

The Adoption of Chinese Legal Codes and Premodern Korea

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This paper examines the adoption process of Chinese legal codes from the Koryŏ to the Chosŏn periods and the subsequent changes of Korea's legal system. Although Koryŏ organized its legal system based on the *Tang code* 唐律, it also adopted various other Chinese laws as needed. The Yuan 元 (1271-1368) demanded legal reforms from Koryŏ, but Koryŏ opposed, citing differences in social foundation. Eventually, the Yuan succeeded in prohibiting consanguineous marriage but failed in reforming the slave system. As a kingdom ruled by royal law, Koryŏ had weak legal stability, and so its society was in disorder. At the end of the 14th century, Koryŏ adopted the *Great Ming Code* 大明律 to revise the legal disorder, and the legal code was carried over to the Chosŏn dynasty. The sixfold division of the *Rites of Zhou* 周禮 became the foundation of the Koryŏ government organization, and during the Chosŏn period, it became not only the basis for government organization but also a model for compiling legal codes. In the late 14th century, the adoption of Neo-Confucianism and Zhu Xi's 朱熹 (1130-1120) Family Rituals transformed the gender-equal family structure into a patriarchal one. This transformation began with a shift from uxorilocal marriage to virilocal marriage and proceeded toward excluding women from ancestral rites and strengthening the inheritance rights of men and eldest sons. By the late 19th century, patriarchy was de facto established and was further reinforced during the colonial period. Furthermore, as time passed, many unique Chosŏn provisions that differed from the *Great Ming Code* emerged in criminal law, leading to its Chosŏn localization. However, Chosŏn emphasized ethical norms such as social status relationships more than China.

The characteristic of adopting Chinese law in the traditional period was the proactive and autonomous adoption of those that fitted our needs. This approach remains meaningful even in the 21st century, when the world continues to integrate.

Keywords: The adoption of Chinese law, *Rites of Zhou* 周禮, the sixfold division, Koryŏ Code 高麗律, Chosŏn legal codes, Chosŏn family structure, the adaptation of the *Great Ming Code* 大明律

Introduction

The world can be divided into several civilizational spheres, and law is the same. In each state, law takes on different forms and unique characteristics. Institutions of a state are developed through mutual influence with those of other states, and law is also the same. Korea, together with China, is classified as part of the Confucian

civilizational sphere, and its law is likewise categorized as part of the Confucian legal sphere. Korea's history is closely related to China and was developed by adopting Chinese institutions and adapting them to fit Korean situations. Law is also the same – from adopting Chinese legal codes in the early 4th century until the introduction of Western law in the late 19th century, Korea's legal institutions were developed in close relations with Chinese law. In the history of Korean law before the introduction of Western law, catalysts for change include the adoption of legal codes in the early 4th century and the introduction of Zhu Xi's 朱熹 (1130-1120) Family Rituals and Neo-Confucianism in the late 14th century.

Although up until now there have been micro-level approaches to specific topics regarding the influence of Chinese legal institutions on Korean society, there has been a lack of approaches that examine the whole of Korean history in macro-level perspectives. In this article, I aim to examine from a macro-level perspective the adoption of Chinese legal codes and legal institutions during the Chosŏn period and the changes and developments in Korean society.

Korea systematically adopted Chinese legal codes in the 4th century. In 373, the 3rd year of King Sosurim 小獸林王 (d. 384), and in 520, the 7th year of King Pŏphŭng 法興王 (d. 540), Koguryŏ and Silla respectively adopted these legal codes, establishing the framework for an ancient state and its development. Although there are no explicit records, Paekche likely promulgated a legal code between the late 3rd and early 4th century, when it restructured its bureaucratic system. Silla revised its legal code after the unification of the Three Kingdoms, but because of non-existent extant historical sources, it is impossible to know the details. In this article, I will discuss the Koryŏ and Chosŏn periods.

This article first introduces the process of adopting China's legal codes. It first opens with the adoption of the *Tang code* in the early Koryŏ, and the Yuan demand for legal reforms and Koryŏ's response during the Mongol intervention period. Then, it moves on to the adoption of the *Great Ming Code* in the early Chosŏn, through which I examine specific topics: 1) the adoption and establishment of the Rites of Zhou's 周禮 sixfold division of political organization 六典體制 as the model of Chosŏn political institutions, 2) the adoption of Neo-Confucianism and its transmitting vehicle Zhu Xi's Family Rituals and subsequent changes in family structure, and 3) Chosŏn's adaptation of the general criminal law, the *Great Ming Code*, according to its situations and the reflection of unique Chosŏn characteristics in its criminal law.

Today, in the age of globalization, laws no longer remain within national boundaries but closely and mutually influence each other beyond these boundaries. By taking a macro-level examination of the adoption process of the heterogeneous Chinese law in our history, this article aims to provide an opportunity to reflect on the direction towards which our legal system should take in the 21st century, when not only materials and people but also regulations exchange across borders.

The Adoption of Chinese Legal Codes

1. The Koryŏ Adoption of Chinese Legal Codes

Founded in 918, Koryŏ inherited the tradition of adopting Chinese legal codes that had existed since the Three Kingdom period and adopted the legal system of Tang China to organize its state structure. In the early Sŏngjong 成宗 reign (981-997), it reorganized the cultural and institutional rubrics and laid the foundation for the state. Afterward, during the military regime of 1170 -the 24th year of King Ŭijong 毅宗 (1127-1173) and the period of Yuan intervention after 1259, the 46th year of King Kojong 高宗 (1192-1259), the legal institution was destabilized. In the reign of King Kongmin 恭愍王 (1352-1374), who regained autonomy from the Yuan, Koryŏ made efforts to construct a new legal order. This section examines the adoption process of Chinese legal institutions, such as the *Tang code* and others, the Yuan demand for legal reforms, and the response of Koryŏ.

(1) The Adoption of the *Tang Code* and the Koryŏ Code 高麗律

The central issue in the Koryŏ legal history is whether Koryŏ independently compiled its own penal code. The treatise on punishments and law in the *Koryŏsa* 高麗史 reveals the Koryŏ penal code in the following general outline.

The institutions during the Koryŏ period were largely modeled after the Tang dynasty (618-907), and in penal law, Koryŏ also employed the *Tang code* and made adjustments according to circumstances. [The Koryŏ Code] consisted of 2 articles on prison officials, 12 on general provisions, 4 on trespassing on forbidden places, 14 on government personnel, 4 on households and marriage, 3 on state stud-farms and storehouses, 3 on unauthorized raising of troops, 6 on theft and robbery, 7 on litigations of brawl, 2 on fraud and forgery, 2 on miscellaneous laws, 8 on the apprehension of fugitives, and 4 on judicial procedures, a total of 71 articles. Those that were complex were removed, and those that were simple and essential were selected and implemented throughout the whole period. Therefore, it cannot be said that it lacked a basis.

高麗一代之制 大抵皆倣乎唐 至於刑法 亦採唐律 參酌時宜而用之。曰獄官令二條 名例十二條 衛禁四條 職制十四條 戶婚四條 廐庫三條 擅興三條 盜賊六條 鬪訟七條 詐僞二條 雜律二條 捕亡八條 斷獄四條 摠七十一條 刪煩取簡 行之一時 亦不可謂無據。¹

Based on the above record, it is impossible to confirm the existence of an independent penal code – the Koryŏ Code, so scholarly opinions are divided. Those who deny the independent compilation of legal code argue based on the following

¹ *Koryŏsa* 高麗史 卷 84 刑法志序

points: 1) the *Tang code* served as the foundation with necessary articles abstracted; 2) according to contemporary circumstances, legal codes of the Song 宋 and the Jin 金 were also adopted; 3) due to the diverse legislative forms, such as decree 制, judgment 判, and instruction 教, there was no systematic codification of law; 4) although there were the legal category 明法業 in the state examination system and legal instructors 律學博士/律學助教 in the state education system, they were based on the *Tang code* and lacked concrete records. However, those who affirm its existence argue based on the following points: 1) The records in the *Tang code* and the similar undated 64 articles resemble the 69 articles in the treatise on punishments and law; 2) legal examination and legal instructors existed; 3) the *Tang code* was used as the model for revision; 4) the history of legal codes continued from Koguryō to Silla then to Koryō; 5) references to a certain code of the Koryō dynasty 本朝律/今所行律令 scatter in the *Koryōsa*. Although there are studies that have argued for Koryō autonomy in their individual topics by comparing with the *Tang code*, until now, there is still no consensus on the existence of an independent Koryō Code.²

The central issue regarding the existence of the Koryō Code, like in the Chosŏn period, is whether the *Tang code* was fully adopted. The *Tang code* consists of 502 articles, but only 71 articles are in the records of the *Koryōsa* – among them, those on prison officials were administrative ordinances 令, not law codes 律. Moreover, a significant number of these were revised to reflect the realities of Koryō. As such, based on this evidence alone, one can affirm the independent compilation of the Koryō Code. Still, throughout the Koryō period, the code did not appear to have operated as an independent code and adopted Chinese legal articles when necessary. For instance, after waging war with the Khitans, Koryō adopted the Song Code to revise its military law. King Hyōnjong altered the local administration, which was based on Tang institutions, to better suit the realities of Koryō. The Song Code, which was called Song *xingtong* 宋刑統 and was based on the *Tang code*, introduced spine beating, face branding, and the conversion of punishments to beating to supplement the five-punishment system 五刑體制. Among the soldiers who fled during the wars with the Khitan, those who were commoners could not be punished either as soldiers or as commoners under the law on government officials 職制律. Thus, the introduction of spine beating during the revision of the military law between the second and ninth years of Hyōnjong's 顯宗 (992-1031) reign was influenced by the Song Code.³ Furthermore, the regulations of beating punishment used metal rods instead of the Tang rods, and the conversion of punishments to beating was an institution of the Song

² The above discussion is summarized from Sin Ho'ung, *Research on the History of Koryō Legal Institutions* 高麗法制史研究 (Seoul: Kukhak charyowŏn, 1995), pp.19-49; Han Yonggūn, *the Koryō Code* 高麗律 (Seoul: Sōgyōng munhwasa, 1999), pp.12-25.

³ Yi Chōnghun, "Koryō sidae chip'ae cheje ūi pyōnhwa wa Chungguk ryul ūi suyong" 고려시대 支配體制의 변화와 中國律의 수용 In *Penal Law and Penal Administration of the Koryō period* 고려시대의 刑法과 刑政 (Kwach'ōn-si, Kyōnggi-do: Kuksa p'yōnch'an wiwōnhoe, 2002), pp. 14-18.

and Yuan dynasties. The memorial rites for former monarchs and the celebration rites for the reigning monarch's birthday were adopted from the practices established during the reign of the Tang emperor, Xuanzong 宣宗 (810-859). But there were also preexisting Koryŏ rituals, such as the Eight Prohibitions Festival and Lantern Festival.⁴

Building on the traditions after the Three Kingdoms period, Koryŏ adopted and internalized the Chinese legal codes based on the *Tang code*, establishing its own independent legal institutions. In this process, standalone royal orders, such as decrees, judgments, and instructions, emerged as important and were categorized as royal law by the Directorate for Legal Deliberation 式目都監. They played a role similar to a legal code. Composed of members with the official rank of 1A of the Secretariat-Chancellery and the Security Council 宰樞, the Directorate for Legal Deliberation concurrently served as the presiding body of the Privy Council 都兵馬使 and preserved judicial rulings. Koryŏ filled the gaps in its legal institutions caused by changes over time with royal law kept in the Directorate for Legal Deliberation. While Koryŏ constructed a universal and rational government system based on the tradition of the *Tang code*, the most advanced at the time, it also used royal law, such as decrees, judgments, and instructions, to address its unique issues. Gradually, Koryŏ royal law played a more significant role than the *Tang code*.⁵

Not merely adopting the institutions of a specific Chinese dynasty, Koryŏ actively adopted institutions that suited its circumstances. The phrase “modeled after the Tang” in the preface of the treatise on punishments and law in the *Koryŏsa* refers not only to the *Tang code* but the entirety of Chinese legal institutions and reveals the *Koryŏsa* compilers' perception during the early Chosŏn period of China and the Koryŏ era. Considering these points collectively, even though an independent legal code was compiled in the early period, its status was not high. In addition, it must be considered that after the military regime, Koryŏ transitioned to a kingdom ruled by royal law in which the king's judgments on individual cases were emphasized.⁶

(2) Disturbance to Legal Institutions During the Yuan Intervention Period

In 1216-the 3rd year of King Kojong-, the Mongols invaded Koryŏ under the pretext of suppressing Khitan loyalists and established diplomatic relations with Koryŏ in 1219. From 1231, the 18th year of King Kojong, to 1259, the 46th year of King Kojong, the Mongols launched seven invasions of Koryŏ. After the collapse of the hardliner

⁴ Han Kimun, “Koryŏ chŏn'gi pulgyo kwanryŏn ryullyŏng ūi naeyong kwa sŏnggyŏk” 高麗前期 佛教關聯 律令의 내용과 성격, *Minjok munhwa nonch'ong* 민족문화논총 37 (2007): 135-176.

⁵ Im Sanghyŏk, “Koryŏ ūi pŏpch'e'gye wa Chosŏn e taehan yŏnghyang” 고려의 법체계와 조선에 대한 영향, *Pŏpsahak yŏn'gu* 법사학연구 48 (2013): 7-32.

⁶ Pak Pyŏnggho and Chŏng Kŭngsik, “Han'guk Pŏpsahak” 한국법사학 In *Academic Research of Korea: Humanities and Social Sciences, vol. 11 (Legal studies II)* 한국 의 학술 연구: 인문 · 사회 과학 편, 제 11 집 (법학II) (Seoul: Taehan min'guk haksurwŏn, 2010).

Ch'oe 崔瑄 (d. 1258) military regime, peace negotiations began in May 1259. But Möngke (1209-1259) died on July 30, splitting the Mongols into Qubilai's (1215-1294) supporters on the one hand and Arigh-Böke's (1219-1266) supporters on the other. Furthermore, King Kojong died. As such, the negotiations were suspended. In 1260-the 1st year of King Wŏnjong 元宗 (1219-1274)-, King Wŏnjong concluded peace with Qubilai with six provisions, one of which was "attire shall follow the native customs" – that is, the principle of not altering local customs 不改風土. The Mongols required from their subordinate states only political, military, and economic demands and did not force them to conform to their sociocultural institutions and practices, such as religion, legal system, and customs.⁷

1) Reform of the Slave Legal System

Koryŏ established friendly relations with the Yuan dynasty and strengthened its royal authority with Yuan support in order to stabilize its society after disruptions. The Mongols allowed Koryŏ to preserve its state customs so that it could maintain the appearance of an independent state. However, as Mongol intervention in Koryŏ intensified, not only did the Koryŏ political system change, but its legal institutions were also destabilized. Reestablished in 1299-the 25th year of King Ch'ungnyŏl 忠烈王 (1236-1308)-, the Branch Secretariat for the Eastern Campaign aimed to rule Koryŏ with Yuan law. During this period, the core of its reform was to abolish the principle of determining slave status by the statuses of one's parents – that is, "if one of the parents was a slave or an emancipated slave, the person was identified as a slave" 一賤則賤, 放良奴婢所生還賤 – and to expand the commoner status by following the principle that "if one of the parents was a commoner, the person was categorized as a commoner" 一良則良. Koryŏ strongly resisted this reform. King Ch'ungnyŏl, Qubilai's imperial son-in-law, was able to rule Koryŏ with relative independence. But after Qubilai's death and Temür's enthronement, the Yuan began to exert direct control over Koryŏ. Both the officials and the king of Koryŏ possessed a dual relationship – they were ruler-subject within Koryŏ and also vassal-bureaucrat within the Yuan. Political status within Koryŏ was determined by political status within the Yuan.⁸ As such, to strengthen royal authority, Koryŏ promoted the adoption of Yuan institutions. This stance, which pursued a monistic order with the Yuan, can be called "the discourse of universal customs" 通俗論. The opposing stance, which emphasized Koryŏ autonomy and uniqueness, can be termed "the discourse of native customs" 國俗論.⁹ The division between the two sides was most evident in the reform of the slave system, which was the foundation of Koryŏ, in the introduction of the Yuan military

⁷ Kim Hodong, *The Mongol Empire and Koryŏ* 몽골 제국 과 고려 (Seoul: Sŏul taehakkyo ch'ulp'anbu, 2007), pp. 83-90; 96-97.

⁸ Kim Hyŏngsu, *Late Koryŏ Policies and Politics* 고려 후기 정책 과 정치 (Seoul: Tosŏ ch'ulp'an chisŏngin, 2013), pp. 27-34.

⁹ Ibid., p. 23.

myriarch system, and in the ban on consanguineous marriage. Reinstating King Ch'ungnyöl in 1299, the Yuan reestablished the Branch Secretariat for the Eastern Campaign and began to reform the Koryŏ bureaucratic structure and the slave system. With Yuan approval, Chief Councilor Öljei (1379-1412) led the initiative to expand the commoner status beyond Yuan law with the prohibition of intermarriage between commoners and slaves and the principle of identifying people born from commoner-slave marriage as commoners. Although Koryŏ accepted the prohibition of commoner-slave marriage to preserve the status system, Koryŏ opposed the principle of identifying people born from commoner-slave marriage as commoners, which aimed to expand the commoner status, arguing that it violated Qubilai's instruction. Eventually, King Ch'ungnyöl visited the Yuan court and requested the withdrawal of the principle of identifying people born from commoner-slave marriage as commoners, after which the slave population in Koryŏ increased.¹⁰ Introduced during the opposition to the Yuan's compulsory legal reform, the discourse of native customs emerged as a reaction against the attempt to incorporate Koryŏ as a province of the Yuan empire. Through this, the awareness of Koryŏ society's distinctive identity was increased. Leading the opposition against the incorporation of Koryŏ into the Yuan provincial system, Yi Kok 李穀 (1298-1351) argued that because Koryŏ had different customs from the Mongols, Mongol law could not be directly applied to Koryŏ – irrational application of Mongol law was the cause of social disorder in Koryŏ.¹¹ However, the Yuan detained King Ch'ungsuk 忠肅王 (1294-1339) and forcefully pushed forward the incorporation of Koryŏ into its provincial system. Despite this, Ch'oe Yuyŏm 崔有滄 (1239-1331) opposed rationalizing that ruling Koryŏ, which had different customs and law from those of the Yuan, according to Yuan law, a ruling policy different from that of Qubilai, would provoke resistance. He eventually succeeded. From this, there was an awareness that to societies with distinctive foundations, such as Koryŏ and the Yuan, different laws should be applied.¹²

2) Ban on Consanguineous Marriage

Due to the legacy of Silla's Bonk Rank system and the nature of the Koryŏ regime, which was formed by marriage alliance, consanguineous marriages were frequent within the royal family and aristocratic society in Koryŏ.¹³ In particular, the reign of King Munjong 文宗 (1046-1082) was a period that saw the development of a hereditary aristocratic society through intermarriages within the aristocratic stratum and consanguineous marriages. In the 5th month of the 12th year of King Munjong (1058), because of an issue stemming from his maternal grandfather's consanguineous

¹⁰ Ibid., pp. 87-98

¹¹ Ibid., pp. 42-50.

¹² Ibid., p. 238; 241.

¹³ Chŏng Yongsuk, *Study on the Endogamous Marriage within the Koryŏ Royal Family* 고려왕실 족내혼 연구 (Seoul: Saemunsa, 1988).

marriage, Yu Chunghyŏng's protective appointment was demoted. As a result, children born from marriages between close relatives within the *taegong* mourning grade 大功親 were prohibited from entering government service. In the 2nd year of King Sŏnjong 宣宗 (1085), concerning consanguineous marriage within the royal family, marriages between half-siblings by the same father were also banned. In the 1st year of King Sukchong 肅宗 (1096), although children from marriages between relatives within the *sogong* mourning grade 小功親 were subject to imprisonment, due to considerable opposition, the punishment was lifted in the 6th year of King Sukchong (1101). Yet, in the 11th year of King Yejong 睿宗 (1116), the imprisonment was reinstated. After that, in the 12th year of King Injong 仁宗 (1134) and in the early reign of King Ŭijong (1146-1147), bans on consanguineous marriage were continuously promulgated. This was a measure to keep the aristocrats, who sought to build their power through consanguineous marriage with the royal family, in check.¹⁴

In 1275 and 1291, Qubilai, Emperor Shizu 始祖皇帝 of the Yuan, strongly denounced the Koryŏ practice of consanguineous marriage. After becoming an imperial son-in-law, the Koryŏ king strengthened his royal authority and, at the same time, attempted to bind the close kins of the royal family together through marriages to resist the Yuan. Such attempts by the Koryŏ king weakened the status of the Yuan princess. Because it was an issue that the Yuan court could not overlook, the Yuan court criticized consanguineous marriage in an effort to control the Koryŏ king. In addition, the situation within Koryŏ also changed. Albeit previously a non-issue, marriage with a wife's niece now received criticism. Hŏ Kong 許珙 (1233-1291), while attempting to remarry his younger sister-in-law's daughter after his wife's death, was impeached. This is an effort to check the newly rising Hŏ Kong, who sought to expand his power through consanguineous marriage. In his enthronement instruction of 1298, King Ch'ungsŏn banned consanguineous marriage.¹⁵ And in his reinstatement instruction of 1308, he announced a prohibition of marriage between people with the same surname. One month later, he even forbade marriage between maternal cousins and extended this restriction further to civil and military officials. In fact, from this time to the reign of King Kongmin, it appears that consanguineous marriage within the Koryŏ royal family no longer existed. Moreover, to establish the social status order through marriage, the royal family specified the aristocratic lineages that could marry into the royal family.¹⁶

Political powerholders allied with each other through marriage. The ban on consanguineous marriage – a transformation of the marriage system – served also as a prerequisite for political reform. In the 16th year of King Kongmin (1367), following

¹⁴ Ch'oe Suk, "Koryŏ honinbŏp ŭi kaejŏng kwa kŭ ŭimi: kŭnchinhon kŭmje rŭl chungshim ŭro" 고려 혼인법의 개정과 그 의미: 근친혼 금제를 중심으로 In *Penal Law and Penal Administration of the Koryŏ Period* 고려시대의 刑法과 刑政 (Kwach'ŏn-si, Kyŏnggi-do: Kuksa p'yŏnch'an wiwŏnhoe, 2002), pp. 157-177.

¹⁵ Ibid., pp. 177-185.

¹⁶ Kim Hyŏngsu, op. cit., pp. 162-163.

the adultery committed by chancellery scholar Yi Sŭngno and his younger sister-in-law, marriages with a wife's sisters and with non-paternal cousins with a different surname were prohibited. However, adultery with a wife's younger sister was not incest under Chinese law; it was instead merely an ordinary adultery punishable by beating.¹⁷ Yet, King Kongmin used this incident as a pretext to break down the private power structure centered on kinship. In the 3rd year of King Kongyang 恭讓王 (1391), with legislation enabling the confiscation of rank land 科田 from those who married people with the same surname, the ban on consanguineous marriage was firmly established.¹⁸ In the early Chosŏn period, with the adoption of Zhu Xi's Family Rituals and the *Great Ming Code*, the prohibition of same-surname marriage was legally established. Furthermore, closely adhering to the Chinese expression of "no marriage between those with the same surname," some argued that not only those with blood ties, even those who shared the same surname but were from different lineages were forbidden from marriage. In 1669-the 10th year of King Hyŏnjong 顯宗 (1641-1674)-, it became legislation and was included in the *Continuation of the Great Code* 續大典, but it did not have normative power.¹⁹ The prohibition of marriage between those with the same surname was also in the Civil Code of 1958, but after several controversies, it eventually disappeared from Korean society with the Constitutional Court's decision in 1997 and the Civil Code amendment in 2005.

2. Adoption of the *Great Ming Code* during the Late Koryŏ and Early Chosŏn Period

As aforementioned, Koryŏ did not rule through a unified legal code, but rather through individual royal laws that emphasized specific appropriateness, and therefore it had limitations on achieving legal stability and universality. In particular, after the turmoil of the military regime and the period of Yuan intervention, there was severe legal confusion. Although, in principle, the Yuan guaranteed the legal independence of Koryŏ, as Yuan influence grew stronger, Koryŏ inevitably came under the influence of Yuan legal institutions. In 1299, the 25th year of King Ch'ungnyŏl, the Darughachi 達魯花赤 dispatched to the Branch Secretariat for the Eastern Campaign attempted in full scale to rule Koryŏ according to Yuan law, and the applications of Koryŏ and Yuan laws and their resulting conflicts exacerbated legal disorder in the late Koryŏ period. The late Koryŏ legal situation faced a total crisis, including the incapacitation of public authority to impose criminal and civil punishments due to the absence of

¹⁷ In the *Tang code* and other Chinese legal codes, adultery between relatives was punished more severely than ordinary adultery. Kinship was determined by mourning grade 服制. A husband's elder brother and a wife's younger sister were considered relatives with no mourning obligation 無服親. Yi Sŭngno, however, was severely punished, including dismissal from office, exile, and even confiscation of his family property.

¹⁸ Ch'oe Suk, op. cit., pp. 190-196.

¹⁹ Pak Pyŏngho, *History of Korean Legal Institutions* 韓國法制史 (Seoul: Minsogwŏn, 2012), pp. 233-234.

efficient and authoritative judicial institutions, deficiencies in legal norms, a crisis of legal stability, and unequal applications of law.

The only way to overcome such a crisis was to unify legal applications under a single source of law. Nevertheless, the search for a new source of law was heavily influenced by political situations. When the pro-Yuan faction was in power in 1377, the 3rd year of King U 禡王 (1365-1389), it planned to unify the source of criminal law with the last Yuan legal code, *Statutes of the Zhizheng Period* 至正條格. However, when the pro-Ming faction seized power after the Wihwa Island Retreat, the Ministry of Punishments advocated for the imitation and implementation of the *Great Ming Code*, the most advanced legal code at that time, on the grounds that it was based on the *Tang code* and ideologically suitable. The context of this claim was the concerns that the *Statutes of the Zhizheng Period*, which was a compilation of individual cases, made it difficult to unify legal applications and prevent the manipulations of clerks and petty officials. Meanwhile, in the late Koryŏ period, there were various opinions regarding a new source of law. In the 4th year of King Kongyang (1392), Chŏng Mongchu 鄭夢周 (1337-1392) proposed a “new code” that synthesized the *Great Ming Code*, the *Statutes of the Zhizheng Period*, and Koryŏ law.

In his enthronement instruction, Chosŏn T'aejo declared that to overcome the chaotic state of the judicial system, he would adopt the *Great Ming Code* (partially). Chŏng Tochŏn 鄭道傳 (1342-1398) argued in the Penal Code 憲典 of the *Administrative Code of the Chosŏn State* 朝鮮經國典 that the *Great Ming Code* should be adopted, and he introduced its content. In addition, to understand the *Great Ming Code*, the *Literal Explanation of the Great Ming Code* 大明律直解 was translated into *idu* 吏讀 “clerical reading” and published in 1397-the 6th year of King T'aejo 太祖 (1335-1408)-. In the early Chosŏn period, when resolving individual cases, the court did not treat the *Great Ming Code* as the absolute source of law but utilized diverse legal sources, such as the *Tang code*, the *Statutes of the Zhizheng Period*, *A Convenient Reference for Punishment Deliberation* 議刑易覽 and the treatise on punishments and law of the *History of the Yuan* 元史, to make decisions that suited its social conditions.²⁰ The *Great Ming Code* was recognized for the time being only as a more authoritative source of law among many and was not absolute. In particular, during King Sejong's 世宗 (1397-1450) reign, the most extensive discussion took place. In this process, a literal explanation of the *Great Ming Code* was once again initiated. By referencing the *Tang code*, *Resolving Doubts in Legal Learning* 律學解頤, *Explaining Law and Identifying Doubts* 律解辨疑, Sejong's court published its own commentary, titled the *Exposition of the Great Ming Code* 大明律講解.²¹ Through this process, the Chosŏn court had a greater understanding of

²⁰ Chŏng Kŭngsik, “Chosŏn chŏn'gi Chungguk pŏpsŏ ūi suyong kwa hwalyong” 조선전기 중국법서의 수용과 활용, *Sŏul taehakkyo pŏphak* 50, no. 4 (2009): 35-80.

²¹ Tanaka Toshimitsu, “Chōsen-kan Daimyōritsu kōkai ni tsuite” 朝鮮刊大明律講解について, *Tōyō hōseishi kenkyūkai tsūshin* 東洋法制史研究会通信 28 (2015): 11-16. There is no such legal text titled

the *Great Ming Code* and eventually stipulated in the Application of Law 用律 entry of the Penal Code 刑典 of the *Great Code for Administering the State* 經國大典 that “the *Great Ming Code* be applied” 用大明律, thus establishing the *Great Ming Code* as the general criminal law. The backgrounds for adopting the *Great Ming Code* during the late Koryŏ and early Chosŏn periods were a sense of crisis caused by the absence of a legal order and the trust in the systematic nature and rationality of the latest legal code.²²

Nonetheless, mechanically applying the *Great Ming Code*, which was compiled based on Chinese society, to Chosŏn inevitably produced unreasonable results that did not match the sense of justice. These defects were solved in individual cases and rectified. In the *Continuation of the Great Code*, published in 1746-the 22nd year of King Yŏngjo 英祖 (1694-1776), it stipulated, stating that “while, according to the *Great Code for Administering the State*, the *Great Ming Code* is to be applied, if there is a suitable law in the *Great Code* or in the *Continuation*, it shall be followed.”²³ This distinguished the state codes as special law and the *Great Ming Code* as general law.²⁴ Revisions to the *Great Ming Code* according to contemporary situations were reflected in the *Grand Complete Code of Criminal Law* 刑法大典, which was the greatest and highest status legislation of the Great Han Empire, promulgated in 1905.²⁵

Chinese Legal Codes and Chosŏn Legal Institutions

1. Adoption of the Sixfold Division of Administration

The idealized sixfold division of administrative organization in the *Rites of Zhou*, which was modeled after the division of Heaven, Earth, Spring, Summer, Autumn, and Winter, was institutionally established in the *Six Statutes of the Tang Dynasty* 唐六典, which was compiled beginning in 722 and completed in 738. Nonetheless, the Tang bureaucratic structure of the Three Departments, Six Ministries, Nine Courts, Five Directorates, and Sixteen Guards could not be perfectly organized into the *Six Statutes of the Tang Dynasty* and were recorded as historical developments rather than as real

Exposition of the Great Ming Code. Rather, it is a conventional title, attributed by the commentaries, which are named “Comment” 講曰 and “Explanation” 解曰. The above article (Note 20) regards it as a Chinese legal text. I would like to correct it on this occasion.

²² Chŏng Kŭngsik and Cho Chiman, “Chosŏn chŏn’gi Tae Myŏngnyul ŭi suyong kwa pyŏnyong” 조선 전기 대명률의 수용과 변용, *Chindan hakpo* 진단학보 96 (2003): 85-116; Cho Chiman, *Criminal Law of the Chosŏn Period: The Great Ming Code and the National Code* 조선 시대의 형사법: 대명률과 국전 (Seoul: Kyŏngin munhwasa, 2007), pp. 31-43.

²³ 續大典 刑典 [用律]: “依原典用大明律, 而原典 續典有當律者從二典”

²⁴ For the establishment of provisions different from those of the *Great Ming Code*, see “The *Great Ming Code* and the Formation of Indigenous Law” Section.

²⁵ Mun Chunyŏng, “Taehan chegukgi hyŏngbŏp taejŏn ŭi chejŏng kwa kaejŏng” 大韓帝國期 刑法大全의 制定과 改正, *Pŏpsahak yŏn’gu* 법사학연구 20 (1999): 31-59.

institutions, so it was not actually implemented.²⁶ Furthermore, the *Tang code* does not follow the sixfold division, and it places the General Principles 名例律 at the beginning and has 12 chapters centering on the emperor's duties, totaling 30 volumes. The sixfold division of legal compilation was established during the Yuan period, through the *Statutes of the Sacred Governance of the Great Yuan Dynasty* 大元聖政國朝典章 of 1303, the *Great Compendium of Governing the World* 經世大典 of 1331, as well as the *Inaugural Code* 元年律 of 1367 from the Prince of Wu, the predecessor of the Ming, the *Great Ming Commandment* 大明令, and the *Great Ming Code*.²⁷

The Chinese sixfold division was first adopted in administrative organization rather than in the structure of the legal code. King Sōngjong of Koryō established a governance structure of Three-Departments and Six-Ministries following the Tang system. In other words, he achieved an administrative structure in which the Central Secretariat 中書省 drafted imperial edicts, the Chancellery 門下省 reviewed them, and the Department of State Affairs 尚書省 executed them. However, while the Central Secretariat and Chancellery served as a decision-making body that managed state affairs, the Department of State Affairs was no more than an administrative body that executed policies, so this was an essential distinction. The chief councilors of the Central Secretariat and Chancellery oversaw the Six Ministries under the Department of State Affairs, and the Six Ministries in turn supervised various offices, such as the courts, directorates, and storehouses. But there are slight differences between the Tang and Koryō. The Tang followed the arrangement of the *Rites of Zhou*: Personnel, Revenue, Rites, Military, Punishments, and Public Works, but the Six Ministries under the Department of State Affairs were in the order of Personnel, Military, Revenue, Punishments, Rites, and Public Works. This also became the order of the Six Ministries and aligned with the rank order of the chief councilors, in which the prime minister 首相 was the Minister of Personnel, the assistant minister 亞相 was the Minister of Military, and the three stewards 三宰 were the Ministers of Revenue. Yet, this order also originated from the Tang system. Although the Tang had 245 subordinate offices, Koryō in the end had only two, so while modeling after the Tang system, Koryō adjusted to fit its actual circumstances. This method continued until the late Koryō period, except for the period of Yuan intervention.

After the military regime, while the Department of State Affairs existed on paper, the Council of Generals 重房, Personnel Authority 政房, and Directorate-General for Policy Formulation 敎定都監 held real power. And in the first year of King Ch'ungnyōl (1275), a period of Yuan intervention, the administrative structure was reformed, in which the Department of State Affairs was abolished and was merged with the Central Secretariat and Chancellery into the Grand Chancellery 僉議府, while

²⁶ Kim T'aengmin, "Haeche" 해제 in *Annotated Translation of the Six Statutes of the Tang Dynasty* 譯註唐六典 (Seoul: Tosō ch'ulp'an sinsōwōn, 2005), pp. 15-20.

²⁷ Uematsu Tadashi, "Shisei jōkaku shutsugen no igi to kadai" 至正条格出現の意義と課題, *Hōshigaku kenkyūkai kaihō* 12 (2007): 109-110.

the Six Ministries were reduced to Four Offices. When the Privy Council 都兵馬使, which was a temporary deliberative council of military affairs, was renamed to the Supreme Council of State 都評議使司/都堂 in the fifth year of King Ch'ungnyōl (1279), it also held real power as a permanent institution. The Supreme Council of State divided government affairs into Six Sections 六色, which, during the reign of King Ch'ang, were renamed as the Six Chambers of Scribes 六房錄事, corresponding to the Six Ministries. In the 5th year of King Kongmin (1356), the Finance Commission 三司 was abolished, and the Department of State Affairs was restored, returning to the government structure during King Munjong's reign. This return lasted until the 11th year of King Kongmin. While the Finance Commission was an organ that took charge of the receipt, disbursement, and accounting of money and grains in the capital and the provinces and was unrelated to the Department of State Affairs, Koryō equated the two under the influence of the Song. Although King Kongmin restored the Six Ministries structure, the institutional reorganization had no significance due to real power still resting with the Supreme Council of State. Eventually, in the 11th year of King Kongmin (1362), the Grand Chancellery and the Finance Commission were restored, but the Six Ministries were not reverted to the Four Offices. Rather, they turned into the Six Offices, thereby sticking to the sixfold administrative division. Although in the 19th year of King Kongmin (1370), royal authority was strengthened for a time, the power of the Supreme Council of State was greater than that of the king, so King Kongmin could not pursue unified policies. To revive the state, late Koryō scholars pursued the consolidation of government orders through the establishment of the Six Ministries system. This pursuit was possible after the founding of Chosŏn, when the structure of the Six Ministries was established in the 5th year of King T'aejong 太宗 (1405).²⁸

As a result of adopting the sixfold division of the Yuan legal code in the late Koryō period, the sixfold division of the Koryō political system became the foundation for legal codification and government organization in the Chosŏn period. After a protracted process, early Koryō's sixfold division was established in the 1st year of King Kongyang (1389) and persisted until the late Chosŏn period. Until the 1st year of King T'aejo of Chosŏn (1392), the order of the Six Ministries followed the sequence of Personnel, Military, Revenue, Punishments, Rites, and Public Works under the influence of Koryō. In the *Administrative Code of the Chosŏn State*, the order for the first time followed that in the *Rites of Zhou*. This was formally established in the inaugural year of King Sejong (1418) and was confirmed in the *Great Code for Administering the State*.²⁹ This sequence undoubtedly continued through the *Comprehensive Compendium of the Great Code* 大典會通 in the 2nd year of Kjong

²⁸ Pyŏn T'aesŏp, *Study on the History of Koryō Political Institutions* 高麗政治制度史研究 (Seoul: Iljogak, 1971).

²⁹ The discussant, Cho Chimán (Professor of Ajou University), pointed out that as the order of the sixfold division changed from Koryō to Chosŏn, the nature of the state and other aspects also differed. A response to this point awaits on a future occasion.

(1865) and even to the *Applications of the Six Codes* 六典條例, and the sequence was also the same in various legal texts.³⁰ The changes of the Six Ministries' names from the early Koryŏ to the early Chosŏn are shown in Table 1. Not only the names of the Six Ministries but also their functions changed, as shown in Table 2.

Table 1. Name Changes of the Six Ministries from Koryŏ to Early Chosŏn

Koryŏ King Sŏngjong 1st year (982)	Recruitment Office 選官	Military Office 兵官	Civil Office 民官	Punishment Office 刑官	Ritual Office 禮官	Public Works Office 工官
Koryŏ King Sŏngjong 14th year (995)	Ministry of Personnel 吏部	Ministry of Military 兵部	Ministry of Revenue 戶部	Ministry of Punishments 刑部	Ministry of Rites 禮部	Ministry of Public Works 工部
Koryŏ King Ch'ungnyŏl 1st year (1275)	Office of Proprieties 典理司	Office of Military Rosters 軍簿司	Office of Census Registration 版圖司	Office of Legal Administration 典法司		
Koryŏ King Ch'ungnyŏl 24th year (1298)	Office of Appointments 銓曹	Office of Military 兵曹	Office of Civil Affairs 民曹	Office of Punishments 刑曹	Office of Ceremonies 儀曹	Office of Public Works 工曹
Koryŏ King Ch'ungnyŏl 34th year (1308)	Ministry of Recruitment 選部		Ministry of Civil Affairs 民部	Ministry of Trials 讞部		
Koryŏ King Kongmin 5th year (1356)	Ministry of Personnel	Ministry of Military	Ministry of Revenue	Ministry of Punishments	Ministry of Rites	Ministry of Public Works
Koryŏ King Kongmin 11th year (1362)	Office of Proprieties	Office of Military Rosters	Office of Census Registration	Office of Legal Administration	Office of Rites 禮儀司	Office of Public Works 典工司
Koryŏ King Kongmin 18th year (1369)	Ministry of Recruitment	Ministry of Command 摠部	Ministry of Civil Affairs	Ministry of Justice 理部	Ministry of Rites	Ministry of Public Works

³⁰ The only legal text that has sections added on top of the sixfold division is the *Royal Instructions Received by Various Offices* 各司受教, which added “Royal Instructions Received by the Hansŏng Administration” 漢城府受教 and “Royal Instructions Received by the Bureau of Slave Administration” 掌隸院受教. The *Comprehensive Compendium of Legal Codes* 典律通補, which was compiled for integrating legal codes, was later supplemented by a supplement volume 補編 and an additional volume 別編. Except the *Classification of Legal Proceedings in the Great Code* 大典詞訟類聚, privately compiled legal books of civil litigation, such as the *Supplement to the Classification of Adjudications* 決訟類聚補, which emphasized practicality, all departed from the sixfold division and were compiled according to litigation procedures.

Koryŏ King Kongyang 1st year (1389)	Ministry of Personnel 吏曹	Ministry of Military 兵曹	Ministry of Revenue 戶曹	Ministry of Punishments 刑曹	Ministry of Rites 禮曹	Ministry of Public Works 工曹
Chosŏn King T'aejo 1st year (1392)	Ministry of Personnel	Ministry of Military	Ministry of Revenue	Ministry of Punishments	Ministry of Rites	Ministry of Public Works
<i>Administrative Code of the Chosŏn State</i> (1394)	Governance Code 治典	Taxation Code 賦典	Ritual Code 禮典	Military Code 政典	Penal Code 憲典	Public Works Code 工典
Chosŏn King Sejong's inaugural year (1418)	Ministry of Personnel	Ministry of Revenue	Ministry of Rites	Ministry of Military	Ministry of Punishments	Ministry of Public Works

Table 2: Functions of the Six Ministries from Koryŏ to Early Chosŏn

Treatise on government offices in the <i>Koryŏsa</i>	<i>The Six Wings of the Zhou Bureaucracy</i> 周官六翼	Preface of the <i>Administrative Code of the Chosŏn State</i>	Personnel Code of the <i>Great Code for Administering the State</i>
Ministry of Personnel: responsible for the selection of civil officials and the conferral of noble ranks	Office of Proprieties: to dismiss and promote all officials	Governance Code: to administer the state, to manage the bureaucracy, and to guide the people	Ministry of Personnel: responsible for the selection of civil officials, the conferral of noble ranks, and the evaluation of officials
Ministry of Revenue: responsible for administering households, tribute, taxation, land, and grains	Office of Census Registration: to disburse and collect revenues and taxes	Edification Code: to pacify the state, to instruct the bureaucracy, and to soothe the people	Ministry of Revenue: responsible for administering households, tribute, taxation, land, grains, and goods
Ministry of Rites: responsible for the administration of etiquette, rituals, sacrifices, court assemblies, diplomacy, schools, and the civil service examination	Office of Rites: to administer court assemblies and ritual sacrifices	Ritual Code: to harmonize the state, to unify the officials, and to bring accord to the people	Ministry of Rites: responsible for the administration of rituals and music, sacrifices and banquets, court assemblies and diplomacy, schools, and the civil service examination

Ministry of Military: responsible for military appointments, military affairs, procession escorts, and postal service	Office of Military Rosters: to control all military guards	Military Code: to settle the state, to rectify the officials, and to bring equality among the people	Ministry of Military: responsible for military appointments, military affairs, procession escorts, postal service, armament, and the safekeeping of gates and keys
Ministry of Punishments: responsible for legal administrations, litigations, and trials	Office of Legal Administration: to adjudicate and administer criminal cases and punishments	Penal Code: to scrutinize the state, to discipline the officials, and to correct the people	Ministry of Punishments: responsible for the administration of law, trials, litigations, and slavery
Ministry of Public Works: responsible for administering natural resources, craftsmen, and construction	Office of Public Works: to produce crafts and construct buildings	Public Works Code: to enrich the state, to appoint the officials, and to enable the people to live and flourish	Ministry of Public Works: responsible for administering natural resources, craftsmen, construction and maintenance, and pottery and smeltery

The sixfold division originated in the *Rites of Zhou* of the Chinese antiquity, took its form in the *Six Statutes of the Tang Dynasty*, and was firmly established in the Yuan period. It functioned as an important principle in organizing the state apparatus – the bureaucratic system – from the early Koryŏ to the late Chosŏn period.³¹ And this sixfold division continued until the Kabo reform of 1894, when the Six Ministries were restructured into the Eight Ministries 八衙門.³²

2. Adoption of Zhu Xi's Family Rituals and Changes in the Family Structure

The adoption of Neo-Confucianism in the late 14th century and the adoption of Zhu Xi's Family Rituals as a medium for disseminating its ideology fundamentally transformed Korean society. Koryŏ was a Confucian-Buddhist mixed society, in which Confucianism served as its political foundation, while Buddhism served as its social foundation. The adoption of Neo-Confucianism served as a catalyst for the transformation of the entire society toward Confucianism. Zhu Xi's Family Rituals was composed of the Common Rites 通禮 and the Four Rites 四禮 of capping, marriage, funerals, and ancestral sacrifices. In the Common Rites, its principles were narrated centering on the ancestral hall. Among the Four Rites, the funeral rites were shifted from the Buddhist cremation to burial by the late 15th century, while the

³¹ Chŏng Kŭngsik, “Chosŏn kyŏnggukchŏn kwa Chosŏn ch'ogi pŏpche chŏngbi” 朝鮮經國典과 조선초기 법제정비, *Sŏul taehakkyo pŏphak* 56, no. 2 (2015): 107-109.

³² See the “Bill of the Council of State Affairs's bureaucratic structure” 議案議政府官制 and the “Bill of various ministries' bureaucratic structure” 議案各衙門官制 on June 28, 1894 (the 31st year of King Kojong).

marriage rites and ancestral sacrificial rites were adapted according to the conditions of Chosŏn.³³

(1) Early Chosŏn Family Structure

Marriage is an important element that determines one's residence, a foundation of life, and additionally forms the spatial basis for kinship ties. A marriage custom of the early Chosŏn period was uxorilocal, in which the groom went to the bride's house to perform the wedding ceremony and then lived there. However, in the marriage rites in Zhu Xi's Family Rituals, the groom brought the bride home with the receiving ceremony and performed the marriage rites there, and then the bride lived in the groom's house. This is a ritual that reflects the patriarchy of male superiority. From the early Chosŏn onward, to promote the bride-receiving ceremony, the royal family set an example by taking the lead, but in reality, it was not practiced. Supporters of the bride-receiving ceremony asserted Neo-Confucian ideologies, while their opponents appealed to native customs. Despite the Chosŏn policy for promoting the bride-receiving ceremony, uxorilocal marriage remained the mainstream.

However, in the mid-16th century, compromised marriage rituals based on the understanding of Zhu Xi's Family Rituals began to emerge. This compromise took the form of a "half bride-receiving ceremony," in which the groom went to the bride's home to for the wedding ceremony, then returned to his home with the bride three days later to perform rituals prescribed in Zhu Xi's Family Rituals, such as greetings to her parents-in-law, and after that they went back to reside with the bride's family. As time progressed, the residency at the bride's home was shortened, and eventually, sons came to live with their paternal grandparents, leading to the formation of a patrilineal kinship group.

The principles of property inheritance during the Chosŏn period included 1) equal inheritance between sons and daughters, 2) inheritance based on bloodline, 3) distinction between primary and secondary children and between commoner and slave statuses, and 4) emphasis on ancestral rites.³⁴ The law stipulating the equal inheritance between sons and daughters was confirmed by judicial decisions, established as customary law, and respected as a "precedent of the ancestors" 祖宗成憲. But there were actual distinctions in inheritance distribution. For example, slaves were divided considering their sex, age, and health, while the land was divided according to distance and fertility. In law, the eldest son was supposed to receive an additional one-fifth of the estate for maintaining ancestral rites according to the entry of "ancestral rites

³³ The following description is summarized from Chŏng Kŭngsik, "Chongbŏp chŏk chesasŭnggye wa kajok ūi pyŏnhwa" 중법적 제사승계와 가족의 변화 In *Research on Korean Social History* 한국사학회 연구 (Seoul: Nanam ch'ulp'an, 2003).

³⁴ Although the freedom of will was recognized by law, in reality there were limitations. See Kim Minjŏng, "Chosŏn ch'ogi sangsok pŏpchje esŏ yuwŏn chayū ūi ūimi" 조선초기 상속법제에서 유언 자유의 의미, *Pŏpsahak yŏn'gu* 37 (2008): 5-31. See also 經國大典 刑典 [私賤]門.

performance” 奉祀條, but this was not emphasized until the mid-16th century.³⁵ Inheritance property was fully protected in law and was not limited by the five-year deadline for filing litigation. If a dispute arose, the officials would evenly distribute the inheritance. The following is the regulation of ancestral rites inheritance in the *Great Code for Administering the State*: in principle, it was patrilineal, in which the eldest son inherited and performed the rites for his previous three generations according to their relationship. But there were also exceptions, such as succession by the younger brother after his brother’s death and succession according to seniority. Also, if there was no primary son, a secondary son would inherit. And only if there was no son at all, an heir could be established. If no heir was established, it recognized the deceased’s slaves to maintain the ancestral rites by using his land.³⁶ Although these were based on Zhu Xi’s Family Rituals, they reflected contemporary concerns of the officials and unique characteristics of Chosŏn society. In the ancestral rites for the previous three generations based on kinship, rather than for the previous four generations, ritual regulations and, more importantly, status distinction were emphasized. The possibility for secondary sons and one’s own slaves to inherit ancestral rites reflected social realities of the time.

Notwithstanding, the above regulations in the *Great Code for Administering the State* were ideals rather than realities until the 16th century. Despite the court’s vigorous policies for promoting ancestral temples, which served as ritual space and the focal point of lineages, they were not common even during the reign of King Myŏngjong in the mid-16th century. It was common that the ancestral rites were performed in rotation by all sons and daughters rather than performed only by the eldest son. If there were no sons, daughters and maternal grandchildren observed the ancestral rites. And if there were no descendants and established heirs, it was not uncommon that the ancestral rites were discontinued.

The reality of ancestral rite succession was reflected as it was in lineage genealogies. Existing early Chosŏn genealogies, such as the *Andong Kwon Genealogy of 1475*, recorded all the paternal and maternal descendants regardless of generations. More than simply a genealogy of a single branch of lineage, it had the characteristic of a genealogy of an extended lineage 萬姓譜, recording all the paternal and maternal descendants from a particular ancestor.

Early Chosŏn families were relatively egalitarian between men and women. It was found on uxorilocal marriage, in which sons, daughters, and paternal and maternal grandchildren were not distinguished, inherited properties equally, and shared the obligation of ancestral rites fairly.

³⁵ According to 經國大典 戶典 [田宅]門, a person in charged of ancestral rites had the exclusive rights to inherit the ancestral temple. In the 15th and 16th centuries, this regulation was observed. For other descendants who could not inherit the ancestral rites, separate property or land were provided for them. See Pak Hyŏnsun, “Punjaegi rŭl t’onghae pon 15~16-segi sajokch’ŭng ŭi chut’aek soyu wa sangsok” 分産기를 통해 본 15~16 세기 사족층의 주택 소유와 상속, *Yŏksa wa hyŏnsil* 84 (2012): 293-330.

³⁶ See 經國大典 禮典 [奉祀] [立後]門

(2) Changes in Family Structure during Late Chosŏn

The two wars in the late 16th century and in the early 17th century transformed Chosŏn society. First, Neo-Confucian ideologies spread to the sphere of daily life beginning in the mid-16th century. The scholar-officials 士族 who were entrenched in the countryside put the *Elementary Learning* 小學, an instructional manual for practical moral conduct, into practice and internalized Neo-Confucianism. Their understanding of Zhu Xi's Family Rituals was also deepened. Also, the escape of slaves and the abandonment of land due to the wars weakened the economic foundation of the literati, leading to an increase in local strife 鄉戰 for leadership of local society. After the Injo Restoration 仁祖反正 of 1623, the discourse on social distinction was further emphasized. Amid this total social transformation, the family structure also altered.

Following the emergence of the “half-bride-receiving ceremony,” the patterns of marriage residence changed. Because of this, distinctions of closeness between paternal and maternal grandchildren emerged and were reflected in the concept of lineage and compilation of genealogy. Different from genealogies until the 16th century, genealogies after the 17th century strengthened patrilineality. They recorded only paternal ancestors and descendants and listed children with sons first and then daughters, rather than in the order of birth. This ultimately led to the formation of patrilineal kinship groups and single-surname villages, which in turn strengthened the consciousness of patrilineality and transformed family and society according to Confucian ideals.

While the understanding of Zhu Xi's Family Rituals deepened, the ancestral rites for the previous four generations, developed from the common three-generations worship, took root after the debate on the state statutes during King Chungjong's reign. Nonetheless, it showed unique characteristics of emphasizing the sacrifice for the anniversary of deceased ancestors and tomb sacrifice, rather than the seasonal sacrifices that are stressed in Zhu Xi's Family Rituals. Furthermore, following changes in marriage customs, the distinction of closeness between paternal and maternal grandchildren directly influenced the succession of ancestral rites and the inheritance of property. This can be seen in the following “inheritance document” by Kim Myŏngyŏl 金命說 (b.1613) of Puan 扶安, Chŏlla 全羅 Province, in 1669.

Although the rotational practice of ancestral rites among sons and daughters is customary, it does not conform to ritual and law. Besides, as per my observation, sons-in-law or maternal grandchildren do not sincerely perform ancestral rites. From now on, in our household, daughters shall not perform ancestral rites and instead

inherit only one-third of the property allotted to sons. If you do not observe this will, you are not my descendants.³⁷

Only sons rotationally performed ancestral rites, while daughters were excluded from the rites and were differentiated in property inheritance. In other words, it shifted from equal inheritance and rotational ancestral rites for sons and daughters to differentiated inheritance between sons and daughters and rotational rites only for sons. However, ancestral rites could not be perpetuated through rotational performance by sons. The method for maintaining ancestral rites was to provide economic incentives to the person in charge of ancestral rites so that he could dedicate himself to the rites. That is, the eldest legitimate son alone inherited ancestral rites and, in return, received preferential treatment in property inheritance. Yet, this squarely violated the law stipulating equal inheritance between sons and daughters. Notwithstanding, they made use of the entry of “ancestral rites performance” in the law, which recognized property allocated for ancestral rites, to circumvent the law. In the *Great Code for Administering the State*, the entry of “ancestral rites performance” stipulated that only one-fifth of the estate, but not the specific details. This entry was intended not for all ancestors but for individual ancestors and entrusted the lineal heir, who was in charge of the rites, with the allotment’s management rights and its *de facto* ownership. Through this, the principle of preferential inheritance of the eldest son and his sole performance of rites was established.³⁸ Following this development, the custom of property inheritance also changed. Property from ancestors was passed on to the eldest sons, while property prepared by the parents, the owners, was bequeathed to their children. The land nearby was handed to sons, and the distant land to daughters, strengthening the focus on patrilineality.³⁹

Formed by changes in marriage customs, patrilineal kinship groups and single-surname villages became the basic units of rural society after the wars, and the descendants living together strengthened their bonds through ancestral rites for pioneer ancestral settlers 入鄉祖. To ensure the perpetuation of the rites, they set aside ritual land 位田 and formed lineage associations 族契 for management. In addition, as the practice of establishing heirs became widespread, subordinate descent lines 小宗 persisted, and naturally, superordinate descent lines 大宗 increased. Patrilineal kinship

³⁷ Charyo chosasil 자료조사실, comp., *Punjaegyiryu* 분재기록 (Documents on the Division of Property) vol. 33, “Puan Kimssi Ubango munseo” 부안김씨우반고문서 (Seongnam: Academy of Korean Studies, 1983), p. 224.

³⁸ In historical reality, various forms appeared; for example, the Andong Kosŏng Yi clan established a clause for the performance of ancestral rites in 1688 for the sole performance by the eldest son, but in 1744 the ritual performance returned to rotational. At that time, a “Regulations on Family Sacrifices” was composed to manage the performance of ancestral rites and inheritance. See Chŏng Kubok, “1744 nyŏn Andong Kosŏng Yi-ssi ka ŭi ‘Kajechŏngsik’: Sojong kye ch’angnip munsŏ” 1744 년 安東 固城 李氏家の 家祭定式: 小宗契창립 文書, *Komunsŏ yŏn’gu* 13 (1998): 61-109.

³⁹ For changes in property inheritance, see Mun Sukcha, *Property Inheritance and Family of the Chosŏn Period* 조선 시대 재산 상속 과 가족 (Seoul: Kyŏngin munhwasa, 2004).

groups that centered on the tomb sacrifice were formed.⁴⁰ Amid these situations, the status of a lineage in rural society was determined by its pioneer ancestral settlers, and as such, there were efforts to honor pioneer ancestral settlers. On the one hand, the economic power of a lineage or the most senior line determined its standing. On the other hand, the continuation of equal inheritance between sons and daughters brought about the fragmentation of property, which was catastrophic to maintaining the status of a lineage. Chŏng Yakyong 丁若鏞 (1762-1836) strongly argued that high officials, who were the foundation of the state, should maintain their wealth, and to do so, the principle of equal inheritance between sons and daughters should be disregarded to privilege the eldest son.⁴¹ Without considering specific periods and regions, the general outline of the changing process of the Chosŏn family structure can be summarized as follows.

Table 3: Changes in the Family Structure during the Chosŏn Period

	15th century	Mid-16th century	17th century	18th-19th century
Marriage customs	Uxorilocal marriage	“half-bride-receiving ceremony”: uxorilocal residence shortened		Formation of single-surname villages
Property inheritance	Equal inheritance between sons and daughters		Differentiated inheritance between sons and daughters	Preferential inheritance by the eldest son
Ritual succession	Rotational performance by all children		Rotational performance by sons	Sole performance by the eldest legitimate son

In the late Chosŏn period, the succession of ancestral rites was emphasized, and the status of ritual heirs 宗子 was strengthened. Contemporaries also accepted these changes. This shows that in Korea, patriarchy and its legal expression in the household head system 戶主制 in fact existed, or that a social foundation for its convenient adoption was already in place. Under these conditions, the Japanese-style family system and the principles that were based on this system, household head succession 家督相續 and property inheritance, could be transplanted and internalized during the

⁴⁰ Chŏng Sŭngmo, “Kajok kwa ch’injok” 가족과 친족 In *Understandings of Korean Social History* 한국 사회사의 이해 (Seoul: Munhak kwa chisŏngsa, 1995).

⁴¹ Chŏng Yakyong 丁若鏞, *Annotated Translation of Mongmin simsŏ* 譯註牧民心書 (Seoul: Ch’angjak kwa pip’yŏngsa, 1984-1985), pp. 293-295.

colonial period. In particular, during the colonial period, disputes over property inheritance were officially resolved through court judgments, and these judgments were reproduced and spread to society. This resulted in the strengthening of the household head's inheritance rights. This process was an elevation of preexisting patriarchal "customary practices" into "legal convention" and a result of the imitation and learning by Koreans. In the 1950s, the household head system was taken for granted as a tradition and was stipulated in the Civil Code. The law is a path. No one will choose to walk on the difficult old path over a convenient newly constructed road. As people travel on it, the new road becomes even more convenient. This is the natural inclination of humans and the inherent nature of things. In this regard, the colonial legacy is still meaningful.⁴² Regarding property inheritance, to prevent actual disputes, legislators took customary reality as principles and exceptionally treated performers of ancestral rites with preferences. But regarding the succession of ancestral rites, they took an idealized stance due to the absence of such customary practices. As time passed, the stipulations on property inheritance became obsolete, while the stipulations on ancestral rites succession became a reality and eventually continued to control us until the 21st century.⁴³

3. The *Great Ming Code* and the Formation of Indigenous Law

After the proclamation of adopting the *Great Ming Code* in King T'aejo's enthronement instruction and Chǒng Tochǒn's the *Administrative Code of the Chosǒn State*, the understanding of the *Great Ming Code* was deepened during King Sejong's reign. As the *Great Ming Code* was put into practice, it was established as a general criminal law. Notwithstanding, it was unreasonable to implement the *Great Ming Code*, a Chinese penal code, in Chosǒn directly. Therefore, in the *Literal Explanation of the Great Ming Code*, which was published in 1397, native kinship terms were used, and official titles were revised into those that were used in Chosǒn.⁴⁴ A proviso stating that stipulations related to slaves were not to be applied was clearly attached, and the Revenue Code's 戶律 Regulations on Taxes and Levies 課程, which stipulated state monopolies, like salt, were not explained. The court considered these actual Chosǒn circumstances and adapted.⁴⁵

The reason that the *Great Ming Code* could not be directly implemented was differences in social conditions, which were the foundations for legal applications. Here, I focus on the greatest differences between China and Chosǒn, which were shown in the scope of kinship, the distinction between legitimate and secondary children, the slave system, and the Confucian moral principles.

⁴² Chǒng Kūngsik, "Sikminjigi kwansūpbōp ūi hyōngsōng kwa Han'guk kajokpōp" 식민지기 관습법의 형성과 한국가족법, *Pōpsahak yōn'gu* 법사학연구 40 (2009): 63-76.

⁴³ This section supplements the critiques made by Cho Chiman, the discussant of the seminar.

⁴⁴ Pak Pyōngho, "Yōmal Sōnch'o ūi ch'injok ūi ch'ingho wa pōmwi" 麗末鮮初의 親族의 稱呼와 範圍, *Sōul taehakkyo pōphak* 44, no. 4 (2003): 94-113.

⁴⁵ Chǒng Kūngsik and Cho Chiman, op.cit., pp. 216-218.

(1) Kinship Relations and the *Great Ming Code*

As discussed above, although Chosŏn was a bilateral society with a strong tradition of valuing both paternal and maternal lineages, China was a thoroughly patrilineal society. After being adopted during the Three Kingdom period, China's five degrees of mourning defined the scope of kinship. While the *Great Code for Administering the State* was identical to the *Great Ming Code* in this regard, in terms of expressions, native terms were used. Despite this, in Yi Chae's 李穡 (1680-1746) *Easy Manual of the Four Rites* 四禮便覽, the representative ritual texts of the late Chosŏn period, terms were identical with Zhu Xi's Family Rituals, and native terms disappeared. In addition, the *Great Code for Administering the State* did not distinguish birth order in kinship, but the *Easy Manual of the Four Rites* differentiated the birth order of all patrilineal descendants. This indeed reflects changes in the family structure of the late Chosŏn period.⁴⁶ In addition, to ensure fairness in legal trials and administrative management, the scope of Chosŏn's rule of familial avoidance 相避親, which forbade close relatives from working in the same government office, did not follow that in the *Great Ming Code* but inherited that of Koryŏ. But compared with the Koryŏ one, the scope of maternal and in-law relatives was expanded.⁴⁷ These differences in the scope of kinship were considered when implementing the *Great Ming Code*.

Adultery between sons-in-law and mothers-in-law: although the mourning attire for a son-in-law during the mourning of his mother-in-law was the silk and hemp garment 總麻服, in the *Great Code for Administering the State*, considering marriage customs, 23 days were added to his leave of absence for the mourning period. In 1423 (the 5th year of King Sejong), there was an adultery case between a son-in-law and his mother-in-law, and according to the opinion of the Ministry of Punishments, they were sentenced to decapitation. This was stipulated under the Judgment 推斷 section in the Penal Code of the *Supplement to the Great Code* 大典續錄 of 1492-the 23rd year of King Sŏngjong 成宗 (1457-1494)-, stating that "by following the precedent in the *Great Ming Code*'s provision on a servant committing adultery with the wife or daughter of the household head, they shall be decapitated." The punishment in the *Great Ming Code* for adultery with a mother-in-law, who was a kin within the mourning grade of wearing silk and hemp garments, was 100 strokes and 3 years of penal labor. But considering Chosŏn conditions, in which a mother-in-law's grace was like that of one's mother due to uxrilocal residence, the punishment was too light and inappropriate. Because of this, it was analogized to the relationship between a household head, on whom one's livelihood depended, and a hired laborer.⁴⁸ The

⁴⁶ Ch'oe Chaesŏk, *Research on the History of Korean Familial Institutions* 韓國家族制度史研究 (Seoul: Ilchisa, 1983).

⁴⁷ Pak Pyŏngho, op.cit., pp. 108-109; Kim Yŏngsŏk, "Koryŏ sidae wa Chosŏn ch'ogi ūi sangp'ich'in" 고려시대와 조선초기의 相避親, *Sŏul taehakkyo pŏphak* 52, no. 2 (2011): 91-119.

⁴⁸ Cho Chiman, *Criminal Law of the Chosŏn Period*, pp. 189-192. There was another similar adultery case in 1539 (the 34th year of King Chungjong). Albeit the *Great Ming Code* stipulating that adultery

provision in the *Supplement to the Great Code* was included in the *Continuation of the Great Code* of 1746-the 22nd year of King Yŏngjo- as a stricter punishment for the crimes committed by scholar-officials, reflecting the transformation of marriage customs and residence patterns.

Adultery between a brother-in-law and a sister-in-law: There was an adultery case between a wife's husband and her younger sister, both of whom were not in any mourning obligations 無服, in 1436 (the 18th year of King Sejong). The *Great Ming Code*'s punishment for ordinary adultery between those who were not kin was 80 strokes. Nevertheless, because they lived together like siblings, there was hesitation in applying the *Great Ming Code* directly. Eventually, it was confirmed that the punishment was 80 strokes in accordance with the *Great Ming Code*, and the husband was assigned as a soldier on the borders.⁴⁹

The above cases were legislations based on the recognition that directly applying the *Great Ming Code*, which was premised on different residency and so different levels of closeness, to Chosŏn, whose conditions differed from the Ming presumptions, did not accord with the sense of justice.

(2) Social Status Relations and the *Great Ming Code*

The *Great Ming Code* is fundamentally a "status-based penal code," which distinguishes between commoners and base people and treats them differently.⁵⁰ However, the *Great Ming Code* could not be applied directly to Chosŏn, where the distinctions and concepts of status were different.

The murder of a primary younger brother by a secondary elder brother: in 1478 (the 9th year of King Sŏngjong), there was a murder case in which a secondary elder brother killed his younger brother with the primary status. The *Great Ming Code* does not distinguish legitimacy but seniority, so if an elder brother kills a younger brother, he is punishable by 100 strokes and exile to 2000 *li* 里 away.⁵¹ But it could not be directly applied to this case in which a secondary son assaulted a primary son. Regarding this case, the following opinions were presented: 1) to set a legal precedent of treating this case according to the distinction between primary and secondary sons, 2) to treat according to legitimacy but without establishing a legal precedent, 3) to apply the provision on an assault against a senior relative but consider the elder brother as base-status and punish him accordingly, 4) to apply the law on assaults between

with a secondary mother was punishable by decapitation, there was no stipulation regarding one with a stepmother. Because one's stepmother was more important than a stepmother according to status distinction, a harsher punishment, death by slow slicing, was executed; see Cho Chiman, *Criminal Law of the Chosŏn Period*, pp. 209-211.

⁴⁹ Cho Chiman, *Ibid.*, pp. 114-115; Kim Taehong, "Chosŏn ch'ogi hyŏngsabŏpsang innyul pibu'e kwanhan yŏn'gu" 조선초기 형사법상 引律比附에 관한 연구 (PhD diss., Seoul National University, 2012), pp. 146-150.

⁵⁰ There were also exceptions for officials, soldiers, and women.

⁵¹ See 大明律 刑律 [鬪毆] 毆期親尊長條

commoners and base people, and 5) to apply the general stipulation on murders (death penalty). King Sŏngjong was inclined towards imposing the death penalty, and after another round of deliberation, he decided to impose the death penalty by following the *Great Ming Code* but treating the two as equal status.⁵²

Crimes committed by scholar-officials: Although the *Great Code for Administering the State* defined status in terms of commoners and base people, a new social status category of scholar-officials, who began to receive preferential treatments in the criminal judicial system by the 16th century, emerged. Scholar-officials were well-protected from crimes committed by commoners and base people. In rape among commoners and base people, only when the offenses were completed, the offenders were punished by strangulation. But unlike the *Great Ming Code*, when rape was committed by commoners and base people against women from scholar-official families, there was no distinction between completed offense and attempted offense, and between the main perpetrator and accomplices. All were executed immediately. Also, when commoners and base people assaulted scholar-officials, the *Great Ming Code* increased the punishment by one degree more severe than ordinary people. But in Chosŏn, regardless of the type of assault, all were punishable by 100 strokes and 3 years of penal labor. When bodily injuries were incurred, 100 strokes and exile to 2000 *li* away.

Scholar-officials received such protection at the price of bearing heavier responsibility. The root of this responsibility was in the treatment of adultery committed by them. In the *Great Ming Code*, punishments for incest, whether capital or non-lethal, were divided by the *taegong* mourning grade. But the *Later Supplement to the Great Code* 大典後續錄 of 1543 (the 38th year of King Chungjong) began to impose heavier punishments, and the *Continuation of the Great Code* expanded to the mourning grade of wearing silk and hemp garments. Yet regarding commoners and base people, their punishments were distinguished by kinship: incest with lineal kin was heavy but light with collateral kin. What distinguished scholar-officials from commoners and base people was the impact caused by the half bride-receiving-ceremony.⁵³

(3) Confucian Moral Principles and the *Great Ming Code*

The *Great Ming Code* did not have any direct provision on “Crimes against bonds and virtues” 綱常犯罪 but stipulated them indirectly through setting the Ten Abominations 十惡 in General Provisions 名例律. However, the Judgment section of the Penal Code of the *Continuation of the Great Code* defined “criminals against bonds and virtues” and stipulated more severe punishments than those in the *Great Ming Code*, as well as special procedures and administrative measures. “Bonds and virtues”

⁵² This is a conclusion that emphasizes the status distinction between primary and secondary sons. Cho Chiman, op. cit., pp. 116-118; Kim Taehong, op.cit., pp. 113-140.

⁵³ Cho Chiman, op.cit., pp. 243-253.

were not limited to blood relations but expanded to the relationships between commoners and officials, and between masters and slaves.⁵⁴

Violations against an official: although in the *Great Ming Code*, punishments for murdering an official were stipulated in degrees according to the stages of the murder's implementation, in the *Continuation of the Great Code*, to set the social norm of the state, even when the murder was not carried out, both soldiers and commoners were subject to decapitation.

The expansion of the master-slave relationship: although the *Great Code for Administering the State* had already set special provisions on the master-slave relationship, these provisions were expanded and reinforced in the *Continuation of the Great Code*. First, slaves were forbidden to testify against their masters' crimes. Second, the relationships between a slave's commoner husband and the slave's master were expanded.⁵⁵ Slaves who were emancipated and became commoners were still treated as slaves in their relationships with their former masters. Nevertheless, by limiting the expansion of a standardized master-slave relationship to the relationship between employers and daily workers, specific legislation was enacted to separate daily workers from slaves.⁵⁶

The relationship between familial superiors and inferiors: while the *Great Ming Code* stipulated that crimes committed by familial inferiors against their superiors were punished with increased severity, punishments for crimes committed by familial superiors against their juniors were reduced. In the *Great Code for Administering the State*, by having the section on Litigation against familial superiors 告尊長, accusations against one's own parents or household heads were punished much more severely than in the *Great Ming Code*. In the *Continuation of the Great Code*, as a redress for this provision, punishments for cruel and vicious crimes committed by parents against their children and descendants were increased.

The expansion of retaliation: in the *Great Ming Code*, retaliation against adultery and murder was exceptional and strictly permitted according to time and space. However, as time progressed to the late Chosŏn period, the scope of retaliation was expanded. When a son killed the adulterer of his mother, his punishment was reduced. Although in the *Great Ming Code*, revenge was permitted only when one's father or grandfather was murdered, in the *Continuation of the Great Code*, revenge by parents for the murder of their children and by wives for the murder of their husbands was permitted. Also, the justification for revenge, which required immediacy in time and at the crime scene, was greatly relaxed in the *Continuation of the Great Code*. For instance, when a murderer was killed during the trial after the private settlement, even though the killing happened 4 years after the murder, the punishment was reduced. When an adulterer was not killed at the scene at the time of the adultery but later, the

⁵⁴ The following narrative is from Cho Chiman, *Ibid.*, pp. 253-277

⁵⁵ Chŏng Kŭngsik, "1793 nyŏn (Chŏngjo 17) 'Pibu chŏngnyul'" 1793 년(정조 17) 婢夫定律, *Sŏul taehakkyo pŏphak* 53, no. 1 (2012): 267-298.

⁵⁶ Cho Chiman, "Taechŏn hoet'ong hyŏngchŏn kyujŏng ūi sŏngnip yŏnhyŏk" 大典會通 刑典 규정의 成立沿革, *Sŏul taehakkyo pŏphak* 서울대학교 법학 52, no.1 (2011): 62-65.

punishment was also reduced. The expansion of retaliation's scope in *the Continuation of the Great Code* reflects the emphasis on status distinction and moral principle in late Chosŏn society.⁵⁷

The various stipulations of *the Continuation of the Great Code*, which were exceptional to the *Great Ming Code*, can be viewed as the “localization or even Chosŏnization” of criminal law. Although the early stages of this localization process were realized centering on diplomacy, which reflected the foundation of law – the social realities, in the later stages, it reflected more instances of Confucian principles. Furthermore, characteristics of most of the actual legal stipulations indeed reflected the expansion of special provisions to different social statuses.⁵⁸

Conclusion

In this article, I have examined the adoption process of Chinese legal codes from the Koryŏ to Chosŏn periods and the subsequent changes in Korean legal institutions. Here, I summarize the above content and discuss its historical significance.

Although there were some debates, early Koryŏ adopted the *Tang code* to revise its legal system and additionally the legal systems of the Song and Jin states. However, the Koryŏ legal system was not based on a unified code but on individual royal legal judgements. The Yuan in principle did not enforce its law on Koryŏ, but as Yuan political intervention intensified, it demanded reforms of the Koryŏ legal system. Their focal point was the slave legal system, which produced a large slave population and the prohibition of consanguineous marriage. In response, Koryŏ resisted reforms of the slave system, which was the economic foundation of the aristocracy, with “the discourse of native customs” and thwarted Yuan intervention. However, the ban on consanguineous marriage, especially that within the royal family, gradually took root, became firmly established by the Chosŏn period, and persisted until the 20th century.

Because Koryŏ was a state ruled by individual royal legal decisions rather than a unified code, its legal stability was inevitably weak. In the late Koryŏ period, the sources of law were diverse, including Koryŏ law, the *Tang code*, and the Yuan and Ming laws, and as a result, the legal order was in serious turmoil. Those in power at that time regarded the restoration of the legal order as the key to revive the state. Unlike the previous period, they pursue the consolidation of the legal order based on a unified legal code. Depending on interstate situations, the Yuan and Ming legal codes each in

⁵⁷ Cho Chiman, *Criminal Law of the Chosŏn Period*, pp. 142-148; 253-277.

⁵⁸ The *Great Ming Code*, despite being adopted by the Chosŏn court, did not greatly influence Chosŏn criminal procedures. Rather, the criminal procedures were formulated based on the institutions developed since the Koryŏ period. See Tanaka Toshimitsu, “Chosŏn ch’ogi tanok e kwanhan yŏn’gu: hyŏngsa chŏlch’a ŭi chŏngbi kwachŏng ŭl chungshim ŭro” 朝鮮初期 斷獄에 관한 研究: 刑事節次の整備過程을 中心으로 (PhD diss., Seoul National University, 2011). A similar pattern can be observed in the use of Chinese legal texts during the early Chosŏn period. See Chŏng Kŭngsik, “Chosŏn chŏn’gi Chungguk pŏpsŏ ŭi suyong kwa hwalyong”

turn received attention, but following the victory of the pro-Ming faction, it was decided that the *Great Ming Code* be adopted. This outcome speaks to the trust in the rationality and systematic nature of the *Great Ming Code* and simultaneously the adoption of the sixfold division principle.

Based on the *Rite of Zhou*, the sixfold division was considered the ideal form of ruling structure, but in reality, its actual formulation was in the *Six Statutes of the Tang Dynasty*, which was completed in 738. Koryŏ imitated the Tang institutions and adopted the Three Departments and Six Ministries administrative structure. Although there were twists and turns in the adoption process, it endured until the Chosŏn period. The sixfold division was firmly established in the Yuan dynasty and influenced not only the administrative structure but also the format of the *Great Ming Code* and other legal codes. This reflects the influence of Confucian natural law of the harmony between Heaven and humanity and simultaneously the product of efforts put on aligning administrative institutions and penal law.

The adoption of Neo-Confucianism and Zhu Xi's Family Rituals fundamentally transformed Korean society. Although until the 16th century men and women were relatively equal in Korean society, in the 19th century, it can be considered a patriarchal society. In the early period, property was inherited equally by men and women, and the performance of ancestral rites rotated among all children. However, from the 16th century onward, the inheritance of property began to prefer males over females, and the performance of ancestral rites began to rotate only among sons. Eventually, it culminated in the preferential inheritance of the eldest son and the exclusive succession of ancestral rites by the eldest son. The foundation of this transformation was the spread of Confucian ideology and the change in the marriage customs that determined the residence from uxrilocal to patrilocal. Moreover, with the collapse of the economic power that supported equal inheritance and the expansion of single-surname villages that centered on the pioneer ancestral settlers, ancestors became increasingly important in the struggle for leadership in local society and began to be honored based on their clans' financial resources. This in turn strengthened the status of the lineal heir in the succession of ancestral rites and in property inheritance. In addition, the strengthening of ideology of social distinction fueled this process. Late Chosŏn society in fact can be considered as patriarchal.

In the history of the late Koryŏ and early Chosŏn periods, although the *Great Ming Code* took the place as a general criminal law, with a different sociocultural background, it could not be directly applied to Chosŏn. Special provisions for crimes among relatives emerged at first and gradually diminished in the later period. The Chosŏn state code reinforced the social status system more than the *Great Ming Code*, but instead of giving preferential treatment to scholar-officials, sex crimes were handled more severely. The outstanding difference between the two is in the matters related to moral principles, as seen in the "crimes against bonds and virtues" of *the Continuation of the Great Code*. The crimes committed by commoners or lower-ranking officials against their superiors were punished severely, the relationship between masters and their slaves was expanded, and familial superiors were better

protected than in the *Great Ming Code*. This tendency is most visible in the expansion of multiple areas. Considering these phenomena together, late Chosŏn society can be assessed as a period of “excessive” ideology, when moral principles took precedence over law.

Although Koryŏ based its political institutions on those of China, it only partially adopted laws from the Tang, Song, Jin, and Yuan dynasties to revise its legal institutions. This was not a case of unilateral imitation but a selective adoption according to necessity from an independent perspective. This is clearly evident in the response to demands for legal reforms from the Yuan. While Chosŏn indeed adopted the *Great Ming Code*, it did not enforce it fully and unconditionally. In the compilation of the *Literal Explanation of the Great Ming Code*, the Chosŏn court considered its own circumstances, such as expressing its reservations about adaptation and application. Moreover, after King Sejong’s reign, the *Great Ming Code* was revised into the state code that suited contemporary concerns. This is Chosŏn’s localization process of the *Great Ming Code*.

Viewed from a broader perspective, a characteristic of adopting Chinese laws during the traditional period was the priority of the adopter’s stance. It is particularly noteworthy that, despite political relations, foreign legal institutions were selectively adopted with an autonomous and proactive stance. This kind of perspective and stance will remain relevant even in the current 21st century, when global regulations are increasingly consolidated.

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