

高麗大學校亞細亞問題研究所

No. 1

Vol. XXIII

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administration in 17th and 18th  
century Vietnam

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1980年1月

The Journal  
of Asiatic Studies



亞細亞研究

華城本圖書

# Political Centralization and Judicial Administration in Seventeenth and Eighteenth Century Vietnam

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## I. Introduction: Law and Imperial Power

The Vietnamese language has two different terms for ruler: *hoang-de* 皇帝 in Sino-Vietnamese and *vua* 嚮 in *nom* 喃 (an indigenous expression). The terms corresponded to the dual aspect of the traditional Vietnamese ruler. In the Le and Nguyen dynasties, especially he was at the same time a socio-political figure, whose nature derived from the Chinese concept of sovereignty, and the embodiment of the mythopoetic and religious tradition that was deep-rooted in Vietnamese culture.<sup>(1)</sup> This paper is concerned more with the ruler's socio-political aspect which began to be reinforced in the Le dynasty through the emphasis on Confucianism; and with the effort to discover the relationships between the ruler's strategy of political centralization and the legal system in the later period of the Le dynasty.

By adopting the Chinese concept of sovereignty, the Vietnamese emperor became the deputy on earth of heaven (the Son of Heaven). He was responsible for maintaining the total cosmic order, and, for this purpose, his own rectification was of primary importance. Confucius said, "When the ruler is correct himself, all the people will follow his government."<sup>(2)</sup> Once he had corrected himself, the ruler was to teach and transform the people by *li* 禮 or "rules of proper conduct." By so doing, the ruler integrated the society and kept it in order. The edict of edification in 1663 (the first year of *Canh-Tri* 景治) is based on

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(1) For the discussion on the dual aspect of the traditional Vietnamese ruler, see Alexander Woodside, *Vietnam and the Chinese Model: a comparative study of Vietnamese and Chinese government in the first half of the nineteenth century* (Cambridge, Mass.: Harvard University Press, 1971), pp. 9-18.

(2) James Legge, *The Texts of Confucianism*, vol. 4: *The Li Ki* (Oxford, 1885), p. 263.

Confucian principles, and can be understood from this point of view.<sup>(3)</sup>

It must be remembered, however, that the Vietnamese emperor was concerned also with the establishment of his authority; and that the law, as the will of the ruler, was the means of protecting this authority.

In brief, the monarch had need of a leading idea with which to rule the masses and found it in Confucianism. By means of the emphasis in Confucianism on loyalty and the family he could ask the people to submit to him and thus prevent social fragmentation. Since, in this system, each family member was closely connected to other family members and to relatives in the same clan, he could not easily emancipate himself from them and develop any idea which might destroy the established order. The various prohibitions of Christianity during the seventeenth and eighteenth centuries can be better understood in this connection rather than from the viewpoint of the destruction of a universal order.

The integrity of the family was important to the ruler also because the family unit was the basis for taxation and military service. Vietnamese law thus had no reason to reject the Confucian idea that wife and children for example might not bring the husband or father to the court.

Under Confucianism, the ruler also had the advantage of observing the distinction between superior and inferior rank for the purpose of recruiting a ruling class. Officials of this class were less severely punished for offenses against commoners than in other cases. Their dress, ornaments, carriages, marriage rites, etc. were also different from those of ordinary people.<sup>(4)</sup> However no challenge to imperial authority was ever tolerated. An official who committed offenses against the emperor and the state was punished as severely as a commoner and was never subject to consideration of general pardon.

Law was the basic means to enforce the structure desired by Confucian ideology and to establish the secular power of the emperor. This is well expressed in the fact that under Vietnamese law criminal prosecution was emphasized and matters of civil law were ignored. In other words, the main concern of the law was with the protection of the emperor and

(3) For the order of 1663, see Nguyen Si Giac, ed., *Le-Trieu Chieu-Linh Thien-Chinh* (Saigon, 1961), pp. 278-299 (hereafter abbreviated as *CLTC*).

(4) *Thien Nam Du Ha Tap* (L'Ecole Française d'Extrême-Orient microfilm A. 334), "legal section," pp. 46a-50b; Raymond Deloustal, "La justice dans l'ancien Annam," *Bulletin de l'Ecole Française d'Extrême-Orient* 10(1910): 489-491 (hereafter abbreviated as Deloustal, *BEFEO*); Samuel Baron, "A Description of the Kingdom of Tonqueen," *A Collection of Voyages and Travels*, 6 vols. comp. Awnsham Churchill (London, 1704-32), 6: 9.

the state; and it was only secondarily concerned with the protection of rights of the people. Study of the Le Code clearly reveals this character of Vietnamese law.

The Le Code, which was published in the second half of the eighteenth century, is the final version of the law of the Le dynasty. The Code was based, for the most part, on the laws issued during the reign of Thanh-tong (1460-1497), many of which were borrowed from the T'ang Code of 653 in China.<sup>(5)</sup> Despite its adoption of Chinese law, Vietnamese law is said not to have been a mere copy of it but to have provided a strong native bias of its own. For example, Le society, unlike that of China, had customs such as common property ownership by husband and wife, and daughter's equal participation with their brothers in the inheritance of property; and these customs, which demonstrate the higher social status of Vietnamese women than that of their counterparts in China, were reflected in Vietnamese law.

Why, then, did Vietnamese legislators adopt indigenous customs in their law? A French scholar, Claude Maitre, construed this as a manifestation of the struggle of Le Loi, the founding father of the Le dynasty, against the influence of Ming China.<sup>(6)</sup> Another explanation advanced by historians attributes the originality of the Le Code to the ruler's conscious recognition of the differences of Vietnamese tradition and customs from those of China: the inference being that the Vietnamese emperor's reverence for tradition and custom caused him to preserve them unchanged.

As this author pointed out elsewhere,<sup>(7)</sup> the first opinion fails to answer to the following matters. Despite the insistence by Maitre, Le Loi had already begun to adopt the government institutions of the Ming in the later years of his reign, changing the titles of the members of the Tribunal of Censors (*ngu su dai* 御史臺) to those of the Ming system. Thanh-tong went further to reorganize the entire government structure according to that of Ming China under the Yung-lo emperor (1403-1424).<sup>(8)</sup> Maitre's explanation fails to account for the matter of these adoptions.

(5) For greater detail on the Le Code, see Insun Yu, "Law and Family in Seventeenth and Eighteenth Century Vietnam," (Ph. D. dissertation, University of Michigan, 1978), pp. 56-85.

(6) Claude Maitre, Introduction to "La justice dans l'ancien Annam," by Deloustal, *BEFEO* 8(1908): 179.

(7) Insun Yu, "Law and Family," p. 30.

(8) The members of the Tribunal of Censors (*ngu su dai*) were first called *thi ngu su* (*shih yu shih* in Chinese), *trung thua* (*chung ch'eng*), etc. according to the T'ang system. But the official titles of the staff were soon changed as *do ngu su* (*tu yu shih* in Chinese), *pho do ngu su* (*fu tu yu shih*), etc., which were obviously borrowed from the Ming system; see Phan Huy Chu, *Lich Trieu Hien Chuong Loai Chi*, 49 vols. (Tokyo: Toyo Bunko X-76), 13: 111a (hereafter abbreviated as *HC*). Cf. Insun Yu, "Law and Family," p. 52, n. 32.

The second opinion on the originality of Vietnamese law seems to contain partial truths, but the following contradiction remains unexplained. Why in fact did Le emperors on the one hand adopt Confucian ideas in their legal codes and on the other preserve Vietnamese customs in them? We know that Thanh-tong, for example, was a strongly Confucian-oriented emperor. Before his accession as emperor, he "was probably able to concentrate on what he wished to study and thus became a confirmed Confucian and literary devotee."<sup>(9)</sup> Again, in the seventeenth and eighteenth centuries, the Trinh family who held real power in the Le Court strongly supported Confucianism. It is striking that, despite this emphasis on Confucianism, some customs preserved in the Le and other law codes apparently contradicted Confucian ideology. These Vietnamese codes lacked the Chinese stipulations which prohibited children from separating themselves from their families, from registering their names on other rolls, and from dividing the property with their families.<sup>(10)</sup> Confucian filial piety demanded children's unconditional submission to their parents, especially to patriarchal power. No emancipation from the family was ever possible. Clearly, we have to seek more substantial explanations concerning the matter of originality. This paper favors an explanation in terms of the ruler's political power.

Since law is always firmly embedded in the everyday life of the people, it follows that any radical change in it may raise confusion and result in opposition. Thus, law in the Le, though it was ultimately revised by the will of the ruler, seems to have bowed to custom and tradition. Alteration in areas of economic life must have been especially difficult to impose. It is not accidental that the originality of the Le Code is almost always found in the economic aspects of indigenoussness: i.e., the system of compensation for damage, the land system, property ownership, the law of inheritance, and so on.<sup>(11)</sup>

We may assume that, from the ruler's point of view, Vietnamese customs were seen as favorable to him. Although Chinese law gave strong authority to the head of the family, the Vietnamese ruler was cautious enough not to adopt legal ordinances that might have led to the creation of powerful families—as this would have been a deterrent to the

(9) John K. Whitmore, "Vietnamese Historical Sources: For the Reign of Le Thanh-tong (1460-1497)," *Journal of Asian Studies* 29-2 (February 1970) : 373.

(10) *Quoc Trieu Hinh Luat* (EFEO microfilm A, 1995), p. 3b (hereafter abbreviated as *HL*); Deloustal, *BEFEO* 9(1909): 93, art. 2.

(11) Niida Noboru, *Chukoku hoseishi kenkyu: dorei nodo ho-kazoku sonraku ho*—A Study of Chinese Legal History: law of slave and serf, and law of family and village (Tokyo: Tokyo University Press, 1962), p. 528.

establishment of central power. In fact, one of main concerns of the Le rulers was to check the growth of powerful families. For example, an edict of 1711 by the Trinh forbade great families and officials to take advantage of the ruin of peasants to enlarge their estates.<sup>(12)</sup> Equally important, the Code of Legal Procedure (*Kham tung dieu le* 勘訟條例) issued in 1777<sup>(13)</sup> stipulated in detail how the people could bring accusation against the nobles, powerful families, and functionaries of unjust acts. In this way the rulers wished to make sure that their authority would not be insidiously undermined by men who stood between themselves and the people. This interpretation of the preservation of indigenous custom becomes more apparent in the examination of governmental structure.

In the pre-Thanh-tong period, government institutions were almost always based upon the system of the previous dynasties, which were in turn loosely evolved from the aristocratic Tang organization. It was Thanh-tong who reorganized the administrative structure by modeling it after the Ming institutions. Unlike the legal structure, administrative institutions were not a direct concern of the people; they could be reformed in favor of the throne without much difficulty.

Under the old Tang-style system, the emperor's power was restricted by the counsellors who stood at the apex of the administrative offices. Under the new system, however, no one stood between the throne and the ministers. The emperor was able to watch and control the six ministers directly.<sup>(14)</sup> Everything was supposed to be reported to and decided by the emperor himself. In addition, the six ministers were checked by one of the six Offices of Scrutiny (*luc khoa* 六科), each of whom was paired with one of the ministers. Decentralization of power followed the same pattern in the military organization. In the central government were five Chief Military Commissions (*ngu quan do doc phu* 五軍都督府) which corresponded to the troops of the five military regions. At the provincial level were three offices—Administration (*tan tri thua chinh su ty* 贊治承政使司 or simply *thua ty* 承司); Surveillance (*thanh hinh hien sat su ty* 清刑憲察使司 or *hien ty* 憲司); and Military (*do tong*

(12) *Kham Dinh Viet Su Thong Giam Cuong Muc*, 47 vols. (Taipei, 1969), 35: 9a-b (hereafter abbreviated as *CM*); cf. *HL*, pp. 66a-b; Deloustal, *BEFEO* 10(1910): 391.

(13) The French translation of the *kham tung dieu le* is annexed to "La justice dans l'ancien Annam," by Deloustal, *BEFEO* 19(1919): 1-81.

(14) John K. Whitmore, "Vietnamese Adaptations of Chinese Government Structure in the Fifteenth Century," *Historical Interaction of China and Vietnam*, ed. E. Wickberg (Lawrence: Center for East Asian Studies, University of Kansas, 1969), p. 4.

*binh su ty* 都總兵使司 or *do ty* 都司) which were autonomous of one another.

As indicated, these government institutions were placed under censorial surveillance provided by several categories of surveillance agencies. This fragmentation and the checks on power were to prevent any one person from a level of prestige dangerous to the authority of the sovereign.

When the Mac family were driven out from the Tongking Delta and the Le Court was restored in 1593, the same system of government was kept with some modifications. The system was not at all unfavorable to the position of the Trinh family, the holders of real power in the seventeenth and eighteenth centuries, since the institutions effectively blocked the rise of new political rivals to the Trinh.

This leads us to the following general conclusion: that in China, the law was apparently traditionally viewed primarily as an instrument for redressing violations of the social order caused by individual acts of moral and ritual impropriety or criminal violence.<sup>(15)</sup> The same was true of Vietnamese law; except as has been suggested, it was in actuality developed more for the establishment of secular power of the ruler.

Let us turn to the institutions that carried out the law. The description will be limited to the Vietnamese state of the north which is believed to have more developed these institutions.

## II. Judicial Institutions of the Central Administration

Government institutions under the Le dynasty can be divided into three periods: 1) the pre-Thanh-tong period, 2) the Thanh-tong and immediate post-Thanh-tong period, and 3) the post-Restoration period. Institutions of the first period were mostly adopted from those of the Tran (1225-1400) and Ho (1400-1407) periods,<sup>(16)</sup> which were loosely based upon the T'ang governmental structure. The second period is characterized, in general, by the abolition of counsellors and the consequent establishment of the emperor's power. The interim rule by the Mac family (1527-1593) should be included in this period. Except for the military,

(15) Derk Bodde and Clarence Morris, *Law in Imperial China* (Cambridge, Mass.: Harvard University Press, 1967), p. 43.

(16) For Le Loi's adoption of the Ho system, see below p. 8.

land, and stipend system, the Mac did not change the Le institutions.<sup>(17)</sup> Governmental structure in the third period was almost the same as in the second, except that the power of the emperor came to be almost nonexistent as the Trinh family rose to power. Judicial administration in the seventeenth and eighteenth centuries must be understood against this background.

Unlike the local administration, which we shall examine at a later point in the paper, judicial functions at the central government level were performed by specialized organs and personnel. The Ministry of Justice (*hinh bo* 刑部) formed the core of judicial administrative hierarchy. With five other ministries of Personnel (*lai bo* 吏部), Revenue (*ho bo* 戶部), Rites (*le bo* 禮部), War (*binh bo* 兵部) and Works (*cong bo* 工部), it was first established in 1459 by Nghi Dan, who came to the throne by usurpation. Under the reign of Thanh-tong, the Ministry had been temporarily abolished and its functions taken over by the Capital Office (*do tinh duong* 都省堂), which later became the Imperial Law Bureau (*kham hinh vien* 欽刑院).<sup>(18)</sup> But in 1466 when the six ministries were restored, the Ministry of Justice replaced the Imperial Law Bureau<sup>(19)</sup> and thereafter existed throughout the Le dynasty.

The Ministry was controlled by a Minister (*thuong thu* 尙書, rank 2a), who was assisted by one each Left and Right Vice Minister (*ta thi lang* 佐侍郎, *huu thi lang* 右侍郎, rank 3b). It had five bureaus: *tham hinh* 審刑, *than hinh* 慎刑, *minh hinh* 明刑, *tuong hinh* 詳刑, *thanh hinh* 清刑,<sup>(20)</sup> whose exact functions are not known. Ming China's Ministry of Justice had thirteen bureaus, one for each province.<sup>(21)</sup> The smaller number of Vietnamese bureaus apparently reflected its smaller territorial size as compared with that of China, or perhaps there was one bureau for each of the five *circuits* 道 during the reign of Le Loi.

The functions of the Ministry were both legislative and judicial. It proposed amendments to law and customs and reviewed all the cases tried by the lower judicial authority. According to the edict of 1659, the Ministry was also responsible for reviewing sentences passed by the Tribunal of Censors,<sup>(22)</sup> though this function seems to have been soon

(17) Le Qui Don, *Dai Viet Thong Su* (EFEO microfilm A. 56), 31-32b; *Dai Viet Su Ky Toan Thu* (Tokyo: Toyo Bunko X-85), 15:70b-71a (hereafter abbreviated as *TT*); *CM*, 32:16a.

(18) *HC*, 13:12b.

(19) *TT*, 12:19b; *HC*, 13:12b.

(20) Philippe Langlet wrongly says that the Ministry of Justice had four bureaus; see Philippe Langlet, "La tradition vietnamienne: un état national au sein de la civilisation chinoise," *Bulletin de la Société des Etudes Indochinoises* 45-2, 3 (1970): 27. cf. *HC*, 13:11a and 12b.

(21) Charles Hucker, "Governmental Organization of the Ming Dynasty," *Studies of Governmental Institutions in Chinese History*, ed. J.L. Bishop (Cambridge, Mass.: Harvard University Press, 1968), p. 94.

(22) *CLTC*, p. 408.

abolished.<sup>(23)</sup>

Closely connected with the Ministry of Justice was the Grand Court of Revision (*dai ly tu* 大理寺), one of the six courts,<sup>(24)</sup> of which the chief and the assistant chief were called respectively *tu khanh* 寺卿 (rank 5a) and *thieu khanh* 少卿 (rank 6a). There are few records concerning its explicit functions, but it would seem that the Court was charged with the care of the archives of the Justice Ministry<sup>(25)</sup> and, as in China, with "a final check, short of imperial review, on the propriety of judicial findings and sentences".<sup>(26)</sup> It also supervised the execution of sentences by the other offices.

In Vietnam, the Grand Court of Revision was first instituted by the Ho government (1400-1407)<sup>(27)</sup> and followed by Le Loi. It was in 1466 that the Court was established as a permanent institution.

The Ministry of Justice was highly autonomous in its administration, but was placed under the surveillance of the Office of Scrutiny for Justice (*hinh khoa* 刑科), an institution which was intended to forestall any potential arbitrariness of the Ministry and a consequent decentralization of power. Nghi Dan (1459-1460), who created six ministries, also first instituted the six Offices of Scrutiny, which were defined regionally and called *trung thu khoa* 中書科, *hai khoa* 海科, *dong khoa* 東科, *nam khoa* 南科, *tay khoa* 西科, and *bac khoa* 北科.<sup>(28)</sup> Because of his accession to the throne by usurpation, Nghi Dan probably needed on the one hand to put the bureaucrats under his direct control and on the other to have them check each other. During the reign of Thanh-tong, the names of the six Offices of Scrutiny were changed to *lai khoa* 吏科 (for Personnel), *ho khoa* 戶科 (for Revenue), *le khoa* 禮科 (for Rites), *binh khoa* 兵科 (for War), *hinh khoa* 刑科 (for Justice), and *cong khoa* 工科 (for Works). Each had one Chief Supervising Secretary (*do cap su trung* 都給事中, rank 7a) and one Supervising Secretary (*cap su trung* 給事中, rank 8a).<sup>(29)</sup>

The function of the Office of Scrutiny for Justice was a censorate-type surveillance of

(23) CLTC, p. 424.

(24) The other five courts were the Seal Office (*thuong bao*), the Court of Imperial Entertainment (*quang loc*), the Court of State Ceremony (*hong lo*), the Court of Imperial Sacrifices (*thai thuong*) and the Court of Imperial Stud (*thai boc*).

(25) Dang Phuong Nghi, *Les institutions publiques du Viet-Nam au XVIII<sup>e</sup> siècle* (Paris, 1969), p. 68.

(26) Charles Hucker, "Governmental Organization," p. 114. cf. Philippe Langlet, "La tradition vietnamienne," p. 23.

(27) In the Tran dynasty (1225-1400), the office which had similar functions was called *thuong lam tu*; see HC 13:5b.

(28) HC, 14: 12a.

(29) HC, 14: 12b.

the Ministry of Justice and other lower judicial authorities. It examined the sentences passed by the Ministry of Justice and, if it found any evidence of injustice, was empowered to exercise a veto. The office was also supposed to investigate the administration of the prisons in the capital and, in this matter, was in turn subject to surveillance by the Grand Court of Revision.<sup>(30)</sup> The Supervising Secretaries could participate in policy deliberations, the selection of high officials, and the trials of serious legal cases. Despite their relatively low rank, they had great prestige and authority. Their appointment was therefore always given careful consideration. The low rank was seemingly reflective of the ruler's intention to suppress the excessive growth of surveillance power.

All the offices discussed above were supervised by the Tribunal of Censors (*ngu su dai*), the functions of which included surveillance and judicial review. This institution had already existed in Tran times, until Le Loi continued the Tran system, partially adopting the Ming official titles.<sup>(31)</sup> Thanh-tong reorganized it fully according to the Ming type. The rulers of the seventeenth and eighteenth centuries followed Thanh-tong's system and expanded its function by absorbing into it the Commanding Office of Justice (*dinh uy ty* 廷尉司).<sup>(32)</sup> The Commanding Office of Justice had belonged originally to the Embroidered Uniform Guard (*cam y ve* 錦衣衛) during the Hong-Duc period (1470-1497) and became an independent office in 1499.<sup>(33)</sup> Its main function was to hold trials for felony cases.

The Tribunal of Censors had one Censor-in-Chief (*do ngu su* 都御史, rank 3a) assisted by one Vice Censor-in-Chief (*pho do ngu su* 副都御史, rank 4a) and one Assistant Censor-in-Chief (*thiem do ngu su* 僉都御史, rank 5a). The Tribunal of Censors included two kinds of important officials: two Censors-Magistrate (*de hinh giam sat ngu su* 提刑監察御史, rank 7a) and twenty-six Provincial Censors (*do giam sat ngu su* 道監察御史, rank 7a), two for each province. It is worth noting that Ming China had 110 Provincial Censors.<sup>(34)</sup>

Significantly, its officials were called the "ears and eyes of the emperor" for the Censorate checked all personnel and the operations of all governmental agencies for the emperor and impeached them for any wrong doing. It was, in fact, unable to criticize the emperor

(30) *CLTC*, p. 426.

(31) See above p. 3.

(32) *HC*, 14 : 13a-b.

(33) *TT*, 14 : 17a-b; *CM*, 24 : 41a-b; *HC*, 14 : 14a.

(34) Charles Hucker, "Governmental Organization," p. 107.

himself for any negligence of laws and customs. The Censorate coterminously played an essential role in the administration of justice in collaboration with the Ministry of Justice and the Grand Court of Revision. As a court of appeal, it reviewed all the cases appealed to it.

The Censors-Magistrate were charged with reviewing all the sentences passed by the Tribunal of Censors; and the Provincial Censors with checking prosecutions of the particular assigned province. Both types of officials had to report on current administrative policies at the end of every year.

This check of power meant the fragmentation of power among the bureaucrats and the solidification of central imperial power. It may be recalled that everything was in fact supposed to be reported to the emperor and that the ultimate decisions remained with him.

The emperors of the seventeenth and eighteenth centuries however were only figure-heads. Instead, the Trinh family held the reins of government. Imperial power had begun to weaken after the demise of Thanh-tong in 1497. Under the system adopted by Thanh-tong, the emperor was to conduct all state affairs. This system was advantageous to the emperor, but only for one who was able and energetic. Otherwise, the responsibilities proved too burdensome.<sup>(35)</sup> The successive emperors were young and unexperienced—conditions which were open to exploitation by those who desired power. The revival in 1510 of the Chief Counsellor (or Prime Minister) system which had been abolished during the reign of Thanh-tong may be understood against this background.<sup>(36)</sup>

The Le emperor's power became even weaker with the usurpation of Mac Dang Dung in 1527. After the Le restoration in 1593, real power remained with the Trinh family. Trinh Tung, a son of Trinh Kiem who was the founder of Trinh family's power, took in 1599 the titles of the grand generalissimo (*do nguyen soai* 都元帥), supreme administrator of the state (*tong quoc chinh* 總國政), and prince of peace (*binh an vuong* 平安王).<sup>(37)</sup> From that time on, the Trinh established a princely court (*vuong phu* 王府) and exerted full power. The emperor only served to say "amen" to all that the Trinh did and to confirm

(35) Charles Hucker, "Governmental Organization," p. 86.

(36) At that time, the Emperor Tuong Duc (1509-1516) was only sixteen years old and political power had become concentrated in the hands of the Chief Counsellor (*binh chuong quan quoc trong su tong thong quoc chinh thai te thai su*); *CM*, 26 : 8b-9b.

(37) Philippe Langlet, "La tradition vietnamienne," p. 22.

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陪從).<sup>(43)</sup> These civil and military mandarins were at first dispatched to review the cases appealed from the findings of the Tribunal of Censors. But in 1696 Supplementary Commissioners (*thiem sai* 添差) were established within the Council of Government strengthening its judicial role.<sup>(44)</sup>

This reform of governmental structure was established also for the purpose of coping with the socio-economic situation at that time. Rural devastation resulting from the civil wars was taken advantage of by nobles and high officials for the accumulation of vast lands. The impoverished peasants, seeking to avoid the government taxes and corvee, bound themselves and their services to powerful landowners in return for economic security and protection.<sup>(45)</sup> The Ministries and the Censorate had become corrupt and lost their ability to cope with the difficult situation. Through direct control over them, the Trinh wished to stabilize the socio-economic bases of the peasants on the one hand and to suppress the growth of powerful elements on the other. What was then the real effect of this reform in terms of a more centralized princely rule? The question is beyond our discussion in this paper.

### III. Judicial Administration at the Local Level

At every level of local government most of the judicial functions had been in the hands of its general administrative officials throughout the Le dynasty.

At the apex of the local administrative units were the provinces (*thua tuyen dao* 承宣道) below these were the prefectures (*phu* 府). The prefectures again were divided into districts (*huyen* 縣 and *chau* 州),<sup>(46)</sup> as the whole system established by Thanh-tong was basically

(43) There had originally been five Chief Military Commissions (*ngu phu*) during the Quang-Thuan years (1460-1469), each having two Commissioners-in-Chief, one of the left and one of the right. In 1664, the five Commissions were reorganized and two kinds of civilian high officials (*chuong phu su* and *thu phu su*) were attached to them to act as checks on the military men who had grown powerful during the war years. From this time forward these officials participated in the deliberations of state affairs with other civil mandarins. Chief Councilors and Associate Councilors, called *phu lieu*, were first instituted during the Hoang Dinh period (1500-1618), their number unfixed. See HC, 14 : 14b; CM, 33 : 12b-13a; Philippe Langlet, "La tradition vietnamienne," pp. 22-23.

(44) HC, 14 : 14b; CM, 34 : 38a.

(45) For the socio-economic situation in this period, see Nguyen Thanh Nha, *Tableau économique du Viet-Nam aux XVII et XVIII siècles* (Paris, 1970).

(46) For the difference between *huyen* and *chau*, see below p. 15.

modeled on the pattern of the Ming local administration. At the time of Thanh-tong's reform, Vietnam had 13 provinces, 53 prefectures and 225 districts (176 *huyen* and 49 *chau*). Of this number, the Trinh, in the seventeenth and eighteenth centuries, had jurisdiction over 11 provinces, 46 prefectures and 207 districts (163 *huyen* and 44 *chau*), including the capital (Phuong-Thien 奉天, that is, Thang-Long 昇龍) which was an independent prefecture subdivided into two *huyen*.<sup>(47)</sup> The Nguyen had control of the rest of the units and of some newly expanded areas to the south.

Thanh-tong's system of provincial administration, like the organization of the central government, was characterized by the fragmentation of power among three autonomous offices which were commonly called the "three provincial offices" or *tam-ty* 三司. In terms of rank, the Regional Commissioner (*do tong binh su* 都總兵使, rank 3a) of the Military Commission was the highest official in a province. Officially there was no single governor who was charged with all provincial affairs: administrative, military, and judicial.

Various revolts and wars in the sixteenth and seventeenth centuries served to strengthen military authority and consequently to raise the Regional Commissioner to the position of governor. After the Hong-Thuan period (1509-1516) the term for province was changed from *dao* 道 to *tran* 鎮, the name that had been applied to strategic points during the Le Loi's period, so that after the Restoration the Regional Commissioner became a governor or *tran thu* 鎮守.<sup>(48)</sup> In the eighteenth century, civilian officials and eunuchs were appointed to governor as well as military officers.

Despite his authority, the governor's judicial function was limited to criminal cases involving theft, robbery and gambling. He was not allowed to extend his power to matters of marriage, landed property, finance and the like. Violations of this regulation were punished.<sup>(49)</sup> This meant that in most of the provinces the other two offices were still very independent, although from time to time they were abolished in the frontier areas and their functions taken over by the governor.<sup>(50)</sup>

(47) Dang Phuong Nghi, *Les institutions*, pp. 78-79.

(48) In the three provinces of Cao-Bang, Lang-Son and Nghe-An, the title of *doc tran* or governor-general was used. The governor of Thanh-Hoa, however, was called *tham tran* until 1711, when this was changed to *luu thu*, the name which thereafter began to be applied to governors of other provinces. In 1739, all these titles were changed into *doc phu* with the exception of those in Lang-Son and Nghe-An, where the governors were called *tong phu* and *doc suat* respectively.

(49) Deloustal, *BEFEO* 19 (1919): 51-52, ch. 16, art. 7.

(50) See below pp. 18-19.

鎮守

Throughout the seventeenth and eighteenth centuries, provincial civil administration still lay within the jurisdiction of the *thua chinh su ty* 承政使司 (called *tuyen chinh su ty* 宣政使司) during the first years of Quang-Thuan. The office headed by an Administration Commissioner (*thua chinh su* 承政使, rank 3b) was independent of the governor, but its authority was greatly inferior to the latter, especially in the frontier areas. In 1721, the Administration Offices in Cao-Bang, Tuyen-Quang, Hung-Hoa, and Lang-Son were abolished and their functions returned to the governor.<sup>(51)</sup> As for its judicial function, the Administration Office examined all prefectural trial records and reviewed civil cases appealed to it.

承政使

The third provincial agency, the Surveillance Office, was responsible for supervising the above two offices. This office, which was first instituted in 1471, was headed by a Surveillance Commissioner (*thien sat su* 憲察使, rank 6a).

憲察使

Hucker's description of the functions of the Provincial Surveillance Office in Ming China can be applied exactly to that of its counterpart in seventeenth and eighteenth century Vietnam: "In general, the Provincial Surveillance Office were required to maintain surveillance over all local governmental personnel, taking whatever disciplinary action was called for to uphold government morale and relieve the people of bureaucratic corruption and oppression."<sup>(52)</sup> Within this context, the Surveillance Commissioner was supposed to make annual tours of inspection within his jurisdiction, but these tours were abolished in 1776 because of inspectors' corruption. The Surveillance Office also played an important role in the administration of justice. It was charged with checking on local prosecutions and served as a court of appeal for cases tried by the Regional Commissioner or by the Administration Commissioner. Like the Administration Office, this office was also abolished in some frontier areas.<sup>(53)</sup>

Each prefecture which had been called *lo* until 1466 supervised the districts within it. The number of districts was not fixed; certain prefectures included seven or eight, while smaller ones had only one or two.

The Prefect (*tri phu* 知府, rank 6b), the head of the prefecture, exercised authority in all governmental affairs, including judicial administration. He was in charge of reviewing sentences passed by the district court, when there were appeals.

(51) That of An-Quang province was also abolished in 1763.

(52) Charles Hucker, "Governmental Organization," pp. 112-113.

(53) *HC*, 14: 23a.

The capital city comprised a special prefecture (*Phuong Thien Phu*), which came under the direct control of the central government. The Prefect (*phu doan* 府尹, rank 5a) was charged with reviewing civil cases appealed to him. Criminal cases such as theft and robbery were under the jurisdiction of four Wardens (*de linh* 提領, rank 2a), one for each Ward (*thanh* 城). The Wardens were actually instituted in 1510 by Emperor Tuong-duc for the purpose of policing the capital.<sup>(54)</sup> Tuong-duc had come to the throne by a military coup.

As the basic unit of governmental control, the district consisted of two types: *huyen* and *chau*. The *chau*, which had been the next higher administrative unit above the *huyen* until the Thanh-tong's reform, were the districts located in frontier areas.<sup>(55)</sup> The District-Magistrate was called *tri huyen* 知縣 (rank 7b) in *huyen* and *tri chau* 知州 (rank 7b) in *chau*. As the government official closest to the people, the District-Magistrate assumed the responsibility for the general welfare of the people within his jurisdiction. His duties included agricultural encouragement, moral education, public security, and the administration of justice as well as census-taking and tax-collecting.

Below the districts were more than two thousand communal administration, or villages (*xa* 社). The chief official of the village was at first called *xa quan* 社官 by Le Loi, but its title was changed into *xa truong* 社長 by Thanh-tong in 1476. Until the mid-seventeenth century, villages had more or less maintained their autonomy under the supervision of the District-Magistrate. Except for the Thanh-tong period, the central government had been weak and shaky; its encroachment on the villages was consequently wary and hesitant. The village head was in charge of all civil cases like marriage and landed property. Appeal to the district court was allowed only if someone was dissatisfied with his sentence.

This local structure began to change from the second half of the seventeenth century. The change was first appeared in an order during the Vinh-Tho period (1658-1662) concerning the appointment of village officials. The District-Magistrate was required to select and nominate, among Confucian students, the chief official, the secretary (*xa su* 社史), and the assistant (*xa tu* 社胥).<sup>(56)</sup> This can be understood against the background of the efforts of the Trinh to revive Confucian ideology and to establish internal stability. The first direct-

(54) *TT*, 15 : 2a; *HC*, 14 : 18b-19a; *CM*, 26 : 2b.

(55) This system was different from that of the Ming dynasty, where the *chau* in Chinese or subprefecture was an intermediate supervisory agency between the prefecture and its counties.

(56) *HC*, 14 : 24a-b; Langlet, "La tradition vietnamienne," p. 37.

attempt to limit village autonomy came in 1664 in the form of abolishing the registration system for a taxation in the Tongking Delta area. The rationale behind this reform was to simplify procedures and to make the taxation process easier by taking it out of the hands of the village authorities.<sup>(57)</sup> At the same time, collection of taxes and requisition of corvée services were put under direct surveillance of the provincial and prefectural officials. A further measure was taken in 1676 by which the village head lost his judicial power.<sup>(58)</sup> Civil cases, which had been under his jurisdiction, came to be decided directly by the District-Magistrate.

Village autonomy began to increase again from the Long-Duc period (1732-1735) when the government left the selection of the village head in the hands of the villagers,<sup>(59)</sup> and to some extent the village authorities regained their judicial power. Article 671 of the Le Code states, "Concerning the suit and dispute, all the smallest affairs should be brought before the village functionaries."<sup>(60)</sup> However, the village head seems not to have completely recovered his earlier power.

It is worth noting that while the local government at each level was supervised by its higher authorities, it was also required to prosecute the latter for any injustice.<sup>(61)</sup> The ruler apparently intended by this to check the growth of local power on the one hand and, by maintaining a system of social justice, to consolidate his power bases on the other. If in the seventeenth and eighteenth centuries, the ruler's power reached deeply into the society at large, this does not necessarily mean that the central power could control Vietnamese society fully.

#### IV. Legal Proceedings: Appellate System

We have thus far discussed the judicial institution in both central and local administration. Let us now proceed to examine how lawsuits were actually administrated in seventeenth and eighteenth century Vietnam. We have seen that the entire administration, from top to bottom, was highly centralized. All officials including the village level were appointed and

(57) Keith Taylor, "The Confucian Renaissance."

(58) *TB*, 1 : 3b; *CM*, 34 : 3a-b.

(59) *HC*, 14 : 25a.

(60) *HL*, p. 121b; Deloustal, *BEFEO* 22 (1922): 16, art. 671.

(61) *CLTC*, p. 168 and p. 408.

controlled by the Trinh in the name of the emperor. This administrative structure was used as the channel for the ascent of cases from the lowest tribunal to the highest at the capital, some going as high as to the Trinh princes. As in China, judicial system was, to borrow from Bodde and Morris, "a centralized monolith with no division of powers."<sup>(62)</sup>

Before proceeding any further, it seems important to point out that there were little procedural differences between the handling of civil and criminal cases and that there were no specialized personnel to handle them separately. In fact, the law *per se* did not clearly distinguish between the two categories, though the criminal aspect generally received greater emphasis. The evidence for this is that the original title of the Le Code, *quoc. trieu hinh luat* 國朝刑律, means the "Penal Law of Our State." Like the Chinese, the Vietnamese regarded the written law (*phap* 法) in almost the same light as penal law (*hinh* 刑). This aspect of Vietnamese law shows convincingly that the ruler's primary concern was to preserve the "order of the universe" and to maintain the dynasty. As we shall see below, however, some distinction was made between serious cases and trival cases: the former included homicide, robbery, and disputes over land, while the latter included matters concerning marriage, misdeeds, assault and battery, etc.<sup>(63)</sup>

At the lowest level of the court system was the village head. As discussed above, his judicial function was different according to the historical vicissitude of his authority. In the pre-Vinh-Tri period (1676-1680), he was entitled to handle civil suits, that is, cases brought by one individual against another on matters concerning marriage, landed property and the like. At the end of every year, he was required to report to the District-Magistrate upon the cases which had been closed and those which had not yet been finished.<sup>(64)</sup> It may have been difficult for the government official to deal with these suits, which were characterized by the customs of each village, rather than with the law of the central government. A person could appeal to higher authorities only if the village authority refused to receive his complaints and if their decision was felt to be unjust. As to criminal cases, the village head was empowered only to report them to the concerned authorities.

The jurisdiction of the village head began to decline from the Vinh-Tho period. The edict

(62) Derk Bodde and Clarence Morris, *Law in Imperial China*, p. 113.

(63) *CLTC*, p. 442.

(64) *CLTC*, p. 454; *HC*, 33: 12a.

of 1676 had demanded that civil suits be adjudicated before the District-Magistrate and then by the Prefect, not before the village head. Even in the last years of the Le, when his authority became somewhat enlarged, the head of village was not authorized to try such cases.

The jurisdiction of the District-Magistrate increased in proportion to the decline of the village head's authority. From the Vinh-Tho years on, he was charged with the initial trial of all civil cases, which included disputes over marriage, landed property, scuffles, insults, taxes, feasts, tombs, canals, the exaction of the rich, and other miscellaneous matters.<sup>(65)</sup> His judgments did not have to be approved by higher officials, but were required to be collectively reported every three months to the Prefect. Any appeal from the District Court went to the Prefect and then up to the Provincial Administration Commissioner. The latter's judgment was final in minor cases, in which the punishment was not heavier than a penalty of 10 ligatures (*quan* 貫) or 60 blows with light bamboo (*truong* 杖).<sup>(66)</sup> Minor injuries such as scratches, cuts, etc., were not allowed to be appealed beyond the Provincial Administration Commissioner.<sup>(67)</sup>

From earlier times, the District-Magistrate was charged with affairs concerning homicide in cooperation with the Prefect, but their judgment was not final. The District-Magistrate and the Prefect could do no more than pronounce a provisional sentence. Homicide cases had to be individually transmitted to the provincial capital for retrial first by the Provincial Administration Commissioner and then by the Provincial Surveillance Commissioner. The convict was also immediately sent to the provincial prison.

Judicial functions were more or less specialized at the provincial level. In addition to the retrial of appealed cases, the Surveillance Commissioner was also charged with affairs concerning the oppression of peasants by powerful families. The governor was mainly in charge of maintaining public peace in his province, and he handled cases of theft, robbery, and other matters which might disturb the social order. According to an order of 1676, anyone dissatisfied with the governor's judgment was able to appeal for retrial to the Surveillance Commissioner.<sup>(68)</sup> With the declining authority of the Administration Commissioner

(65) Deloustal, *BEFEO* 19 (1919) : 1, ch. 1, art. 1.

(66) Dang Phuong Nghi, *Les institutions*, p. 96.

(67) Deloustal, *BEFEO* 19 (1919) : 68, ch. 22, art. 2.

(68) *CLTC*, p. 462.

and the Surveillance Commissioner in some areas, particularly on the borders, the governors took over these judicial functions. In the capital, the Prefect handled the cases appealed from the judgment of the district. He was also in charge of affairs involving the nobles and the powerful. Cases concerning robbery, theft, and homicide were within the jurisdiction of the Warden. Any appeal of these cases, civil or criminal, was made to the Censorate.

Beyond the provincial and the capital levels was the Tribunal of Censors. Its judgment was final in the majority of cases except for those of utmost gravity.<sup>(69)</sup> The Censorate also judged the misdeeds of officials, either as it found them, or as they were brought before it.

Further appeal to the Council of Government was possible in the cases of utmost gravity.<sup>(70)</sup> It is not known when the members of the Council began to handle cases appealed to them, except that the system went into effect before 1696, the year when the Supplementary Commissioners were instituted. Anyone dissatisfied with the judgment of the Council of Government was permitted to appeal to the Trinh prince on the day of his public audience (*thi chinh nhât* 視政日).<sup>(71)</sup> The Trinh not only reviewed appealed cases, but also gave final ratification to all sentences in which government officials were involved.

Appeals from the lower levels to the higher were permitted within certain temporal limits which varied according to the nature of the case. The order of 1658 fixed the deadlines as follows: six months for matters concerning marriage, landed property, theft, robbery, and other miscellaneous matters, and one year for homicide.<sup>(72)</sup> As previously indicated, appeal was possible only to the next higher court, which was required to accept it. Any victim of a powerful family, if he found the lower authorities unwilling to accept his case, could appeal directly to the Trinh by striking a bell which was installed at the gate of the prince court.<sup>(73)</sup> Once the appeal was accepted, the official had to handle it within a certain period of time. According to an order of 1645 (and 1676) three months were permitted for disputes on landed property, four months for homicide cases, and two months for the matter of marriage.<sup>(74)</sup> <sup>(75)</sup> If officials failed to meet the deadline, they were subject to various

(69) The category of cases with exceptional gravity is not clear.

(70) Deloustal, *BEFEO* 19 (1919) : 1, ch. 1, art. 1.

(71) Deloustal, *BEFEO* 19 (1919) : 10, ch. 1, art. 26; *CM*, 40 : 7b.

(72) *CLTC*, p. 462.

(73) Deloustal, *BEFEO* 19 (1919) : 11, ch. 1, art. 27; *CM*, 40 : 23a-24a; *TB*, 1 : 30b.

(74) *CLTC*, p. 394.

(75) *CLTC*, p. 468.

punishments, depending upon the amount of time that had passed: degradation for one-month delay, dismissal for three months, and penal servitude for five months.<sup>(76)</sup>

The appellate system resulted in so many lawsuits in the seventeenth and eighteenth centuries that, in 1718, the Tribunal of Censors discouraged people from making appeals.<sup>(77)</sup> One reason for the many lawsuits seems to have been due to the misapplication of law by officials who were not trained tribunals but civil and military mandarins. In addition, lawsuits were actually encouraged by officials to whom the suits were important sources of income. Officials were supposed to be remunerated according to their rank for the handling of each case.<sup>(78)</sup> Most of the suits seem to have been lodged by the rich and powerful, not by commoners. For the poor, lawsuits were risky because they were subject to punishment if they failed to prove the truth of their case, and because they had to tender court costs.

Clearly, the appellate system reflected the ruler's desire to insure his central power. It was supposed to guarantee that the Trinh could at once check the growth of intermediary power and win support from the people by removing injustice. The system seems not to have been very successful as is evidenced by the many peasant revolts in the eighteenth century.<sup>(79)</sup>

Besides the routine channels for the majority of cases which we have discussed, judicial activity emanated from various other agencies. Cases involving imperial clansmen came within the jurisdiction of a special agency called the Imperial Clan Court (*tong nhan phu* 宗人府). Each of the six Ministries also had the right to deal with persons and activities falling within its special sphere of jurisdiction.<sup>(80)</sup>

## V. A Further Comment

In the previous chapters we discussed law and governmental structure in terms of the ruler's strategies for consolidation of power. We have attempted to show how, by adopting Confucianism, the ruler sought continually to integrate all the people under his control; and

(76) Deloustal, *BEFEO* 22 (1922) : 15-16, art. 670; *HC*, pp. 121a-b.

(77) Dang Phuong Nghi, *Les institutions*, pp. 92-93. Dang did not mention the source of this order.

(78) *CLTC*, pp. 406, 410 and 414.

(79) For the peasant revolts in the eighteenth century, see *Vietnames Studies* 21 : 106-111.

(80) For the detailed judicial activities of six Ministries, see Dang Phuong Nghi, *Les institutions*, p. 99.

how, through the preservation of custom, he aimed at checking the growth of powerful groups. The government institutions first adopted by Thanh-tong were instruments designed to realize these strategies more effectively. The system remained without much change in the seventeenth and eighteenth centuries to the benefit of the Trinh rather than on behalf of the Le emperor.

If the Trinh replaced imperial power and continued to make and unmake emperors at will, nevertheless, they dared not abolish the Le dynasty. This meant that their political position was not very secure. Recall that the Trinh were continuously at war with other powers internally and externally they felt the threat of China's encroachment. Of prime importance was the indirect threat by the growing bureaucracy. Despite their efforts, the Trinh seemingly could not obtain full support from the mandarins. Some of them, trained in the Confucian ideology, may have been disturbed by the Trinh's superior power over the throne. Certain other corrupt officials were more interested in accumulating personal wealth than in supporting the Trinh; these indirectly undermined the Trinh's position by fomenting peasant discontent. It was for these reasons that the Trinh began to depend on the eunuchs. By 1631, one eunuch named Bui Si Lam 裴仕林 became governor of Thanh-Hoa province.<sup>(81)</sup> In 1739, Trinh Giang even went so far as to organize the eunuchs as an independent order for the supervision of the civil and military officials.<sup>(82)</sup> In all events, the Trinh seem to have failed to exercise full power on the bureaucracy. As a result the central authority was unable to penetrate the countryside and was forced to recognize village autonomy to some degree. Powerful people seized this opportunity to expand their private lands and control the people. The situation became so disruptive that in 1740 the Trinh proposed to nationalize all lands and distribute them to peasants who would pay land rents to the state.<sup>(83)</sup> Because of opposition by the bureaucracy and the landowner class, however, the project was soon buried. Peasant revolts became inevitable under these circumstances. The Trinh were able to defeat them because they were not well organized. When confronted with the better organized and more powerful Tay-son rebellion in the last decades of the eighteenth century, the Trinh eventually collapsed.

(81) Wada Masahiko, "Betonomu jematsu gensho no kanganni tsuite (A study on eunuchs in the late Le and the early Nguyen)" *Keio gizuku daigaku gengo bunka kenkyujo* 10(1978) : 24.

(82) Dang Phuong Nghi, *Les institutions*, p. 60. For details on the activities of eunuchs, see Wada's above article.

(83) *Vietnamese Studies* 21 : 103.