
Aspects of Nineteenth-Century Chosŏn Society As Observed through a Legal Proceeding*

Analysis of the 1816 Soji filed by the Munhwa Yu Descent Group in Kurye

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Abstract

Conventional wisdom on the East Asian legal culture is that East Asia, including Korea, has been non-litigious, generally avoiding legal proceedings. It is often argued that the traditional legal culture of Korea was averse to trials, rendering customs and propriety (ye 禮) more significant than laws (pŏp 法), mediation (chochŏng 調停) and compromise (t'ahyŏp 妥協). Recently, a contrary view is put forward forcefully, not in the least buttressed by the fact that the rate of legal proceedings is, in actuality, higher in Korea than that in most other countries.

According to the findings from the field of history, the Chosŏn dynasty was actually congested with legal proceedings to the point of the district magistrates (heretofore suryŏng 守令) not being able to accomplish much else. This paper delves into this question by conducting an empirical analysis of a lawsuit filed in 1816 by a family in Kurye, a district in the Chŏlla province (全羅道). This study shows that the nineteenth-century Chosŏn society went through a general transformation. At this juncture in time, an individual was becoming more of an independent person rather than the merely passive subject of the monarch at the mercy of the government officials that one had been up to this point in time. The nineteenth-century individual no longer resembled the mid-Chosŏn one who spent their life furthering the cause of Neo-Confucian ideology, the individual in the nineteenth century had become one who actively pursued their rights, capable of maneuvering through the legal channels in the pursuit of their self-interest.

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I. Introduction

Recently, East Asia, including Korea, has been understood to have been ensconced in a culture that generally avoided legal proceedings. A few examples of scholars who have argued this perspective are Takeyoshi Kawashima of Japan and Pyungchoon Hahm of Korea. In particular, Hahm's argument can be summarized as follows. In examining the modern Korean legal system, while the structure itself was modeled after the German system as modified by Japan, the legal culture can be said still to be mired in a traditional, premodern state. Furthermore, the traditional legal culture of Korea was alegalistic [*sic*], rendering customs and propriety (*ye* 禮) more significant than laws (*pŏp* 法), mediation (*chochŏng* 調停) and compromise (*t'ahyŏp* 妥協) preferred over trials, leading to a general avoidance of litigation. Consequently, the concept of justice has always been strictly aimed at achieving substantive resolutions (*silchil chihyangchŏk* 實質指向的) as well as being irrational (*pihamnichŏk* 非合理的) in essence. As such, there can be no lesson learnt from the abovementioned legal culture for fostering a modern constitutional state.¹⁾ As of late, much scholarship in opposition to the above viewpoint has been emerging, not in the least buttressed by the fact that legal proceedings are not few in number in contemporary Korea; the rate of legal proceedings is, in actuality, higher in Korea than that in most other countries.²⁾

In the field of jurisprudence, however, there has been a relative lack of historical study of the subject at hand, instead focusing on the contemporary legal proceedings. According to the findings from the field of history, the Chosŏn dynasty was actually congested with legal proceedings to the point of the district magistrates (heretofore

1) Yang Kŏn, "Han'guk esŏūi 'pŏp kwa sahoe' yŏn'gu (Investigation of Law and Society in Korea)" in *Pŏp kwa Sahoe* 1 [*Law and Society* 1] (*Ch'angjak kwa Pip'yŏngsa*, 1989); "Hanguk kwa Ilpon kanūi Pigyo pŏpmunhwa non ūl wihan sŏsŏl (An Introduction to the Comparative Studies on Jurisprudence in Korea and Japan)" in *Chŏsŭtisŭ* [*Justice*] 34-1 (Han'guk pŏphag'wŏn, 2001. 2).

2) Such discussions and arguments usually involved the idea of the appropriate number of those in the legal profession. Han Sanghoe, *Pyŏnhosa wa chŏkchŏngsu* [*Lawyers and an Apropos Number of Them*] and Cho Uhyŏn, "Pŏpchoin chŏkchŏngsu e taehan sogo (A Look at What the Appropriate Number of Lawyers Is)" in *Pŏp kwa Sahoe* 11 [*Law and Society* 11] (*Ch'angjak kwa Pip'yŏngsa*, 1995); Yang Kŏn, "Hanguk esŏūi 'pŏp kwa sahoe' yŏnggu (Investigation of 'Law and Society' in Korea)" in *Pŏp kwa Sahoe* 1 [*Law and Society* 1] (*Ch'angjak kwa Pip'yŏngsa*, 1989).

suryŏng 守令) not being able to accomplish much else.³⁾ However, there has been little effort to study in conjunction the historical facts and the contemporary explosion of legal proceedings.⁴⁾

This paper seeks to examine the process of solving legal disputes in the local societies (*hyangch'onsahoe* 鄉村社會) of the late Chosŏn period by analyzing a lawsuit filed in 1816 by a family in Kurye, a district in the Chŏlla province (全羅道). The specific case dealt with in this paper arose in the tenth month of the year 1816 and continued until the second month of the following year, involving an inheritance dispute amongst Yu Chinŏk (柳鎭億), his paternal aunt of secondary birth status (*sŏgomo* 庶姑母) Widow Yu (Yu Kwanyŏ 柳寡女), and her son Hong Hŭigap (洪喜甲), yielding about ten petitions (heretofore *soji* 所志).⁵⁾ In general, *soji* tend to be rather piecemeal, their contents quite fragmentary, but the *soji* of the Yu dispute are unusual in the following ways: first, there are ten *soji* for the same case, providing an outline of the proceedings of the lawsuit, including the trial itself; second, of the ten *soji*, six were those submitted to the government (*kwanbu* 官府) and subsequently received decisions (*chesa* 題辭), four were written based on the decisions (*chesa*) of the *soji* no longer extant and include memoranda (*sugi* ,手記) relevant to the other *soji*. There still exists, furthermore, the original inheritance document (*punjaegi* 分財記) that precipitated the legal dispute.⁶⁾

In this paper, first, a brief summary of the process of trials during the Chosŏn

3) Chŏn Kyŏngmok, *Chosŏn hugi Sansong Yŏn'gu* [Studies on the Late Chosŏn Litigations Involving Burial Ground Matters] (Ph.D. Diss., Chŏnbuk National University, 1996); Pak Myŏnggyu, "19 segi huban hyangch'on sahoe ūi kaltŭng kujo (The Details of Conflicts in the Countryside Village Societies in the Latter Part of the Nineteenth Century)" in *Han'guk munhwa* [Korean Culture] 14 (Seoul National University Han'guk munhwa yŏn'guso, 1994).

4) Im Sanghyŏk, "Chosŏn chŏgi minsa sosong kwa sosong iron ūi chŏn'gae (The Development of the Civil Suits and Theory on Litigation in the Early Chosŏn)" Ph.D. diss., Seoul National University, 1994.

5) *Soji* are documents composed by the non-official sector of society and turned into the government when in need of resolution for legal disputes, and as they were compiled due to a real necessity, their contents reflect clearly certain aspects of a society in a given time period. Furthermore, a great number of them are extant due to the involved parties having preserved them as these documents contained matters of gains and losses. Ch'oe Sŭnghŭi, *han'guk komunsŏ yŏn'gu* [Investigation of Documents Originating from Premodern Korea] (Kaejŏng chŭngpop'an; Chisik sanŏpsa, 1989), pp.306-307.

6) Han'guk chŏngsin munhwa yŏn'guwŏn, *Komunsŏ chipsŏng* vol. 37, 38 *Kurye Munhwa Yussika* [Compilation of Premodern Documents, vol. 37, 38; Munhwa Yu Descent Group of Kurye] (Han'guk chŏngsin munhwa yŏn'guwŏn, 1998), heretofore referenced as *Chipsŏng*.

dynasty will be presented for the benefit of the readers, subsequently leading to an analysis of the dispute at hand. This will be followed by a close examination of the actual conditions of legal proceedings, as well as an exploration, amongst others, of the application of laws and the concept of rights in the said time period.⁷⁾ While this paper is limited in scope by its focus on the Kurye region in the Chŏlla province, it can provide a general depiction of the realities of the early-nineteenth-century trials and the application of laws, thereby enabling us to reconstruct a part of life in the Chosŏn local societies.

II. Trials in the Chosŏn Dynasty

In the Chosŏn dynasty, trials were referred to as *songsŏ*(訟事). The terminologies for the trials, conceptually divided, were as follows: *sasong*(詞訟) for civil suits and *oksong*(獄訟) for criminal cases, both under the umbrella of the term *ch'ŏngsong*(聽訟). In reality, however, the two types of lawsuits were not strictly separated and compartmentalized, and, as such, led to the frequent discontinuation of the civil trial when criminal elements were found within the case, ensuing in the opening of the criminal trial. Only when the criminal suit closed did the civil trial resume. Following the established local administration system, a coordination of investigation by different legal institutions (*simkŭp chedo* 審級制度) became more refined, yielding a tripartite structure, beginning at the level of *suryŏng* to the provincial governor (*kwanch'alsa* 觀察使: *kamsa* 監司, *sunsang* 巡相), ultimately ending at the Ministry of Punishments (*hyŏngjo* 刑曹). In other words, the officials at the *suryŏng* level—namely *moksa* 牧使, *pusa* 府使, *kunsu* 郡守, *hyŏllyŏng* 縣令, *hyŏnkam* 縣監, *et cetera*—dealt directly with all civil cases as well as those correlative to a punishment level lesser than flogging (*t'aehyŏng* 笞刑). The plaintiffs who lost their claim in trial at the first level (*ilsim* 一審) had the recourse to submit their case to the provincial governor's office, a process called *ŭisong* (義送). The provincial governor did not personally try these appealed cases, but did engage in close investigations of the facts of the case as well as the reasons behind the court's decision at the first level, subsequently proffering the conclusions on the said

7) Original texts will be cited using the number of the *soji* and the lines to which I am referring.

investigation including recommendations, a document called either *kamgyŏl* (甘結) or *kwanmun* (關文). These documents were sent back to the *suryŏng* who usually followed the recommendations offered and revised the former judgment. In addition, the contents of the *ũisong* could be sent up to the Ministry of Punishments, the only organ simultaneously overseeing any legal proceedings and acting as the body rendering final decisions for all lawsuits. As the source of all jurisdiction was the monarch, in reality all of the ultimate decision-making power rested with the king. A direct appeal to this ultimate authority was called *sang'ŏn* (上言) or *kyŏkchaeng* (擊錚). The former was done on paper, the latter by striking a gong in front of the monarch's procession (*haengch'a* 行車).

Though the Chosŏn society was organized according to people's stations based on birth, actual limitations on the different classes were exercised only in the sphere of public law, not in the execution of private statutes. As such, commoners as well as slaves were eligible to file lawsuits on an individual basis. The only exception to this practice was the treatment of married women who were constrained by the law separating the inner and the outer realms (*nae'oe'pŏp* 內外法); no lawsuit could be filed directly by women, and the claim was instead forwarded by a close family member, a process called *taesong* (代訟). In addition, disputes arising amongst close kin were discouraged from being filed as lawsuits, in some cases those who did take action were punished for doing so. Amicable settlements were actively promoted, inasmuch as they were within the range of possibility, thereby effecting a general avoidance, to a certain extent, of decisions rendered by trials. The presentation of a *soji*, which was called *tanja* (單子) for the yangban and *palgwŏl* (白活) for the commoners, initiated legal proceedings. Certain prescribed formalities were required in all cases. In the mid-nineteenth century, a volume called *Yusŏp'ilji* (儒胥必知) containing guidelines for the different *soji* styles was issued by a private publisher (*sach'an* 私撰). According to the regulations stipulated, all civil suits had to be filed within the five-year limit following the incidents which precipitated the lawsuits. There was an exception to this rule wherein the five-year limit was voided where the lawsuit itself took longer than five years or if the plaintiff's right to claim suits was somehow violated. However, by the late Chosŏn the cases that could be considered for the aforementioned exception rule became constrained by rigid boundaries, and the time limit was shortened, both changes instituted in order to discourage lawsuits from being filed. Should one file a suit past the statute of limitation (*chŏngsokihan* 呈訴期限), the claimant was punished for "filing a suit

based on unreasonableness” (*piri hosong* 非理好訟), and the *suryŏng* who received the claim knowing that this set time limit had passed was penalized for the “crime of knowing the falsehood” (*chibi’o’gyŏl choe* 知非誤決罪). Most of these rules, however, were neither strictly followed nor enforced; the cases ineligible under the strict regulations were usually accepted and settled regardless.

After the plaintiff presented the *soji*, the defendant submitted a response document, a process called “*sisong tajim* (始訟俵音).” The defendant was not duty-bound to appear in court; it was the plaintiff’s responsibility to bring the defendant. Legal proceedings began with the testimony of the plaintiff and continued with the defense, the plaintiff then submitting direct evidence as well as presenting eyewitnesses. And following the adage, “Trials shall be in accordance with documents,” trials were in fact strictly based on written materials. A volume called *Ch’ŏngsongsik* (聽訟式) was compiled, in effect, to record the details of conducting trials such as the specific proceedings of the trials and the method of discerning the authenticity of the submitted documents. According to regulations, decisions against the plaintiffs were rendered without fail when, after the lawsuit had already begun, the plaintiff did not appear in court thirty times out of the fifty hearings; this was due to time constraints and concerns. Lawsuits concluded with the court’s decisions, contained in what is sometimes referred to as *kyŏlsong ib’an*(挾訟立案; heretofore *ib’an*). This document consisted of daily records of all the processes of the trials and the evidence submitted by the plaintiff and the defendant, as well as the eyewitness accounts noted on paper, enclosing in the final pages the decision proffered by the judge. Due to the extravagant cost and the hassle of composing the *ib’an*, *ipchi* (立旨) -simple certificate- was instead put together in simple cases such as small claims. In most situations, however, the recipient of favorable decision not only requested the more complicated *ib’an*, but also the destruction of documents submitted by the opposing party in order to prevent being involved in the headache of the appeals process.

The losing party could always appeal, of course, in addition to re-submitting the complaint to a newly appointed *suryŏng* or to another in the surrounding districts. This led to the possibility of the perpetuation of lawsuits and disputes, as well as to the difficulties in confirming a decision already rendered. Consequently, rules such as “3-trials-2-wins” or “5-trials-3-wins” were implemented, but to no real avail. The claimant, in reality, could continue to file suits until realistically or psychologically satisfied with the rendered decision. In other words, there was, within the legal

system, no real power in the finality of decisions or a foolproof method to prevent the court's decision from being overturned by another. This non-existence of absolute power in the hands of the courts displays a cultural belief in the superiority of the substantive justice over procedural justice.

The *soji* was not easy for the commoners to compose due to the prescribed formal requirements. Therefore, there were those who, as their profession, put together the documents on behalf of others, an occupation that can be found even in the beginning of the Chosŏn dynasty. These professionals instructed people on the methods of filing suits in addition to compiling the *soji*, at times sharing the profits by handling the filings themselves. Usually these proxy handlers were active around the *Changnyewŏn* (掌隸院) in the early Chosŏn period, an organ that dealt with suits filed regarding slave ownership. So they were called *Oejibu* (外支部). In order to control the explosion in the number of lawsuits, the central government, which had concluded that such increase in suits was largely due to the proxy handlers, punished these people by sending the whole household to border regions (*chŏnga sabyŏn* 全家徙邊) depending on the severity of their crimes and rewarded those who informed the government of their dealings. Despite these preventive measures, the government did not succeed in uprooting the business of proxy handlers, as, while to the government they were the cause of increasing legal disputes, for the commoners they served as conduits to the resolution of distress and restoration of rights.⁸⁾

III. Development of the Dispute in Kurye

In general, it is difficult to ascertain precisely the development of a given dispute due to the fact that all the pertinent *soji* record the years and months, but not the specific dates. Through the contents of these *soji* and the *chesa*, however, an approximation of the development can be reached. The following table illustrates the temporal progress of the dispute extrapolated from the contents of the *soji* used in this paper.

8) Pak Pyŏngho, *Han'guk pŏpchesa [History of the Korean Legislative System]* (Han'guk T'ongsin taehak Ch'ulp'anbu, 1986).

Outline of Soji Examined

#	Date	Soji Claimants, Residence	Addressed	Chesa	Source Page #	Notes
18	1816. 9	Petition (<i>wŏnjŏng</i>) by Madame Cho, granddaughter-in-law of Yu P'ungch'ŏn of Kurye	<i>Sunsang</i> Provincial Governor	X	103	Draft of the vernacular <i>soji</i> (#20)
20	1816.10	Petition (<i>wŏnjŏng</i>) by Madame Cho, granddaughter-in-law of Yu P'ungch'ŏn of Kurye	<i>Sunsang</i> Provincial Governor	10. 5	108	Contains a record of the <i>chesa</i> by the provincial governor re: the petition by the paternal uncle
21	1816. 10	Petition (<i>wŏnjŏng</i>) by Madame Cho, wife of prisoner Yu Chinŏk	<i>Sŏngju</i> District Magistrate	10. 8	113	
19	1816. 10	Petition (<i>wŏnchŏng</i>) by Madame Cho, Granddaughter-in-Law Kurye Yup'ungchŏn	<i>Sunsang</i> Provincial Governor	11. 1	105	Yu released upon payment of 480 <i>yang</i>
14	1816. 11	<i>Hwamin</i> (化民) Yu Chinŏk	<i>Sŏngju</i> District Magistrate	X	98	<i>Chesa</i> from the provincial government re: payment of 480 <i>yang</i> (*1)
15	1816. 11	<i>Hwamin</i> Yu Chinŏk	<i>Sŏngju</i> District Magistrate	X	99	<i>Sugi</i> by Hong Sŏkyŏng and his son <i>Chesa</i> (*2) from the District Magistrate prohibiting Hong from further misconduct
17	1816. 11	<i>Hwamin</i> Yu Chinŏk	<i>Sŏngju</i> District Magistrate	11. 8	102	<i>Chesa</i> (19) from the Provincial Governor re: Kurye district decision of the case
16	1816. 11	<i>Hwamin</i> Yu Chinŏk	<i>Sŏngju</i> District Magistrate	X	101	<i>Chesa</i> on <i>soji</i> 19, 17; <i>chesa</i> by the Provincial Governor re: appeals (*3)
22	1817. 2	Yu Chinŏk, resident of Kurye district	<i>Kyŏmsŏngju</i> Substitute District Magistrate	2. 25	115	Decision by the Provincial Governor re: (*4); <i>chesa</i> (19) by the Provincial Governor re: original petition (<i>wŏnjŏng</i>)
38	1817. 2	Yu Chinŏk, resident of Kurye district	<i>Sŏngju</i> District Magistrate	2. 27	149	Newly appointed District Magistrate; <i>sugi</i> by Hong Sŏkyŏng and his son

It is impossible to extract a whole picture of the development of this case because only the *soji* by Yu Chinök and his wife are extant today; the *soji* filed by Hong Hügäp, the opposing party, has not been found.⁹⁾ In examining the extant *soji*, however, the development of the lawsuit can be divided into two stages as follows: the first stage is the process of the trying to garner an acquittal for Yu Chinök who was imprisoned due to Widow Yu's false accusations; the second involves the course of reimbursing the bail money of 480 *yang* paid upon Yu's imprisonment, in addition to repossessing the counterfeit documents and Yu Chinök's subsequent efforts to receive an *ib'an* to prevent any future problems that may be caused by the false allegations.

A. Yu Chinök's Imprisonment and Acquittal

In the fall of 1816, Yu Chinök's paternal aunt of secondary birth Widow Yu and her son Hong Hügäp filed a motion, based on the will of Hong's maternal grandfather Yu Iju written in the vernacular (*ömmunsuchök* 諺文手跡), demanding a part of the Yu family inheritance. Hong, *et al.*, first filed with the Magistrate of Kurye (*hyökam*) but appeared to have lost, thereafter appealing to the Provincial Governor of Chölla (*kamsa*). The provincial governor, however, dismissed as being trivial the matter of Hong's request for his portion of the inheritance and refused to render a verdict. On the other hand, the provincial governor considered the case a flagrant violation of moral principles (*kangsang* 綱常) by Yu Chinök, who was accused of abusing his aunt, thus categorizing it as a criminal case, and subsequently ordered the magistrate of Kurye to investigate the case thoroughly as one of a *yangban* man "abusing and ousting his paternal aunt."¹⁰⁾ The magistrate of Kurye imprisoned Yu Chinök and urged him to pay Hong 4,700 *yang*, which was equivalent to the price of land allegedly bequeathed to Hong. Then Yu Chinök's paternal uncle *et al.* submitted a petition (*wönchöng* 原情) on Yu's behalf to the provincial governor's office, but that office imprisoned these people. Ultimately, Yu

9) Yu Chinök, *et al.*, most likely ended up receiving all the documents, more specifically the forged documents handed in by Hong Hügäp, that they requested from the district office; the reason the returned documents do not exist today is most likely that the Yu family destroyed them to prevent future problems.

10) *Soktaejön, Hyöngjön*, "Ch'öngni:" "In cases of kin filing suits against one another wherein allegations of abuse of an elder or someone of lower status and/or younger age are forwarded, these allegations of abuse must be dealt as criminal matter before proceeding to the actual suit."

Chinŏk's wife of the surname Cho (Cho'ssi; heretofore Madame Cho) presented a *soji* (tenth month; *soji* 20) to the Provincial Governor of Chŏlla (*kamsa*).

In the *soji*, Madame Cho protested that the provincial circuit headquarters (*sunyŏng*) had reached a verdict only by considering the forged will submitted by Widow Yu, and that authentic will (*tomungi* 都文記) left by Madame Cho's grandfather-in-law Yu Iju was ignored. She also refuted Hong Hŭigap's contention based on the following reasons: first, division of inheritance must follow strictly the will of the head of the estate (*chaeju* 財主) in question to prevent future disputes;¹¹⁾ second, even an inheritor of low birth is recorded in the will if designated as a recipient of a part of the estate, and yet Madame Cho's aunt-in-law, Widow Yu, was not noted as such in the original will. If, Madame Cho continued, there ever had been a part of the assets set aside as the aunt-in-law's inheritance, the aunt-in-law should have claimed it at the time of the proprietor's death. That the aunt-in-law was, however, requesting her share only twenty years after the death of the head of the estate, showed that the head of the estate, Madame Cho's grandfather-in-law, had not in fact intended to leave any inheritance for Widow Yu, which proved indubitably that the document forwarded by Widow Yu *et al.* had been forged. Madame Cho further asserted that the share claimed by Widow Yu had originally been intended for K'waesul(快述), the secondary son of Madame Cho's grandfather-in-law, who expressed as his dying wish that, should K'waesul meet an early death, the sum left for him should then be set aside to defray the cost of proper ancestral rites (*chewijo* 祭位條). As such, the sum left for the secondary son could not be re-apportioned to the aunt-in-law. Finally, Madame Cho appealed that the aunt-in-law had never been mistreated, and requested that her husband be acquitted of the charges of abusing and ousting his paternal aunt (tenth month; *soji* 20). Madame Cho further asserted the following in a *soji* written in literary Chinese, which was ultimately not submitted (*soji* 18): first, the handwriting-signature (*sugyŏl* 手決), supposedly of her grandfather-in-law, presented by the plaintiff could be shown undoubtedly to be a forgery when compared to the signatures contained in the original will; second, the Magistrate of Kurye took into consideration only Widow Yu's forged document and disregarded the original will when imprisoning Yu Chinŏk, now the head of the family, and urged him to impart the assets by blatantly

11) "In general, the division of inheritance follows the document composed by the head of the estate (*chaeju* 財主); this is in order to prevent future disputes (*soji* 18: lines 4-5)."

ignoring the principles of legal proceedings.¹²⁾

In summary, Madame Cho asserted the following: first, the document presented by Widow Yu was forged; second, her grandfather-in-law, Yu Iju, never intended to impart any of his assets to Widow Yu; third, the magistrate of Kurye, by ignoring the original will of the deceased, reached a verdict in favor of Hong Hūigap, *et al.*, and their forged document, and; finally, there was never any abuse of Widow Yu, the paternal aunt of Yu Chinök and aunt-in-law to Madame Cho.

The provincial governor dealt with Madame Cho's aforementioned petition as follows. Paternal aunts of secondary birth are the same in kin relations as paternal uncles (*samch'on* 三寸), and therefore abusing and ousting a relative, albeit of secondary birth, is never in line with the proper conduct of any *yangban*. In addition, though Widow Yu filed a claim based on false accusations, if in the past treated well, she would not have felt the need to forward such a claim. The fault, therefore, lay with Yu Chinök and his wife, and, furthermore, the provincial governor's office had no reason to be involved in the division of inheritance (tenth month, fifth day; *soji* 20 *chesa*). The governor's office, in other words, reinforced the decision rendered by the magistrate of Kurye based on the charges of abuse against the aunt without having reached any verdict regarding Madame Cho's claim that Widow Yu, *et al.*, had forwarded counterfeit documents. The only decision the Governor's office (*sunyöng*) actually proffered was that it did not want to intervene in inheritance matters because they were to remain a matter only for the family to decide, not those in which the Governor's office should be involved.

Having lost in the appeal (*nakkwa* 洛科), Madame Cho again submitted a petition to the Kurye district. The Madame claimed:

My husband's paternal-aunt, though of secondary birth, is a close relative equivalent to paternal-uncle (*samch'on*). Being a *yangban*, how could [my husband] not know proper ethics? Moreover, even after I came to my husband's house and took over the household affairs, my aunt-in-law has never demanded any part of the family assets; therefore, what my husband and I have done cannot be considered an act of abusing and ousting a relative (*soji* 21: lines 7-8).

12) "You have imprisoned my husband having looked only into one page of a document forged by Widow Yu, without making inquiries into the circumstances and details of the case...(soji 18: line 8)".

In response to Madame Cho's claims, the magistrate's verdict was as follows: "The assets that justly need to be apportioned and allotted to Widow Yu, et al., must without fail be given to the said plaintiffs before your husband's disgraceful act can be settled (tenth month, eighth day; *soji* 21 *chesa*)."

Soon after the abovementioned decision was rendered, Madame Cho decided to permit the allotment of part of the Yu family assets to the plaintiffs, upon committing to the idea that her husband's swift release from prison and the refutation of false accusations was of utmost importance.¹³⁾ Subsequently, Madame Cho, following the order from the provincial government (*yŏngŭp* 營邑) to give Hong Hŭigap, *et al.*, 480 *yang* in compensation, imparted this amount to the Hong party and waited for her husband's release. Her husband, however, was kept in prison, and again Madame Cho submitted a petition to the provincial government.

In other words, Madame Cho had believed, as was stipulated in the decision rendered for her first petition, that the matter of her husband's crime (or lack thereof) would be settled if she paid the said amount. In its stead, Yu Iju's, brothers who had importuned for her husband Yu Chinŏk's release, were themselves placed in custody. Madame Cho, moreover, lamented the following facts: while her father-in-law was alive no kin close or distant and no relatives living in the neighboring villages had ever come forward to claim shares of the inheritance, but; now the Yu family was being sued when her father-in-law's death had not yet been more than twenty years in passing. Subsequently, she again appealed for her husband to be freed of the false accusation of "abusing and ousting an aunt (*komo kuch'uk* 姑母驅逐)." The provincial governor responded:

The allotment of family assets is not a matter for the government officials to decide. In addition, Widow Yu filed a lawsuit accusing Yu Chinŏk of mistreating her, his aunt. Such a crime has always been dealt with severely as the punishment can serve to rectify improper customs through edification and correct governance. Though we have tried to reclaim the compensation for the paddy fields, there seems to be no practicable way. As Yu Chinŏk has been imprisoned for a long time, we order his immediate release (eleventh month, first day; *soji* 19 *chesa*).

Subsequently, Yu Chinŏk was released.

13) "I do not lament the imparting of our assets; only, I entreat you, please, spare my husband (*soji* 21:line 9)!"

B. Rehabilitation of Yu Chinök's Rights

Circumstances seem to have changed rather rapidly following Yu Chinök's release from prison. Upon his release, Yu promptly demanded the following to prevent future troubles: the two documents presented by Hong Sökyöng and his son, Hong Hūigap, which began the whole dispute; the allegedly forged will written in the vernacular along with the official decision written on the back of the *soji* (*önjang pae'gwan* 諺狀背關), and; finally, in the form of an *ipchi*, the explanation of the grounds for the government (*kwan*) paying out 480 *yang* to Hong Hūigap, an amount *in toto* that Madame Cho paid due to the dispute caused by Hong Hūigap and Yu Yöngmuk. He was Yu Chinök's brother derived from the same paternal great-grandfather and anticipated being adopted instead of Yu Chinök's and hoped to succeed to Yu Family's properties. (eleventh month; *soji* 14).

Despite all of Yu Chinök's efforts to prevent further problems, Hong Hūigap tried to stir up trouble once again; Yu Chinök's biological paternal uncle (*samch'on* 三寸) in defense submitted another *soji* and received a verdict barring Hong from filing yet another lawsuit, and otherwise struggled to convince Hong not to cause additional strife. Hong, however, asserted that a division of family assets was not a matter in which the government (*kwanchang*) should be involved, and, as such, had to be settled privately. Consequently, Hong showed up with a promissory note for 3,500 *yang*. Yu Chinök in defense composed a *soji* demanding the documents he had requested in his previous *soji* mentioned above, in addition to the refund of the 480 *yang* paid out earlier (eleventh month; *soji* 15). For reasons unknown, Yu Chinök did not actually submit this *soji* to the Kugye district government.

Of the 480 *yang* Yu Chinök paid, 50 *yang* was paid out to Hong Hūigap by the district government, the rest held at the local bureau of punishments (*hyöngbangch'öng* 刑房廳). When Yu requested the reimbursement of 430 *yang*, the Magistrate (*söngju*) ordered him to wait for a verdict (eleventh month, eighth day; *soji* 17 chesa), but the verdict was never actually issued. Subsequently, Yu Chinök again filed a petition with the provincial government (*sunyöng*). From the provincial government (*sunyöng*) came the decision: "The money collected by the district office is not a matter for the provincial government (*yöngmun*), therefore we remand the matter to the district office (*soji* 16)." Subsequent to this order, Yu Chinök composed yet another *soji* requesting a refund of the entire 480 *yang* since, Yu claimed, there was no need to pay Hong Hūigap any money (eleventh month; *soji* 16).

In addition to the refund, Yu Chinŏk requested any documents concerning the dispute as well as an *ipchi* to be issued. The response by the bureau of punishments (hyŏngbang) to Yu's appeal was, however, postponed again and again without proper grounds. Frustrated with the lack of action, Yu wanted to file another petition, this time to the substitute district magistrate, but since the verdict from the provincial government already ordered the pertinent district to deal with the matter on its level, Yu's petition to the substitute district magistrate would most likely have been turned down. In addition, the repeated appeals could potentially bring punishment to his relatives again. There was also no guarantee that the former magistrate of Kurye would again be appointed to this office; as such Yu kept his silence for the time being. In the mean time, the position of the magistrate of Kurye became vacant, and in the second month of the following year, Yu submitted a petition to the substitute district magistrate (*kyŏmsŏngju* 兼城主).

The substitute replied with the following verdict:

The former official's behaviour appears to be truly regretful. I came to know that before I had finished reading even half the appeal. I cannot understand the reason behind the former official's not giving to the petitioner the documents submitted by Hong Hŭigap. However, a new official is soon to be taking office, and the petitioner should then file a motion with him (year 1817, second month, twenty-fifth day; *soji* 22 *chesa*).

The substitute, in other words, agreed with Yu's petition, yet he did not issue an *ib'an* due to his lack of any real jurisdiction over the case.

Soon afterward, the new official was appointed as the magistrate of Kurye and Yu then filed his motion. The magistrate proffered the following verdict in the year 1817, twenty-seventh day of the second lunar month, confirming the finality of a favorable decision for Yu (*soji* 38 *chesa*):

Hong Hŭigap, not to mention the right and wrong of this case, is truly difficult to edify. How can we ignore the depravity of Hong's false accusations against his maternal family (*oega*), claiming that the family had mistreated the Hong and his direct kin, and say that Hong's petition is in the right? Even if the lost documents (*sugi*) were truly from Hong's maternal grandfather, Hong should still be unable to file a lawsuit seeking to correct the

wrong, since in the meantime Hong has already received some property: How, then, can he file a suit with forged documents? Considering this one act, we can come to know everything else. As for the lost documents in the midst of the legal proceedings, the misplacement happened while the former official was still in office; therefore, I cannot myself find and return them. Generally speaking, propriety and reason exist unto themselves, so what use would the gain and loss of the documents have to do with them? Moving forward, should there be more of the same evil practices, this certificate must be used as evidence for defense against such wickedness.

The verdict came in favor of Yu Chinök as filing a claim against one's maternal family itself-as had been done by Hong Hūigap-was found to be immoral, in addition to the judgment that the will submitted by Hong, *et al.*, could not be accepted.

The case at hand had begun as an inheritance battle between Yu Chinök and Hong Hūigap, the son of Yu's paternal-aunt of secondary birth. The civil suit precipitated by the dispute was considered also to be a criminal one, leading to the imprisonment of Yu Chinök; this stage of the case was concluded only after Hong Hūigap was given money in exchange for Yu's release. Upon his release, Yu tried to receive an *ib'an* to prevent future troubles, but when Hong, still dissatisfied with the compensation received, again caused problems, Yu tried to reclaim the compensation given to Hong. From this point on, the case was in actuality a continuing conflict amongst Yu, the magistrates, and his administrative assistants (*isō* 吏胥). Yu Chinök was able to recover his rights only after he had submitted approximately ten *soji*, in addition to suffering the shame of his kinsmen being confined due to having appealed on his behalf.

IV. Litigations and the Mobilization of the Law

Through examining the case discussed above, we can grasp the realities of the nineteenth-century Chosŏn legal procedures by closely exploring the process and progress of the lawsuit at hand. Though Hong Hūigap was trying to obtain a part of the maternal family's estate, he did not merely appeal to familial sentiments, but in fact employed legal channels. Yu Chinök, in defense, also engaged in diverse legal maneuverings and asserted his rights. In this we can see the capacity of the members

of the general public to mobilize the law in their favour as well as a facet of their concept of rights in the nineteenth century.

Hong Hŭigap and Yu Chinŏk never had any direct contact between themselves regarding their dispute, and instead indirectly filed claims against each other through the Kurye district and the provincial government. In order to win their claims, both Hong and Yu employed diverse and creative legal measures. This section will explore the formal aspects of litigation and the proceedings of lawsuits, as well as the significance and modes of mobilizing legal measures.

A. *The Proceedings of Litigation*

Yu Chinŏk was imprisoned due to the accusation that he had abused and ousted his paternal aunt and ordered to pay 4,700 *yang* to the Kurye district. Afterward, the provincial government and the Kurye district avoided rendering a decision regarding the payment submitted. As mentioned previously, the civil case concerning an inheritance dispute became a criminal one based on the accusation of Yu's ousting an aunt; this is a clear example of the characteristics of the litigation proceedings in the Chosŏn dynasty, which treated ethics and social mores with much gravity. According to the Great Criminal Code of *Ming Dynasty (Taemyŏngnyul 大明律)*, the crime of abusing and ousting an aunt carried with it the punishment of eighty floggings and two years of imprisonment.¹⁴ In Yu Chinŏk's case, the detainment was for about two months after having fallen prey to Hong Hŭigap's plan to turn the suit in his favor by filing a false accusation. In addition, all of Yu Chinŏk's relatives including his biological paternal uncle entreating on Yu's behalf were also confined, Yu being released only after he submitted the 480 *yang* to the local bureau of punishments.

The process of appeals in the Chosŏn began at the district level, then moved on to the provincial governor's office, and finally to the Ministry of Punishments, in rare cases all the way to the monarch.¹⁵ At the first level, Yu Chinŏk *et al.* appealed to the provincial government and the Kurye district, and the Kurye district, for its part, released Yu following the order from the provincial government. In the second phase, Yu Chinŏk repeated his appeals to the Kurye magistrate and the provincial

14) *Taemyŏngnyul, Hy'ongnyul T'ugu.*

15) O Kapkyun, *Chosŏnsidae sapŏp chedo yŏn'gu [Studies on the Judicial System of the Chosŏn Dynasty]* (Samyŏngsa, 1995).

government, with the latter subsequently relegating the final decision to the former. That Yu, *et al.*, did not in fact file an appeal with the Ministry of Punishments might have been due to the geographical distance, but it is more likely that this lack of appeal to the highest level was caused by the development of the decisions being rendered. In other words, as the organ that actually rendered verdicts was the district magistrate provincial governor, from Yu Chinök's perspective, the decision rendered by the aforementioned organ rather than that proffered by the Ministry of Punishments was much more effective.

As such, Yu repeatedly filed appeals at the same level, and though the district office punished Yu due to the numerous filings (*soji* 11: line 7), it nevertheless avoided making any real decisions regarding restricting his appeals, ultimately relegating the verdict to the Kurye district.¹⁶⁾ This exemplifies well the function and characteristics of the civil suits; the litigation proceedings did not conclude depending on the process and progress of the lawsuit, and the claimant could repeatedly file until satisfied either in reality or psychologically. In other words, rather than formal justice carried out following a set procedure, the civil suits depended on a type of real and substantive justice taking into utmost consideration the claimant's satisfaction.¹⁷⁾

Yu Chinök won his case having appealed only once to the newly appointed Kurye district magistrate. Why, then, did the Chölla provincial governor's office and the Kurye district magistrate either avoid rendering a decision or repeatedly postpone the litigation proceedings? The Chölla provincial governor's office at this time was Kim Kyokün (1816. 3-1817. 7),¹⁸⁾ and the Kurye district magistrate was first Hong Nag'u (appointed 1816. 3),¹⁹⁾ then O Ch'ihun (1817. 2-1819).²⁰⁾ The Chölla provincial governor's office initially detained Yu Chinök on the charges of

16) Such practices have been discontinued in contemporary Korea.

17) In order to understand the function and characteristics of this type of litigation, Hong Hüigap's response to entire process needs to be investigated thoroughly; unfortunately, his assertions and opinions on the matter cannot be known.

18) From a volume edited by Yi Tonghüi called Chosön sidae Chölladoüi Kamsa Suryöng Myöngdan, Chönbukpy'ön [The Roster of District Magistrates and Provincial Governors of Chölla Province: North Chölla Edition] (Chönpukdae Chöllumunhwayönguso, 1995).

19) Dates based on the *Sunjo Sillok* [Veritable Records: King Sunjo].

20) Üpji 4: Chöllado [History of Towns and Districts: Chölla Province] (Ase'amunhwasa, 1983), p.182. Also mentioned in *soji* 22.

crime against ethics (*kangsangwipŏm* 綱常違犯)), then promptly released him, ordering him to settle out of court with Hong Hŭigap. Subsequently, the Chŏlla provincial governor's office did not at all deal with Yu Chinŏk's request for a certificate, instead consigning the duty to the Kurye district. The provincial governor's office imprisoned, then released Yu based on his own judgement, exercising the judicial power of the provincial governor's office.

The Kurye district magistrate Hong Nag'u, for his part, did not show any good will toward Yu Chinŏk, as he pretended to follow the orders of the provincial governor's office yet never actually issued the requested certificate. In addition, the clerk at the bureau of punishments (*hyŏngbangsŏla* 刑房胥吏) Pak Munhwan postponed the refund of the 400-some *yang* as well as the return of the pertinent documents to Yu Chinŏk. Both Hong Nag'u, abusing his position as district magistrate, and Pak Munhwan, on the back of Hong, tried to profit from Yu's payment to the office. However, all their efforts did not result in any substance since a new district magistrate took office, leading to the reinstatement of Yu's rights.

Ultimately, O Ch'ihun, the newly appointed district magistrate, confirmed a judgement in favor of Yu Chinŏk: First, Hong Hŭigap's filing a suit against his maternal family was itself a crime against ethics and mores (*kangsangwipŏm* 綱常違犯); second, the promissory note supposedly by Hong's maternal grandfather was either a forgery or already apportioned, hence legally moot; third, the denial of his own father's handwriting-signature led one to believe that Hong's forging other documents would be more than probable. In other words, rather than relying on detailed evidence, O Ch'ihun judged that the documents were forged and discarded them based on ethical grounds such as Hong's want of filial piety. Moreover, he did not recognize widow Yu's rights of inheritance, a decision supported by Yu Iju's notarized will composed in 1793. A judge was an official whose significance lay not in professionalism, but in actualizing justice and extending benevolence and fairness to the common people on behalf of the monarch; as such, the newly appointed Kurye district magistrae rendered decisions taking into consideration the specific circumstances of the given case as well as Yu Chinŏk's assertions.

B. Mobilization and Employment of Law

Those who were excluded from the division of assets, namely Hong Sŏkyŏng and his party, had twice entreated to human feelings and received part of their

maternal family's estate. However, this did not satisfy Hong Hŭigap who believed he possessed certain rights to expect a greater share of the inheritance, and, as such, Hong employed several measures, including the false accusation that the defendant Yu Chinŏk had beaten and ousted his own aunt; the intended outcome was to guarantee that he would receive a part of the family assets. In other words, Hong even risked punishment in his drive for profit, mobilizing any legal measures at his disposal.²¹⁾

As for resolving inheritance disputes, it had been customary for the district office to divest the estate directly according to legal proscriptions regarding inheritance.²²⁾ This practice could not be continued following the solidification of the sole rights over divestment held by the head of the estate; as the district office lacked the precedents on which to base the apportionment of the estate, it had to depend on the will of the estate head. However, depending solely on the said will bore the distinct possibility of disputes amongst kin; in order to prevent the clashing of the divestment rights of the head of the estate and the inheritors' rights to claim part of the estate, the district office refrained on principle from rendering decisions on inheritance claims, instead encouraging the pertinent parties to settle out of court.

The case at hand was concluded with the mediation of the provincial government, which ostensibly encouraged the parties to come to a compromise on their own (*soji* 20, 19 *chesa*), but in reality coaxed a solution out of them. Hong Hŭigap naturally resented such an inducement, and Yu Chinŏk for his part refused to accept the solution forwarded by the provincial government, instead repeatedly asserting his rights, an act especially driven by his distaste over Hong's behaviour. Both Hong and Yu used as their bases for refuting the decision rendered by the provincial government the latter's statement that the division of assets shall remain strictly a private matter,²³⁾ each interpreting it to his own advantage.

The provincial governor's office and the provincial government were both official organs which, on behalf of the monarch, governed and looked after the people, and as such, their orders, in reality, almost exceeded the gravity of those forwarded by the king. Both Yu and Hong, however, ignored the decisions rendered

21) Cho Yunsŏn, "Soktaejŏn Hyŏngjŏn 'Ch'ŏngni' chowa Minŭi Pŏpŭisik (On the 'Ch'ŏngni' Clause in the Punishment Chapter of *Soktaejŏn* and the Awareness of the Law in the General Public," *Hanguksa yŏngu*, [*Studies on Korean History*] 88. (Hanguksa Yŏnguhoe, 1995), p.11.

22) Pak Pyŏnggho, *Hanguk Pŏpchesa* [*History of the Legal System of Korea*], p.164.

23) "財之分與不分 非營邑所可之事 人家分財 非官長所可決處."

by the aforementioned official organs, considering them to be no more than relative in substance and hence malleable to their own benefit.

We must note here Yu Chinŏk's appeals strategy. In order to reclaim all of his rights, Yu employed not only legal measures, but also made entreaties to sentiments, claiming his "urgent and mortifying situation."²⁴⁾ Madame Cho also engaged similar strategies to help her husband be exonerated of the false accusation of having committed a crime against ethics, ultimately succeeding in her endeavours. Of course, appealing to sentiments did not always guarantee a favourable outcome; Yu in fact employed such a tactic against the inhospitable Kurye magistrate Hong Nag'u only once before reverting to legal measures. Depending on the person for whom the appeal was designed and on the contents of the complaint, Yu exploited innate sentiments and natural proclivities, even going so far as to become completely sycophantic. This type of clever maneuvering can be seen clearly in his accusing Hong Hŭigap of furthering a claim on false grounds. Unreasonable and repeated legal claims were considered to cause social chaos, and as such were severely restricted by the government.²⁵⁾ Yu Chinŏk himself was in fact punished under this category, leading to even his kinsmen being detained (*soji* 22: line 7), and to avoid serving the penalty in its entirety, he accused Hong's father and son of filing an unreasonable suit (*soji* 22: lines 1-2).

Moreover, Yu engaged in long and tiresome battles against the Kurye district in order to receive the certificate as well as a refund of the 480 *yang* he had been ordered to submit in the beginning of the ordeal. In his efforts to reclaim his rights, Yu not only employed passive tactics such as appealing to mercy, but also various and sundry active measures aimed at achieving his goal. Against Hong Hŭigap's assertion of inheritance rights, Yu used the Great Code of Chosŏn, revised (*Soktaejŏn* 續大典) stipulation that divestment of an estate must follow the ancestor's will, in conjunction with the idea that no division of assets shall be carried out for progeny past three generations from the head of the estate (*soji* 15: line 11), a

24) This appears in all *soji* in addition to the headings and closings of the *soji* 15, 22, and 38. Such expression occur in many a *soji* (as discussed in Pak Pyŏnggho's *Hanguk Pŏpchesa*, p.288), but as they do not turn up in *Yusŏp'ilji*, such expressions cannot be seen as being part of a set format.

25) Cho Yunsŏn, "Soktaejŏn Hyŏngjŏn 'Ch'ŏngni'chowa Minŭi Pŏpŭisik (On the 'Ch'ŏngni' Clause in the Punishment Chapter of *Soktaejŏn* and the Awareness of the Law in the General Public," *Hanguksa yŏngu*, [Studies on Korean History] 88. (Hanguksa Yŏnguhoe, 1995), pp.11-13.

proscription in the Great Code of Chosŏn (*Kyŏngguktaejŏn* 經國大典)²⁶⁾ as well as the Great Code of Chosŏn, revised.²⁷⁾ As can be seen, Yu had a clear and shrewd understanding of the law and its contents, using and interpreting them to his advantage. For example, Yu refuted the official's claim that he could not return the documents because the former official had misplaced them by pointing out the irrationality of such an excuse, that a former official no longer had any jurisdiction over a claimant's papers (*soji* 22: lines 9-10, *soji* 38: line 9). The government assertion that the 480 *yang* could not be refunded because the money was either given to Hong Hŭigap or was lost, coupled with the haphazard postponement of the certificate, were confronted by Yu: "This is neither the proper way of litigation nor of governing (*soji* 22: line 5)." All of the above clearly displays Yu's lucid understanding not only of *a jus scriptum*, but also of the underpinnings of common law. Moreover, he cogently asserted his rights to everyone involved in this specific legal process, including his opponent as well as the officials and clerks in the government office.

Beyond the legal arguments, Yu also problematized the innate quality and disposition of the pertinent officials. Upon hearing that the government office once again was postponing the issuing of the certificate, Yu questioned, "Is it right for the government to deceive its people (*soji* 22: line 6)?" In other words, Yu made the criticism that anyone without a real grasp of the law did not qualify to be an official, essentially refuting the authority of the office. He had, above all, cleverly aimed all his criticisms at the official of the neighbouring town filling in for the vacant office (*kyŏmkwan* 兼官) in Yu's own district, a tactic devised to avoid being punished for insulting an official.²⁸⁾

Going forward, Yu Chinŏk claimed a legal status equal to that of the government, as according to his own estimation, both possessed a similar level of knowledge regarding the inner workings of the law. Yu wrote, "Though I reside in the countryside, I am a descendant of a central court official, and as such recognize and fully understand the weight of the law and its spirit. My intention is not to withstand passively my family name being ruined, its fortunes becoming bankrupted. In order to prevent future troubles from causing my family distress once again, I request that

26) *Kyŏngguktaejŏn*, *Hyŏngjŏn*, "Sachŏn."

27) *Soktaejŏn*, *Hyŏngjŏn*, "Ch'ŏngni."

28) *Kyŏngguktaejŏn*, *Hyŏngjŏn*, "Sowŏn."

you quickly issue the certificate (*soji* 38: lines 10-11).” In other words, Yu expressed a certain awareness of the idea that it is not only a person’s right, but also their duty first to understand the law, and stemming from this knowledge, protect and reclaim their rights. This represents a perspective, held by the non-official general public, on the concept of the law. Law, as these people understood it, was less a technical tool for the punishment of criminals, being instead a mechanism for actualizing justice as well as a method by which to resolve grievances.²⁹⁾ Law, as they understood it, was a useful tool with which to protect rights of both those in power and those who are governed, and, as such, the governed became the semi-arbiters of the law actively incorporating it for their own use, instead of remaining passive, controlled subjects.

Both Hong Hŭigap and Yu Chinŏk employed legal maneuverings and means to put their litigation proceedings into motion: Hong by using forged documents and focusing on falsely bringing to attention the criminal aspect of the case, and; Yu through taking advantage of his detailed knowledge of the law, daring at one point to problematize even the qualifications of the government. In observing the proceedings of the litigation at hand, we can see that the people of this time period possessed a level of legal knowledge which allowed them to mobilize legal means to their advantage and a sense of themselves as the semi-arbiters of these legal channels that rival those of today’s citizens.

V. Conclusion

In the autumn of 1816, Hong Hŭigap filed a lawsuit that resulted in Yu Chinŏk’s imprisonment under the charge that Yu, the defendant, had abused his aunt and ousted her from his house (*komo kuch’uk* 姑母驅逐). Subsequently, Yu was able to reclaim his rights only in the second month of 1817, after a hundred-some days had already passed by, with the numbers of petitions filed by his relatives as well as himself altogether surpassing twelve: Madame Cho filed thrice or more, Yu’s biological paternal uncle and other kin filed thrice or more, and Yu himself did so more than six times. The case was not merely one between Yu and Hong, but

29) Pak Pyŏnggho, “Chosŏnsidae Wangkwa Pŏp, (The Monarch and the Law in the Chosŏn Dynasty),” *Kŭnseŭi Pŏpkwa Pŏpsasang* [The Law and the Legal Thought in Modern Korea] (Chinwŏn, 1996).

essentially one that involved the people in the center and the periphery of the case pitted against the magistrates and the low ranking local officials subordinate to him, with Yu's kinsmen suffering great distress in the process. Yu nevertheless won the case; yet this was only made possible by his vast knowledge of the law buoyed by his firm sense of his legal rights.

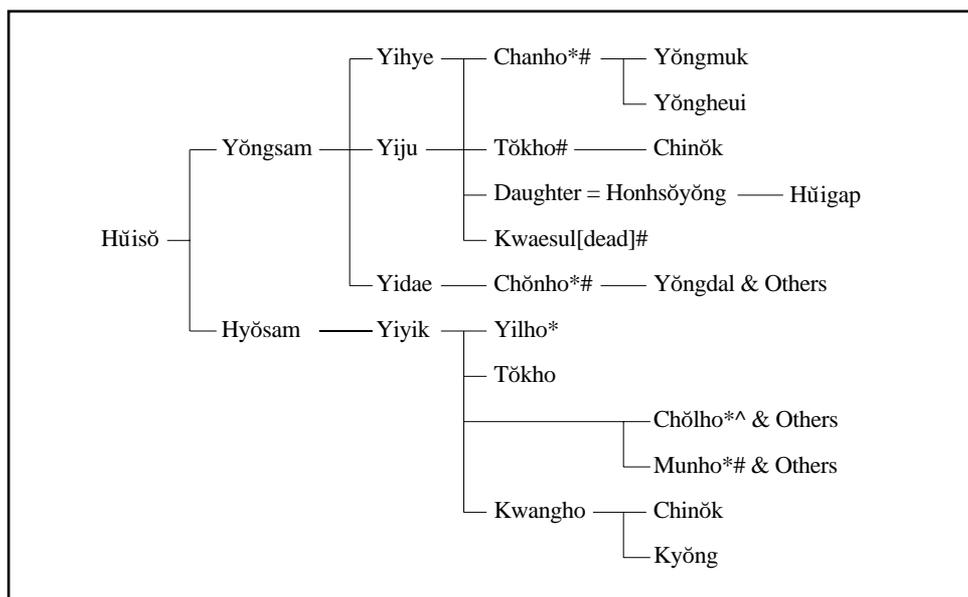
In the face of the semi-authoritarian governing body, individuals employed all means possible to protect and extend their rights, in the process actively using the law to their advantage. The vigorous use of legal means, oftentimes bordering on exploitation, was especially true in cases of litigation, and the methods by which an individual used and abused the law depended largely on the circumstances and proceedings of the lawsuit. As such, a state policy, intended to curb the active expression of profit-seeking ventures wherein resolutions of discord without litigation would be heavily promoted, could not continue to be successful due to the amplified concept of individual rights in the nineteenth-century Chosŏn society. Individuals at times even went so far as to ignore or interpret freely an official order when it essentially failed to serve their purpose and play to their advantage, and, further, did not hesitate to claim their rights against government officials. As has been seen previously, Yu Chinŏk even criticized the qualifications of the official dealing with the case at hand.

All of the aspects mentioned above illustrate a general transformation of the nineteenth-century Chosŏn society. At this juncture in time, an individual was becoming more of an independent person rather than the merely passive subject of the monarch at the mercy of the government officials that one had been up to this juncture. Otherwise put, the nineteenth-century individual no longer resembled the mid-Chosŏn one who spent their life furthering, either directly or indirectly, the cause of Neo-Confucian ideology, having been indoctrinated by and in it from an early stage; the individual in the nineteenth century had become one who actively pursued their rights, capable of maneuvering through the legal channels in the pursuit of their self-interest.

Law is a tool for regulating advantages and interests in society, and thus a sphere in which human propensity toward self-interest becomes most transparent. This paper is merely confined in its scope to the events that took place in a specific geographic location, namely Kurye, and as such may be rather limited in terms of the conclusions one can draw on a more broad level. An overall generalization of any given social facet, however, is achieved first through the accumulation of the

particular instances of the particular characteristic. Moving forward, it will be of utmost interest to extract a more complete picture of the social transformation through time and the individual as historical agent throughout the Chosŏn dynasty through gathering more primary sources and investigating them thoroughly.

Appendix: Lineage Map



*: Testifiers, #: Donee, ^: Writer (1794 YuYiju's Instrument).

Source : Munhwa Yu's Genealogy, Edited by Munhwa Yu's Main Association, 1984
Munhwa Yusi Sekyŏbo, Munhwa Yusi Taechonghoi, 1984, pp. 548-557.

KEYWORDS : *soji*, legal culture, trials in the Choson dynasty, ch'ongsong, litigation, the Great Code of Choson (*Kyongguktaejon*)