

The Gia Long Code in Comparative Codification

Bui Ngoc Son, Assistant Professor, CUHK LAW

In 1812, Gia Long, the first emperor of the Nguyễn Dynasty, the last dynasty in Vietnam, with the capital at Huế, enacted the *Hoàng Việt Luật Lệ*. Also called Gia Long Code, it is the most comprehensive and sophisticated legal code in premodern Vietnamese legal history. The Code includes 398 articles, divided into 22 books. It takes the form of a criminal code but covers a range of legal issues, such as crimes and punishments, property, torts, family, litigation, administration, finance, and military.

This article explains how and why the Nguyễn Dynasty codified law. It locates the enactment of the Gia Long Code within the scholarship on comparative codification. Adapting from the work of Alan Watson and John W. Head, this article argues that the enactment of the Gia Long Code was shaped by two conditions: political will and capacity. Emperor Gia Long was willing to codify law to create a comprehensive framework for ruling, to unify the country, and to lay down a foundation for new regime's legal legitimacy. The Emperor was capable to do so because he could centralize the power and acquire institutional and personal resource and supports. Apart from the conditions, the Nguyen's codification was determined by internal and external factors. The internal factors include: the Vietnamese tradition of codification (particularly the Hồng Đức Code of the Lê Dynasty), legal chaos, political revolution, and social change after the Nguyễn Dynasty was created following a civil war. The external factor is legal transplant or the Nguyễn Dynasty's reception of China's Qing Code. This article has implications for comparative codification in East Asia legal history.

The article is tentatively structured as below:

Introduction

- I. Theory of Comparative Codification
- II. Gia Long's Codification
- III. Conditions.
 - A. Political Will.
 - B. Political Capacity.
- IV. Factors
 - A. Vietnamese Tradition of Codification
 - B. Legal Chaos
 - C. Dynasty Change
 - D. Social Change
 - E. Legal Transplant
- V. Conclusion: Implications

Formalism and Substantivism in Qing Law

Junnan Lai, Associate Professor, School of Law, Fudan University

The law of China's Qing dynasty (1644-1911) revealed a complicated coexistence of "formalist" and "substantivist" aspects. In terms of Qing's criminal law, judicial centralization reached a pinnacle, with legal hermeneutics (*lu xue*) well-developed to satisfy the need for top-down supervision of judicial bureaucracy. Special legislations were gradually separated from the *Great Qing Penal Code* (*da qing lu li*) and executed by other government departments rather than the Board of Punishments (*xingbu*). Nevertheless, Confucian ethics still played an essential role in Qing's criminal law, and imperial intervention still existed in extremely significant criminal cases. Regarding civil law and custom, Qing government introduced new provisions displaying a clear tendency to respect property rights and contracts. Additionally, local land customs were highly influenced by economic rationality, and civil justice relied more on explicit legal and customary rules. Cultural (Confucian in particular) or emotional factors, however, still more or less influenced certain civil customs and dispute resolution. As evaluated and analyzed in this article, the paradoxical coupling of heterogeneous elements in Qing law may help scholars rethink Qing law's potential for "modernity" and its complex fate in the westernized legal reform during the 20th century.

Property, Religion, and the Formation of the State in Comparative Perspective: Japan & China in the 18-19th Centuries

Kentaro Matsubara, Professor, Graduate Schools for Law and Politics, University of
Tokyo

This paper focuses on the relationships between the protection of property and the formation of the state in Tokugawa Japan and Qing China, highlighting the differences in the roles of what we might call religious beliefs.

The Qing land regime functioned in an environment where there was ignorance on the part of the government regarding who held what land, and also the government's inability to enforce legal judgements on property. In such an environment, it was necessary for local communities to be formed in such a way as to be able to provide protection of property rights. The dynamics of the Qing regime as a whole revolved around the relationships between such communities and the government, and the roles played by different forms of religious beliefs took on an importance of their own in the process.

In contrast, the Tokugawa regime had a much tighter control over land ownership, dividing land ownership into two tiers, the *Shoji* and the *Ryōchi*. The former was the right held over farmland and urban units of houses and land by the population engaged in agriculture, commerce, or artisanship. The latter term describes the rights of the samurai lord whose domain the land fell into. The lord's ownership, closer to a form of territorial sovereignty, was a right to which all rights of *shoji*, were subject. The Tokugawa regime, based on the relationship between the Tokugawa Shogunate and the various domains, of which the lords held the *Ryōchi* of the land, had a much closer relationship with the daily acts of landholding.

This paper, while articulating this difference, will go on to look into how the Western concept of the "state," when it was introduced to these regimes in the 19th century, would be interpreted with different reference points in Japan and China, giving rise to the differences in how the two countries would deal with the "modernity" imposed by the West.

The Great Ming Code and Indigenizing the Chosŏn Penal Code

Jungwon Kim, King Sejong Assistant Professor of Korean Studies, the Humanities in the Department of East Asian Languages and Cultures, Columbia University

The Great Ming Code (Da Ming lü; K. Taemyŏngnyul 大明律) is one of the most important law codes in East Asian history. An essential part of the social reform efforts of the early Ming dynasty (1368-644), it was inherited by the subsequent Qing dynasty (1644-1912) in China and also copied to a significant extent by China's neighboring countries of Korea, Vietnam, and Japan. The Chosŏn dynasty (1392–1910), while inheriting many institutions and legal codes from the preceding Koryŏ dynasty (918–1392), adopted the *Great Ming Code* as the basis of Chosŏn criminal law. However, though the Ming Code served as the basic criminal law of the dynasty from its beginning and remained influential to the end of the dynasty, it was never the only penal code in use during the Chosŏn dynasty. The Chosŏn court implemented a series of revisions in order to address cultural and socio-economic differences between China and Chosŏn Korea by issuing numerous legal changes and royal orders throughout the dynasty. *The Great Ming Code*, therefore, serves as a significant source for understanding East Asian cultural interactions through the perspective of legal knowledge translation. Revisiting the particular Ming law concerning “coercion to cause others to die,” this paper explores the evolution of legal codes related to the self-inflicted violence—suicide—in Chosŏn Korea. While keeping the Ming statute on “coercion to cause others to die” in judging the circumstances that had led to the self-inflicted violence, the late Chosŏn court became keen to delineate the judicial line between “the accused” and “the principal offender” in determining punishment, carefully using the term “the accused” in legal reports under its “statute of triggering one’s death”—a statute unique to Chosŏn Korea. Centering on the Chosŏn specific statute of triggering one’s death, this paper illuminates how the Chosŏn court built a legal system departed from China by inventing its own legal codes that fitted the Korean society.