

Analysis of East Asian Legal Data

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For over 35 years I have been impressed and attracted by the idea that legal data, especially East Asian law data could be used toward understanding the cultural values, family and kinship structure. This legal data offers quantifiable and measurable data on cultural values, kinship boundary, relative status of family members, and the difference between the status of men and women not to mention the legal system itself. I became aware of this in 1963-65, when I was co-teaching a seminar on East Asian Law and Society at Yale Law School, in collaboration with a lawyer. My role then was to provide essential cultural information on Asia, without which American students cannot understand some of the basic principles of Asian law.

One of the most intriguing aspects is that in the 18th century, the same crime was punished differently when the offender of the law was a relative of the victim versus a stranger. Moreover, punishment was calculated on the basis of the Chinese system of measuring kin distances, called *wufu*, meaning the five mourning grades. (See Table 1 - *Wufu* system)

There is a variety of ways to mourn the death of one's family and relatives. For example, if the father is deceased, one will be wearing 3 years of unhemmed sack clothes. Hemmed or unhemmed, the coarseness of the fabric, wearing the garment and using a staff were all symbols of the extent of one's grief and expression of mourning. The use of a staff symbolized the severity of one's sorrow that you needed to have some kind of support. Unhemmed, rather than hemmed sack clothes meant one was enduring discomfort in the memories of one's lost respected or loved ones. At any rate the important point here is that the kinship distance-measuring rule can be codified and ranked because one's crime against his or her family and their relatives and was punished in accordance to one's degree of mourning. This data reflected the relative status of the various kin roles in the family.

The usefulness of this legal data is due to the following reasons:

- (1) The data is quantifiable,
- (2) Criminal data covers information on all social strata and not only that of the ruling class. Anthropologists and historians alike resorted to a household registry, or genealogies to understand the kinship structure of traditional society. However, this data was class bound and reflected the situation of only the upper class families. The criminal punishment records, unlike the above two types of historical records, included data on slaves as well as royal families thus covered the entire range of social strata.
- (3) The systematic recording of criminal data in other East Asian countries, such as China, Japan, and Vietnam became available in sufficient quantities for comparison only in 18th century.
- (4) Due to the above reasons, the controlled comparison of East Asian legal data is possible. A controlled comparison promises to bring the characteristics of the culture into a sharper relief than when studied without any comparisons.

Why compare the laws of four East Asian countries?

- (1) In the 8th century, the Tang Dynasty Chinese law was adopted by Korea, Japan and Vietnam thus all four countries shared a common principle of law.
- (2) All this legal data is recorded in Chinese script, Japan being the only exception. *Tokugawa* legal documents are in a mixed text of both Chinese and their own vernacular script kana.
- (3) The data lends itself to computer manipulation.

The purpose of the Paper:

To present the analysis method of 18th century East Asian criminal codes and criminal punishment records that is used in a comparative study of East Asian Law and Culture. The Japanese Ministry of Education funded this international, collaborative research project from 1996-1999. Ten interdisciplinary scholars from law, sociology, anthropology, computer ethnology and history, coming from China, Japan and Korea undertook the project. Dr. Shigeharu Sugita (Computer Ethnologist), Deputy Director of the National Museum of Ethnology, Osaka Japan, was the project representative while Dr. Hesung Chun Koh (Comparative Sociologist and Cultural Information System specialist, Chair and President of East Rock Institute, New Haven, CT, USA, was the project Director.

The methodology used in this project is further testing of the research method originally developed by Hesung Koh for Korean data and the research result was published in 1993 (See Koh 1993). However, for the economy of the time, I will be using only Korean samples today, to illustrate the principles and method of analysis of legal data of the East Asian law and culture project.

There are at least three components to our information system. Today I will only address first order analysis.

1. Zero base data, which is a complete legal data and not yet analyzed.
2. First order analysis of legal data for comparative cultural analysis.
3. A scholar who wishes to test specific types of hypothesis does second order analysis.

This paper focuses on the first order database and its analysis method utilizing Korean data. This same analysis method was used for *Ching* Chinese legal data, *Tokugawa* Japanese legal data and Vietnamese *Le code* as well as *Choson* dynasty criminal codes and cases.

See attached samples:

See East Asian Law and Culture Project: Basic Sources Processed

See Table 0-A, Sample page from the Korean legal data, *Chungbo Munhon Pigo*, Hyonggo

See Table 0-B, Sample of Analysis Output, *Chungbo Munhon Pigo*

See Table 0-C, Classification Code, East Asian Law and Culture Project

Analysis Categories of legal data (for both legal codes and legal cases):

“Classification Code”

A. Source Code MH = *Chungbo Munhon Pigo*, Hyonggo.

This is neither the code nor case but a mixture of both. It was compiled as an administrative guide for the government officials and based on actual cases. It is said to be the most comprehensive list of types of crimes punished in 18th century Korea.

The following is the list of analysis categories and its compositions.

B. Legal Material Code

Legal code = L, legal case =C and Mixture of both = I

C. Data Identification Code

Because East Asian Legal sources were organized in a different style, we assigned codes for each component of such ordering. For example, the number of volumes, columns, lines and the components have been separately identified. In the case of Korean legal data, Chungbo Munhon Pigo, the ID number is computerized with the following four components.

C= volume number of the book, D = column and line number and section within that line where the description of one criminal case is described.

D. Culture code (OWC)

This is the worldwide culture classification code used by the Human Relations Area Files.

AA02 = Traditional Korea

AB02 = Traditional Japan

AF02 = Traditional China

AM11 = Traditional Vietnam

E. Topical code for the crime (OCM)

See attached sample “Norm Violation Related to the Family in Chosun Dynasty

F. Type of family code

Household, family or non-kin is separately identified by H, F, and O. It is due to the importance attached to all those who lived in the same household. Regardless of their kin status they were important in *Tokugawa* Japan, unlike Korea and in China where the definition of a functioning family was more in the line with those who were blood relatives.

G. Five Mourning Grades

See Table I. The Five Mourning Grades

(This classification is assigned only in the second order analysis.)

The Ch’ong su, Korean Indigenous System of measuring kin distances.

(This classification is assigned only in the second order analysis)

H. (Offender of the law)

JK = kin relationship with the victim

N# = Number of persons

Nn = name

Ng = gender

Nr = place of residence

NS = office title, if applicable

O (Crime)

Type of crime, See

Table 6: Choson Dynasty Crime against Family and Kin

E.g. Assault, battery and homicide?

P (End result of the offense)

Q1 Punishment

See Table 5: Choson Dynasty Punishment Scale

Q2 Further modification of the Punishment

—

R (References)

The legal code that was employed for the punishment calculation,

E.g. Great Ming Code, vol. 139, 19.08-139.10.17.)

Some of the findings about Korean family and kinship system utilizing criminal Cases are already reported in the article, Hesung Chun Koh “Persistence of Korean Family Norms in a Confucian State: An Analysis of Eighteenth-Century Criminal Cases.” In Shima, Mutsuhiko and Rogert L. Janelli, Eds. *The Anthropology of Korea: East Asian Perspectives.*, Osaka, Japan: Senri Ethnological Studies no. 49, National Museum of Ethnology, 1998:7-36.

	A	B	C	D
1		刑法事例 (Criminal law case)	法典 Legal codes	
2				
3	Korea	增補文獻備考Munhon Pigo	續大典Soktaejon	
4		秋官志 Ch'ugwanji	大明律Taemyongyul	
5		審理錄Simnirok		
6				
7	China	刑案匯覽HsingAnHweiran	大清律	
8		刑科題本當案	TaChingLu	
9		清朝各省當案		
10				
11	Vietnam	NA	唐律疏議	
12			黎朝刑律	
13				
14	J a p a	御仕置例類集Oshikiruireish	德川禁令考	
15			Tokugawa Kinreiko	

一日者每一日加一等 ○官馬牛駝騾驢乘駕不如法脊破領穿瘡圍

繞三寸者每五寸以上 ○官馬牛駝騾驢群頭群副等不勤牧養十頭致

瘦者每十頭加一等罪止 ○牧馬之官不調習官馬一匹者每五匹加

十杖八 ○鋪兵稽留公文三刻者每三刻加一等 ○公文到鋪而鋪司不

即遞送者 ○鋪兵遞送公文磨擦及破壞封皮不動原封一角者每三

一等罪止杖六十 ○鋪 ○出使人員常事違限一日者每三杖六十軍

司知而不舉者同罪 ○承差人應解官物囚徒畜產違限一

日者每三日加一等罪止 ○承差人應解官物囚徒畜產違限一

日者每三日加一等罪止 ○承差人應解官物囚徒畜產違限一

毆人不成傷者凡毆各役後下 ○期親以下尊長以手足毆傷卑幼

之婦者他物毆傷以上 ○以手足毆姊妹夫妻之兄弟及妻毆夫之姊

妹夫不成傷者以凡毆以上 ○弟妹以手足毆兄之妻不成傷者以凡

○妾以手足毆夫之弟妹及弟之妻不成傷者以凡毆以上 ○妾以手

足毆妻之子不成傷者以凡毆以上 ○不曾同居繼父以手足毆妻前夫

之子不成傷者以凡毆以上 ○以手足毆不曾同居繼父不成傷者以凡

○妾以手足毆夫之期親以下總麻以上卑幼不成傷者以凡

○監臨官吏家人私役使部民出百里之外及久占在家使喚一名

者每五名加一等 ○徒流遷徒充軍囚徒當該官司限十日外無故稽

留三日不發者每三日加一等罪止杖六十 ○應捕人一月不獲強

盜者 ○應捕人兩月不獲竊盜者 ○應斷決應起發罪囚當該官吏稽

留三日不決發者每三日加一等 ○獄卒以手足非理毆打罪囚不成

SOURCE	ST	卷	項	順	ONC	親戚(1)	加害者(J)	犯罪の状況(L)	被害者(N)	不法行為(O)	結果(P)	刑罰(Q)	処罰条件(Q1)	參考(R)
MH571	I	138	05	02	AA02	F	妻	夫之弟妹及弟之妻	以手足毆	不成傷者	不成傷者	答2.0	成傷以上以凡關論	大明律(138.0-138.05.20)
MH571	I	138	05	03	AA02	F	妻	妻之子	以手足毆	不成傷者	不成傷者	答2.0	成傷以上以凡關論	大明律(138.0-138.05.20)
MH571	I	138	05	03	AA02	F	不曾同居繼父	妻前夫之子	以手足毆	不成傷者	不成傷者	答2.0	成傷以上以凡關論	大明律(138.0-138.05.20)
MH571	I	138	05	04	AA02	F	不曾同居繼父	不曾同居繼父	以手足毆	不成傷者	不成傷者	答2.0	成傷以上以凡關論	大明律(138.0-138.05.20)
MH571	I	138	05	05	AA02	F	妻	夫之期親以下 麻以上卑幼	以手足毆	不成傷者	不成傷者	答2.0	成傷以上以凡關論	大明律(138.0-138.05.20)
MH571	I	138	08	15	AA02	H	奴婢	良人	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH571	I	138	08	15	AA02	F	同姓無服卑幼	尊長	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH571	I	138	08	18	AA02	F	弟妹	兄之妻	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH571	I	138	08	17	AA02	F	妻	夫之同姓無服尊長	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH571	I	138	08	18	AA02	F	妻	夫之姊妹夫及正妻 之兄弟	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH571	I	138	08	19	AA02	F	妻之子	父妾	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH571	I	138	08	19	AA02	H	奴婢	舊家長	以手足毆	不成傷者	不成傷者	答3.0	成傷以上以凡關論	大明律(138.0-138.07.05)
MH573	I	138	10	08	AA02	H	同居卑幼	引他人盜己家財物 二十貫者				答4.0	每二十貫加一等罪 止杖一百	大明律(138.0-138.11.13)
MH573	I	138	10	15	AA02	H	雇工人	家長之002麻親 者	罵			答4.0		大明律(138.0-138.11.13)
MH573	I	138	10	18	AA02	F		官吏於訴訟人內關 有服親及婚姻之家 若受案師及舊有 嫌疑之人轉移文 回避而違者				答4.0		大明律(138.0-138.11.13)
MH574	I	138	12	08	AA02	H	許	嫁女已報婚書及有 私約而輒悔者				答5.0	雖無婚書曾受聘財 者同罪	(已上大明律) 38.11.19-138

**Classification code for the East Asian Law and Culture Project
For the analysis and indexing for the legal code and cases
Hesung Chun Koh
January 15, 2000**

A. Legal Source number

Munhon pigo = MH

Ch'ugwanji = C

Hsing -an hui-lan

TA Ch'ing Lu li

Oshioki ruirishu = O

Le Code = L

B. Page number

Page number of the book

(See variation of the pagination method in classical sources)

C. Source Type Code

Legal code = l, legal cases = c, combination of both = l

G. Country/ Culture Code = OWC code

All of 18th century

China = AF02

Korea = AA02

Japan = AB02

Vietnam = AM11

H. Time Code (all 18th century materials)

KTG = e.g. Ch'ing

KTS = e.g.. 1733 AD

I: Family? Household? Non-kin? Other?

J: Offender of the law

Number of

Name of

Sex

Place of Residence

K: Name of Residential location

L. Condition of Crime

M. Accomplice

N. Victim

Number

Name

Sex

Residential location

X: Kin distance between the Offender and the Victim

X1 = Wufu system

X2 = Ch'onsu (Korean indigenous way of measuring kindistance.

Similar to Roman law,

But used in Korea from 4th century?)

X3 = social status (e.g. elder lineage, of younger generation)

O: Crime

Type of Crime

Method of injury

OCM code for the Crime

P: Damage caused by Crime)

Q Punishment

Q1 Notes on punishment

S: Accuser

Number

Name

T: Legal Office

U: Trial Procedure

Y: Motivation

R: References

Z: Analyst's Note

Classification Code¹

東洋の法と文化 Project

- A ; 基本資料 (Source Code)
(MH=増補文献備考、C=秋官志、S=審理録、大清律例、H=刑案匯覽、x=刑科題本、L=黎朝刑律、O=御仕置例類集)
- B ; 項数 (ID no.)
(例 Volume=巻、Column=項、Line=行、Component=号)
- C ; 資料種類 (Source Type Code <ST>)
(L=律令、C=事例、I=複合)
- F ; 件名番号 (Case or Code no.)、記入事例番号 (原本検見指標)
Case or Code ID
(Volume=巻、Column=項、line=行、Component=号) 又件
Country Code
=OWC Code (China=AF02、Korea=AA02、Japan=AB02、Vietnam=AM11)
- I ; 親屬 (Family) (?)
親屬(Family)=F、家口(Household)=H、凡人=NR、其他(Others)=O
- * H ; 年代 (Time Period, Specific)、事件年代
e.g. 1732A.D.
- J ; 加害者 (offender) 首
Jk=親戚關係
J#=数 (複数名の場合 J1,J2,J3 等)
Jn=名
Jg=性別(M,F or MF)
Jr=居住地
J S =階級 「奴婢」
- * K ; 居住地名 or 地域名 (Residential Location)
(例—湖南、嶺南等)
- L ; 犯罪の状況 (Crime Condition)、案情、情状、事件概要 (文章形) [(犯罪の一般的状況、具体的事実)]
- M ; 共謀者 (従) accessory
- N ; 被害者 (Victim)
Nk=親戚關係
N#=数 (複数の場合 N1,N2,N3 等)
Nn=名
Ng=性別
Nr=居住地
N S =階級
- ✧ X ; 加害者と被害者の親族距離
(Kin Distance between the Offender and the Victim)
X1=五服制
X2=寸数
X3=親等
X4=地位 (尊卑、長幼等)
X 5 =服忌令
- O ; 不法行為 (Crime)、罪名

- 1 =種類 例—毆・告・殺
- 2 =傷害を与えた方法 例—以手足
- P ; 結果(Damage caused by Crime) (?)
 - 例—傷・不傷・死・折一齒
- Q ; 刑罰 (Punishment)
 - Q 1 =Punishment Specification
 - Q 2 =
 - Q 3
 - Qf=最終の刑罰
- * S ; 告訴人 (accuser)
 - S#=数
 - Sn=名
- * T ; 法官職名 (Legal Office) 、所管役人
 - 法機関名 例—義禁府
 - T 1
 - T 2
 - T 3
- * U ; 訴訟節次 (Trial Procedure) 、e.g.
 - V 1 : 刑罰の理由 「例..先例)
 - V 2
 - V 3
- * Y ; 動機 (Motive)
 - R ; 参考 (Reference) (例—以上大明律, 以上續大典)
 - Z ; 備考、(法典引用)
- ¹ Revision of the ANALYSIS code suggested at the 1 st workshop by, H. C. Koh
- * Categories not in 増補文献備考, Code needed for legal cases

Norm Violation Related to the Family in Chosun Dynasty
親族間 不法行為 (朝鮮時代)

高 惠 星

1. Offenses against Persons (683.01)

- (1) Cursing or Use of Abusive Language 罵詈
- (2) Accusation 告
- (3) Assault and Battery 毆傷
- (4) Sales of Person 売身
- (5) Revenge 復讐・私和

2. Offenses against Life (682.00)

殺害

3. Sex & Marital Offense (684.01)

- (1) 不正通婚
- (2) 婚期違反
- (3) 同姓近親婚
- (4) 重婚
- (5) 自由婚・自由改嫁
- (6) 強制婚
- (7) 犯姦 (835.03)

4. Property Offense (685.01)

- (1) 別財 (685.01)
- (2) 盜財 (685.02)

5. Illegal Succession or Adoption (597.00)

- (1) Illegal Succession 不法立嗣 (611.09)
- (2) Illegal Adoption 不法養子 (597.09)

6. Non-fulfillment of Obligation (686.02)

- (1) 奉養不謹 (577.02)
- (2) 居喪不慎 (765.00)
- (3) 葬儀違反 (764.02)

Table1. The Five Mourning Grades (Obokche)五服制

Grade	Name	Mourning Requirement
1	斬衰 Ch'amch'oe (Korean), or Chan-ts'u (Chinese)	Garb of unhemmed sackcloth, three years 斬衰三年
2	齋衰 Chaech'oe (Korean) or Tzu-ts'ui (Chinese)	Garb of hemmed sackcloth, three years 齋衰三年
	斯 (2a) For a collateral (ki) uncle	One year, with or without staff 一年
	(2ai)	One year with staff * 一年
	(2aii)	One year without staff 一年
	(2b)	Five months 五ヶ月
	(2c)	Three months 三ヶ月
3	大功 Taegong (Korean), or Ta-kung (Chinese)	Nine months 九ヶ月
4	小功 Sogong (Korean), or Hsao-kung (Chinese)	Five months 五ヶ月
5	思麻 Sima (Korean), or Ssu-ma (Chinese)	Three months 三ヶ月

Note: Terms that appear in 2a, 3, 4, and 5 specify collateral relatives.

Ki, taegong, sogong, sima are usually used as prefixes to designate collateral relatives, such as "ki-[uncle]" or "sogong-[brother]," or to describe the degree of a relationship.

*The staff means that there is need for support for the bereaved mourner.

Table 5. Chosn Dynasty Punishment Scale

Major Category	Subcategory
Death 死刑	Death by slicing 凌遲處死 Immediate decapitation 斬不待時 Decapitation after assizes 斬待時 Immediate strangulation 絞不待時 Strangulation after assizes 絞待時
Banishment 流刑	Banishment to 3,000 li 流三千里 Banishment to 2,500 li 流二千五百里 Banishment to 2,000 li 流二千里
Penal servitude 徒刑	Penal servitude for 3 years 徒三年半 Penal servitude for 2.5 years 徒二年半 Penal servitude for 2 years 徒二年 Penal servitude for 1.5 years 徒一年半 Penal servitude for 1 year 徒一年
Heavy bamboo 杖	100 strokes heavy bamboo 杖一百 90 strokes heavy bamboo 杖九〇 80 strokes heavy bamboo 杖八〇 70 strokes heavy bamboo 杖七〇 60 strokes heavy bamboo 杖六〇
Light bamboo 苔	50 strokes light bamboo 苔五〇 40 strokes light bamboo 苔四〇 30 strokes light bamboo 苔三〇 20 strokes light bamboo 苔二〇 10 strokes light bamboo 苔一〇
No punishment 無罰	

Table 6 .Choson Dynasty Crime against Family and Kin 親戚間の不法行為

Major Category	Subcategory
Accusation 告	Accusation 告 Accusation, false 誣告
Assault and battery 毆	Assault and battery, no injury Assault and battery, breaking teeth and more Assault and battery, breaking one tooth and more Assault and battery, injury Assault and battery, using hands and feet, no injury Accidental assault and battery, no injury Accidental assault and battery using knife, breaking limb and eye Accidental assault and battery, breaking bones Accidental assault and battery, injury Assault and battery, breaking injury Assault and battery Assault and battery, causing illness Assault and battery, resulting in death Assault and battery, using hands and feet Assault and battery, homicide
Homicide 謀殺	Premeditated homicide Executed homicide 故殺 Homicide with no injury Homicide with injury Homicide resulting in death Malicious homicide Homicide by assault and battery 毆殺 Accidental homicide 過失殺
Cursing or use of abusive language 罵詈	Insulting and cursing 罵詈
Sale of person 賣	Sale of person, kidnapping 賣身 Sale of person, kidnapping, slavery
Sexual violation 強姦、通姦	
Revenge 復讐、私和	
Other	Separating property 離財 Stealing property 盜財 Sale of person 賣身 Illegal succession and adoption 不法相續、不法立嗣 Illegal marriage 不法婚姻、不法養子

10-11