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Introduction

The understanding of Vietnamese society and social relations remains problematic. Even for recent times there is a dearth of research on basic facets of Vietnamese social structure. Scholars remain all too indebted to Hickey's study of Khanh Hau, which, dealing with a single and in some ways unique Southern village, can hardly be taken as representative given the wide regional and class differences characteristic of Vietnamese society.¹ Moving backwards through time, the central elements of social relations become increasingly difficult to examine. The reasons lie both in an inevitable emphasis on what can loosely be called political history (e.g., the effects of French colonial rule, the resistance against that rule, the administrative problems faced by the early Nguyễn dynasty, or the recurring issue of war — and peace — with China) and the increasing narrowness of the documents available for study (i.e., the inevitability of reliance on official documents such as dynastic histories and legal codes).

Nevertheless, important steps have been taken in recent years to develop a more fine-grained understanding of Vietnamese society under the Lê Dynasty (1428–1788), the historical period dealt with in this essay. Yu presents an overview of the evolution of law under the Lê Dynasty and the relationship of that law to family structure.² Young presents a provocative analysis of Lê Dynasty property laws.³ Whitmore portrays the tension between the state and villages over control of the spirits,⁴ and Ta Van Tai assesses the status of women in Vietnam under the Lê.⁵ Underlying Tai's work is the forthcoming translation into English of the so-called Lê Code. The Lê Code (literally Criminal Laws of the National Dynasty — *Quốc Triều Hình Luật*) as translated into French by Deloustal,⁶

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¹Gerald C. Hickey, *Village in Vietnam* (New Haven: Yale University Press, 1964).

²Insun Yu, *Law and Family in Seventeenth and Eighteenth Century Vietnam* (Ann Arbor: University Microfilms, 1978).

³Stephen B. Young, "The Law of Property and Elite Prerogatives During Vietnam's Lê Dynasty: 1428–1788", *Journal of Asian History* 10 (1976): 1–48.

⁴John K. Whitmore, "Supernaturalism and Power in Southeast Asia: Administrative Control of the Spirits" (paper presented at the annual meetings of the Association for Asian Studies, 1980).

⁵Ta Van Tai, "The Status of Women in Traditional Vietnam: A Comparison of the Code of the Lê Dynasty (1428–1788) with the Chinese Codes", *Journal of Asian History* 15 (1981): 97–145.

⁶Raymond Deloustal, "La Justice dans l'ancien Annam", *Bulletin de l'École Française d'Extrême Orient* 8–13, 19, and 22 (1908–22). The Deloustal translation does not include Article 219 of the Code. Thus, for any article over 219, 1 must be subtracted to give the proper reference in the Deloustal translation (e.g., Article 410 is Deloustal's Article 409).

Vietnamese by Luong Than,⁷ and forthcoming in English by Nguyen Ngoc Huy, Tran Van Liem, and Ta Van Tai, was probably promulgated in 1767, roughly twenty years before the final fall of the Lê Dynasty.⁸ Nguyen Ngoc Huy, however, argues strongly that the core of the code can be traced back not only to the reign of Lê Thánh-tông (1460-1497) but directly to the reign of the founder of the dynasty, Lê Lợi (Lê Thái-tô, 1428-35), and the work of Nguyễn Trãi and Phan Phu Tiên.⁹

Whatever the specifics of its final promulgation, the Lê Code can be taken as a guide to the latter part of the Lê Dynasty (e.g., the seventeenth century) and probably to earlier periods as well. Looking through the Lê Code at Vietnamese society under the Lê, this article assesses the structure of Vietnamese society. In doing so, I address first the general interrelations among the law, the state, and the general society under the Lê, and then turn to an examination of the central principles — often competing — that appear from the Code to have underlain Vietnamese kinship.

The Law, the State, and the Society

The Lê Code is a penal code. Unlike a document like the Book of Good Government of the Hồng-Đức Period (*Hồng Đức Thiển Chính Thư*), which specifies the appropriate way in which marriage negotiations and ceremonies ought to be carried out, the Lê Code tends to be restricted to consideration of those actions that are not only less than ideal, proper, or appropriate, but that are also of such serious public consequence that the state must intervene to apply sanctions (i.e., punishments).

This nature of the Code raises tortuous questions about the kinds of reflections or refractions of society that one will find in it. For example, do particular articles exist in support of a widely shared cultural consensus that a particular action requires punishment, or do they exist because a particular action is not generally deemed to be a crime and the state must therefore explicitly reiterate and enforce its view of criminal behavior over that of the general populace? The Nguyễn (Gia Long) Code of the early nineteenth century represents a variation of this latter possibility in its direct derivation from the Ch'ing Code, and thus its nature as an ideological statement of the state's Confucian orthodoxy in the face of established and indigenous local customs. Perhaps an even more difficult problem is the possibility of large gaps in the law — areas in which the state takes no particular interest but which are of central importance in delineating the outlines or structure of social relations.

Yet these very weaknesses in another perspective become significant strengths. This perspective involves not so much extracting from the Code insights into social relations in a general sense — as shall nevertheless be attempted for kinship — but using the Code as a guide to the organization of the state itself. Two major points emerge. One is the fact that much of the Code deals with only a small segment of Vietnamese society. The point is not only that many articles have to do with the structure, rights, and obligations of nobles and members of the state bureaucracy, but that many others specify punishments for crimes, yet only in terms of particular levels of the mandarinat. Only some go further

⁷Luong Than, Can Nai Quang, and Nguyen Si Giac, *Quốc Triều Hình Luật [Hình Luật Triều Lê]* (Saigon: Trung Luat-Khoa Dai-Hoc, 1956).

⁸This dating of the final promulgation of the Lê Code follows Gaspardone. Deloustal himself believed the code was promulgated a full decade later. See Nguyen Ngoc Huy, "Le Code des Le: 'Quoc Trieu Hinh Luat' ou 'Lois Penales de la Dynastie Nationale'", *Bulletin de l'École Française d'Extrême Orient* 67 (1980): 190-91.

⁹Nguyen Ngoc Huy, "Le Code des Le", pp. 190-211.

and specify distinctions (beyond officials) of people with means, people without means, and those in various kinds of servitude.

The **second** major point involves the relationship between the Vietnamese state and the vast majority of its people. Above all, the state showed no indication of desiring to have its authority stop at the village gate. While the Code gives sometimes apparently conflicting information on the chain of administrative authority from the emperor down to the village, and the extent to which village officials were selected by or direct subordinates of district officials, there is no doubt that such village officials were accountable to the official hierarchy for their actions and for those of their villages.¹⁰ That is, the Lê Code indicates the same kind of tension between state authority and village autonomy as indicated in Whitmore's analysis of attempts by the state to administratively control local spirits.¹¹

The need for the state to reach into the village lay in the twin issues of taxation and conscription. The Code's section on landed property (articles 342-73) is notable for its emphasis on the proper identification of land and the appropriate and official documentation of the type and ownership of the land. This probably reflects the origin of these articles at the beginning of the dynasty.¹² Perhaps more instructive is the section in the Code on marriage and the family (articles 284-341). What is interesting about this section is that the emphasis is not so much on the structure of families or the process of marriage, but rather on the accurate and official recording of whatever social arrangements existed. Again, the state's need for a tax and conscription base is indicated.

Overall, then, the major notions of the Lê Code can be seen as oriented towards two central concerns of the state: **first**, the state was intent on carefully delineating the power, rights, and obligations of its own hierarchy of defined bureaucratic ranks (both civilian and military); **second**, the state was concerned to maintain its narrow, but consistent and continuing, relationship to the village units that lay at the lower reaches of the centrally administered bureaucracy. Within these villages, the state maintained an official or quasi-official presence, looking for the documentation of household composition and land ownership in order to ensure a sufficient tax and conscription base.

The bulk of the Code was thus oriented toward the overall goal of administrative control, comprising these two issues of internal control (structuring and monitoring the central government and its élite prerogatives and obligations) and linkage with village society (structuring and monitoring the relations between the central government and the majority of the population). But the full picture that emerges from the Code is not only of a carefully organized central state government reaching down to and at least partially through village gates, but also of a state committed to the maintenance and stability of the entire society, a state that was not averse to explicitly reminding the population that particular laws on inheritance of property were not just for mandarins, but for all the people, following together a natural law (article 389). What emerges about this society as a whole is the mix of finely-gradated hierarchy and considerable individual mobility and

¹⁰The central issue is not so much what a particular version of the Lê Code specified, but rather that there were distinct changes during the Lê Dynasty regarding the roles of the village chief and the mechanism by which he came to office. Yu describes these, and emphasizes the changes beginning in the mid seventeenth century through which the village chief was directly selected and nominated by the district magistrate. He explains the changes in terms of the need by the state for greater internal control. The state, in the "effort to spread its ideas, ... first found it necessary to appoint village chiefs who were fully integrated into the ruling ideology and committed to emphasize that ideology to the people" (Yu, *Law and Family*, p. 216).

¹¹Whitmore, "Supernaturalism and Power".

¹²Cf. Deloustal, "La Justice", 10: 461 et. seq.

autonomy. Several key articles in the Code, for example, suggest that, compared to other Southeast Asian societies, different categories of servitude were limited in their extent and, as Whitmore describes in more detail in this volume, tended to be of the redeemable variety. The Code provided various safeguards against servitude, notably the prescription of penalties against those who attempted to voluntarily place themselves in servitude and the proscription that the powerful could not take free men into their personal service. The state's explicit interests lay with the maintenance of a free peasantry. The history of the Lê Dynasty does not, however, indicate that the state was entirely successful in this regard.

The Lê Code thus presents considerable insight into the overall societal organization of Vietnam, in particular portraying the internal structure of the centralized state bureaucracy, its linkage with the villages, and its general thrust towards the majority of its citizens, perhaps the key point of which involved support for a free peasantry.¹³ There is, however, a different kind of question involving Vietnamese society under the Lê Dynasty. It involves not so much overarching issues about societal organization, but rather more specific questions about the nature and structure of social relations, about the core interactions that governed social life among the general populace. For Vietnam, then as now, this necessitates a consideration of kinship.

Reflections of Kinship

While the Lê Code cannot provide the direct ethnographic prism that is needed to fully address the structure of social relations in Vietnam under the Lê Dynasty, it does provide useful insights. Since the primary purpose of the code lay in issues of governmental control, these insights are probably of greater weight than is indicated by their relative emphasis in the Code itself. The remainder of this paper addresses the central principles in the structuring of Vietnamese kinship that can be adduced from the Code. Not surprisingly, these principles are closely related to what is known of Vietnamese society in more recent times. In order, I discuss lineality, seniority, and equality.

Lineality merits first discussion because, paradoxically, it is both the clearest principle underlying Vietnamese kinship and perhaps the most frequently misunderstood. Any consideration of recent Vietnamese society demonstrates that the society is patrilineal — an examination of kinship terminology confirms it, the very existence of corporate lineages (*trúc*) documents it, the way in which at least rural villages are residentially structured as segments of patrilineages indicates it, and the way in which political and religious organizations reflect lineage boundaries further confirms it.¹⁴

That relatively recent Vietnamese society is patrilineal is irrefutable. However, two questions do remain open. The first is for how long this has been the case. While an analysis of the Lê Code cannot address the question of whether patriliney is in some ultimate historical sense indigenous or a Chinese overlay, the Code can at least provide a preliminary assessment of whether or not Vietnamese society has or has not been

¹³As Ebihara suggests for Cambodia in this volume, the more important issue may be not whether the society is characterized by either horizontal or vertical divisions, but that it is characterized by both.

¹⁴Hickey, *Village in Vietnam*; Robert Spencer, "The Annamese Kinship System", *Southwestern Journal of Anthropology* 1 (1945): 284-309; Paul Benedict, "An Analysis of Annamese Kinship Terms", *Southwestern Journal of Anthropology* 3 (1947): 371-91; Joseph R. Cooke, *Pronominal Reference in Thai, Burmese, and Vietnamese* (Berkeley: University of California Press, 1968); David Haines, "The Structure of Kinship in Vietnam: Implications for Refugee Adaptation" (Paper presented at the annual meetings of the Society for Applied Anthropology, Denver, Colorado, 1980).

patrilineal for the last five hundred years. The second question — which I shall argue is not as tangential to this paper as might appear — is the extent to which the patrilineal principle ramifies through Vietnamese social relations.

Reserving this latter question, the first issue is to assess whether there are indications of patriliney in the Lê Code. The answer is a clear affirmative. As would be expected in a patrilineal society, for example, there are variations in punishments for those who commit acts of violence or lack of respect against parents or parents-in-law depending on whether the act is committed against the paternal or maternal side. Specifically, the Code considers the act more serious if committed against the paternal side (articles 476-77).

This kind of distinction between the paternal and maternal sides of the family is more a probable side-effect of patrilineality rather than a necessary indicator of it. The far more compelling indications of patriliney are found in the Code's thirteen articles on *hưởng-hỏa* property (articles 388-400). These articles are original to the Lê Code, or at least if they have precedents these relate to previous Vietnamese dynasties rather than to any of the legal codes of China.¹⁵ The initial of these articles reiterate the nature and purpose of *hưởng-hỏa* property (i.e., to provide the resources necessary for the continuing proper veneration of ancestors) and stipulate the general rule that one twentieth of transmitted property is to be designated as *hưởng-hỏa* property. The latter of the articles deal more explicitly with what constitutes the most appropriate patrilineal transmission of this property and, where necessary, the most appropriate management of the property. The articles thus provide the necessary guidance in determining, as is so fundamental to the delineation of any patriline, the relative precedence of, for example, two cousins, one of whom is older but the other of whom is the son of the other's father's older brother.¹⁶

While these particular articles of the Code indicate the existence and nature of patriliney in Vietnam under the Lê Dynasty; there are other aspects of social relations, as reflected in the Code, which are not reducible to patriliney. The second major principle underlying Vietnamese kinship that appears in the Lê Code is seniority. The entire societal organization under the Lê was replete with constant distinctions of subordinate and superordinate status. The Code's assessment of the seriousness of a crime, for example, and its appropriate punishment, hinge almost inevitably on the status of the offender and on that of the victim. In the domain of kinship, seniority lay in the relations of age and sex, and is most clearly documented for the relations of husbands and wives, and parents and children.

The Lê Code indicates a distinct lack of equality of husbands and wives in their relationship to each other. As Ta Van Tai so ably documents, the Lê Code in many respects follows Chinese legal codes in the attribution of a distinctly inferior status of the wife.¹⁷ Wives who struck their husbands, for example, were subject to more severe penalties than husbands who struck their wives. Indeed, husbands under the Code were subject to virtually no punishment unless they inflicted serious injury. Wives were subject to punishment even for verbal complaints. Further, husbands had clear superiority in terms of their

¹⁵See Yu, *Law and Family*.

¹⁶The example in the text is very rudimentary. Consider, for example, the case of a man who has two sons. The *hưởng-hỏa* property goes to the elder son, who passes it to his son. This son has only daughters. However, his cousin (the son of the original man's younger son) does have a male child. The *hưởng-hỏa* property subsequently goes to this child in order to provide the most appropriate veneration of the ancestors (Article 398).

¹⁷Ta Van Tai, "Status of Women".

ability to terminate marriages and to do so to their advantage.¹⁸ While it can be argued that this subordination of the wife tends to be the result of Chinese influence, as seen in the origins of certain of the Code's articles, or that built into the Vietnamese codes were some moderating articles ameliorating the husband's control,¹⁹ the Code so pervasively emphasizes the superordinate status of the husband as to render inarguable any proposition that in their ongoing relationship with each other, husbands and wives had equal status.

An analogous seniority applied to parents over their children. Children were subject to serious penalty for acts of disobedience and/or lack of filial piety toward their parents. Respect to parents, and subordinate status in relation to them, lasted throughout life.²⁰ This, like the relation of husband and wife, might be construed as an artifact of Vietnamese society's demonstrated patriliney were it not for the Lê Code's prescriptions regarding widows. If patriliney were the only issue, the death of a man would involve no shift in the extent to which his wife and children were incorporated into his patrilineal group. His property, for example, would pass to his sons or revert to the management of an agnate. The Lê Code, however, presents a very different picture. Widows retained management of, at the least, significant portions of their husband's property. They also retained authority over their minor children. In addition, wives often had their own individual property, whether inherited or obtained during their marriage. This strong position of widows suggests that seniority for Vietnamese society was a separable and distinct aspect of kinship from lineality.

The situation of widows, however, also suggests the third major principle underlying Vietnamese kinship as reflected in the Lê Code. That is the issue of equality. As noted, there is little indication that husbands and wives can be construed as equals in their relationship to other. However, they were equal in one sense and that involved their independent rights to inherit, gain, retain, and dispose of property (articles 373-86). Daughters, for example, were entitled to the same share of parental property as were sons.²¹ This property was not absorbed into the husband's estate upon marriage. The wife maintained individual title to it, though her property might be forfeit to her husband in the case of adultery (article 401). As Ta Van Tai summarizes the situation:

... the Lê Code gave to the widow, even childless, full ownership rights over the real

¹⁸For example, an accusation of the husband by the wife was not only one of the Ten Abominations (Article 2) but sufficient to justify exile if correct (Article 504) or strangulation if the accusation was false (Articles 502-503). A wife's beating of her husband was punishable by exile (Article 481), but husbands apparently were subject to no penalty for beating their wives unless they actually inflicted injury, and even if they did inflict injury, the punishment was significantly lighter (Article 482). Further, husbands had the right to repudiate their wives on a variety of grounds — barrenness, jealousy, disease, disobedience (to the husband's parents), causing disharmony, or stealing (Article 310).

¹⁹Yu, *Law and Family*; Ta Van Tai, "Status of Women."

²⁰Not only was filial impiety — quite widely defined — one of the ten abominations (Article 2), but it was severely punished under the Lê Code. Disobedience or failure to support parents was punishable by penal servitude (Article 506). Children who actually beat their parents were punished by exile (to a remote province) or strangulation if any injury to the parent resulted (Article 475). Parents, on the other hand, who beat their children were subject to no penalty unless the beating resulted in death, and then the penalty was military servitude (Article 475).

²¹The clearest documentation for this in the Lê Code is Article 388 which stipulates that, in the case of two parents who both die without leaving a will, one twentieth of their property shall be placed under the administration of the eldest son for *huong hoa* and the rest is divided among the sons and daughters. That women maintained this property after marriage is fully established by Articles 374 and 375, which address the situation in which one spouse dies before the other.

property originating from her clan, over half of the community property and also usufruct over a portion of the part that would revert to her late husband's family. Moreover, if she had children by her late husband, the code recognized her administering powers over the minor children's property bequeathed by her late husband. Such power might include the legal capacity to dispose of property.²²

In addition to prescribing equal inheritance among sons and daughters, the Code also implies equal inheritance among all sons and all daughters. Given the way in which seniority ramifies throughout Vietnamese social relations, and is indeed built into the language, this overall equality of inheritance is noteworthy. Parents, despite their acknowledged and in many ways total control over their children, did not even have a right to disown children without due cause. Finally, it is worth noting that adopted children (explicitly) and secondary wives (implicitly) under the Lê Code also had specific inheritance rights, though not equal to those of senior wives or full children.²³

These articles of the Code on transmission and usufruct of property demonstrate that, under the Lê Dynasty, Vietnamese society (as it is today) was governed by something that we might call the inalienable right of individuals to maintain, inherit, and sell property. By this can be inferred a kind of equality — loosely defined — that existed within a kinship system that was governed in other contexts by patriliney and strict rules of subordination and superordination.

Conclusion

The Lê Code presents a number of important insights into the structure of Vietnamese society and social relations under the Lê Dynasty. In particular, it provides significant documentation for three distinguishable elements in Vietnamese kinship — lineality, seniority, and equality. In so doing, the Code provides both the potential for comparison with other Southeast Asian (or East Asian) societies at the same time, and two important avenues for a wider consideration of Vietnamese society. **First** through the documentation of lineality, seniority, and equality in Vietnamese society under the Lê Dynasty, a nearly five-hundred year period of significant continuities in kinship is suggested. **Second**, the presence of these three principles in Vietnamese kinship, both then and now, suggests that the important questions in assessing Vietnamese society may lie not in discussions of whether or not Vietnamese society is or is not patrilineal, or is or is not equalitarian, but rather in how enduring, and sometimes competing, principles of lineality, seniority, and equality together form the underlying dynamic of Vietnamese kinship, and thus of important aspects of Vietnamese society as a whole.

However, the information from the Lê Code also leaves some important questions unanswered. While we find patrilineality in the Lê Code, the documentation is limited largely to the transmission and management of *huồng-hỏa* property. It remains possible — some would suggest likely — that the patrilineal principle was far more restricted under the Lê than in recent times. A larger question left unanswered involves the pervasiveness of kinship itself as an organizing principle for the society as a whole. Relatively

²²Ta Van Tai, "Status of Women", p. 131.

²³Article 380, for example, specifies a one-half share for the adopted child as compared to the natural child. Ta Van Tai ("Status of Women", pp. 133-35) suggests, on the basis of largely indirect evidence, that secondary wives did have distinct rights to inherit property. The point is that a wide set of people had not necessarily equal rights to inherit particular property, but independent and legally supported rights to inherit at least some of it. There is an inevitable tension here between the right to inherit on the one hand, and the right to make a will or distribute property before death on the other (see Yu, *Law and Family*, pp. 160-65).

recent work, whether on Vietnam itself or on Vietnamese refugees in the United States,²⁴ emphasizes the prime and unconditional relations among kin, and the way in which relations among non-kin are decidedly secondary and quite conditional. The Lê Code, perhaps because of its very nature as a penal code, is quiet on this point. The Lê Code was less severe in its rules on which relatives were considered accountable in cases of treason (articles 411 and 412) or which relatives were required to observe mourning restrictions (article 109) than were the corresponding Chinese laws.²⁵ This may indicate a more limited pervasiveness of kinship in Lê society than in more recent times, or simply that Vietnamese society was different from that of China — a self-evident point. On the other hand, articles in the Code that specify review of a parent's will by the head of the kin group to assess its impartiality (article 390), or involvement of an elder of the kin group in marriage ceremonies when the parents are dead (article 314), suggest that it may well be kinship that extends through, and binds together, the village and local community under the Lê Dynasty.

²⁴David Haines, Dorothy Rutherford, and Patrick Thomas, "Family and Community Among Vietnamese Refugees", *International Migration Review* 15 (1981): 310-19.

²⁵Yu, *Law and Family*, p. 144; Ta Van Tai, "Status of Women", pp. 109-10.