

Widows on the Margins of the Family

In 1898 a man submitted an appeal to the Ministry of Legal Affairs (Pöppu), denying an accusation of widow rape against his son. The plaintiff, Chöng Tong-il, had paid a hundred coins to a man so that his son could marry the man's widowed daughter-in-law. Soon after the wedding the widow's natal family severely reprimanded the father-in-law for the marriage and demanded the widow's return. Back in her natal home, the widow was rebuked for having defiled her chastity; "unable to bear the shame," she eventually committed suicide. The widow's family, in turn, sued the plaintiff's son for "raping the widow," and he was imprisoned. In his letter of appeal, Chöng pleaded that his son was innocent and should not be charged with rape when the widow had come willingly to the wedding site.¹

This case raises many questions about the situation of women, widows in particular, at a point in 1890s Korea when change was imminent, but the consequences of centuries of social, economic, and ideological developments still prevailed. Widow chastity was an important moral virtue for elite women in the Chosön dynasty from early on.² By the end of the Chosön dynasty, with the increased competition between elite families, widow chastity became a "public indicator of the moral level" of the family.³ In the increasing competition for official recognition, widows were pushed to perform more drastic acts, usually suicide, to prove their virtue.⁴ In her study of a widow suicide case from the early nineteenth century, Jungwon Kim has argued that widows' virtue became a "highly vulnerable asset" for the family as well as the women themselves in the period; to protect the honor of herself and the family, a widow would commit suicide at the slightest slander against her chastity.⁵

Widow chastity, or the prescription that widows remain unmarried, was abolished, formally at least, in 1894 as part of the Kabo Reforms of 1894–96 undertaken

in the Chosŏn court by the pro-Japanese cabinet.⁶ Under the strengthened influence of the Japanese during the Sino-Japanese War, former pro-Japanese reformers of the Kapsin Coup in 1884 were brought back into the cabinet from exile in Japan and were able to implement many of the reforms that they had failed to implement before. In addition to various measures to reform Korea in the model of Meiji Japan, many institutional reforms were implemented to at once modernize Korea and optimally prepare Korea to be a Japanese protectorate.⁷ The reforms that were undertaken during this period therefore are a good indicator of which Korean customs were considered backward as well as an impediment to Japanese control. Social institutions that were considered the basis of *yangban* elite power, therefore, were targeted for reform.⁸ The abolition of the ban on widow remarriage was one of these, together with the abolition of early marriage, the discrimination of offspring of concubines (*sŏja*), and slavery.⁹ Women's status by then had become a "yardstick for the civility of an entire country" in Korea as well.¹⁰ Mistreatment of widows, or women in general, was considered a marker of backwardness, and a particularly Asian backwardness at that. Customs like the ban on remarriage of widows, for example, often were criticized in the same terms as the notorious practice of sati in India; the news of its abolition by the British was well known around Asia, including in Korea.¹¹

Another key goal of the Kabo Reforms was to establish and expand new institutions. The appeal letter introduced at the opening of the chapter is part of a collection of letters addressed to the Ministry of Legal Affairs, a judicial institution created by the reforms that served as a kind of appellate court. The head of the Ministry of Legal Affairs received letters requesting revocation of decisions handed down in the local courts administered by local magistrates.¹² In 1894 the Korean court had established the Ministry of Legal Affairs as the sole administrative apparatus for legal matters. Judicial matters were to be handled by the Provisional Court of the Department of Justice (*Pŏppu amun kwonsŏl chaep'anso*).

Despite the Kabo Reforms, however, the practices surrounding widow chastity persisted, and the collection of appeal letters addressed to the Ministry of Legal Affairs contains a set of cases filed under the category of "widow rape" (*kŏpkwa*). "Rape" was a serious crime according to *Taejŏn hoet'ong* (1865), the Chosŏn legal codes, and a perpetrator could receive punishment of up to a sentence of death.¹³ The fact that people understood widow rape to be a uniquely punishable offense seems to suggest that, even after the Kabo Reforms, widow chastity still was regarded as a prized act of morality. In fact, the details of the 1898 case reveal a wide spectrum of attitudes toward widow chastity: while the natal family seems to have been so attached to the ideal of chastity that they drove their daughter to suicide, the father-in-law seems to have considered it a mundane matter to sell his daughter-in-law in marriage for profit.

The case reveals much about what was considered normative, acceptable, and transgressive. We can detect, for example, that the widow remained with her

husband's family and that it was not considered particularly criminal for the husband's family to arrange her remarriage and even collect a dowry in the process. But we also can detect that marrying off a widowed daughter-in-law was not considered an honorable act and that it could earn criticism from the widow's natal family. The widow's natal family seems to have had the recourse of claiming her back. We also can see that the virtue of widow chastity was still a viable ethical norm and that families thought that their reputation relied significantly on proper adherence to virtue by the women of the family. It also is clear that an accusation of rape could be far more than a matter of sexual offense.

Most of the cases concerning widows mentioned in the appeal letters to the Ministry of Legal Affairs involved attempts or actual incidents of rape or abduction, both of which were considered serious crimes in the Chosŏn dynasty. Accused men often pleaded their innocence by saying they had entered into sexual relations with a widow with her consent or sometimes even with the assistance of a matchmaker. These men often rebutted the charges of rape with accusations that the in-laws were trying to sell off their widowed relative to another bidder. While these cases are filed under "widow rape," upon closer examination they often are not at all about the moral prescription of female chastity against immoral outbursts of male desire. In many instances the sexual offense came under official scrutiny only because of the violence of widow suicides, which often grew out of what was essentially an economic conflict. Those accused of raping a widow often were men who had gotten on the wrong side of the in-laws by providing an insufficient amount of money for the widow. In one of the cases, a daughter-in-law was threatened with rape by her brother-in-law when she refused to obtain money from her natal family.¹⁴ A survey of the cases involving widows among the appeal letters show that behind the issue of rape or remarriage there existed a common and deeper problem: the tension over family property between the widow and her in-laws.¹⁵

Although the case is filed under "widow rape," we are unlikely ever to find out whether this widow was indeed married off against her will, or if she was a willing bride protesting against the familial censure against a new marriage. The same goes for other widows who appear in the collection of letters to the Ministry of Legal Affairs, mostly as corpses. These dead widows remind us of Bhuvanewari's suicide in Gayatri Spivak's "Can the Subaltern Speak?"¹⁶ As in the case of Spivak's dead woman, our dead widow likewise could be viewed in widely different subjectivities: a defiled widow, a willing (and perhaps not so chaste) bride, and even an abject victim of the brutal prescriptions of Confucianism. Yet, just like the early nineteenth-century widow in Jungwon Kim's study, this widow seems to have killed herself in protest. Whatever the real story was, suicide seems to have been used by the widow as what Kim calls a "premeditated strategy" to express her anger and protect her honor.¹⁷ In a world where Confucian ethics, which idolized widow chastity, still had great currency, some chaste widows found suicide their only and last recourse to expose the truth of the violence to which they were subject.¹⁸

Still, it was not so much the Confucian prescription of widow chastity to which widows fell victim but their marginalized position in a virilocal marriage system. They were victims of a land-based property regime that largely deprived women of access to property ownership. In *Dowry Murder* Veena Talwar Oldenburg shows that the practice of dowry murder in India, where a woman could be murdered for insufficient dowry, was a product of British imperialism, which had transformed the Indian economy to favor men over women, both in the labor market as well as in property ownership.¹⁹ In the process dowry was redefined from movable property voluntarily given to women in marriage by natal families for provision and as a mark of status to “groom price,” where the bride’s family paid the groom’s family to compensate for the (perceived) inferior economic (earning) power of the bride. In short, dowry murder was not a cultural problem but an economic one. Oldenburg’s case inspires us to rethink the argument that Korean women were victimized by Confucianism (or by the culture-as-culprit thesis, in Oldenburg’s term) in a whole new way. In other words, women’s marginalization in the family was not from cultural or ideological transformation per se (“Confucianization”) but rather from the socioeconomic transformation of family that reconfigured property relations and concentrated land property in the hands of sons (and later in the hands of the eldest son) as the lineage system matured.²⁰

The case thus illustrates the precarious position of widows at the end of the Chosŏn period. In their marginal place in the family, many widows seem to have been perceived as burdens, and even threats, to family viability. Accordingly, they were subject to extortion, threats of expulsion from the family, or pressure to remarry (or sold in marriage in exchange for monetary compensation). Whatever the specifics of individual cases, these dead widows seem to have been pushed to the limits of their existence by numerous converging desires: the widow’s desire to protect her honor, the natal family’s desire to maintain the widow’s chastity, and the marital family’s desire to decrease the financial burden of keeping the widow.

By the late nineteenth century, where we encounter the corpse of the raped widow, the Korean family system and ideology had effectively pushed widows to the margins, where they had to negotiate between the impossible ideal of widow chastity and the realities of their position in the marital family. What does the case of these dead widows tell us about the state of widows’ and women’s position in the family at the end of the Chosŏn dynasty? What is the process through which widows became so marginalized in the family system? In the following I examine the reconfiguration of family practices in marriage customs, living arrangements, ancestral rites succession, and property inheritance in the seventeenth century that increasingly marginalized women’s claim to family property. I also show that, in addition to this slow transformation of inheritance practices, the patrilineal principle that became the official principle of family arrangement of the court from the beginning of the Chosŏn dynasty made women’s, and especially widows’, right to family property a precarious one, susceptible to continuous challenges. Revealing

sources for our purposes lie in accounts of litigation, where economic conflicts dating from the beginning of the Chosŏn dynasty were exposed and resolved. The fault line increasingly came to be between married-in women (who were widowed) and those linked through agnatic ties.

THE EMERGENCE OF PATRILINEAL FAMILY PRACTICES

Confucian ideology was highly prescriptive when it came to matters of family, and it was instrumental in transforming family practices in the Chosŏn dynasty, when it became the official ideology of the court. According to Confucian teachings, a proper family should be organized on strict hierarchical principles, where the wife was always to submit to the husband's guidance. A woman was taught to adhere to the "Three Followings [Samjong Jido]," which meant that she should follow her father when young, her husband upon marrying, and her son in widowhood. Marriage was to be strictly virilocal: a woman married into a man's family, signifying a wife's submission to a husband's ways. The wife had significant restrictions in legal rights as well. She was expected to submit her rights over property to her husband while married, and she had no right to divorce her husband; the husband, on the other hand, could divorce the wife on seven legitimate grounds (*ch'ilgŏ ji ak*), which included jealousy and failure to produce children.²¹ In inheritance families were to exercise primogeniture: the firstborn son inherited the right and obligation to perform the ancestor rites and with that the right to inherit the dominant portion of the family property.

It was another couple of centuries after the initial round of reforms by the court before the lineage system became fully fledged as a result of steps initiated by the elite.²² Scholars largely agree that this happened sometime around the mid-seventeenth century after the Imjin War (also known as the Hideyoshi Invasions, 1592–98). It was then that lineages became larger and began enforcing lineage-securing practices such as virilocal marriage, primogeniture in inheritance of the ritual heirship, and the exclusion of daughters and privileging of firstborn sons in property inheritance. As early as the mid-sixteenth century, some families began abandoning partible inheritance and setting aside property to compensate for ancestral rites that were becoming increasingly elaborate. At the same time, families began allotting more inheritance to the sons (and later, the eldest sons), who began to take on more responsibility in carrying out rites.²³ As the ideal of conducting ancestral rites for four generations of ancestors spread among the ruling class of yangban, agnatic kin who congregated to perform the rites became more organized, with stronger leadership and systematic lineal succession. Lineage groups thus formed were designated the "small lineage" (*sojong*), as opposed to the "large lineage" (*taejong*), which referred to all descendants sharing a common lineage seat (*pon'gwan*), the purported geographic site of the lineage's origin.²⁴

These changes came about slowly across families but, by the eighteenth century, were normative expectations for elite yangban families. In the late eighteenth and the nineteenth centuries, the conspicuous practice of Confucian rites spread even to the lower levels of the middle-status class (*chung'in*) and to wealthy merchants.²⁵ This affected family makeup and dynamics, strengthening the powers of patrilineal heirs against other elders. Chông Chi-yông (Jung Ji Young), for example, detects a declining number of women household heads in household registers, even among commoners, in the eighteenth century.²⁶ The status of household head increasingly came to be passed on directly to sons rather than to widowed wives, reflecting a shift in ritual inheritance and the accompanying public recognition and status given to the ritual heir.²⁷

VARIATIONS IN FAMILY PRACTICE

Evidence suggests that even after the principle of virilocal marriage became established as the norm, modified forms of uxorial marriage customs, a remnant from the preceding Koryô dynasty (918–1392), continued for centuries. In the Koryô dynasty the wedding took place in the bride's house, where the bride continued to live after the wedding, while the groom had a variety of options: he could live with the bride in her natal home, return to his home and visit the bride occasionally, or the couple could move away from both homes to set up a separate residence, typically to follow his posts.²⁸ As marriage was utilized to form ties of alliance and patronage, upper-class men commonly married multiple women and rotated among their respective houses.²⁹ Despite continued efforts by the Chosôn court to reform marriage customs to implement *ch'inyông* (C: *qinying*), the wedding rites at the groom's house, such change initially was resisted by the yangban elite families. King Sejong (r. 1418–50), for instance, conducted all the royal weddings in *ch'inyông*-style to be an example to his court officials, but to no avail.³⁰ By the sixteenth century, what is called a "half-virilocal marriage" (*pan-ch'inyông*) was practiced widely among the yangban elite. A half-virilocal marriage entailed a wedding ceremony at the bride's house, after which the couple would move to the groom's house. As time went on and the custom of virilocal marriage spread, women increasingly moved into their husband's families' home, but it was not rare for them to postpone the departure until they were comfortably settled into the marital relationship with a number of children. Many couples chose to extend the period in the bride's house for quite a long time, one year on average but sometimes longer.³¹ Although the time the couple lived in the bride's family was gradually shortened, a nineteenth-century record still shows a bride joining the groom's family six months after the wedding. The record includes no sign that this practice was unusual; therefore, it would be safe to assume that this delayed move was perfectly acceptable.³²

While uxorial marriage was still in practice, daughters had equal rights to inheritance as well as an equal share of the obligation to support natal parents

in old age and also the responsibility of carrying out ancestral rites.³³ Even when a daughter was expected to marry out of the house, it was not uncommon for part of the household property to be inherited by her to then be passed on to her descendants. Records indicate that yangban-class women had rights over separate property that they inherited from natal households and passed on; records show men reporting among the property they inherited property that originated with a maternal grandmother.³⁴

VIRILOCAL MARRIAGE AND THE RECONFIGURATION OF FAMILY PROPERTY

Virilocal marriage significantly impacted a woman's position in the family: while she lost standing in her natal family, she gained a new standing in her marital family. Upon moving to her husband's house, the bride lost all the familiar surroundings and support that she had grown up with. Prescriptive literature for women aimed to suppress women's emotional attachment to their natal parents, while asking that they transfer their feeling of filial piety to their parents-in-law.³⁵ Popular didactic stories of women sacrificing themselves for natal parents from the Koryŏ dynasty disappear in the Chosŏn dynasty. Instead, women gained a new strong and stable status in the marital family as mother of the future heir, as well as mistress of the inner quarters and overseer of the preparation of ancestral rites, the significance of which grew steadily in the late Chosŏn period. By the mid-seventeenth century, as laws of lineal succession were followed by more yangban families, wives' status in the family was strengthened in comparison to that of daughters.

Even with their newly gained status in the marital house, wives' rights paled in comparison to the increasing rights of sons. As agnatic principles became more pronounced under the lineage system, the patrilineal line from father to children (increasingly sons rather than daughters) became emphasized, and legal rights over family property also began to reflect this change. Beginning in the sixteenth century, adoptees, who used to be chosen from outside of the lineage, increasingly were chosen exclusively among agnatic kin.³⁶ Also, an increasing number of sons inherited directly from their deceased fathers rather than waiting until their widowed mothers passed away. In other words, wives slowly lost rights to directly inherit from their husbands. Such a move was first initiated by the Chosŏn court itself: as early as 1411 the court began to let sons directly inherit from their deceased fathers, bypassing widowed mothers.³⁷

Daughters' rights accordingly were diminished. As the virilocal marriage custom spread, daughters were excluded from ancestor-rites succession, which traditionally was a shared responsibility of all children. Often the performance of rites rotated among the houses of sons and daughters. Such a sharing of obligations supported the practice of partible inheritance, which included daughters.³⁸ But as

daughters began marrying out and living farther away from the natal household, ancestral rites increasingly became the obligation of sons and then increasingly that of the eldest son.³⁹ As ancestral rites became more formalized and onerous, inheritance increasingly came to be considered a compensation for their economic burden. As virilocal marriage practices made sharing the obligation to carry out ancestral rites more difficult, more and more families began to excuse sons-in-law from ancestral rites duties, and sons-in-law, in turn, excused themselves from inheriting from a wife's natal family, yielding their share to her siblings, who would carry out the rites.⁴⁰ From the mid-sixteenth century, families began to replace daughters' inheritance in immovable property with dowries of movable property.

CONFLICTS OVER WIDOW RIGHTS

The principle of virilocal marriage affected widows as well. As the virilocal principle was strengthened, virilocal residence came to be expected even in widowhood. Although widows seem to have commonly returned to their natal families or remarried during the Koryŏ dynasty, widows in the Chosŏn dynasty were expected to remain in the marital family, never to remarry. The notorious ban on widow remarriage—meant only for upper-class women—was promulgated as a rule in 1485, when sons of remarried widows were banned from sitting for the civil examinations.⁴¹ Widows therefore were forced to keep their chastity for the sake of their sons' future prospects and to maintain the status of themselves and their marital families. To encourage widow chastity and to assist the livelihood of chaste widows, the court allowed a chaste widow to retain part of her husband's rank land as *susinjŏn* (land to preserve chastity), but that practice was abolished as early as 1466; this was an indication, not of the diminished importance of widow chastity, but rather of a strengthened expectation of it, as it indicates that the court expected the marital family to support the widow.⁴²

On the other hand, such a strong obligation to remain chaste also resulted in stronger rights for widows despite Confucian agnatic principles. Traditionally, since the Koryŏ dynasty, widows had rights to own and manage their husbands' property until the ritual heir had matured enough to assume the duties.⁴³ Widows also, in the meantime, had ritual rights and the obligation to carry out ancestral rites. The same logic applied when a widow had no sons and an heir had to be adopted. Such a widow still enjoyed usufructuary rights over her husband's estate and had the prerogative to select an heir.⁴⁴ As a *chŏngbu* (eldest daughter-in-law), a widow could move into the lineage's main house and take over possession of the land and slaves set aside for the support of ancestral rites. In terms of ritual succession, *chŏngbu* had precedence over a husband's nephews.

While remaining customs of uxorilocal marriage practices enabled women to enjoy certain rights that they lost in the late Chosŏn period, there is not a neat storyline by which women's standing in the family consistently diminished from

Koryŏ to late Chosŏn. The trend toward virilocal marriage and lineage formation formally and forcefully initiated at the outset of the Chosŏn dynasty meant increasing tension over women's property rights. Legal records show that women were subject to challenges to their property rights from marital relatives all throughout the Chosŏn dynasty, albeit with differing degrees of intensity.

Although legal records mainly represent (often extreme) violations of norms, and thus are not the optimal source for deducing norms, they nonetheless provide a rich source of information about what was considered ideal, "normal," and transgressive. Records of lawsuits or criminal investigations provide us with a vantage point on how family norms were practiced in everyday life. These records, far more than the ideals laid out in the prescriptive literature, tell us about the actual rules for customs that people adhered to, just as sources like diaries provide glimpses into customs-as-practices rather than customs-as-ideals. Actual family practices are useful not only to see how things were different in reality from prescriptions but also in showing the boundaries of what was considered acceptable, if not ideal. Similar contrasts between ideal and practice also are employed by legal anthropologists in distinguishing between law-as-text and law in everyday life.⁴⁵

Even though many records remain about legal disputes that were civil in nature, the Chosŏn dynasty legal system, in accordance with the legal culture of China, did not have civil laws separate from penal codes.⁴⁶ Not only was there no separation of civil matters from penal matters, but there were no codes written for civil matters, except for procedural laws for such disputes. Also, most of today's civil matters were in general considered outside of the judicial concern of the state. Legal administration of the state was focused on adjudicating criminal matters, and therefore only penal codes were compiled.⁴⁷

This is not to say that civil conflicts were ignored by the state. As economic relationships became more complex in the late Chosŏn dynasty, legal codes had to accommodate a growing number of conflicts between private parties of a civil nature when those parties appealed for official adjudication. *Sok-taejŏn*, a legal code compiled in 1746 to complement the original codes of *Kyŏngguk taejŏn*, included eleven new categories of codes, among which were "Listening to Disputes [*Chŏngri*: Procedural laws]" and "Land Registers [*munki*]," to address the growing number of civil litigations. Since family order was deemed a critical foundation of the Confucian world order, some family matters that may seem private to the modern reader were very much at the center of state interest. Failure to marry off a daughter by the age of thirty, for example, was deemed criminal and was a subject of direct state intervention.⁴⁸ Yet the focus of adjudication in civil disputes was not delineation of rights but conflict resolution, even though validation of rights was what happened in the end and what the litigators sought.⁴⁹

Confucian ideology influenced what sort of cases came to court as well as how they were adjudicated. Civil lawsuits were discouraged under Confucian legal culture. Lawsuits with monetary objectives were perceived as indications of selfish

intentions and symptomatic of disharmonious relationships. The ideal of the Confucian state, therefore, was to have no lawsuits (*musong*). Even in criminal matters ritual propriety played an important role in adjudication. In noncriminal matters lodging lawsuits against one's elders or superiors was discouraged and could warrant the death penalty regardless of who was at fault. One of the major concerns of the state was breaches of propriety. For example, when a grandson became entangled in a lawsuit for selling a family property without the permission of his grandmother, he lost the case not because he was not the legitimate owner but because he had breached propriety by bringing a lawsuit against his elder. The majority of civil cases concentrated on issues considered acceptable in terms of maintaining Confucian social order: disputes over property boundaries and cultivation rights, slaves (especially those who had run away), and gravesites. In such a legal culture, where it was considered inappropriate for family members to lodge lawsuits against one another, it was rare for familial conflict over property to appear in official legal records. Indeed, one result in some cases was for both the plaintiff and the accused to be penalized for disrupting harmony.⁵⁰

Despite such limitations, a number of records remain where widows came forward to accuse their in-laws of taking away property that they had inherited from their late husbands. In some cases, widows even sued their natal families for property.⁵¹ These cases show several implicit concepts about family-property ownership in the Chosŏn dynasty. One was the principle of "separate family, separate property" (*pun'ga pyŏl'jae*), by which lineage elders had limited rights over the property of family members living in separate households.⁵² Another was that women, especially as heads of their own households, had certain rights to property. Women also had rights over separate property that they inherited from their natal families and also independent ownership over property and wages that they earned. Despite the Confucian sense of propriety that encouraged submission to elders in all things, such concepts of property ownership remained strong and provided bases for property litigations throughout the Chosŏn dynasty.

Married-in women who were not mothers of heirs (i.e., sons) posed a unique threat to the agnatic lineage system. Cho Ũn traces how even as early as the fifteenth century, the Chosŏn court tried to limit women's place in the family inheritance regime to their status as mothers; a widow, for example, no longer directly inherited from her husband if she had children who could inherit on her behalf.⁵³ This meant that a new concept of property ownership emerged in the Chosŏn dynasty, whereby property ownership became collectively held by the patrilineal kin group, access to which depended on one's membership in that kin group and was stratified depending on one's standing within it. Membership was restricted to agnatic kin, and one's standing followed the agnatic principles that defined one's share of obligation in the performance of ancestral rites. Widows without children, therefore, posed a unique challenge in the inheritance regime, especially because they were expected to remain in the marital family. Since they lacked children who

could inherit in their stead, they had to be given some inheritance rights, albeit provisional, to ensure the flow of property to the next generation to an adopted heir; yet, as they were denied lineage membership, they were forever outsiders. Changes in widows' property rights, therefore, serve as a barometer of the transition in property ownership from being individually based to being collectively based in the agnatic lineage.⁵⁴

As patrilineal principles grew stronger in the Chosŏn dynasty, a widow's position in the family became an ever more volatile one: she was not quite a member of the agnatic kin group, but she held significant ritual and property rights as the key figure protecting the patrilineal line.⁵⁵ It was thus that widow rights, that is, *ch'ongbu-gwŏn*, became a common source of conflict between women and marital family members. Families struggled to restrict widows' property rights to keep control over family property within the hands of agnatic kin. In 1466 chastity land, the rank land of a late husband that a widow was allowed to keep to support her during widowhood, was abolished.⁵⁶ A widow was now expected to be supported by her sons or her husband's family. Exercises of property rights that would have been unremarkable in the Koryŏ dynasty were considered preposterous in the newly evolving lineage system: a widow selling family property under her management would cause great alarm to her husband's brothers. In some cases, younger brothers-in-law resented the widow and deprived her of inheritance or even expelled her from the house. In 1488 a dispute broke out in the royal family when a younger brother usurped the ritual heirship of his elder brother's widow. Although the court reprimanded the younger brother for harming propriety by expelling his sister-in-law, it also took his side and acknowledged him as the legitimate ritual heir. The court concluded that customary widow rights were too strong and contradicted patrilineal principles, eventually declaring that the widow should not be allowed to succeed to ritual heirship unless her husband had already succeeded as the ritual heir.⁵⁷ In 1554 an official restriction also was placed on whom a widow could adopt as her husband's heir: adopted heirs had to be chosen strictly from among agnatic kin. A widow thus could not adopt from her natal family and the previous exception for adopting toddlers from outside of a family was banned. Often, especially when she had only daughters, a widow would postpone adopting an heir, creating tension with her in-laws, whose main interest was in securing an heir for the family line.

Cases of widows who died without children serve to reveal in stark relief the emerging concept of *kasān*, or family property, in late Chosŏn. Family property was not new, for it had been a source of controversy even earlier in the Chosŏn dynasty. Records of a series of litigations over such properties remain from the sixteenth century. These cases show that, as the concept of family property spread, even property of married-in women came to be folded into the collective property of the marital lineage. In 1560 two families, Choe and Son, went head-to-head over a piece of property that had been inherited from a Choe daughter who

had married into the Son family. Her property, which had been inherited by her adopted daughter from her natal family (another Choe), had passed to her son-in-law and was about to be inherited by a nonrelation (the son-in-law's second wife and son). In sending one of its daughters as an adoptive daughter to the Son family, the Choe's had attempted to maintain control over the property given in marriage, but the plan fell apart when the adoptive daughter also died without leaving children. When the Son family attempted to pass the property that was originally from the Choe family to one of the descendants of the Sons, technically cutting all traces of Choe ties to the property, the Choes went to court but were able to reclaim only half of the property; the rest was divided among all Son progeny, including those unrelated to the Choes.⁵⁸ In 1583 a lawsuit was lodged from the opposite direction, from a marital family against the natal family of a dead woman. This dispute over an inherited slave broke out between the Yi and Kim families. When a Kim daughter died without children, her natal father retrieved the family slave given to her in marriage and gifted him to one of his other children. In response to this, the dead daughter's adopted son brought suit against the Kim family, citing his rights to inheritance as the ritual heir.⁵⁹ In both of these cases, the woman's family lost control of the property granted to a daughter in marriage, as it had become increasingly difficult to retrieve such property when a daughter died without children. This was a sharp departure from Koryŏ dynasty conventions.

In the Koryŏ dynasty, when a woman died, her property was enjoyed by her spouse until his remarriage or death, upon which point the property was returned to the woman's natal family. This custom was observed until the early Chosŏn dynasty, when, in King Sejong's reign, debates flared over whether a widower had an obligation to return property when he remarried. Eventually, it was decided that when the widower died, one-third of the property (from the deceased wife's family) was to be given to the ritual heir born of the second wife (who presumably would continue to observe ancestral rites for the deceased first wife), and two-thirds of the property was to be returned to the natal family. A woman, however, could keep her husband's property only when she maintained chastity. By 1548 the court ordered that in cases where a child born of a second wife bore the obligation to continue the ancestral rites, he or she could inherit all of the first wife's property.⁶⁰

By the late seventeenth century, inheritance rights of the ritual heir were further strengthened. A case from 1696 between the widow Yu and the adopted ritual heir shows how much a widow's rights over family property had diminished. When the widow Yu tried to pass on part of the family property to her five daughters, citing her deceased husband's verbal testament on his deathbed, the ritual heir sued her, citing his rights as the ritual heir.⁶¹ The widow eventually won the lawsuit, but such resistance on the part of the ritual heir to partible inheritance and to inheritance by daughters, as well as the extent of the ritual heir's exclusive rights to inherit family property, is a stark contrast with the practice of bilateral and partible inheritance common during the sixteenth century.

As property given in marriage was increasingly difficult to retrieve, it is easy to understand why daughters were given an increasingly smaller share of property that had any lasting value, such as land or slaves. Land inheritance to married-out daughters seems to have begun diminishing sometime in the sixteenth century, a trend more pronounced during the late seventeenth century. Slaves, especially wet nurses, continued to be provided to daughters of wealthy families, but they were given without formal papers, presumably so that they could easily be retrieved when need be. This also made disputes more difficult for the natal families when conflict did break out, because they lacked documentary evidence.⁶² By the late seventeenth century, when virilocal marriage and agnatic principles had become more established, married-in women brought with them dowry that was valuable but not worth much more than what they could themselves consume.

By the end of the Chosŏn dynasty, then, a family-property regime had developed that pushed women to the margins of the family in terms of rights of access to family property. As daughters, they were largely excluded from family inheritance, except for some movable valuables received as dowry. As married-in women, they lost direct inheritance rights to their husband's rank land or other forms of property. As widows, they had indirect rights over family property as the mother of the ritual heir, but without sons they were in a precarious position: expected to remain chaste (unmarried) and stay in the marital house, yet unable to own property in their own name. As the eldest daughter-in-law (*ch'ongbu*), a woman had provisional rights over family property, but she had to turn over her rights as soon as a ritual heir was secured.

CONCLUSION

I have outlined the long process through which patrilineal principles were entrenched in family practices, especially customs that governed marriage and inheritance. While virilocal marriage and agnatic inheritance increasingly marginalized women's rights to family property, it also maintained widow rights, which led to inevitable contradictions. While widows were indispensable in ensuring the stable succession of heirs and property along patrilineal lines, the fact that these women married into the family from outside, as nonagnatic members, posed a threat to the desire and principle to limit access to family property to agnatic kin. As we have seen, widow rights had an inherently ambivalent relationship with patrilineal family principles and were a source of familial conflicts from the beginning of the Chosŏn dynasty.

The ambivalent and controversial nature of widow rights were what lay behind the dead widow bodies from the 1890s that we encountered at the beginning of this chapter. Yet it would be incorrect to see these women as helpless victims of strident Confucian prescriptions for widow chastity. More accurately, I would argue, they were active agents using suicide as the strongest and loudest legal voice

available to them to advocate for their innocence, and as such were successors to the widows who appear in legal cases of the Chosŏn dynasty. Forceful female litigants again emerge in legal records in the Japanese colonial period, which began just a few years later. The pattern of familial conflict over widows during the colonial period, moreover, was similar to that from the Chosŏn dynasty. The continuity of such patterns dispels the popular perception that colonial rule dramatically changed (for better or for worse) Korean families and the lives of women. What was changed was merely the legal venue that widows used to claim and defend their rights.

What is significant, these cases show, is how similar family conflicts were treated differently under the two different legal systems. While the widows in the nineteenth century were invariably depicted as victims of moral crimes or experienced loss of propriety, the widows from colonial courts presented themselves as bearers of certain rights for which they demanded recognition. Also, while the power of widows' positions, shown in the nineteenth-century letters, was contingent on their moral authority (that is, the chastity or propriety that they derived from being reputable members of their families), the rights of widows in the colonial period cases were independent of any moral qualities. Rather than reflecting any drastic change in consciousness (in what was, after all, a short ten-year span), these changes reflected the different cultures of judicial process within which widows operated.