

THE EQUAL DIVISION OF INHERITANCE AMONG SONS AND DAUGHTERS IN LÊ SOCIETY OF VIETNAM: A REVISIT

NHÌN NHẬN LẠI VẤN ĐỀ PHÂN ĐỊNH QUYỀN THỪA KẾ CÔNG BẰNG
GIỮA CON TRAI VÀ CON GÁI TRONG XÃ HỘI ĐẠI VIỆT DƯỚI TRIỀU LÊ

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1. Ownership of Family Property

Marriage in the Lê society (1428-1788) of Vietnam was closely connected to the perpetuation of the family, i. e., procreation. Married couples were expected to produce one or more children who automatically became the members of the family by birth. The children's automatic family membership meant that they acquired inheritance of family property. Then, in what way did the children inherit that property?

It has been generally accepted that, when the parents died without a will, their property was divided equally among their children, regardless of sex. However, one scholar, named Nhung Tuyet Tran [Trần Tuyết Nhung], has challenged this opinion recently, saying that the daughters were discriminated against in the division of the parents' property.¹

She argues that article 388 in the Lê Code only mentions the division *among* the brothers and sisters (*trương phân*, 相分), not necessarily an *equal* division (*quân phân*, 均分). Second, she states that the eldest son's portion had to be equal to that of the other '*chúng tử*' (衆子) according to the *Hồng Đức thiện chính thư* [Book of Good Government of the Hồng Đức Period], which was compiled in the first half of the sixteenth century. Nhung Tuyet Tran translates '*tử*' literally and says that it means only 'son.' Thirds, she quotes another statute in the above book. It mentions the equal division among brothers (*huynh đệ*, 兄弟). She interprets '*huynh*' as 'elder brother' and '*đệ*' as 'younger brother'. Accordingly, she insists that a daughter's absence in this provision suggests no grant to the daughter of the right of the equal division of household property. Fourth, she takes as an example the several testaments in which the daughters' inherited portion was much smaller than that of the brothers. For example, the testament of Vũ Văn Bân and his principal wife, Trương Thị Loan, dated from the year of 1747, shows that the daughter's inherited portion was much smaller than that of her two brothers. Her portion was only 1.83 mẫu while that of the eldest son was 7.19 mẫu (excluding the *huong hỏa* property) and the second son's one was 5.95 mẫu.²

This author would like to briefly mention the nature of family property in Lê society before the discussion of the children's inheritance. This is because the property was closely related to their inheritance.

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It has been well known that family property consisted of three parts: 1) husband's property inherited from his family [*phu tông điền sản*], 2) wife's property originating from her family [*thê tông điền sản*], 3) property acquired jointly by husband and wife during the marriage [*tân tạo điền sản*].³

We know from these categories that the owner of family property was the parents, or, in other words, the husband and wife. The following testament [*chức thư*], dated from the year of 1767, also shows that the owners of family property are the husband and wife. It states: "All the lands and other things are possessions of the husband and wife. Therefore, neither paternal nor maternal relatives should interfere by any fraud or double dealing with them."⁴ Even the children were not able to fraudulently sell their parents' property during the latter's lifetime. If so, they were punished. According to the Lê Code [*Quốc triều hình luật*, better known as *Lê triều hình luật*], the punishment was as follows: for males, sixty strokes of the heavy stick and a two-grade demotion, and for females, fifty strokes of the light stick and one-grade demotion.⁵ As we know, the Lê Code was modeled on Chinese law, that is, the Tang and Ming codes. In the latter two codes, the same act on the part of the children applied to *misappropriation* of family property. For example, the punishment in the Ming Code was only applied when the amount was twenty *quán* [貫]: twenty strokes of the light stick.⁶ This punishment was due to the children's misbehavior, not to their stealing. It is because property in China was jointly owned by all the family members.⁷

2. Testate Inheritance

As mentioned above, the husband and wife were the owners of family property. However, they were equal in terms of property. They had no right to the property of a spouse and had equal right to newly acquired property during their marriage. They also had no right to inherit a spouse's property. Only their children had right of inheritance. If one spouse died intestate without a child, his/her own property and half of the newly acquired property were supposed to be returned to his/her parents for the purpose of his or her ancestral worship. If the parents were dead, the properties were entrusted to his/her relatives.⁸

The only difference between the husband and the wife was usufruct in regard to the newly acquired property. The husband retained usufruct of his predeceased wife's share for his lifetime even if he remarried. On the other hand, the wife lost the property of her deceased husband upon her remarriage.

This right of the husband seems to have been the general trend in virilocal residence in Lê society. He could not have kept such a right in case of uxrilocal residence. In fact, uxrilocal residence was not unusual in view of the prohibition of such a custom by Lê Thánh Tông (1460-1497), who emphasized Confucian ethics.⁹ The custom still existed in later periods in spite of such prohibition. Christopher Borri, who visited Cochinchina in the first quarter of the seventeenth century, mentioned uxrilocal residence. "The husbands bring their own portion, and leave their houses to go to the wife's . . ."¹⁰

It was indeed quite common in Lê society for the wife to manage household affairs. John Barrow, who accompanied Lord Macartney to China in the 1790s, said: “A Chinese would consider it disgraceful to commit any affair of importance to a woman. Women, in the estimation of the Cochinchinese, are but suited for, and are accordingly entrusted with, the chief concern of the family.”¹¹

This seems to have been closely related to women’s contribution to the family economy by their agricultural and commercial activities. They were especially well-known as able market traders.¹² This is why the wife was called *nội tướng* or Home Secretary.

Now we will return to an examination of the ways in which the children inherited their parents’ property. There were two rules in general, that is, either the will of the parents or their intestacy; even so, the law preferred a will over intestacy. The parents enjoyed the freedom of testation in leaving their property to the children. Samuel Baron said in the late seventeenth century that every Vietnamese enjoyed what he got by his own effort and was able to leave to his heirs.¹³

However, parents’ testation required a written document called *chúc-thư* or testament. A father and a mother usually made their testament when they reached advanced age. The literate testators wrote their own will while illiterate persons were required to have their will written and attested by a village chief.¹⁴

The division of the parents’ property should be fair. The clan chief (*tộc trưởng*) was supposed to be satisfied that the division was impartial.¹⁵ If he found that the division was unfair, he would be able to order the redistribution. And if the parents would divide their properties unfairly, giving a fertile part to one child and a barren part to another without good reason, the disadvantaged one was allowed to bring the case to local authorities. If he was found to be in the right upon investigation, he would be given a new part.¹⁶ On the other hand, if any child was discontent in spite of the fair division, his portion was revoked.¹⁷

Considering the above discussion, we can say that the right of the parents to testation of their property was somewhat restricted, not unlimited. In a sense, their freedom of testation meant simply that they could indicate what part of their property was to be given to one child and what to another. If so, there was not much difference between testacy and intestacy in Lê society. The equal division of the parents’ property seems to have been a general trend even in case of testacy.

3. Intestate Inheritance

It has been generally accepted that, when the parents died without a testament, their properties would be divided equally among the children, whether brothers or sisters. It was the Japanese scholar Makino Tatsumi who first mentioned the equal division among sons and daughters based upon article 388 in the Lê Code. He said in the 1940s that, if the

parents died intestate, their property was supposed to be divided equally among the children, brothers and the sisters alike.¹⁸ Nguyễn Ngọc Huy and Tạ Văn Tài expressed the same opinion recently, and I also agreed with them.¹⁹ Article 388 of the Lê Code reads as follows: “If the parents die, leaving their lands without a *chức thư* [testament] for their disposition, the brothers and sisters shall reserve one-twentieth of this property to constitute the ritual *huong hỏa* (incense and fire) property which will be entrusted to the eldest son. The remainder of the property shall be divided among them all (*trung phân*).”²⁰

In Nhung Tuyet Tran’s opinion, the question is whether ‘*tử*’ only means a son. We must interpret it in its context, not literally. The preminent Japanese legal scholar Niida Noboru already expressed the different view from that of Nhung Tuyet Tran in the 1930s. He has taken the following example in the legal documents during the Tang and early Song period. In the brothers’ division of their parents’ property, if one of them was already dead, ‘*tử*’ (‘*zi*’ in Chinese) will take over the portion of his dead father. Niida Noboru has conjectured that ‘*tử*’ (son or child) in this case had meant ‘sons and daughters’.²¹ Furthermore, the annotation in the article 52 of the Tang Code defines that ‘*tử*’ means both ‘*nam nữ*’ (son and daughter).²²

When we consider that Vietnamese law in the Lê dynasty adopted Chinese law, ‘*tử*’ in the *Hồng Đức thiện chính thư* must have also meant ‘sons and daughters.’ Thus ‘*huynh đệ*’ should not be interpreted literally, either. It must imply both brothers and sisters. A Korean scholar also interprets ‘*huynh đệ*’ (*hyong je* in Korean) in a document from the Koryo period (918-1392) as brothers and sisters.²³ If we interpret ‘*huynh đệ*’ in this way, ‘the division among the brothers and sisters’ (*huynh đệ tỷ muội trung phân*) in article 388 in the Lê Code must mean the *equal* division of the parents’ property among the male and female children.

Finally, Vũ Văn Bản and his principal wife, in their testament, stated the *equal division* of their property among ‘*chúng tử*’ and leave it to the three ‘*nam nữ*’, i. e., two sons and one daughter.²⁴ But they did not explain the reason for the daughter’s lesser portion. I suggest that she could have received a dowry in compensation. Pan Ding Gui, who visited Vietnam in 1688, said that the girls who had no property were despised in Vietnamese society.²⁵ The above mentioned wife’s property can now be easily understood. However, dowry of girls from poor families may have been less common because these families were more concerned with their own economic survival. Those who left a testament must have been relatively wealthy.

When we consider all these, the property of the parents must have been divided equally among sons and daughters in Lê society Vietnam. The daughters were never discriminated against. It was obvious in the eyes of the Europeans who visited Vietnam in the seventeenth century. Samuel Baron and Abbé Richard reported that only the eldest son received a larger portion—and it was larger because of the inclusion of the *huong hỏa* property.²⁶

Equal division of the parents' property was found even in the nineteenth century. For example, we can see this equal division in the two testaments which were quoted by a Japanese scholar.²⁷ In one of them, dated 29 March 1817 (sixteenth year of the Gia Long Emperor), their property was equally divided among the eldest son, three grandchildren (one granddaughter), and the five grandsons of their daughter(s). In the other, dated 24 November 1899 (twelfth year of Thành Thái Emperor), their property was equally divided among eight children (three sons and five daughters). The inheritance of the five sons of their daughter(s) may have been related with the custom of uxrilocality or the bilateral system in traditional Vietnamese society.

The property of parents has not always been equally divided among their children, especially in case of testacy. Confucian influenced legal codes of the Lê dynasty required children to be pious towards their parents, and allowed parents to disown their impious children. In accordance with these legal codes, any disowned child was not qualified to receive his/her portion at the time of the division of parental property. Even if the parents' *chúc thư* failed to meet the regulations fixed by law, the unfilial child could not claim his/her share. On the same grounds, the pious child could be granted a larger portion than other children.²⁸

4. The Position of Vietnamese Daughters in Lê Society

It is no wonder that, if we consider the relatively high position of women in Lê society, the division of parents' property was equal among sons and daughters. It is true that the Vietnamese preferred boys. But they never discriminated against girls. The notorious female infanticide in China was not a feature of Vietnam. According to Samuel Baron, the Vietnamese adopted children regardless of sex.²⁹ Pan Ding Gui even said that they were joyful over the birth of girls and gloomy over that of boys.³⁰ In this relation, a Korean from Jeju Island, who had drifted to Hội An in the second half of the seventeenth century, returned and said that [in Annam] men were mean and women were noble.³¹ Another evidence of no discrimination against daughters is found in the Vietnamese family tree. Sons and daughters were recorded in the order of age regardless of sex.³² According to Confucian ethics, sex is more important than age. Thus sons and daughters were recorded not in the order of age but of gender. Sons were recorded first, and then daughters.

Succession as the basis of ancestor worship also shows the relatively high position of females in Lê society. The Vietnamese distinctly preferred succession by male children over females, but the latter were never excluded from it. Female succession was practiced so widely that the Confucian-oriented Court officially recognized the custom. Even Lê Thánh Tông, who emphasized Confucian ethics more than any other rulers throughout the Lê dynasty, allowed it.³³ The custom was also adopted later by the Lê Code [in the year 1517], whereby the management of the *huong hỏa* property was entrusted to the eldest son or, failing that, to the eldest daughter.³⁴

In sum, daughters were principally equal to sons in the inheritance of their parents' property. But the parent's way of thinking was not always the same. Thus we cannot say that the parents would have always divided their property equally among sons and daughters. When we consider especially the likelihood that Lê society was influenced by Confucianism to a certain degree, some parents may have given more to sons than to daughters. Others who were less influenced by Confucian ethics may not have been more generous to sons than to daughters. What is more likely in this case is that the division of property would have been equal among sons and daughters.³⁵

- ¹ Nhung Tuyet Tran, *Familial Properties: Gender, State, and Society in Early Modern Vietnam, 1463–1778*, University of Hawai'i Press, 2018, pp. 136~145; Nhung Tuyet Tran, "Beyond the Myth of Equality: Daughters' Inheritance Right in the Lê Code," in Nhung Tuyet Tran and Anthony Reid, eds., *Việt Nam: Borderless Histories*, Madison: The University of Wisconsin Press, 2006, pp. 129~139.
- ² Nhung Tuyet Tran, *Familial Properties*, 140~142; Nhung Tuyet Tran, "Beyond the Myth of Equality: Daughters' Inheritance Right in the Lê Code," pp. 134~135. The *hương hỏa* property of the eldest son was 0.69 mẫu.
- ³ Makino Tatsumi, *Shina kazoku kenkyu* [A Study on the Chinese Family], Tokyo: Seikatsushya, 1944, pp. 687-724; Robert Lingat, *Les régimes matrimoniaux du Sud-Est de l'Asie: essai de droit comparé indochinois*, Hanoi: Ecole Française d'Extrême-Orient, 1954, vol. 1, pp. 75~92.
- ⁴ Niida Noboru, *Chukoku hoseishi kenkyu: doreinodoho to kazokusonrakuho* [Researches on Chinese Legal History: law of slave and serf, and law of family and village], Tokyo: Center for Asian Culture, Tokyo University, 1962, p. 541; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code: Law in Traditional Vietnam*, Athens, Ohio: Ohio University Press, 1987, vol. 2, p. 205.
- ⁵ *Quốc triều hình luật* [國朝刑律], EFEO microfilm A. 1559, pp. 68a-b; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code: Law in Traditional Vietnam*, Athens, Ohio: Ohio University Press, 1987, vol. 1, art. 378, pp. 200-202; Makino Tatsumi, *Shina kazokukenkyu*, p. 699.
- ⁶ *Da Ming Lu Ji Jie Fu Li* [大明律集解附例], Taipei: Taiwan xuesheng shuju, 1986, juan 2, p. 558.
- ⁷ Niida Noboru, *Chukoku hoseishi kenkyu*, pp. 359-363.
- ⁸ *Quốc triều hình luật*, p. 67b; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 1, art. 375, p. 199; *Hồng Đức thiện chính thư* [洪德善政書], trans. Nguyễn Sĩ Giác, Saigon: Nam-Hà Ấn-Quán, 1959, pp. 98-99.
- ⁹ *Hồng Đức thiện chính thư*, pp. 46~47.
- ¹⁰ Christopher Borri, "An Account of Cochinchina," in Awnsham and John Churchill, eds., *A Collection of Voyages and Travels*, Vol. 2, London: Printed for Awnsham and John Churchill, 1732, p. 805.
- ¹¹ John Barrow, *A Voyage to Cochinchina, in the Years 1805 and 1806*, London: T. Cadell and W. Davies in the Strand, 1806, p. 302.
- ¹² Yu Insun, *Law and Society in Seventeenth and Eighteenth Century Vietnam*, Seoul: Asiatic Research Center, Korea University, 1990, pp. 64-66.
- ¹³ Samuel Baron, "A Description of the Kingdom of Tonqueen," in Awnsham and John Churchill, eds., *A Collection of Voyages and Travels*, Vol. 6, London: Printed for Awnsham and John Churchill, 1732, p. 9. Baron was born of a Dutch and a Vietnamese woman in Lê capital of Thăng-long around the middle of the seventeenth century.
- ¹⁴ *Quốc triều hình luật*, p. 65b; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 1, art. 366, p. 196; *Hồng Đức thiện chính thư*, pp. 118~119.
- ¹⁵ *Quốc triều hình luật*, pp. 71a; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 1, art. 390, p. 204; *Hồng Đức thiện chính thư*, pp. 16~17.
- ¹⁶ *Hồng Đức thiện chính thư*, pp. 40~43, 46~47.
- ¹⁷ *Hồng Đức thiện chính thư*, pp. 20~21, 40~41.
- ¹⁸ Makino Tatsumi, *Shina kazoku kenkyu*, pp. 716~717.
- ¹⁹ Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 2, p. 225; Yu Insun, *Law and Society in Seventeenth and Eighteenth Century Vietnam*, pp. 99~100.

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- ²⁰ *Hồng Đức thiện chính thư*, pp. 70a~b; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 1, art.388, p.203.
- ²¹ Niida Noboru, *ToSo horitsu monjo no kenkyu* [A study of the legal documents during the Tang and Song period], Tokyo: Toho bunka gakuin, 1937, p. 583.
- ²² *Tang Lǚ Shu Yi*(唐律疏議), Beijing: Zhonghua Shuju, 1883, p. 137.
- ²³ Ro Myung Ho, “Koryo sidae ui tojisangsok [The inheritance of land property in the Koryo period],” *Jungang saron* 6(1989), p. 27.
- ²⁴ *Chúc thư văn khế cữu chỉ*, Viện nghiên cứu Hán Nôm, A. 2917, p. 1b.
- ²⁵ Pan Ding Gui, “An Nan Ji You [安南紀游],” in *Xiao Fang Hu Zhai Yu Di Cong Chao*, Incheon: Inha University Press, 2010, p. 122.
- ²⁶ Samuel Baron, “A Description of the Kingdom of Tonqueen,” pp. 9~10; Abbé Richard, *Histoire naturelle, civile et politique du Tonquin*, Paris: Chez Moutard, 1778, vol. 1. p.105.
- ²⁷ Miyazawa Chihiro, “Betonamu hokubuniokeru josei no zaisan no chii” [Women’s right on the family property in northern Vietnam], *Minzokugaku kenkyu*, 60-4 (1996), pp. 330-341.
- ²⁸ *Hồng Đức thiện chính thư*, pp. 46, 132, 118.
- ²⁹ Samuel Baron, “A Description of the Kingdom of Tonqueen,” p. 10.
- ³⁰ Pan Ding Gui, “An Nan Ji You,” p. 1b.
- ³¹ Jeong Dong Yu, *Ju Young Pyeon* [晝永編], Seoul: Seoul National University Press, 1971, p. 82.
- ³² Yamamoto Tatsuro, “Betonamu no kabo [The Family Tree of Vietnam],” in *Wadahakase kokikinen toyoshironso*, Tokyo: Kodansha, 1961, p. 1045.
- ³³ *Hồng Đức thiện chính thư*, pp. 58~59; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 2, p.223.
- ³⁴ *Quốc triều hình luật*, p. 71a; Nguyễn Ngọc Huy & Tạ Văn Tài, *The Lê Code*, vol. 1. Art. 391, p. 204.