

## **The Reciprocal Interaction between French Colonial Civil Law and Ex-Ante and Ex-Post Vietnamese Law Concerning Guarantee of Real Property**

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The law of the French colonial empire superimposed on the soil of Vietnam is the subject of controversies. Nuanced interpretations and commentaries have been made by both Vietnamese and foreign scholars regarding the successfulness of the acculturation process with little convergence. While Vietnamese socialist scholars condemn the colonial laws as being manipulative, positive impacts of colonial civil laws are observed by other groups of scholars. This paper does not favour over-generalized statements, viz. colonial laws were positive or negative, but a subject-based approach. This approach should be more appropriate since interactions of french colonial laws with Vietnamese laws and the influence of French colonial laws may vary across different legal branches, fields, and regimes. As such, this paper only does a modest task that is to study ‘guarantee of real property’ (real security) which is, shorthandedly speaking, ubiquitous yet being multiple as having been rooted from distinct legal traditions and thereby, being complex. For this end, by offering and analysing primary sources (records about the society, statutes, and cases) and secondary sources, this paper addresses two crucial questions: (i) whether colonial laws ignored and even eradicated both distinctive indigenous laws and culture of the colony, and (ii) whether colonial civil codes had and have been having any considerate significance. This paper makes two notable remarks: (i) ‘secured transactions’ of real estate (real security) have been employed even in feudal age and reflected features of an agricultural society; (ii) the transplanted french colonial laws, to a certain extent, were impacted and even altered in part by customs and vice versa, the transplantation of french laws transforms practices on real security in Vietnam. This paper contributes to a proper assessment of the heritage of colonial laws and the evolution of real security in Vietnam in the process of transcending from an agricultural society. Despite being not the primary concern of the paper, the analysis may inevitably shed light on debates about the legal and cultural acculturation, and matters of transnational legal history.

## **The Value of Vietnamese Ancient Law and Foreign Laws in Perfecting the Legal Framework for Guaranties in Vietnam**

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Guarantee, a common form of security for the performance of contractual obligations in many countries' civil codes, particularly in civil law countries, was existed and evolved early in the Roman law. In Vietnam, the laws of guarantee have a long history.

In feudalism, the basic principles of guarantees have been founded in the Royal Court's Penal Code (Hong Duc Code). This ancient Code shows the concept of guarantees is close to the approach found in the present civil Code, according, guarantee defined as an undertaking made by the third party to a creditor to perform an obligation on behalf of a debtor if the debtor fails to perform payment obligation. In the French colonial period, the guarantees continued to be governed in the Civil Codes in Northern Vietnam (1933), and Central Vietnam (1936), and case laws in the South of Vietnam. After the independence of Vietnam in 1975, as a result of the centralized economy launched after the independence of Vietnam in 1975, the civil law in general and the guarantee laws have no significant movements until the economic reform policies in 1986 known as "Doi Moi". Thanks to the reform, many significant changes in legal grounds were created in an effort to meet the new social and economic contexts. Notably, the first civil Code of Vietnam adopted by the National Assembly in 1995 played a major role to govern mostly private legal relations in Vietnam, which was later revised in 2005 and 2015 respectively to meet the social changes in Vietnam. This paper studies the historical development of the Vietnamese laws of guarantees, analyzes the current provisions under the current Civil Code of Vietnam concerning guarantees in the comparison with ancient law and foreign law-making experience, thereby, proposing the recommendations to perfect the guarantee legal frameworks in Vietnam.

## **The Two-Way Connection: A Comparative Historical Analysis of Civil Law's Evolution in China and Japan**

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The paper aims at depicting the historical and cultural legal exchange between China and Japan, focusing on Civil Law.

The relations began in the 5th century when Confucianism reached the Japanese coasts. The Confucian worldview and its legal concepts took root early in Japan where, from the 7th century, the Emperor looked at Imperial China's institutional architecture and promulgated legal codes inspired by the Chinese ones.

In the 19th century, the *status quo* was shattered: the Westerners started to demonstrate their power with the Black Ships in Japan and the Opium Wars in China. The two great countries had to face an enemy who was establishing colonial entities, applying his law and eroding their sovereignty. The way they reacted changed their destinies and reversed the China-Japan legal influence. Indeed, Japan became a model for the modernization of the Chinese legal system. Thanks to Meiji Restoration's reforms, Japan moved quickly from being a colonial state to becoming the Eastern superpower capable of defeating China and even Russia. Given up its Sinocentrism, China acknowledged the Japanese success and ascribed it to the modernization of its legal system. Japan was the means through which the legal transplant of "Western Law" occurred in the Chinese legal system, transforming the traditional law into modern law.

The paper addresses two significant elements: the creation and adaptation of a new legal language, guided by Japanese scholars and the translation of Japanese laws and textbooks; the introduction of the Civil Law tradition in the Chinese legal system through the drafting of a Civil Code, inspired by the Japanese Civil Code, modelled, in turn, on the BGB. It is valuable to think back to historical bonds and highlight the great extent of values and history two countries shared. Culture might be a powerful instrument to improve present bilateral relations.