

BOOK REVIEW

Jisoo M. KIM, *The Emotions of Justice: Gender, Status, and Legal Performance in Chosŏn Korea*. Seattle: University of Washington Press, 2015. 224 pages. ISBN 13: 9780295995038 (Hardcover). 50.00 USD.

The Emotions of Justice: Gender, Status, and Legal Performance in Chosŏn Korea by Jisoo M. Kim ventures into some of the most underexplored domains in the field of Korean history: legal history and women's history. This book represents an adventurous and ingenious attempt to simultaneously shed light on these realms by focusing on women's petitioning activities and their social and cultural significance in Chosŏn legal culture.

As far as the study of Korean legal history is concerned, until recently, both Western and Korean scholarship have associated the premodern Korean legal tradition with a relative absence of law in the Weberian sense. Such an understanding of Korean legal tradition by and large coincides with that of the overall East Asian legal tradition, which was to a considerable degree influenced by Chinese legal tradition. Thus far, Chinese legal historians have reaffirmed that the Chinese concept of law or *fa* (K. *pŏp*) is distinct from its Western counterpart: the former originated from punishments or ancient penal law, while the notion of rights played a crucial role in the evolution of the latter. Although the emphasis on Confucian leniency or strong opposition to the arbitrary use of law was central to the evolution of Chinese law or the process of the "Confucianization of law" beginning with the Han dynasty (202 BC-AD 220), premodern Chinese law as a whole has often been understood in both Western and Chinese scholarship as a coercive tool of "Oriental despotism." As Chosŏn Korea was heavily influenced by Chinese law, particularly the Great Ming Code (*Da Ming lü*), it has been taken for granted that commoners were subjected to harsh punishments. This negative view on traditional Korean law was expanded, and a true understanding of it further distorted, through the country's colonization by Japan.

The story becomes even more dismal, when women and their legal status in Korean history are considered. Viewed from the conventional perspective, the law, by espousing Confucian patriarchy, placed every woman in a socially inferior position and failed to recognize individual women as legal subjects. Many legal cases related to sexual crimes such as rape and adultery demonstrate that women were indeed victimized by a legal system the principles of which were firmly founded on male patriarchy and Confucian gender politics. It has been said that these overwhelmingly unequal aspects of the law in these areas of gender and status discrimination were not overcome until the adoption of modern law.

However, in *The Emotions of Justice*, Jisoo Kim tells a completely different story about Chosŏn women and the legal system. Although Chosŏn society was highly stratified and gender-segregated, the very Confucian judicial system that allowed any person to redress a grievance in a law court meant that the state

recognized every subject regardless of gender or status as an independent legal subject. According to Kim, this petitioning activity deserves our attention from a comparative perspective because other contemporary patriarchal societies, such as China and some European countries, did not allow marginalized groups, such as women and slaves, to publicly air their grievances in the law courts. The Chosŏn legal system was hardly irrational or arbitrary in that even women and slaves were granted an opportunity to redress wrongs committed against them. In this respect, it seems to have achieved “legal rationality” by pursuing the very notion of Confucian justice, just as the author argues:

The Chosŏn legal system functioned in a contradictory fashion. While applying unequal laws and punishments according to different social statuses, the state’s recognition of *wŏn* as an egalitarian sentiment allowed every subject to petition. By embracing the voice of every subject, the state built a stronghold of legitimacy and also was able to maintain social harmony by regulating those who transgressed the laws or social norms. However, subjects concurrently utilized the appeals system to pursue their own interests and even manipulated the system to achieve some form of emotional satisfaction regardless of the legal results. (149-50)

Here, the term *wŏn* has diverse meanings including emotions, such as anger, grief, suffering, and pain, even though it is often translated as “grievance,” “injustice,” or “wrong” in English. The cases introduced in this book reveal that women were not simply victimized by the law. Contrary to the conventional view on traditional Korean law, women were allowed to exercise their legal power through the performance of petitioning, and actively engaged in dialogue with authorities, which enabled them to voice their sense of injustice.

Fortunately, this book is not the sole attempt at the rejection of conventional views on the East Asian legal tradition generally, and Korea’s in particular. Recent trends in both historical and legal scholarship exhibit greater efforts to reject Eurocentric legal discourses and reassess the essence of the East Asian legal tradition. Recently published books such as *Law and Custom in Korea: Comparative Legal History* (2012) by Marie Seong-Hak Kim, *Wrongful Deaths: Selected Inquest Records from Nineteenth-Century Korea* (2014) by Sun Joo Kim and Jungwon Kim, and *The Spirit of Korean Law: Korean Legal History in Context* (2016) edited by Marie Seong-Hak Kim, also reflect changing trends in the field of Korean history. *Wrongful Deaths*, in particular, facilitates a further understanding of the Chosŏn legal system by providing us with the first English translations of inquest records. In line with these recent works, this book contributes to a deeper understanding of what the Confucian legal tradition was in a real, not superficial or abstract, sense, and how it was redefined and articulated in a Korean context.

Even more remarkable is that this book sheds new light on the role of emotions in the law in a Confucian state. This attention to how emotions played a role in the Chosŏn legal system may interest quite a few scholars of contemporary law who are attempting to rethink the place of emotions in the law. Just as William Shaw argues in his *Legal Norms in a Confucian State*, the Chosŏn legal system “discriminated against subjects on the one hand but simultaneously minimized

such discrimination on the other” by recognizing *wŏn* (12).¹ The recognition of *wŏn* in the Chosŏn legal system deserves our attention in the context of a comparative history of East Asian legal culture as well in that it was rarely found in other Confucian states, such as China and Japan. Furthermore, Kim’s book enlightens us about the fact that it was during the Japanese colonial period (1910-1945), not during the Chosŏn period, that women were deprived of their legal capacity.

Without a doubt, the greatest merit of Jisoo Kim’s book lies in its helping to debunk the conventional perception of law in East Asia, particularly Korea, as well as the Confucian legal tradition. It directs our attention to a fact that has too often been overlooked by contemporary scholarship: that, not unlike modern law, premodern Korean law also strove to search for justice and achieve legal rationality by allowing people to publicly vent the emotions of *wŏn* regardless of gender or status.

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¹ Also see William Shaw, *Legal Norms in a Confucian State* (Berkeley: Institute of East Asian Studies, University of California, 1981), 122.