

Les Régimes matrimoniaux du Sud-Est de l'Asie.
Essai de Droit comparé indochinois.

Volume I: *Les Régimes traditionnels.*

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(Publication of l'Ecole française d'Extrême-Orient, XXXIV)
Paris: E. de Boccard, 1952, pp. 176 in octavo.

The French School of the Far East has recently published under the above title an important study in comparative law, the conclusions of which go far beyond the juridical framework to which its title and the author's background would appear to assign it. For this reason, it seemed necessary to call the work to the attention of readers of this journal, especially those who are interested in the problems of the relationships between the original indigenous infrastructure

and the Indian and Chinese superstructures in South East Asia.

M. Robert Lingat, Professor in the Faculty of Law at the University of Hanoi and formerly Juridical Counsellor to the Government of Siam, has already become known through a series of studies and researches that testify to his perfect understanding of customs and legislation in the Indochinese countries.¹ The work of which the present book forms the first volume is devoted

¹ Among the most important of these, it is appropriate to mention:

'L'Esclavage privé dans le vieux Droit siamois' (*Etudes de sociologie et d'ethnologie juridiques*, VI), Paris, 1931.

'Vinaya et Droit laïque, Etudes sur les Conflits de la Loi religieuse et de la Loi laïque dans l'Indochine hïnayâniste' (*Bulletin de l'Ecole française d'Extrême-Orient*, XXXVII, 1937).

'Le Régime des Biens entre Epoux en Thaïlande' (*Revue indochinoise juridique et économique*, III, 1942).

'L'Influence juridique de l'Inde au Champa et au Cambodge d'après l'Epigraphie' (*Journal Asiatique*, 1949).

'Evolution of Law in Burma and Siam' (*Journal of the Siam Society*, XXXVIII, 1950).

to an examination of matrimonial systems in those countries of the Indo-chinese peninsula which underwent the influence of the Indian or the Chinese civilisation.

About these countries there arises a curious problem:

'Indochina,' the author notes (p. 5), 'is at the junction of two great civilisations, the Indian and the Chinese, both possessing an impressive apparatus of legal codes. One might think that at least two juridical systems would be found standing over against each other, and that, if a comparison can be established, it will necessarily be limited either to the group of countries of Indian civilisation or to those of Chinese civilisation. . . . With respect at least to the limited subject which has been chosen, however, we have been able to establish, to our great surprise, that, despite the deep influence of Chinese law, or the less tyrannical one of Hindu law, the financial relationships of the spouses are, in the entire Indochinese world, governed by visibly uniform rules. The traditional system in all the Indochinese countries is in fact a community of property.'

Here then lies the great interest of M. Lingat's book: it demonstrates an identity of ancient customs among the countries of South East Asia. Although their ethnic elements and cultural components would seem to be so different, this identity imposes itself upon the researcher's attention, in this as in many other domains.

The method of research which guided the author is highly judicious. 'In a first volume,' he says (p. 6), 'we shall study the matrimonial system in the various

countries of the Indochinese world, working solely from their customs or their traditional laws. With regard to Cochinchina and Burma, this will lead us to a description of the present state of the law, since these two countries are not yet endowed with modern codes. For the other countries, on the contrary, we shall take account only of the state of the law anterior to the present codes. The second volume will be given over to an examination of the matrimonial systems instituted by the five codes' (those of Tonkin, Annam, Cambodia, Laos and Siam). Such a study assumes a thorough knowledge of the juridical literature of the two civilising countries, India and China, and requires original research in the domain of the law and customs of the Indochinese lands.

On the general characteristics which are common to Chinese and Hindu law as well as on those that set them apart, M. Lingat formulates some highly astute remarks which every historian of Asian law will do well to ponder:

'It is known', he says (pp. 34-35), 'that custom has remained the essential source of law in the Far East. Written law does not have the imperative value which we recognise in it. There, the legislator, who makes no sharp separation between law and ethics and religion, sees in the first only a means of achieving the ends of the two others. He proposes, above all else, models of conduct which the good man, solicitous of upholding in society the role which has come to him, will make it his duty to follow. The legislator therefore enacts a sort of transcendent law which will ultimately be self-imposing because

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it conforms to the natural and the moral order, but which for the moment, and insofar as it has not penetrated among the masses, the expounder has the mission of seeking to reconcile with the possibilities suited to each class. In China, as in India, the legislator counsels more than he ordains, and the punishments with which he accompanies his prescriptions do not confer any more imperative a character upon them, for such sanctions are "instituted, not to be applied, but to strike fear" (Granet).'

In addition, the influence of Hindu law on that of the countries which came under Indian influence is treated with unmatched competence, and the author's conclusions merit quotation. 'The Hindus', he says (p. 112), 'possess a rich juridical literature. . . . To this literature the local laws, which for a long time had remained customary, resorted in order to find the models according to which they might construct themselves and the instrument which would permit their self-improvement. In other words, Hindu law, instead of obtruding its injunctions and superimposing itself upon customary rules which it might have claimed to have superseded, sought only to offer principles and methods, classifications and distinctions, according to which a true local law might be organised. The Hindu law brought norms rather than prescriptions, not so much fully-formed institutions as frameworks for the ordering of existing institutions or those in process of formation. The result is that, in contrast to what has been shown for Chinese law in Vietnam, Hindu law did not act directly

upon custom, and the latter was not impaired except to the extent that the attraction of the new civilisation may have modified local practice. Hindu law may have corrected custom, shorn it of some of its barbarous traits, it may even have condemned it morally, but it did not abolish it.'

The book's outline is extremely simple. The first part, devoted to the countries with Chinese civilisation, first formulates, in Chapter I, the principles of Chinese law, traditional and applied, during the transition period between the fall of the Manchu Dynasty in 1911 and the promulgation of the Civil Code in 1930. Then comes, in Chapter II, a description of the law of Cochinchina (that is, the former French colony which today makes up South Vietnam) according to the sources and the conclusions of jurisprudence. Chapter III sets forth the customs of Vietnam according to the code of the Le Dynasty and modern customs, and attempts to reconstruct primitive Vietnamese usages.

The second part, devoted to countries with Indian civilisation, treats in three chapters of the Hindu law, the Burmese law, and the Siamese law.

The last chapter of the book seeks to extract some general ideas and to formulate conclusions which result from the foregoing study.

The comparative examination of matrimonial systems in China and in Vietnam shows impressively 'the strength of the resistance which national traditions put up against Sinisation' (p. 12). In China, says M. Lingat (p. 21), 'the matrimonial order is extremely simple, or rather, no rules exist pertaining

particularly to the financial relations of the spouses, the personality of the wife being absorbed into that of the husband, and the wife, when married, not ordinarily bringing any property of appreciable value'.

Cochinchina was placed under the Code of Gia Long, which is hardly anything more than 'the translation into Sino-Vietnamese of the Chinese Code of the Ch'ing, in which it made only the faintest retouches' (p. 30). But writers have long noticed that 'there existed, among the populations formerly under French jurisdiction, customary rules which did not have their origin in the provisions of the Gia Long code and which sometimes went so far as to contradict them' (p. 31).

'The Code of the Le,'² M. Lingat points out (p. 76), 'in those of its provisions which are devoted to marriage, attributes to the wife a much higher position than the Chinese wife has, by imposing duties upon the husband with respect to her.' In this there is a very clear reaction against the patriarchal system of the dynastic Chinese codes. 'In Vietnam', M. Lingat writes further (pp. 80-82), 'marriage appears under a light wholly different from its aspect in China. Here, there is no absorption of one patrimony into another. The wife does not enter completely, person and property, into her husband's family. She or her family retains the ownership of the property which she brings from her home or receives from there. She can only give the rights of usufruct thereof to her husband. . . . We are truly face to face here with a

conjugal community of property, goods belonging in co-ownership to the two spouses and each possessing equal rights in them when separating. . . . Here, in fact, lies the big new fact which the Code of the Le makes us cognisant of: The existence in the old Vietnamese code of a matrimonial system including common property side by side with those goods which remain the property of each spouse.'

Trying to reconstruct, with the aid of the data offered by the Le Code and by present usage, what may have been the primitive matrimonial system in Vietnam, M. Lingat describes it as marked 'by putting into a common mass the property of the two spouses, who form a sort of company with the property they bring to the union, and unite their efforts to make the initial capital produce a yield. The property brought by the spouses at marriage, and that which they subsequently acquire, are, so long as the marriage lasts, conjoined in a single estate, the administration of which belongs jointly to the two spouses' (p. 105).

The comparative study of matrimonial systems in India and in the Hinduised states of Indochina offers an interesting parallelism with what M. Lingat has found between matrimonial systems in China and in Vietnam. The ideas from which Hindu law took its departure, he says (p. 123), 'excluded any possibility of building up a patrimony belonging to the two spouses. Hindu marriage is not a society founded on the particular interests of the newly-formed couple. The wife

²Promulgated in 1777. But the section utilised by M. Lingat goes back to the fifteenth century.

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enters her husband's family, in order to assure male descendants to that family, who will carry on the name and the worship, that is, to assure the continuance of the husband's family as such. The marriage is not a simple agreement of inclinations; it is a sacrament which associates the spouses only for the accomplishment of religious duties. Each remains separate from the other so far as property is concerned.' There is a conception here which is rather close to that of the dynastic Chinese codes. Now on the contrary, M. Lingat calls our attention to the fact that (p. 112) 'the Indochinese countries which owe their civilisation to India, all practice a system of community property which shows close resemblances to the one which we have just discovered in Vietnamese practice'.

For example, in Burma 'the conception of marriage differs from that found in India and China. The newly-united couple does not disappear into the family organisation. It has its own house. It lives an independent existence, it assures its subsistence by its own means . . . All the spouses' goods, whatever may have been their origin, form, so long as the marriage lasts, a common, undivided mass, which is the co-property of the two spouses' (pp. 135-136).

In Siam, the engaged young man pays a sum of money to the parents of the girl, to reimburse them for the charges they have incurred in bringing her up. This makes the marriage resemble a purchase. 'We see plainly, in fact, from ancient texts, that the payment of this sum effects the transfer of power over the daughter from her parents to her husband, and this in part explains

why the dependence of the (Siamese) wife with respect to her husband is more marked than in Burma' (p. 151).

In Siam as in Burma, 'all the spouses' goods, whatever may have been their origin, form, as long as the marriage endures, a single capital, administered by the husband and obliged to meet the obligations of both spouses. We find, in the settlement of common assets, the same essential distinction as in the Burmese law between prenuptial and post-nuptial possessions' (p. 153).

M. Lingat reminds us (p. 165) that the legislation of the Le dynasty reveals 'the existence in Vietnam, in the fifteenth century, of a system of community property, the already highly developed rules of which would lead us to suppose a long past development'. He also recalls that his inquiry into the Hinduised countries of Indochina enabled him to rediscover community property traditionally established in the countries of Indochina which are by their civilisation joined to India; and comes to the conclusion (p. 166) that 'in all that part of Asia which lies between India and China, the pecuniary relationships of the spouses obey rules which are very nearly uniform and the governing principles of which are common: strict fusion of the patrimonies of the spouses during the marriage, common administration, taking back what was brought and sharing of acquisitions in case the marriage is broken. . . If from East to West the Indochinese countries resemble each other by the common traits their marriage systems show, they resemble each other still more, if one may put it so, by the opposition that their choice of

community property sets up between them and those nations which brought them civilisation.'

What is perhaps most remarkable in these conclusions, which result from a purely juridical investigation conceived without any preconceived theory, is, as I indicated at the beginning, their agreement with the conclusions that emerge from analogous inquiries undertaken in other disciplines.

The writer of this review has established in the field of linguistics that 'languages belonging to families which, outside the peninsula, are highly differentiated, and which show traits permitting us to contrast them in certain respects, somehow reveal a weakening of these contrary characteristics in Indochina. . . . It will be a matter for future research to determine what has been the role, in this sort of acclimatisation or naturalisation of alien tongues on Indochinese soil, of reciprocal contacts, and what the role of the independent reaction of a common substrate. One thing is sure, and that is that the languages of Indochina have a family look.'³

In another field, 'the study of the ethnographic, social, and religious facts show that the traits common to the civilised societies are the heritage of the Austroasiatic pre-Indian or pre-Chinese culture and are also to be found in the more backward societies. As for those traits which set the civilised societies over against each other and which are unknown among the less-

developed societies, they can, in general, be traced to the civilisation of India or that of China.'⁴

An attempt has sometimes been made to explain this remarkable community of customs in Indochina on the basis of an ancient matriarchical family organisation. On this point M. Lingat presents some serious reservations. He shows, for example, that conjugal community of property 'could not truly develop until such a time as every element of the matriarchy had vanished' (p. 167). He points out the contrast which the political organisation of the Indochinese societies shows with that of India and of China, where the extended family rules and where marriage has for its end the consolidation of the existing family group, causing 'the wife to leave her parents' family in order to incorporate herself as closely as possible in that of her husband', her condition as regards patrimony being 'determined by the rules which regulate the organisation of the community into which she has been admitted' (p. 168), 'while in the Indochinese countries, the marriage has as its end the creation of a new household destined to live an independent existence. . . . Marriage then appears as an association of property as well as of persons, and it is an association into which the wife enters in an equal capacity with her husband' (pp. 169-170).

By revealing a new example, in the juridical field, of the common culture of the immemorial inhabitants of South East Asia, whose origin no doubt goes

³'Les Langues de l'Indochine' (*Conférences de l'Institut de Linguistique de l'Université de Paris*, VIII, p. 67).

⁴G. Coedès, 'Les Civilisations indochinoises' (*Tropiques*, No. 342, mai 1952, p. 27).

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back to what J. Przyluski called the 'Austroasiatic civilisation', and by showing its force of resistance to the higher civilisations of China and of India, M. Lingat's book is certainly

of the greatest interest at a time when the question of cultures of different levels in that part of the world has priority on the agenda of scholarly discussion.