

# A STUDY ON THE HUMAN RIGHTS PROTECTION PARADIGM IN THE CHINESE LEGAL FAMILY - FOCUSING ON ANCIENT CHINA AND VIETNAM

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**Abstract** - We can achieve human rights protection through different methods. To safeguard human rights means to uphold the fundamental circumstances that uphold human dignity in a time and location. This article aims to examine the legal systems of ancient China and Vietnam within the Chinese Legal Family. It explores the different approaches to safeguarding human rights within this legal framework, highlighting that procedural law is not the sole method of human rights protection. Whether it is substantive law or a combination of substantive law and procedural law, they are just different styles of human rights protection, and the results are ultimately the same.

**Keywords:** Chinese Legal Family, human rights protection paradigm, procedural justice, China, Vietnam

## INTRODUCTION

Safeguarding human rights is always a subject of great interest. What actions can we implement to strengthen the safeguarding of human rights? Nations with different legal systems have historically adopted various approaches to safeguard human rights. In Western nations, they commonly accomplish the aim of safeguarding human rights through procedural justice, as shown by the well-known legal principle “Remedies come before rights”. On the other hand, ancient Eastern nations, such as the Chinese Legal Family, emphasize the protective role of substantive law.

China, as a member country of the Chinese Legal Family, has long been a proponent of using substantive laws and regulations to maintain social order. Vietnam, having achieved independence from Chinese rule in the Ming Dynasty, devised a ground-breaking approach to safeguarding human rights. Vietnam achieved this through the ingenious combination of substantive law, known as the *Hong Duc Code*<sup>1</sup>, and procedural law, referred to as the *Quoc Trieu Kham Tung Dieu Le*.

This article does not deny the value of procedural justice. It merely observes two member countries under the Chinese legal family from an internal perspective, observing the two answers given by China and Vietnam in maintaining human rights and social justice under the guidance of the same worldview. The findings prove that the proposition “justice begins and ends with procedure”<sup>2</sup> (Xu, 2013) is false.

### 1. Material and Method

The primary focus of this paper is on using historical sources. The Chinese ancient documents have been published with checks and punctuation marks, while many of the Vietnamese documents remain unpublished and have not been researched by the world. However, they are still being preserved in the Institute of Sino-Nom Studies. This paper uses the valuable ancient Vietnamese documents gathered by the Institute of Sino-Nom Studies to compare the differing modes of human rights protection in China and Vietnam.

A hermeneutical method is used in this paper to compare the paradigms of human rights protection in China and Vietnam. This paper discusses three contexts. First, it considers the shared legal heritage of China and Vietnam, both being part of the Chinese legal family. Second, it analyses China’s position as the historically ancestral home of this family. Last, it examines Vietnam’s position as a sub-nation within the same legal family. Although China and Vietnam have a common legal tradition, their current legislation is influenced by distinct national circumstances and the specific obstacles they encounter. As a result, there have been multiple models developed to protect human rights. This article uses the

<sup>1</sup> The official name is “*Quoc Trieu Hinh Luat*” (National Penal Code). According to the common view, this legal code was promulgated during the Hong Duc era of Emperor Le Thanh Tong of the Later Le dynasty, so it is also known as the *Hong Duc Code*.

<sup>2</sup> Original Text: 正义始于程序，终于程序。

hermeneutical method in analyzing the perspectives of China and Vietnam on the models of human rights protection. It aims to examine the similarities and differences between these models.

## 2. The Connotation of “Human Rights Protection” in the Chinese Legal Family

Currently, in the global community, the protection of human rights is perceived as euro-centrism, with Western countries primarily led by the United States controlling the debate on human rights. Are there human rights for the Chinese legal family? Many scholars contend that “human rights” are Western imports and stem from Western values. As an illustration, Xia Yong (2007) posits that human rights entail both individuals and their entitlements, whereas ancient China was an obligation-based society, whereby the concept of rights was absent. There were no human rights in ancient China, only the moral principles of human ethics.

In order to delve deeper into how a concept is conveyed across various eras and civilizations, it is crucial to refrain from interpreting it in a mechanistic manner. Just like realizing the concept of code, as He Qinhu and Liao Xiaoying (2023) point out, if we insist that a code is a product of systematic and logical thinking, neither the Code of Urukagina nor Code of Hammurabi from ancient Mesopotamia can be considered codes, just as we question what makes up a code today. While we may refer to modern freedoms, equal rights, and other rights as human rights, claiming that these freedoms define human rights would exclude the rights prevalent in ancient Western, Eastern, or other civilizations or regions. This narrow interpretation of the concept arises from viewing a historical concept through the lens of contemporary perspectives, which can be a misstep.

Studying how human rights have been manifested in various civilizations could aid in comprehending the essence of the concept, which is to interpret human rights as “the fundamental prerequisites for preserving human dignity”<sup>3</sup> (Li, 2002, p. 59). Distinct epochs and societies hold diverse interpretations of the essential conditions for safeguarding human dignity, and the legal protections they offer will differ accordingly.

### *The social system under the guidance of Confucian thought*

The *Tang Code Annotations* opens by stating, “When the three talents are in place, all things are divided.”<sup>4</sup> (Zhangsun, 1983, p.1). The traditional Chinese worldview posits that when the positions of heaven and earth are established, all things are brought forth. In human society, each person has a designated role and function to contribute, thus ensuring smooth operation. How are positions in human society found out? Confucianism posits that order between elders and juniors, distinction between superiors and inferiors, determines social positions.

The system of Li (ritual propriety) and Fa (law) in ancient China was characterised by order between elders and juniors and distinction between superiors and inferiors, which sometimes led people to mistakenly believe that there were no laws in ancient China. According to the *Tang Code Annotations* (Zhangsun, 1983, p.1): “Those who governed have historically established positions and offices for the people, implementing criminal laws to enforce political education.”<sup>5</sup> “For the tools of governance, there must be criminal laws”<sup>6</sup> (Lich Dai Chinh Hinh Tong Khao, A.1670), and so “when politics was chaotic during the Xia Dynasty, Yu’s punishments were created, and when politics was chaotic during the Shang Dynasty, Tang’s punishments were created.”<sup>7</sup> (Zuo, 2015, p.744). During the Xia and Shang dynasties, China already had laws, though they were kept secret and not open to the public. Written laws were not published until the Spring and Autumn and Warring States periods, when the rites collapsed and corrupted, making the laws accessible to the public. Since then, the progress of laws has continued until the Tang Dynasty founded the Tang Code. This attracted neighboring countries to learn and imitate it, eventually forming the Chinese Legal Family.

Within the Chinese Legal Family, law and rites are complementary. According to the *Tang Code Annotations* (Zhangsun, 1983, p.3): “Virtue and Li lay the foundations of political education, while punishment and law provide its application. It is like how dusk and dawn or spring and autumn rely on each other to complete the cycle.”<sup>8</sup> This is exemplified by the statement, “Li prevent what is about to

<sup>3</sup> Original Text: 维持人性尊严的基本条件。

<sup>4</sup> Original Text: 夫三才肇位，万象斯分。

<sup>5</sup> Original Text: 历来为治者莫不因为百姓而设立职官，为实施政教而施行刑法。

<sup>6</sup> Original Text: 为治之具，必有刑律。

<sup>7</sup> Original Text: 夏有乱政，而作禹刑；商有乱政，而作汤刑。

<sup>8</sup> Original Text: 德礼为政教之本，刑罚为政教之用，犹昏晓阳秋相须而成者也。

happen; Laws prevent what has already happened,”<sup>9</sup> (Ban, 2013, p.2252) which proves that rites and laws exist within the same social logic system and work together to uphold social order and stability.

The operation of traditional Chinese social systems can be summarized as rulers ruling, ministers serving, fathers being fathers, and sons being sons. This phrase emphasises the importance of fulfilling one’s role in society. For example, those in the role of a ruler should perform their duties as such, while those in the role of a minister, father, or son should do the same. As Fan Zhongyan (2002, p.439) famously said, “When at the high post in the imperial court, they worried about the welfare of people and when at the corners far away the capital, they worried about the king”<sup>10</sup> This highlights the responsibility of those in power to be mindful of their duties to the people and the ruler.

Understanding the traditional Chinese social order is reliant on ‘position’ as a key concept. Ancient Chinese society formed an order of hierarchy between elders and juniors, and a distinction between superiors and inferiors, based on the recognition of position. Therefore, the laws of Ancient China maintained the social order prevalent. Enabling everyone to enjoy the rights and fulfil the duties assigned to them, helped to preserve their dignity in that era.

#### *Human rights in the Confucian social system*

In order to uphold these fundamental human rights, the Chinese Legal Family has instituted appropriate mechanisms. When crimes are committed between family members, the severity of punishment is determined based on the level of kinship. The punishment for committing a crime against a superior family member is more severe if the perpetrator has lower social status and closer kinship ties, and vice versa. This is to maintain the family hierarchy and ensure obedience to superior family members. In order to preserve family bonds, the principle of familial confidentiality is upheld, except for the ten most severe crimes, to protect family members who might have committed a wrongdoing. In the relationship between a husband and wife, the husband has been traditionally granted the right to divorce (‘seven outs’, namely, the seven legal grounds for divorcing a wife), whereas the wife is safeguarded by three conditions under which a wife cannot be divorced. In criminal cases, there exists a protective framework that secures equal rights for the victim and the perpetrator. While the system upholds the victim’s right to life, it also provides the perpetrator a chance to make restitution for their crimes. The privileged class is entitled to the benefits of ‘eight deliberations’ that ensure a dignified life.

In terms of property rights, land rights were the most significant, both in terms of property rights and human rights, in ancient China. The legislation contains comprehensive regulations governing the acquisition and transfer of land.

### **3. Human rights protection model based on substantive law: The practice of Chinese law**

In ancient China, human rights protection was founded primarily on substantive law. The continuous evolution of substantive law aimed to improve human rights protection. Starting from the first legal code during the Warring States Period, the subsequent dynasties focused on continual development and enhancement of legal codes. During the Tang Dynasty, a comprehensive and systematic Tang Code was developed. Later dynasties concentrated on the coordinated development of various legal codes and the creation of comprehensive legal and case law codes. Despite its vast scope, the legal codes belong to the category of substantive law, with only a few procedural provisions distributed throughout the system.

#### *The developing style of substantive law*

In the Warring States period, Li Kui created the *Fa Jing (Canon of Law)* that defined six chapters: The first dealt with laws on robbery, the second with laws on violence, the third with laws on imprisonment, the fourth with laws on arrest, the fifth with miscellaneous laws, and the sixth with general laws. Throughout the Wei, Jin, Southern and Northern Dynasties, several regional regimes aimed at integrating Confucianism into their legal systems, and this resulted in significant success in combining rites with law.

The Tang Dynasty gathered the knowledge from prior dynasties into the *Annotations of the Tang Code*, and this became the basis for future legal systems. The process of Confucianizing law had also reached completion. An instance of this is that rules regarding showing respect to older adults, affection towards the young, care for the disabled and sympathy for the sick was derived from *The Rites of Zhou*. During the Han Dynasty, distinct legal codes were established. Later, during the Tang Dynasty, the legal

<sup>9</sup> Original Text: 夫礼者，禁于将然以前；而法者，禁于已然之后。

<sup>10</sup> Original Text: 居庙堂之高，则忧其民；处江湖之远，则忧其君。



provisions related to the aforementioned aspects were refined and enhanced, clearly stating that crimes committed by older adults, young, sick, and disabled could be exempted or punished less severely. According to He Qinhuo et al. (2019, p.780),

The legal rules for respecting older adults, loving the young, caring for the disabled, and sympathizing with the sick is founded on the ethical principles that are promoted by the ancient Chinese philosophy of Confucianism. This ethical code upholds the precedence of blood relations and family hierarchy in a patriarchal society as the norm of human relations, and even the survival rules of the universe. It provides a pathway for personal development, the management of family affairs, the governance of the country, and the establishment of peace in the world.<sup>11</sup>

The Tang Code established the groundwork for the fundamental legal codes of future generations. Following the Tang Dynasty, all subsequent dynasties utilised the Tang Code as a template to plan their own legal codes. The innovation lies in building a diverse model of legal code coordination to better express the spirit of justice.

The Ming and Qing dynasties based their laws on the ones established during the Tang era. The development of various codes and their interplay primarily showcased innovations in human rights protection during these periods. According to He Qinhuo and Liao Xiaoying (2023), the Ming Dynasty made three significant contributions to the legal code model: first, they changed the Statutory Code model to a Statutes and Case Law Code model; second, they created a comprehensive legal code called Hui Dian (Collected Statutes); and third, they formed a combination of three-level legal codes and two-level legal codes based on these two innovations. In the Qing Dynasty, the compilation of case law codes and the creation of a coordination model of Statutes and Case Law Code and case law codes were first started. The coordination model between statutory law codes and case law codes offers insight that even under a legal system dominated by statutory law codes, case law can still supplement the deficiencies of statutory law. When codified, case law - being more flexible than other forms - can achieve good social effects.

#### *Reasons for the formation of the substantive law protection model*

Ancient China adopted the substantive law model to protect human rights because of officials' pursuit of avoiding litigation and the prevalence of mediation in ancient times.

The officials pursued the goal of avoiding litigation. The idea of avoiding litigation originates from *the Analects*. Confucius viewed a judge who could fairly adjudicate cases as impressive, but considered the most enlightened judge as the one who could create a situation where no litigation occurred within their jurisdiction. "Although rare and infrequent, historical records provide evidence of situations with relatively low litigation in Chinese society at different times and regions. In some areas, a state of almost no litigation was achieved through the active efforts of local officials."<sup>12</sup> (Fan, 2013, p.4).

Mediation was prevalent. According to Huang Zongzhi (2020, p.182), "The legal code in ancient justice systems was punishment-oriented because it depended on a vast and efficient informal justice system to resolve most civil disputes and trivial matters."<sup>13</sup> The emergence of the mediation system in ancient China is based on the "harmony" culture. According to the *Zuo Zhuan* (Zuo, 2015, p.847): "Harmony can be compared to the seasonings used in cooking: soup, water, fire, vinegar, sauce, salt, and plum. They enhance the flavour of fish and meat."<sup>14</sup> As in cooking, if the flavour is too plain, you can add salt; if it's too overpowering, add water to dilute it. By adding the right amount of these seasonings, mouth-watering dishes can be prepared. The concept of harmony highlights the importance of coordinating and coexisting with diverse elements, while respecting and acknowledging differences

<sup>11</sup> Original Text: 尊老爱幼恤废怜疾的法律关怀，其思想基础和法理精神，就是中国古代儒家所主张的伦理精神，这种伦理精神将维护宗法社会中以血缘家族为基础的人伦尊卑等级秩序，视为人伦之常道，乃至宇宙万物的生存规则，以此铺就一条修身、齐家、治国、平天下的道路。

<sup>12</sup> Original Text: 尽管罕见甚至偶然，但相关史料表明，中国社会在不同时期和地区确实存在相对“无讼”的事实，通过地方官的积极努力，在局部达到接近“无讼”的状态。

<sup>13</sup> Original Text: 古代正义体系中的律典之所以会“以刑为主”，是因为它能够凭借庞大有效的非正式正义体系来解决大部分的民间细事纠纷。

<sup>14</sup> Original Text: 和如羹焉，水、火、醯、醢、盐、梅，以烹鱼肉。

among people, in order to maintain harmonious relationships. Coordination is necessary to achieve harmony among diverse individuals. In ancient China, the concept of mediation emphasised achieving balance through moderate adjustments, allowing conflicts to resolve harmoniously.

#### 4. Human rights protection model combining substantive and procedural law: The innovation of Hau Le Dynasty law in Vietnam

The Hau Le Dynasty was a Vietnamese dynasty that gained independence from Ming China. Following independence, the Hau Le Dynasty embraced Confucianism as its state religion, actively promoting Confucian culture and implementing Chinese legal codes, mainly the *Annotations of the Tang Code*, based on their national circumstances.

##### *The Hong Duc Code and the Quoc Trieu Kham Tung Dieu Le*

The *Hong Duc Code* was not a permanent law for all generations. At the commencement of the Hau Le Dynasty, the Criminal Law was decreed, which was the earliest variant of the *Hong Duc Code*. Later on, during the reigns of Le Nhan Tong, Le Thanh Tong and the Mac Dynasty (16th century), various single-issue laws were introduced, including the Initial Increase of Land Property Chapter during Le Nhan Tong's reign and the Supplementary Incense Order during the Mac Dynasty. After being promulgated, these single-issue laws were included in the copies of the *Hong Duc Code*.

The *Hong Duc Code* resulted from the imitation of the Tang Code. According to *Lich Dai Chinh Hinh Tong Khao* (A.1670),

Vietnamese dynasties established their own criminal laws, with Ly possessing the essentials of criminal law and Tran having a definitive criminal code. These laws were based on the study of ancient and modern times and meant to serve as established regulations. However, Ly's punishments were excessively merciful, while Tran's punishments were overly severe, and both failed to achieve a sense of balance, thus lacking good governance. Only after the establishment of the Le dynasty was the *Hong Duc* criminal law revised and adopted, using the governance principles and severity standards from the Sui and Tang dynasties and incorporating obvious distinctions in governance. Subsequent dynasties have followed this law and used it as a constitution.<sup>15</sup>

The *Hong Duc Code* is the outcome of Vietnam localizing Chinese law. It features many provisions containing local characteristics, while also imitating Chinese law. According to Korean scholar Insun Yu (1990, p.41): "407 out of the 722 laws in the *Hong Duc Code* were only created by Vietnam, whilst the remaining 300 were influenced by Chinese codes but contained many innovative elements." The similarities between the articles in the *Hong Duc Code* and the Tang Code were classified into three levels by Nguyen Ngoc Huy and Ta Van Tai (1987, p.84): copy, similar, and influential. Their findings compared the number of independent articles in the *Hong Duc Code* to the Tang Code, revealing "412 independent articles in the *Hong Duc Code*, 29 of which were identical to the Tang Code, 171 were similar, and 110 were influenced by it. The *Hong Duc Code* was found to be 57.1% independent from the Tang Code. Applying a similar method to compare the *Hong Duc Code* with the Da Ming Code, it was discovered that its independence ratio reached 88.4%." Insun Yu, Nguyen Ngoc Huy, and Ta Van Tai all emphasized the independence of the *Hong Duc Code*.

The *Quoc Trieu Kham Tung Dieu Le*, or called *Tu Tung Dieu Le*, was compiled in 1777. The preface explains the reasons and methods used for formulating this code and its effectiveness. This code alleviated the widespread dissatisfaction among the people resulting from arbitrary handling of cases by officials in various government offices. Le Hien Tong (1740-1786) instructed officials to refer to previous litigation regulations, extract procedural provisions, and compile them into a code. Following its formulation, all government offices were required to adhere to the prescribed procedures when handling cases, maintaining public trust in the government and preventing negligence or the shielding of criminals.

*Quoc Trieu Kham Tung Dieu Le* comprises 31 chapters. The introductory chapter summarizes litigation regulations, specifying the required materials for accepting cases, the statutes of limitations, situations where cases cannot be accepted, evidence for litigation, and case adjudication standards.

<sup>15</sup> Original Text: 我越历朝立国各定刑章，李有刑书之须，陈有刑律之定，莫非斟酌古今，永示成规。然李之刑失于宽，陈之刑失于刻，轻重失中，皆未为善制也。迨于有黎之兴，复行删定洪德刑律，参用隋唐，断治有划一之条，轻重有上下之准，历代遵行，用为成宪。

Subsequent 30 chapters deal with procedures for filing lawsuits, investigating cases, and handling various case types, including land disputes, assault cases, marriage cases, and homicide cases.

*Quoc Trieu Kham Tung Dieu Le* is a systematic procedural code and represents the culmination of procedural laws in Vietnamese history. During ancient times, Vietnam placed great value on the formulation of procedural law, as they believed that “clear rules for investigation and litigation, along with established precedents for handling disputes, were crucial towards proper administration of justice and achieving the desired outcome of processing criminal matters.”<sup>16</sup> (*Lich Dai Chinh Hinh Tong Khao*, A.1670). According to the *Lich Dai Chinh Hinh Tong Khao* (A.1670), “the litigation regulations were established by Chen Tai Tong in 1230”<sup>17</sup>, during the Chen Dynasty, separate laws related to procedural law already existed.

In the Hau Le Dynasty, there was an increase in the frequency of formulation and revision of procedural laws. According to *Lich Dai Chinh Hinh Tong Khao* (A.1670),

In 1428, Emperor Le Thai To ordered ministers to establish litigation laws....Emperor Le Thanh Tong established litigation laws in 1625. ...Emperor Le Chan Tong established investigation and litigation rules in 1645. ...Emperor Le Than Tong established investigation and litigation rules in 1654. ...Emperor Le Huyen Tong established investigation and litigation rules for thanks and penalties in 1665, and established annual and seasonal litigation rules in 1666. ...Emperor Le Canh Tong established investigation and litigation rules in 1674, and established human life litigation rules in 1687. ...In 1717, the brushing litigation cases were established. ...Emperor Le Thuan Tong established investigation and litigation rules in 1734.<sup>18</sup>

Until 1777, finally emperor Le Hien Tong revised the investigation and litigation regulations.

#### *Reasons for Vietnam's Innovative Development of Procedural Law*

The promulgation of the *Quoc Trieu Kham Tung Dieu Le* during the Hau Le Dynasty was primarily because of rampant official corruption and widespread public grievances. To address this situation, an urgent solution was required, and a procedural code was deemed the fastest and most direct solution. According to *Lich Dai Chinh Hinh Tong Khao* (A.1670), an edict was issued in 1718, stating that

The internal and external investigation offices and other departments were told that the basis of governance was to make the litigation text concise and clear. The previous rules and regulations were already complete, but because of the lazy civil culture, the trial documents were cumbersome and complicated, and the investigating officials very often stuck to the rules and were unwilling to make the trial concise and clear. Now is the time to carry out reforms, restore the old system, follow the previous regulations, point out the strengths and weaknesses, promulgate and implement them, and change the culture of filing lawsuits and establish the morality of honesty and cleanliness in order to realise the policy of governance and stability. If anyone abandons them and does not abide by them, he will be dealt with under the law of the land, and the regulations will be strictly enforced.<sup>19</sup>

Confucianism and culture did not deeply penetrate Vietnam. Regarding this matter, one contributing factor is Vietnam's historical legacy. Tran Minh Tong issued an edict, as recorded in the *Lich Dai Chinh Hinh Tong Khao*, in which he prohibited the accusations between husbands and sons, spouses, and household slaves. This supposed to study mutual tolerance among relatives in China, with the goal of

<sup>16</sup> Original Text: 至于勘断有勾查之条，鸣讼有先后之例，累朝准定，条贵详明又皆，所以为正狱之方，而期清刑之效者也。

<sup>17</sup> Original Text: 陈太宗建中六年（即1230年）定勾讼例。

<sup>18</sup> Original Text: “黎太祖顺天元年（1428年）命大臣议定词讼律令。”“神宗永祚七年（1625年）定词讼令”“真宗福泰三年（1645年）定勘讼例”“神宗盛德二年（1654年）定勘讼例”“玄宗景治三年（1665年）定勘讼谢罚例，四年定岁季刷讼例”“嘉宗阳德三年（1674年）定勘讼例”“正和八年（1687年）定人命讼、盗劫、田土、户婚、殴骂，十五年定勘讼各条”“永盛十三年（1717年）申定刷讼事例”“纯宗龙德三年（1734）申定勘讼例”。

<sup>19</sup> Original Text: 谕内外各勘衙门等曰，为治之本，所贵讼词简省，从前科条品式亦已具备，间奈民风偷薄，讼牒分掣，而勘官多因循苟且亦不欲使之简省。所当厘革，今复古制、循前规，参酌损益，颁布施行，务使告奸风移，廉耻道作，用昭治平之政，倘或废格不遵有国法在仍申飭各条。

fostering harmonious coexistence within families. Afterwards, Tran Quoc Trang who was the Empress's father, was falsely accused by a house slave who was paid and bribed without the Emperor's knowledge. He was imprisoned and oppressed by the treacherous minister which led to his death because of deprivation of essential needs. Commenting on this situation, Ngo Si Lien, a renowned historian of the Hau Le Dynasty in Vietnam, said, "It is hard to guide people towards compassion, filial piety, faith, and righteousness when the rules and actions are contradictory."

China was not very effective in spreading Chinese culture in Vietnam. Before the independence of the Hau Le Dynasty, it was ruled by the Ming Dynasty, and although the Ming Dynasty adopted the same ruling policy as China in Annam and attached importance to the popularisation of Chinese culture, objectively speaking, this did not achieve very good results. Because of the geographical distance between Annam and the political centre of China, the officials sent to Annam by the Ming Dynasty were underqualified. "According to the Records of the *Huangming Shilu*, those officials were mainly the children of military officers who had failed to pass the imperial examinations and the ones who had been demoted to Annam because of their involvement in crimes or faults."<sup>20</sup>(Yamamoto, 2020, p.474-475.) With such low-quality officials running Annam, it wasn't possible to popularize the culture of China in Annam to a great extent.

### 5. Comparison of the Effects of Two Types of Human Rights Protection

Both of the following cases involve plaintiffs filing lawsuits over land disputes decades after the fact, it happened in the same period. By comparing how judges in China and Vietnam handle similar cases, we can observe the differences between their approaches to human rights protection.

#### *Precedents:*

The Chinese case originates from *Meng Shui Zhai Cun Du*. It is a compilation of Ming Dynasty judicial precedents by Yan Junyan, also known as Yanshu, Kaimei, and Xue Cui, a native of Zhejiang Province. In the first year of Chongzhen (1628), he attained the status of Jinshi and was appointed as the magistrate of Guangzhou. During his tenure in Guangzhou, Yan Junyan compiled the cases he handled and published them in a book that he named *Meng Shui Zhai Cun Du*. This book contains 1438 recorded judgments, out of which 224 are related to land disputes. The case that follows is known as the Yao Wenyi Land Dispute.

The case from Vietnam is sourced from *Doan Tu The Thuc*. This file contains records of some cases during the Hau Le Dynasty and also Le Thanh Tong's exhortation to agriculture. Eight land dispute cases are recorded. The case that follows is the Gao Jinbang Land Dispute.

The Yao Wenyi case in China (Yan Junyan, 2001) :

The judge made a value judgment at the beginning of the judgement: The plaintiff claimed that the disputed land was over four hectares. How it could have been sold without the knowledge of the entire family, only to be sued decades later? How did this happen? In addition, all of Yao's family members for generations were sons-in-law living at wife's parentage, and Yao Wenyi had a poor reputation. Why did they allow others to occupy their land for decades?

The judge investigated the case after making a judgement: It was discovered that the defendant sold the land to someone else during the Wanli period while Yao family members were still alive, yet nobody objected. The witnesses provided by the plaintiff were residents who exhibited uncertainty or feigned ignorance regarding the disputed land after a few questions.

The judge suspected that the plaintiff was pursuing the land dispute unreasonably. One crucial reason for the plaintiff's lawsuit was the defendant's authorship of a "voluntary return of land" deed. After logically inferring and questioning the plaintiff and witnesses, the judge concluded the plaintiff utilized certain improper means to prompt the defendant to write a voluntary land return document before suing to enforce the land return. Finally, the judge found the plaintiff guilty of false accusation.

This ruling represents a paradigm of an ancient Chinese judge's amalgamation of emotion, reason, and law to reach decisions. The aim of this model is to uncover the truth of the matter as much as possible and based on this understanding, give a fair verdict, so that people receive their just deserts.

The Gao Jinbang Case in Vietnam (*Doan Tu The Thuc*, A.1983):

The case was tried at the first level of court of Chengsi. The land in dispute was purchased by Gao Jinbang's adoptive father Gao Wan, and both the father and son's names were listed on the land purchase

<sup>20</sup> Original Text: 明朝派来安南的官员, 根据《皇明实录》记载, 一部分是在科举考试中未能及格的军官子弟, 一部分是因犯罪或过失被贬谪到安南任职的官员。

contract. Plaintiff in this case was the daughter of Gao Wan. Father and son had been farming on this land for over 30 years, according to the statements of both the plaintiff and defendant, as well as the witnesses. After reviewing the case, Chengsi (the judge) referred to the law which stipulates that if a piece of land is farmed by someone for a specific period of time, the plaintiff loses their right to claim it and cannot inherit such rights. According to Chengsi, the plaintiff was suing out of ignorance of the law; the disputed land should be returned to Gao Jinbang for farming.

This ruling reflects the Vietnamese officials' adherence to procedural law when handling cases. Initially, the case was accepted under the legal requirement that land dispute cases must involve a contract. The aforementioned case required a land purchase contract as a precondition for legal consideration. Secondly, according to the legal provision, Chengsi is the initial court level for land dispute cases, and the aforementioned case was tried at Chengsi.

The judgement is quite brief, strictly following the current major premise - the law stipulates that the right of action is lost if the land has been cultivated by another person for a certain number of years, minor premise—Gao Jinbang has been cultivating the land in question for over 30 years, conclusion—the land should be returned to Gao Jinbang, three-part reasoning for adjudication, no reasoning why the daughter will come to fight for the land? What is the secret behind it? Instead, the judgement was made under the law and procedures.

#### *Analysis of Effects*

In China's model for protecting human rights, the emphasis is on substantive law, which determines the key role of officials in safeguarding human rights. Therefore, officials undergo specific education and management systems.

To begin with, there is the concept of parent-officials, which denotes the special status of officials. Officials hold a superior position, which not only gives them power but also the responsibility to protect their citizens, provide quality education and maintain an environment of peace and contentment, marked by simplicity and honesty, which would be conducive to everyone's well-being. Officials are mostly educated through setting an example and reasoning, akin to parents' approach in educating their children at home. In the Spring and Autumn Period, Ji Kangzi, an esteemed physician from the state of Lu, questioned Confucius how one may govern the country successfully. Confucius responded by stating that "government denotes uprightness. If you lead by example and uphold uprightness, who would dare to not follow suit?"<sup>21</sup> (Confucius, 2016, p.138)

The law imposes severe punishments on officials who distort justice, which motivates them to strive for the just administration of law. According to the generalization of Ren Chongyue(2000, p.114) ,

In the Bei Wei Dynasty, officials were executed for embezzling a piece of cloth. During the period of Song Tai Zu, many criminals who committed capital offenses were pardoned, but no officials were ever pardoned for embezzlement or perverting the law. Ming Tai Zu allowed the public to report officials who embezzled or perverted the law, and upon confirmation of the embezzlement of 60 taels of silver, the officials were publicly sentenced to beheading. According to law in the Qing Dynasty, officials who embezzled over 10 taels had all their property confiscated.<sup>22</sup>

Of course, the human rights protection model based solely on substantive law has its certain limitations. Focusing only on the correctness of the outcome can easily lead to a judge's preconceptions. If the judge's understanding is correct, then justice will be upheld and human rights protected; if the judge has a biased understanding of the case, then miscarriages of justice can easily occur.

In contrast, the separate procedural code established by Vietnam suggests stricter limitations on the actions of litigants and officials during judicial activities. This could ensure officials strictly adhere to judicial procedures and minimize the likelihood of arbitrary actions.

## CONCLUSION

As previously mentioned, historical issues have prevented the deep-rooting of Confucian thought in the cognition of the Vietnamese people. Besides this, the urgent situation of widespread public

<sup>21</sup> Original Text: 政者正也，子率以正，孰敢不正？

<sup>22</sup> Original Text: 北魏时期，官员贪污布一匹即会被判死刑；宋太祖时期，曾赦免了许多犯死罪的犯人，但对于贪污枉法的官员则是1个都没有赦免过；明朝时期，明太祖允许民众赴京揭发官员贪污枉法，一旦查实贪赃60两银子，则官员会被判处枭首示众；清代规定，凡是官员贪污10两以上，便没收全部家产充公。



grievances prompted the creation of a unique procedural code within the Chinese Legal Family in Vietnam.

It is conceivable that if it were not for the emergence of the above two situations, Vietnam might have adopted the same human rights protection model centered on substantive law as China. The main purpose of introducing the Vietnamese procedural code was to deal with the urgent situation of widespread public grievances caused by officials' arbitrary actions. However, this does not mean that introducing the procedural code signifies a step up in the human rights protection model, but a different human rights protection model. Whether it is a protection model centered on substantive law or a human rights protection model that combines substantive and procedural law, both aim to achieve the goal of human rights protection. Although the models may differ, they share the same purpose.

China and Vietnam, both belonging to the Chinese Legal Family, have adopted distinct approaches in implementing the provisions on human rights protection in substantive law. China adopts a "civility before force" approach: educating officials beforehand to enforce the law impartially, practice benevolence, and prioritize the people, and deterring them afterward with severe consequences for miscarriages of justice. Vietnam, on the other hand, adopts the approach of formulating a procedural code to standardize every step of litigation activities and minimize the space for officials to pervert the law.

We should recognize that both models - one with only substantive law and the other combining substantive and procedural law - have their unique methods and paths to ensure that people's legitimate rights are protected and their human dignity is respected.

It is within the unique value system of the Chinese Legal Family that a human rights protection model centered on substantive law emerges. The absence of procedural law does not imply the absence of human rights protection measures or legal regulations. We should embrace a pluralistic and inclusive perspective when examining the operation of different legal systems so that we can appreciate the unique institutional charm of different legal systems and perceive the outstanding wisdom of different cultures.

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