucian Virtue Jurisprudence,’ in eds Amalia Amaya and Hock Lai Ho, *Law, Virtue, and Justice* (Oxford: Hart Publishing, 2012), pp.119–20.

52 David L. Hall and Roger T. Ames, *Thinking Through Confucius* (Albany: State University of New York Press, 1987), p.171.

53 Ing, *Dysfunction of Ritual*, pp.19–20.

54 Hall and Ames, *Thinking Through Confucius*, p.172.

55 Sim Chaeu 심재우, ‘Chosŏn malgi hyŏngsapŏp ch’egye wa ‘taemyŏngnyul’ ūi wisang’ 조선말기 형사법 체계와 ‘대명률’의 위상, *Yŏksa wa hyŏnsil* 역사와 현실 65 (September 2007): 121–53, at pp.122–23.

56 Pak Tongin 박동인, ‘Kong-maeng yepŏpkwan ūi saengsong kwa pyŏnhwa’ 孔孟禮法觀의 생성과 변화, *Sŏgang immun nonch’ong* 32 (December 2011): 37–70, at pp.64–65.

57 Sor-hoon Tan, *Confucian Democracy: A Deweyan Reconstruction* (Albany: State University of New York Press, 2004), p.183.

58 Pak Chongch’ŏn 박종천, ‘T’oegye yehak kwa kŏn’gi silhakcha ūi yehak — t’oegye-sŏngho-tasan ūi chungsim ūro’ 퇴계 예학과 근기실학자의 예학 - 퇴계退溪·성호星湖·다산茶山을 중심으로, *Kukhakyŏn’gu* 국학연구 21 (December 2012): 105–38, at pp.122–23.

59 Yi Yŏngch’un 李迎春, ‘Tasan ūi yehak kwa pokche yesŏl’ 茶山の禮學과 服制禮說, *Chosŏn sidae sahakpo* 朝鮮時代史學報 5 (1998): 175–224, at p.179.

60 Hahm argued that ethical impulses such as moral suasion and the Confucian disinclination to punish rigidly operated far more strongly than the force of law. He portrayed Chosŏn as a litigation-averse society, where the ‘rule of ritual’ (*yech’i* 禮治) overwhelmingly structured interpersonal relationships. Pyong-choon Hahm, *Korean Jurisprudence, Politics, and Culture* (Seoul: Yonsei University Press, 1986), pp.95–97.

61 Shaw eventually challenged Hahm’s thesis. Shaw provided an interpretation that emphasised a certain symbiosis between ritual and law. The two functioned separately but complementarily, such that when ritual’s purview ended, law came into force. He notes that many representative Chosŏn statesmen expressed their sympathies for China’s Legalist tradition. Shaw even argues that the force of law was necessary to encourage Confucian practice among the elite at times. William Shaw, *Legal Norms in a Confucian State* (Berkeley: University of California, 1981), pp.14–21.

62 Kim founds her analysis on the Confucian dictum of ‘Ritual Rules, Law Follows’ (*Yeju pŏpchong* 禮主法從), which expressed the ideal relationship between these forces. A critical aspect of this arrangement rested in the fact that the punishments prescribed for various crimes were seen as morally appropriate. Furthermore, these characterisations demonstrate how it was possible for the statesmen of this period to simultaneously abhor punishment, which was an ideal of socio-legal relations, and nevertheless pursue it at the same time, which was seen as necessary corrective to various social ills. Marie Seong-Hak Kim, *Law and Custom in Korea: Comparative Legal History* (Cambridge: Cambridge University Press, 2012), pp.41–59.

63 Though the Namwŏn magistrate never reveals the precise reactions of the Hŏ family to the exhumation, it may be worth examining an analogous incident to provide some perspective. William Rowe, in his research on the Chinese city of Hankow during the late Imperial period, describes something of a similar situation where the residents of that city joined together to construct a defensive wall than ran through burial sites. Rowe writes: ‘The new [Defense Works Bureau] undertook a survey of the wall site, exercising care to avoid unnecessary disturbance of grave sites. In a few cases where disturbance was deemed unavoidable, the Bureau arranged for disinterment of caskets and careful reburial elsewhere; reportedly the workmen involved in this operation were so shaken by the experience that a ceremony of absolution was conducted for them by Hu Chao-ch’un [the head of the Defense Works Bureau] himself at the Kan-lu Temple in December 1863,

these two thinkers, we see shades of older debates about the relationship between ritual and law playing out in the Chosŏn context.

The debate about ritual and law continues in modern scholarship on Chosŏn. Hahm Pyong-Choon (Ham Pyŏngch’un) and William Shaw provided contending theses on the question in the 1960s and 1970s. The former understood Chosŏn through the lens of ritual primacy and non-Legalism,<sup>60</sup> while the latter — who observed the widespread use of the courts at the time — argued for a greater symbiosis between ritual and law.<sup>61</sup> Marie Seong-Hak Kim echoes similar themes when she argues that law in Chosŏn, while fundamentally penal, ultimately aimed to rectify lapses in moral conduct among members of society, who were expected to admit of their faults and draw near to ritual perfection once more.<sup>62</sup> In each of these studies, ritual consistently appears as the dominant force in the ordering of society — the role of law appears either as supplementary or minimal.

Hamjang’s case poses critical questions to all of the characterisations described above. Hŏ To’s argument suggests the existence of a certain misalignment in the relationship between ritual and law, one that caused the system to function in ways that differed from the various ideals envisioned by Confucian scholars. In fact, does Hamjang’s case not reveal a circumstance where law basically *interfered* with ritual, or even *subordinated* it in some fashion? Does this case reveal a space where the ideal understandings of the relationship between ritual and law did not obtain in practice?

When the Hŏ family argued with the Namwŏn magistrate that the case should be closed, they relied explicitly on the notion that legal codes might interfere with ritual codes on certain occasions. The argument they presented suggested that their own situation involved a confusion of the typical relationship between ritual and law. *They found it possible to imagine such a conflict.* The autopsy procedures — standards enshrined as legal guidelines — acted neither independently of nor subordinately to ritual in Hamjang’s case. Instead, those procedures actually threatened to undermine the proper exercise of ritual. The actual content of the state’s codes did not always live up to its ideal relationship. In between law and ritual there was ‘another space’ that emerged from time to time, when the less well-reconciled components of the state’s codes informed everyday practice.

A couple of omissions from the case records deserve attention. First, at no point did the Namwŏn magistrate provide a *substantive* response to the Hŏ family’s argument. He never attempted to reconcile the contradiction on the basis of fact or logic. He cited no precedents, he summoned no personal knowledge of ritual procedure or texts, nor did he seriously consider the possibility that the Hŏ family felt sincerely concerned about their ritual duties. In fact, it seems that he simply tried to dodge the question and vilify the actions of Hamjang’s kin as pure strategy. If the magistrate intended to continue the

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personally attended by both the prefect and the magistrate.’ Rowe’s source material evidently describes the reactions of those who exhumed the bodies and the efforts of the authorities to organise a purification ritual for them. The question remains whether the Hŏ family felt similarly shaken after Hamjang’s exhumation. William Rowe, *Hankow: Conflict and Community in a Chinese City, 1796–1895* (Stanford: Stanford University Press, 1989), p.293.

64 For a fuller treatment of this debate, see Kim Ho 김호, ‘Chosŏn ūi pŏbŭihak kwa p’ungsok 22: Tasan ūi myŏngp’angyŏl kwa chosŏn ūi pŏp p’ungsok, mudŏm ūl p’asŏrado kŏmsi hara’ 조선의 법의학과 풍속 22: 茶山の 명판결과 조선의 법 풍속, 무덤을 파서라도 검시하라 *Kwahak kwa kisul* 과학과 기술 515 (2012): 70–73, at p.71. <<http://ebook.kofst.or.kr/book/201204/#page=72>>.



investigation without hindrance, he might have issued a full rebuttal to HŎ To's testimony and thereby put all doubts to rest. However, it seems that the logical substance of HŎ To's argument was not easily overcome, leaving the magistrate no choice but to quash the discussion by fiat.

Second, the Namwŏn magistrate carefully glossed over the fact that he had to spoil the fruits of ritual to complete his investigation. The case records clearly and repeatedly mention that the HŎ family completed the burial rites up to and including the mountain burial. The circumstances thus required a full exhumation. How might the HŎ family have responded to a forceful intrusion on their ritual products, even if they initially completed those rituals with strategic intent? Unsurprisingly, the case records provide no description of the HŎ family's reactions. This particular question therefore remains a matter of pure speculation.<sup>63</sup> We can only reflect the matter against debates held within the Chosŏn court about the appropriateness of exhumation. Many cases from this period required the disinterring of bodies. As a result, various Chosŏn kings convened scholars to debate the precise circumstances under which such a procedure might be justified.<sup>64</sup> Though the state ultimately recognised these procedures, it remains questionable whether the families of the exhumed viewed them with a similar degree of tolerance (even if, as with Hamjang's case, they may have acted with strategic intent).

In sum, the case of HŎ Hamjang presents an instance where concrete circumstances enabled the articulation of a contradiction between the Chosŏn state's ritual and legal systems. Confucian scholars held idealised notions of how ritual and law each played distinct but mutually supportive roles; however, these codes of conduct may not have been so well-reconciled in all cases. They complemented each other on many occasions, but ran foul of each other in certain others. In the latter case, peculiar and interesting forms of everyday conflict, such as Hamjang's case, became a possibility. Rather than viewing the Chosŏn state apparatus as a well-integrated system, it seems more effective to view the state as a generator of order and conflict.<sup>65</sup> Though many statesmen and élite professed the ideal that ritual and law existed in a complementary relationship, in reality the task of eliminating every last contradiction presented a near impossibility. Whether those contradictions emerged because of conflicts in timing, or limitations on the availability of material resources, or some other principle, can only be discerned by the terms of each individual case.

<sup>63</sup> Janet M. Theiss makes a similar point with regard to Qing China in her book *Disgraceful Matters: The Politics of Chastity in Eighteenth-Century China*. Theiss explains how the state's encouragement of conformity to such virtues as chastity and loyalty often placed contradictory demands on the subjects of the Qing state and therefore resulted in bitter legal struggles in everyday life. Theiss writes: '[Previous studies into the Qing chastity cult emphasise] the coherence of the state's agenda and its effects. In contrast, I begin by looking for process rather than paradigm, asking questions of why and how chastity became politically important in the Qing, what it meant to rulers, officials, moralists, and ordinary women and men, and how it influenced political culture and social practice. By examining not just how the state imagined moral order but how the concept of chastity actually worked in policy making, courtroom interactions, and family and community conflicts, this study highlights the contradictions in the state's goals, the messiness of their implementation, and their unintended consequences ... A focus on these processes reveals that while the state certainly desired to impose a uniform vision of gender order, its own laws and policies were fraught with contradictions and reflected compromises with popular mores, most critically with women's own views of virtue.' Janet Theiss, *Disgraceful Matters: The Politics of Chastity in Eighteenth-Century China* (Berkeley: University of California Press, 2004), pp.8–9.

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