Some Signs of a State of Law in Vietnam in the Monarchical Time

Vu Thi Phung

Introduction

In recent years, researchers and managers have had long-running discussions about the issue of a state of law in Vietnam. Some argue that a state of law has never existed in Vietnam, thus one has to be built. Others hold that in Vietnam there has been a state of law already, but one that has not been fully developed. There is also an extreme opinion that “state of law” is an ideal model that only few countries can achieve, and therefore the fact that there is no state of law, or only an imperfect one, in Vietnam is understandable. In the academic debate on the history of states and laws in Vietnam, researchers have regularly discussed whether a state of law has ever existed in Vietnam. In this paper, on the basis of available sources, we would like to contribute some thoughts on the above issue. Due to the scarcity of materials, the scope of our study is limited to the monarchical period (from the 10th century to the mid-19th century). To help clarify the issue, we propose three basic questions based on the available literature and theoretical debates about state of law:

- During the monarchical time in Vietnam, did Vietnamese states recognise the importance of the law and did they actually compile and promulgate laws? How were laws established in this period?
- If Vietnamese states did pay attention to the law, how did laws in the monarchical time regulate the relationship between the state and citizens, and the issue of human rights?
- How were laws implemented in reality?
The Awareness of Monarchical States of the Law

Our research results show that, during Vietnam’s feudal era, states already recognised the role of laws in governing and managing the country. Building on available materials, researchers today agree that before the Ly dynasty, in Vietnam there were no written laws, and laws only existed in the forms of conventions and customs. From the Ly dynasty onwards, one of the most important progresses of this time was that leaders of dynasties realized that in order to maintain social stability and order, to make people observe laws and regulations, and to punish those who violated the law, there had to be written laws. Therefore, monarchical states made several achievements in the field of legislation, especially in issuing written laws. First of all was Ly dynasty’s Royal Code (Bo luat Hinh thu) (1042) and then Tran dynasty’s Royal Code (Bo luat Hinh thu) (1341), Le dynasty’s Royal Penal Code (Quoc trieu hinh luat) (also called Hong Duc Code – 1483), Nguyen dynasty’s Hoang Viet Code (also called Gia Long Code – 1815) and thousands of legal documents in the forms of royal proclamations, decrees, ordinances, edicts, etc. The reason for the issuance of the Royal Code by the Ly dynasty was mentioned in Dai viet Su ky toan thu (Complete Annals of Dai Viet):

"Previously, the legal procedures for suing and trial in our country were complicated; the officials responsible for legal matters were too finicky about rules and too rigid and harsh in the implementation of laws to the extent that many people were mistreated and became victim of injustice. The king felt pity for them, thus he ordered the Head of the Cabinet office to adjust laws to keep up with the situation, to divide laws into sections and specific regulations and combine them all in a single text, the Royal Code, which is intelligible to everyone."

The materials show that the Ly dynasty’s emperors realized the necessity to have written laws in order for the people to know how to adjust behaviours, for the state to have the means to investigate and supervise officials. In the context of a period 1000 years ago, these thoughts on the importance of issuing written laws, as a basis for the enforcement of laws, was an important progress in legal thinking. Inheriting the above thoughts, succeeding dynasties highly valued and appreciated the role of laws. In 1428, when giving order to officials to compile laws to promulgate, Le Thai To points out clearly that:

1 Social Sciences Publisher (1998), Dai Viet su ky toan thu, 263.
“from the past to present, the governing of the country has always relied on laws, or else the society has been in chaos. Therefore, we follow our precedents to issue laws to tell commanders, officials and the people what is right and wrong, what to do and what to avoid so as they will not violate the law.”

By the time of the Nguyen dynasty, in the preface of Hoang Viet Code, King Gia Long wrote:

“Everyone living in the society has infinite desires, and without laws to prevent their illegal conducts, it will be impossible to educate them so that they understand ethics. Therefore, as our ancestors have said, laws are the critical tools for good governance.”

In order for the code to be effectively implemented, King Gia Long stated that:

“Authorized officials have to follow these rules and consider them the guiding model about laws.”

These statements and declarations of Vietnamese emperors, the heads of state (as recorded by state historians in ancient historical works) show that laws had a certain role in Vietnamese society during the monarchical time. This was demonstrated through the fact that monarchical states compiled and issued many written codes and several other legal documents. However, another issue that needs to be taken into consideration is how monarchical states organized the compilation of laws. Based on the records in Dai Viet su ky toan thu, the compilation and issuance of Ly dynasty’s Royal Code is described as follows:

“The king felt pity for them (those who suffered injustice), thus he ordered the Head of the Cabinet office to adjust laws to keep up with the situation, to divide laws into sections and specific regulations and combine them all in a single text, the Royal Code.”

The position of the Head of the Cabinet Office (Trung Thu) mentioned above might refer to the head of the organization that managed the entire administrative matters of the court.

---

2 Social Sciences Publisher (1998), Dai Viet su ky toan thu, 263.
3 Culture-Information Publisher (1994), Hoang viet luat le, 1, 3.
4 Culture-Information Publisher (1994), Hoang viet luat le, 1, 3.
5 Social Sciences Publisher (1998), Dai Viet su ky toan thu, 263.
6 In the Nguyen and Ming dynasties (China), Trung Thu was a position that played an important role in the royal court, also referred to as the prime minister.
Also according to historical records, many basic legal documents of the Le dynasty stated clearly the name of law-drafting officials (for example: the Legal Code compiled by Nguyen Trai (1440–1442); Royal Laws and Orders compiled by Phan Phu Tien (1440–1442); Thien Nam du ha tap compiled by Than Nhan Trung, Quach Dinh Bao, Do Nhuan, Dao Cu and Dam Van Le (1483). Only Hong Duc Code (during Le Thanh Tong’s reign) did not state the name of law-drafting officials because this code was compiled based on legal regulations issued by previous kings. Hoang Viet Code (Nguyen dynasty) was compiled by Northern Citadel Governor Nguyen Van Thanh.

It can be seen that most monarchical states assigned the compilation of laws to officials holding important positions. These were knowledgeable and gifted people, thus they were entrusted with important duties by kings. However, based on the above documents, we did not find any record reflecting that ordinary people were involved in the compilation of laws at the time, nor did we find any materials about drafts of laws being sent to those affected by the laws for review and feedback. Therefore, it can be concluded that, laws in the monarchical time were mostly compiled by court officials following orders from kings, who were also the final reviewers of drafts of laws and the ones that gave approval for the laws to be promulgated. There was no involvement of the people in this process. Thus one question is whether this method of law-making was democratic and objective.

Some Notable Regulations in Laws in the Monarchical Time

An examination of the contents of laws in the monarchical time (in general codes and specific legal documents) shows that scales and types of issues governed and mentioned in these laws were massive, diverse and complex. For convenience, we would like to summarize the contents of legal normative regulations in the monarchical period based on the following issues.

Firstly, based on the current method of classification, the contents of laws in the monarchical time governed social relationships in fundamental legal fields namely: Administrative law, Criminal law, Civil law, and Marriage and Family law, Prosecution law. For example: both Quoc Trieu hinh luat (the Hong Duc laws-Le dynasty) and Hoang viet Luat le (The Gia Long laws – Nguyen dynasty) had regulations on the organization of state agencies and
officials’ duties; types of crime, types of punishment and principles to determine crimes and sanctions; rights of ownership of land and property; rights of inheritance; marriage and divorce, relationships between family members; procedures and order of investigation processes, and rules about detaining and interrogating, etc.\(^7\)

Secondly, laws in the monarchical time also specified the power of the king, the authorities and responsibilities of officials and the duties of the people. For example: Among crimes, the ones considered most serious by monarchical states were the Ten Crimes,\(^8\) including ten most serious crimes that violated the king’s power, the existence and rule of the feudal state, the survival of the nation, and the most important social relationships according to Confucian ideals at the time (king-subject, father-child, husband-wife). Criminals were sentenced to the toughest punishment (death). Even if they were among the “Eight Cases of Remission”, they were not granted remission and they could not compensate for their crimes by money. In the chapter “Royal Guards”, the laws ruled that behaviors violating the royal citadel and palaces; violating the king’s life and property; violating national security and border (for example: people without authorization were not allowed to be inside the royal palace out of official working hours; not allowed to tease others, to be arrogant or to spontaneously talk to imperial maids; not allowed to sell territory and land to foreigners; not allowed to reveal national secrets, etc.). Those committing these crimes were often sentenced to high punishments (penal servitude, banishment, and execution). Officials would be severely punished if they committed crimes such as: taking bribes, contravening the king’s orders intentionally,


\(^{8}\) Ten Crimes includes: Mưu phản (high treason, attempt to overthrow the sovereign or harm the country and society); Mưu đại nghịch (destroy royal shrines, temples and palaces); Mưu bàn (betrayal and cooperation with the enemy); Ác nghịch (kill grandparents, parents and relatives); Bắt đào (kill many people at the same time), Đại bất kính (steal ritual items in shrines and royal tombs, fake royal seals and do harm to the king’s health and prestige), Bắt hiếu (denounce, insult grandparents and parents, or refuse to mourn deceased grandparents and parents); Bắt mục (kill relatives, wives beating or denouncing husbands); Bắt nghĩa (ordinary people killing officials, students killing teachers) and Nội loạn (have sexual intercourse with relatives and concubines of father and grandfather).
being irresponsible at work, using power to harass people, etc. (punishments for these crimes ranged from whipping, caning, to death depending on the seriousness of the crimes committed). As for the ordinary people, the crimes to be punished included: robbery; murder; fighting with and injuring others; insulting and calumniating others; cheating and faking papers, royal seals and job titles for personal benefit; adultery, rape; disseminating false rumors, engaging in superstitious activities, etc.

Thirdly, containing detailed and specific regulations covering many fields, laws during the monarchical era basically and firstly served the purpose of securing the power of the feudal state. Regulations in laws as well as in other documents focused on protecting the absolute ruling power of the feudal landlord class, of which the king was the highest representative (thus all behaviors violating the power, life and honor of the king were always sentenced to the most severe punishments). Laws also focused on safeguarding the privileges of the king and the royal family; of officials, patricians and the landlord class (politically and economically). Laws also protected the foundations for the state to exist and develop, including: the ideological foundation (mainly Confucianism); the economic foundation (laws protected the right of the state as the supreme owner of land and the only entity with the right to collect taxes; protected the private ownership of land and property, especially the private ownership of the landlord class; protected the means of production and the supply of labor); the social foundation (laws protected class order, the interests of upper classes and the inequality inside and outside the family). For example: both Hong Duc code and Gia Long code had regulations about the “Eight Cases of Remission”.9 According to this regulation, when people included in this system committed serious crimes (except for the Ten Crimes), judges could only identify their crimes and proposed their punishments to the king to decide; if the punishment was from banishment downwards, it would be decreased by one level. Besides, laws also specified the remission of the punishment of descendants of people with great contributions to the country, or wives of man-

---

9 Eight Cases of Remission include: close relatives of the King and the Queen, the Queen mother (nghi than); people who serve the king for a long time or those who served previous kings (nghi co); people of great morality (nghi hien); people with great talent (nghi nang); people with great contributions to the country (nghi cong); officials from third rank upwards (nghi quy); industrious officials (nghi can); previous kings’ descendants (nghi tan).
Sixtals based on their husbands’ official position, etc. Among the people who could redeem their guilt by money were relatives of the king and the queen.

Fourthly, although focusing on safeguarding privileges of the king, aristocrats and officials, laws in the monarchical era still had regulations about the rights of ordinary people. For example: Among the subjects that were granted privileges and allowed to redeem guilt by money, old people above 90 and children under 7 were cleared of charges even if they committed crimes that would lead to death sentence; old people above 70, children under 15 and disabled people were granted privileges and considered for less severe punishments. Laws also had regulations on the grant of exemption from legal proceedings or remission to people who committed minor crimes but had given themselves up; on the reward for people denouncing crimes or punishments for people covering up for criminals. There are some regulations that prevented officials and village nobles from exploiting and harassing the people. Especially, to a certain extent, Quoc trieu hinh luat had some regulations to protect women’s rights (to inherit, to propose for divorce) and ethnic minorities (to deal with disputes in their communities based on their own laws, to use their own languages in trials), etc.

About Disseminating and Implementing Laws in the Monarchical Era

Disseminating Laws

In order for laws to be implemented, the most important issue is to disseminate and communicate the contents of laws to officials, who would implement laws, and the people. However, in feudal societies, this was not a simple task because at that time there was not the possibility to print and make copies of laws like today; and only a small proportion of the population was literate. In order to disseminate laws, feudal states applied the following methods:

Firstly, after issuing important legal documents, the state appointed court officials to make (by hand) three copies of any document (Giap copy, At copy, Binh copy). Therefore, in Vietnam there is an idiom, “After three copies are made, the original will be lost” to indicate that in the past, it was impossible to avoid mistakes when copying documents.
archives; At copy (copied from the original) was sent to and stored at the relevant department (the central organization responsible for the implementation and monitoring of the implementation of that law); Binh copy (also a copy of the original) was sent to local regions to implement. However, that process of copying documents cost a lot of time and effort, and could not guarantee absolute accuracy in comparison with the original document. Therefore, laws disseminated in this way only reached a small portion of officials. In order to solve this problem, later dynasties (especially the Nguyen dynasty) engraved important documents on wood (so called wood blocks) then used the wood blocks to print on paper. This method also cost great efforts to engrave Sino scripts on wood blocks (each block was equivalent to a page). The advantage, however, was that the document could be printed into many copies and the accuracy could be guaranteed.\textsuperscript{11}

Secondly, as for the ordinary people, in the situation that many people were illiterate, feudal governments also had some methods to disseminate laws which were quite effective and appropriate. Ancient historical works recorded methods to copy the king’s orders or some particular regulations of the state and local government. These copied would then be put on public display at crowded places. When seeing those announcements, people usually gathered, literate people read and explained to illiterate ones, then they discussed with each other to clearly understand the regulations and to observe them willingly. However, this method had a limitation: the law in question could not reach all citizens because not everyone came to crowded places and when they listened to explanations, each person understood them in a different way. Therefore, in order to solve the above problem, feudal governments used the method of orally disseminating laws through “village criers”.\textsuperscript{12} However, this method made Vietnamese people passive in studying laws, which forced the government to “bring” laws to their home because they thought “no announcements, no wor-

\textsuperscript{11} At the moment, the National Archives IV in Da Lat have stored thousands of wood blocks of this kind, including the important wood block collection used to print Hoang Viet code of the Nguyen dynasty.

\textsuperscript{12} A village crier was a special civil servant serving village officials especially in the Northern delta region. Besides handling trivial chores such as making tea, cleaning the communal house, laying mats, carrying trays, when village officials gathered for discussion, the village crier had the duty to go to everyone’s home to announce regulations of the central or local government for the people to know and implement.
ries”. That mentality and habit have posed a difficulty to the disseminating, communicating and implementing of laws amongst a large part of the population nowadays.

**Implementing Laws**

As mentioned above, although feudal states used many methods to disseminate laws, the implementation of law did not meet the expectations of state authorities. In reality, for many reasons, the problems of corrupt officials and people disobeying the law were observed in all dynasties. In this situation, in order to guarantee the enforcement of laws, the main method of Vietnamese states was to stipulate sanctions and strictly implement them.

**Regarding Officials**

Having clarified officials’ roles in implementing laws, the state issued and applied several methods to inspect and supervise officials’ implementation of laws in places where they were in charge. According to ancient historical works, when seeing that officials lacked credibility and integrity, and misused laws to harm people, King Le Hien Tong (in 1449) straightforwardly criticized and expressed a tough attitude toward these corrupt acts through his words in the following royal ordinance:

“Our state uses the strength of people to determine the laws of the nation; the guards inside and outside the palace are responsible for implementing regulations, all kinds of services have to be considered for awards. It is clearly stated that corrupt officials should be punished and honest people should be rewarded. Sanctions are ready at all times to prevent briberies. Thus it is hard to understand why authorized officials do not follow state regulations. Few care more about the nation than their personal gain, while many ignore their responsibilities and duties. Many keep committing evils that we have tried to eliminate, such as letting the rich go and only arresting the poor and misappropriating state money. Some pursue their own benefit at the expense of others, some submerge themselves in wine and girls while ignoring their duties, some abuse their position to exploit others, some cover up for others and ignore state laws, some only think about conspiracies and torture without mercy for the poor (…) That is why I issue new regulations to eliminate these evil old habits. Those who observe these new rules will be forgiven; those who fail to do so will be strictly punished. Whether you will face disasters or fortune is up to you. Choose wisely.”

In codes as well as other legal documents by the king, the following behaviors of officials were forbidden:
- Must not be greedy and plunder people's assets.
- Judges have to be fair and must not take bribes to make wrong judgements, which can lead to injustice.
- When travelling abroad, must not buy goods without reporting.
- Officials must not take bribes; if they do they will be punished, depending on the amount they take.
- Tax collectors must not misappropriate tax payment.
- Must not abuse public work for personal purpose.
- Must not take bribe or favor relatives to promote people without morality and talent.

All the officials committing the above behaviors were punished by laws. For example: taking bribes was considered the most typical act of corruption, which was regulated both in Hong Duc Laws and Gia Long Laws. In order to deal with this behavior, laws had regulations to punish those who accepted bribes (usually officials) and those who bribed (usually ordinary people and subordinates). The level of punishment depended on the amount of bribes.

During the monarchical time, regular examinations of officials was an effective method to prevent corrupt behaviors and enhance the enforcement of laws because through these examinations, the government collected a lot of information about officials and took timely actions to deal with corrupt officials. On the other hand, pressured by the investigations, officials had to adjust their behaviors to avoid making mistakes. This method, therefore, was a mechanism of active prevention of corruption.

**Regarding the Masses**

In order for the masses to observe laws, illegal behaviors were severely punished to set examples for others as well as to show the rigorousness of the law. This is shown through notes in ancient historical works, according to which any behavior that did not follow the orders of the king and the government was considered crimes of “violating majesty” or “internal upheaval”. Once accused of these crimes, no one can avoid being punished, from light punishments such as the whip or cane, to more severe punishments namely banishment, decapitation, or extermination of three generations of kinship. These sanctions were considered effective because they made the people afraid and made them follow the laws. However, because people’s intellectual standard at that time was low, punishments by the state were usually combined with pun-
Several Inequalities in Implementing Laws

Basically, feudal states’ laws usually focused on protecting the interests of the governing, oppressing and exploiting classes. Therefore, although officials’ illegal behaviors were strictly punished, in reality, there were many injustices in the enforcement of laws in the monarchical period. Ordinary people were punished more severely than officials for the same violations. Additionally, several officials exploited this discrimination to distort cases, to force people to admit crimes they did not commit, and to punish many people unjustly. This sparked anger amongst the people. For example: Dai Viet su ky toan thu recorded the case of Do Thien Thu (younger brother of Do Khac Chung – a high-ranking mandarin in the court), who was involved in a lawsuit with another. While he was absolutely wrong, local officials kept delaying the prosecution. Consequently, the other person intercepted the king’s chariot to report the case. After the king ordered an investigation, it was concluded that Do Thien Thu was really wrong.

Therefore, in order to reduce people’s dissatisfaction, some dynasties applied several methods for the people to report urgent matters to the king. Dai Viet su ky toan thu recorded two events:

- In March 1052, under the reign of King Ly Thai Tong, the king ordered the casting of a large bell, located in the Dragon Pond, and allowed people to ring it should they want to report any injustice they had suffered.
- In 1158, King Ly Anh Tong, following the model of the Song dynasty (China), put a bronze chest in the middle of royal palace, and anyone who had anything to report or denounce could put a letter into it.¹³

Conclusion

Through the above materials and research, we conclude that: Based on the criteria of a state of law, we can argue that in Vietnam in the monarchical peri-

¹³ Some argue that nowadays state agencies also use this method in the form of suggestion boxes for people to express their needs and suggestions.
od some signs of a state of law already existed. Those included the fact that the state, upon recognition of the role of the law, organized the compilation and promulgation of general codes and other specific legal documents for the people to know and observe, and for officials to implement. Vietnamese feudal states also had many methods to disseminate and communicate laws to the subjects, using many different forms which were suitable to the specific context of different areas and the level of awareness of the masses. Vietnamese feudal states also strictly punished illegal behaviors. Those methods partly enabled the implementation of laws. Thanks to that, many dynasties were able to maintain social order, mobilize armed forces to fight against foreign invaders and maintain power for hundreds of years.

However, the above signs still have not provided sufficient evidence to affirm the existence of a state of law in the monarchical time because many basic and important factors were missing. Those included the process of compiling laws (without the people’s involvement and discussion); laws were issued mostly for the king and the state to impose on and control the people, instead of being a “contract” between the state and citizens; laws still expressed inequality between officials and ordinary people; there were still many shortcomings in the implementation of laws, especially officials’ abuse of power to violate regulations in laws; human and people’s rights, although noticed, still received limited attention; punishments still depended on social hierarchy, corruption was still rampant, and the implementation of laws was still arbitrary. Those limits significantly undermined the legitimacy of many dynasties. Some dynasties even lost their power because of that reason.

Those were historical lessons for us to consider, finding and applying effective methods to build and improve the state of law in Vietnam at the moment and in the future.

References

Culture-Information Publisher (ed.) (1994): Hoang viet luat le. Hanoi.