

The Impact of Buddhism and Confucianism On Capital Punishment in Imperial Vietnam

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ABSTRACT

The death penalty¹, or capital punishment, means to legally authorize killing someone for a crime. Across history, it was widely used by monarchs, powerful rulers, and religious leaders (Metze, 2014), including in Vietnam (Tran & Vu, 2019) from the 10th century to the mid-20th century, for various reasons with different frequencies (Duyen, n.d.). In the feudal times² Vietnamese society was heavily influenced by Confucianism (Thu et al., 2021) and Buddhism (Morris, 2021). This research paper will review literature on the schools of Confucianism and Buddhism, focusing on their philosophies and attitudes toward capital punishment, with the aim of understanding their impact on feudal Vietnam's legal system. Along with that, it will include a discussion of Vietnam's criminal laws or authorized punishment related to the death penalty.

Introduction

Capital punishment—also called the death penalty—is often applied as the highest one available. This type of sanction today faces criticism as it is in conflict with humanitarianism which has led to the popular movement of abolishing capital punishment all over the world: from a few abolitionist states in 1945 to almost half of the world's countries having abolished the death penalty de facto or de jure (Schabas, 1998). Despite the movement, Vietnam's government continues practicing capital punishment, which has a long history in this nation since the feudal times—from the 10th century to 20th century—due to a variety of religious and cultural reasons (Tran & Vu, 2019).

¹ According to the Oxford English Dictionary, capital punishment, also called the death penalty, is the legally authorized killing of someone as punishment for a crime. As its given name of 'capital,' this punishment often applies to individuals who have been convicted of severe crimes. Those who are given the death penalty nowadays often have committed crimes such as murder or drug trafficking. Capital punishment is not used as a cultural tradition but more like a political decision in order to maintain the government's authority (Bae, 2008).

² The term 'feudal Vietnam' or 'imperial Vietnam' indicates the time from the state's declaration of independence in 938 to Emperor Bao Dai's abdication in 1945 that aborted Vietnamese monarchism. In the meantime, the state was called by many titles: Dai Co Viet, Dai Viet, Dai Ngu, Dai Nam,... - but all titles generally refer to the state of Vietnam or imperial Vietnam. This era consists of ten dynasties, but there are paramount dynasties and reigns will be focused on more: the Ly dynasty (1009 - 1225), Tran dynasty (1225 - 1400), Later Le dynasty (1428 - 1527, 1592 - 1789), and Nguyen dynasty (1802 - 1945).

Buddhism³ and Confucianism⁴—along with Taoism—are considered the most important philosophies and religions in Vietnam, especially during the imperial period. These are the dominant ideologies that influenced feudal Vietnamese society from the economic system to the education system, from elite classes to the servants, from the north to the south (Van, 2020; Thu. et al., 2021). Under the Ly dynasty (1009 - 1225) and the Tran dynasty (1225 - 1400), Buddhism had an important role with monks participating in the political system (Dai Viet Su Ky Toan Thu, 1697). Confucianism then emerged as the national ideology in the Later Le dynasty (1428 - 1527; 1592 - 1789) and the Nguyen dynasty (1802 - 1945) with an enhanced Confucian education and policy reasoning related to this philosophy (Dai Viet Su Ky Toan Thu, 1697; Viet Nam Su Luoc, 1920). Buddhism and Confucianism had an obvious influence on the legal system as evidenced by the arrangement of positions and titles to the constitution, including the dynasties' attitudes toward the death penalty. The two dominant philosophies gained their impact on this branch not only directly but also indirectly, such as through the concept of power or political structure.

Historical Context

Most feudal dynasties of Vietnam had their main criminal codes at the beginning monarchs' reigns that determined the policies made throughout the entire dynasty. For examples, the Ly dynasty established the Hinh Thu under Emperor Ly Thai Tong in 1042; Quoc Trieu Hinh Luat (Hong Duc Laws) was instituted in 1483 by the order of Emperor Hong Duc or Emperor Le Thanh Tong, and Hoang Viet Hinh Luat (Gia Long laws) was created by Emperor Gia Long in the year of 1811 (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). Other specific cases are written, recorded in the historical books such as Dai Viet Su Ky Toan Thu by Ngo Si Lien in 1697 or Viet Nam Su Luoc by Tran Trong Kim in 1920. The principal aim of the legal systems that are represented by the constitution or law books is to maintain the nation under the regime, centralizing the power for the monarchs of the dynasty (Van Dao, 2021). Despite the adjustment of laws through the dynasty, there were always spaces for humanitarianism in the use of the death penalty. Under the Nguyen dynasty, it was written in law: "If the elderly are 70 years old or older, children 15 years old and under and people disabled (damaged eyes, broken legs) guilty of being saved downwards for redemption . . . The elderly 80 years old or older, children 10 years old or younger seriously ill, committing murder, the conspiracy will be summoned to the king awaiting the decision of king . . . Elderly 90 years or older, children 7 years old or younger even if they commit a crime of death, there is no penalty . . ." (Hoang Viet Luat Le, 2008).

Upon Buddhism reaching Vietnam in the first centuries AC, it soon spread extensively in the Viet people's community as illustrated by the existence and worshiping of the monks or Buddhism itself being represented in folktales such as 'Quan Am Thi Kinh' or 'Tu Dao Hanh and Nguyen Minh Khong' which were collected in a book called Linh Nam Chich Quai by Tran The Phap. It had also spread among the upper classes: Emperor Ly Thai To was illegitimate and raised by an influential Buddhist monk called Van Hanh and unexpectedly succeeded to the throne (Dai Viet Su Ky Toan Thu, 1697).

Under the thousand years of northern colonization, the Han culture and the philosophies of Confucius were brought to Viet's community in order to assimilate people (Viet Nam Su Luoc, 1920). The Vietnamese learned about Confucianism from the Chinese and made it part of Viet culture; however, Confucianism did not gain dominance over Buddhism under the first dynasties until after Vietnam's independence from the north (Dai Viet Su Ky Toan Thu, 1697; Viet Nam Su Luoc, 1920). Confucianism education was adopted and established in feudal Vietnam with the

³ Vietnamese Buddhism is distinct from the earlier form of Indian Buddhism. The Buddhism discussed in this article is Vietnamese Buddhism from the Mahayana Buddhism branch or northern branch in Vietnam. It is based on the belief that there is more than just one Buddha, people are capable of gaining enlightenment without being a monk, and one's success of reaching Nirvana can be a group's success which is in contrast with Theravada (Rahula, 2014). Neither worship a supreme world creator nor reject Four Noble Truths (Rahula, 2014).

⁴ The Confucianism in imperial Vietnam did not have much difference from the earlier Confucianism in China. The Confucianist scriptures The Analects or Doctrine of the Mean were applied originally in Vietnam.

Temple of Literature to worship Confucius inside the national university in 1070 under King Ly Thai Tong's reign (Dai Viet Su Ky Toan Thu, 1697). This dominant ideology's doctrine shaped the society's virtues and relationships throughout the population (Thu, 2021).

Capital Punishment from Buddhism's Perspective and Its Role in Vietnamese Feudal Dynasties

Buddha's lessons were recorded by various students of Buddha from different points of time in history. Despite the Buddhist branches' distinct teachings, they all believe in the Four Noble Truths or Noble Eightfold Path (Rahula, 2014). The influential Four Noble Truths generally consist of four truths taught by Buddha: all in life are suffering; suffering comes from desire, lust, and craving; there is an end to suffering; and suffering can be overcome through the application of the Noble Eightfold Path (Alarid et al., 2001; Van Gordon et al., 2015).

Inside the Noble Eightfold Path, the right ways to relieve suffering are divided into three main categories: ethical conduct, mental discipline, and wisdom. Mental discipline contains right effort, right mindfulness, and right concentration, when wisdom indicates right thoughts and right understanding. Ethical conducts are right speech, right action, and right livelihood. Most of the dogmas from Buddha determine the need for a reduction of the act of harming or killing any creatures, even authorized. Right thoughts also means non-violent thoughts; right action means to cease destroying life; right livelihood means living without harming anyone or anything, even indirect methods such as declaring wars, trading weapons, and manufacturing poisonous products (Rahula, 2013).

Besides the Noble Eightfold Path, the concept of morality in Buddhism is demonstrated in its Five Precepts or Pancasila: the first factor is to not harm anyone; secondly, not to steal from others; thirdly, not to engage in sexual misconduct; fourth, not to tell a lie; and lastly, not to get involved with drugs or intoxicants (Bong, 2016). The precept of not harming anyone, most related to Buddhism's attitude toward capital punishment, is divided into stages of penalty received based on categories of awareness, volition, objectness, victim's size, and benefit to society (Mahathanadull, 2018). The levels of the penalty's harshness is not something the authority can determine or measure itself but stems from heavy or light demerit (Mahathanadull, 2018), which is a part of karma's flow and based on a person's own actions, goodness, and badness (Wg, & Rykova, S., 2018). As a result, the authorities do not have the power to judge and kill individuals because of their crimes.

In conclusion, Buddhism does not encourage or protest against harming or killing any creatures under any form or reason rigidly. However, Buddhism does not have a philosophy or principles related to politics directly, so there were still spaces for rulers and monarchs to be brutal even if they and their nation followed Buddhism (Alarid et al., 2021). For example, King Le Ngoa Trieu was told to apply brutal punishment to individuals who committed crimes despite the fact that he brought six types of Buddhist scriptures to Vietnam from China (Dai Viet Su Ky Toan Thu, 1697).

The practice of Buddhist virtues in the legal system can be observed in some nations in the same region as Vietnam. Inspired by the teachings of Buddhism, feudal Japanese monarchs officially abolished the use of capital punishment from the year 810 to the year of 1156 (Schimdt, 2002). In the Indian peninsula, the Buddhist king Asoka was highly against killing and likely decided to abolish capital punishment by creating laws (Likhitpreechakul, 2022).

As discussed earlier in this paper, Mahayana Buddhism was delivered to northern Vietnam under a thousand years of northern colonization or by earlier Indian merchants (Van, 2020; Viet Nam Su Luoc, 1920). After Ngo Quyen defeated the Southern Han Kingdom in 938, a new era of independence began in Vietnam, but the impacts from a long time of being colonized were still there, Buddhism being one of them. Through dynasties, Buddhism's standing rose both in the court and in society until its downfall and the rise of another dominant philosophy, Confucianism. Since the first centuries AD, Viet people accepted Buddhism, and Luy Lau became the center of Buddhism in northern Vietnam (Van, 2020).

Capital Punishment from Confucianism's Perspective and Its Role in Vietnamese Feudal Dynasties

Confucius (born 551 BC, died 479 BC) had an important role in Chinese history as an educator and philosopher. He considered himself a “transmitter” more than a “creator”; he had a sense of history, trying to revive the old order of the Zhou dynasty to accomplish the new (Tu, 1998). He was driven by his passion for understanding rituals, such as the belief of worshipping ancestors along with the idea of Heaven and aspects of the past, especially the Zhou civilization (Tu, 1998). This philosophy influenced the ideology of people and later dynasties in China: the Han dynasty, Sui dynasty, and Ming dynasty (Hill, 2006; Kim & LeBlang, 1975). Confucianism was not just China's dominant philosophy but was also delivered or adopted in neighboring nations: Korea in 958 and Tokugawa Shogunate in Japan, with Confucianism as the center of the political system (Hill, 2006). Consequently, this philosophy came to Vietnam through the period of a thousand years of northern colonization as a method of assimilation in the first centuries AD (Viet Nam Su Luoc, 1920).

Like Buddhism, Confucianism has its own foundational teachings. Confucius' ideal philosophy was to be a noble man and to be in harmony with the world, with society around each person (Fukuyama, 1995). There are three primary fields in life that were inspected in this ideology: sacrifice to ancestors, social and political institutions, and etiquette of daily behavior. In addition, its virtues define main relationships⁵ in society and how people should act in them (Fukuyama, 1995). Besides that, Confucianism is also based on five principles: Jen⁶, Chun Tzu⁷, Li⁸, Te⁹, and Wen¹⁰ (Hill, 2006). These principles constructed Confucianism's foundation, and some might have taken an essential role in passing the death penalty. They defined how the nation should be ruled, how everything should have a root from benevolence, humanitarianism, and love; social classes and ranking; and an embrace of the monarch's power with loyalty (Hill, 2006). Confucius coherently showed his desire in terms of human care (Tu, 1998). Most of his teachings were written in his popular book of Analects.

The role of Confucianism in law was clearer than Buddhism's. Confucianism thrived at almost every stage of development as a humanitarian force—humanity in a conflict with harsh laws made by the Legalist became the dominant philosophy in the Qin dynasty (Kim, & LeBlang, 1975). After the failure of Legalist, the Han dynasty applied Confucianism, which made the legal system less cruel than the previous dynasty (Kim, & LeBlang, 1975). The central principle of “Ren” determines that people in society should love and care for each other, treat people with kindness, and tolerate others (Hill, 2006; Le, n.d.). Confucius believed that society must be governed with morality to guide people into order by Rite; “Ren” must be the core of any legal systems or criminal code (Le, n.d.). In the Analects, Confucius criticized the overuse of punishment: it can scare people so that they follow the laws but they themselves do not have the sense of shame. He instead promoted embracing educating virtues so that people not just follow orders but also have the sense of shame to behave themselves. Nevertheless, Confucius did not absolutely contradict punishment or penalty in laws but taught that they should not be prioritized solutions for crimes over the use of morality (Le, n.d.). Regarding capital punishment, Confucius' conception did not encourage the cruelest form of penalty, arguing that monarchs were responsible for the corruption of their people's morality (Le, n.d.).

⁵ Main relationships in the society defined by Confucianism are relationships between emperors and ministers, fathers and childrens, husbands and wives,... (Tu, 1998)

⁶ Jen is the foundation in social relationships that people should treat others with benevolence, humaneness, love and request people to be unselfish, sympathetic,... (Hill, 2006)

⁷ Chun Tzu is the primary goal of people who yearn for being ‘ideal’ and ‘superior’ (Hill, 2006)

⁸ Li is the manners and rituals that distinguishes civilized man from barbarians (Hill, 2006)

⁹ Te is the basis of government which should be ruled by men and emperors should be obeyed,... (Hill, 2006)

¹⁰ Wen defines societal priorities and where energies should be expended (Hill, 2006)

In addition, before an authority imposes the death penalty on anyone, they have to analyze many aspects: can the individual be educated?; has the government tried to educate the person?; etc. To judge anyone's right to live, the judge has to consider the factors of power and time during the trial (Le, n.d.). To conclude, Confucianism is against the use of harsh capital punishment and states that capital punishment should not be top priority over education and morality; the authorities have to provide civilians with an environment that will not force them to commit crimes.

Despite being humanitarian-focused, Confucianism had various ways of impacting the legal system due to its vast number of political-related virtues. Confucianism, with one of its central principles of "Li," the place of the emperor is development, not just having political power but even religious power as "the Son of Heaven" (Qin, 2008). "Li" indicates that everyone must be loyal to the throne; people who violate the rules of "Li" would be punished, but when the emperor does so, some officials advise or complain about him and risk being punished by the emperor (Qin, 2008). While Confucianism does not support the death sentence, it is a means for monarchs to show off their authority, which was greatly enhanced by Confucianism's domination (Tran, & Vu, 2019). After gaining independence from the Ming dynasty's colonization and unlike the previous period, the Le dynasty let Buddhism meet its downfall and embraced Confucianism, which was enhanced by the later dynasty of Nguyen.

The Impact of Buddhism and Confucianism On Capital Punishment Policies in Feudal Vietnam

In the first dynasties, despite the rise of Buddhism, their ideology was more impacted by their focus on the military than the philosophy or code of law. In less than a hundred years—from 938 to 1009—there were four dynasties with chaos and a large number of conflicts: the invasion of Southern Han and the Anarchy of the 12 Warlords or the invasion of Song (Dai Viet Su Ky Toan Thu, 1697). Consequently, their codes of law were harsh and cruel: not just capital punishment but also torture by animals such as tigers and elephants; burning people alive; and forcing them to climb up a tree then cut it to make them die falling (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.; Tran, & Vu, 2019). However, things started to change when it came to the dynasty of Ly from year 1009 to year 1226 with the dominance of an ideology—Buddhism—as discussed earlier in this paper.

The Ly dynasty was established by Ly Cong Uan, later known as king Ly Thai To—an unordinary king—with a unique relationship to Buddhism (Dai Viet Su Ky Toan Thu, 1697). He was adopted by a monk called Ly Khanh Van at Co Phap pagoda; when he grew up, he was educated by monk Van Hanh, which made him a pious Buddhist (Dai Viet Su Ky Toan Thu, 1697; Van, 2020). Therefore, the Ly dynasty ruled by Ly Thai To and his eight descendants remarkably embraced Buddhism. In 1018, King Ly Thai To ordered some officials to travel to China to take Buddhist scriptures back to Vietnam (Viet Nam Su Luoc, 1920), and "on royal holidays, the king [went] to Chan Giao pagoda so that the king could sit and watch chanting" (Dai Viet Su Ky Toan Thu, 1697). King Ly Thai To's descendants—King Ly Thai Tong and King Ly Thanh Tong—were also dedicated Buddhists, playing important roles in some Buddhist zen branches—Vo Thong Ngon zen for King Ly Thai Tong and Thao Duong zen for King Ly Thanh Tong—continuing King Ly Thai To's policies embracing Buddhism (Van., 2020). Buddhism not only had high standing in noble classes but also had influence over the civilians: every village had sacred pagodas, Buddhist rituals became habits, and folklores had Buddhist themes in the well-known folklore collection Linh Nam Chich Quai by Tran The Phap (Van, 2020). The last male emperor, King Ly Hue Tong, converted to a monk after his abdication, according to the historical book Dai Viet Su Ky Toan Thu by Ngo Si Lien in 1697.

Similar to feudal Japan or Maurya, the dominance of Buddhism came with the reduction and softening of capital punishment's usage. Some research even indicates that due to Buddhism's dogmas, capital punishment was not applicable, at least for a certain period (Tran, & Vu, 2019). Capital crimes under Ly dynasty were called the "Ten Abominations," adopted from the "Ten Crimes" established by the Tang dynasty: Rebellion, Great sedition, Treason, Parricide, Depravity, Great irreverence, Lack of filial piety, Discord, Unrighteousness, and Incest (Duyen, n.d.). Buddhist humanitarian principles altered the Ly dynasty's attitude toward the death penalty. As mentioned previously, the

Ly dynasty's code of laws determined that the elderly older than 70 and children younger than 15, those who were disabled or sick, individuals who were physically weak, and the king's relatives from the title "Dai cong" and higher were able to atone with money (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). However, they could not atone when committing any of the "Ten Abominations" (Dai Viet Su Ky Toan Thu, 1697).

There were also specific cases where the punishment for crimes that normally was considered to deserve the death penalty was reduced due to the virtues of Buddhism. Under King Ly Thanh Tong's reign, the kingdom of Champa triggered conflicts in the southern borders so that the King had to lead the army to handle it himself (Dai Viet Su Ky Toan Thu, 1697). After capturing King Che Cu of Champa, he forgave and let the foreign king escape although this often received execution as an act to present power and dominance (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.).

Then in the case of "Dam Dam Lake" in 1095, Le Van Thinh was accused of attempting usurpation by magic, which means he committed one of the "Ten Abominations" (Dai Viet Su Ky Toan Thu, 1697). However, King Ly Nhan Tong did not execute the official but exiled him. Discussing the case, historian Ngo Si Lien said, "The ordinary people trying to usurp the throne to kill the king and be exempt from death is wrong in the king's crime of Buddhist devotion" (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). Buddhist beliefs were also used by the officials under the Ly dynasty to release Nung Tri Cao, a rebellion leader, from execution in 1041 (Dai Viet Su Ky Toan Thu, 1697; Van Tai, T, 1989).

In conclusion, the death penalty was reluctantly applied because of Buddhism's attitude against killing and many crimes that were sentenced with capital punishment in other dynasties had less harsh sentences under Ly dynasty and the laws focused more on the rehabilitation of those who committed crimes Under Ly Thai Tong, someone who committed murder was fined only 100 staff; there are even cases of intentional death that are still not considered a crime (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.)

Tran Canh's coronation put an end to the Ly dynasty and replaced it with a new dynasty, the Tran dynasty, but still maintained Buddhist dominance. Tran Canh, in order to escape his own coronation, fled to a pagoda (Viet Nam Su Luoc, 1920). King Tran Nhan Tong, who defeated the infamous Mongol Empire twice, was ordained, established the Truc Lam Zen, and was given the title of "Buddha Emperor" (Dai Viet Su Ky Toan Thu, 1697). A variety of pagodas were built under this dynasty such as Pho Minh pagoda, Binh Son tower, Boi Khe pagoda, and Thai Lac pagoda; Buddhism combined with the local culture and was mentioned as "water with milk" (Van, 2020).

The Tran dynasty began as the ruling dynasty in 1226 and established novel laws which lasted until the end of the Tran dynasty in 1400 in two important legal books called "Quoc Trieu Thong Che" published under King Tran Thai Tong's reign in 1230 and "Hoang Trieu Dai Dien" published under King Tran Du Tong's reign in 1341—both required capital punishment (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.; Tran, & Vu, 2019). In 1244, Tran Thai Tong added ways to apply capital punishment to the laws (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). The Tran dynasty practiced capital punishment in a harsh way with tortures and brutal executions: lingchi (brutal feudal punishment, killing those who committed an offense by cutting off limbs into pieces of meat to die gradually), elephant-included execution, and cutting hands of those who committed theft (Duyen, n.d.).

However, along with that, there were exceptions due to the closeness between the kings and the officials, the people, and the Buddhist virtue of equality. King Tran Thai Tong used to drink, get drunk, and sleep with officials; in the Mongol invasion, Hoang Cu Da disrespected the King, but after the war ended, he was not punished or sentenced because the King blamed himself for Hoang Cu Da's disrespectful attitude (Dai Viet Su Ky Toan Thu, 1697).

In addition to the previous "Ten Abominations" of the Ly dynasty, those committing robbery or counterfeiting money would also be executed, and there was no privilege (Duyen, n.d.). Gambling also received such cruel punishment: Senior Lieutenant Nguyen Hung was punished to death with a staff (Duyen, n.d.). Some capital punishment sentences were not direct or written in law and had more political interest: the former king Ly Cao Tong after abdicated and became a monk of the prior dynasty, was forced to suicide by Tran Thu Do (a Tran dynasty's governor). In 1347, Bao Uy Vuong Hien was found guilty, so he was sent to Vong Giang town as a general. The court then sent an agent to murder him on the highway (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.).

Buddhism, although highly against harming or killing in any form, does not point out how to be directly applied to laws since it should be “separated from state political and economic involvement;” that’s the reason why some devout Buddhist emperors still used harsh punishments in laws (Alarid et al., 2001). The Tran dynasty replaced the favored Ly dynasty through a political marriage, then had to face three invasions from the Mongol Empire in the beginning reigns which led to an increase in the number of individuals engaging in crime and treason (Dai Viet Su Ky Toan Thu, 1697). Some who committed treason were forgiven after the king burnt Mongols’ army’s letters with the traitors to maintain the nation's solidarity, but when some were found, they were not forgiven. Dang Long, a close relative to the king, surrendered to the enemy before being arrested and executed; Prince Tran Ich Tac escaped to the Yuan dynasty after surrendering to the enemy with his family but was humiliated as “A Tran” which means a Tran girl (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). It may come from the Tran dynasty’s royal family’s origin: a peasant family embracing martial arts that had to suppress warlords and then became generals under the Ly dynasty (Dai Viet Su Ky Toan Thu, 1697).

With the harsh laws, execution, and extent of crimes that led to the death penalty, the Tran dynasty gained stability for a long time until its downfall from the middle of the 14th century (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). In 1400, Ho Quy Ly overthrew the Tran dynasty and established the Ho dynasty, but it only lasted for 7 years after being conquered by the Ming dynasty in China and could not make much change due to the short length and was not able to gain popularity with new policies (Dai Viet Su Ky Toan Thu, 1697). The Ming colonization ended in 1427 by the Lam Son rebellion, and the Later Le dynasty started the second major period with Confucianism’s dominance.

Under more than 300 years of the longest dynasty in Vietnam’s history, there was a primary code of laws called Quoc Trieu Hinh Luat, also known as “Luat Hong Duc” (Hong Duc Laws) or “Le Trieu Hinh Luat” (Le Dynasty Criminal Code) (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). The downfall of Buddhism was visible in societal aspects despite the philosophy’s deep impact: influential historian and scholar Ngo Si Lien used Confucianism to criticize Buddhism in his work; King Le Thanh Tong banned building new pagodas to save money for more necessary works (Dai Viet Su Ky Toan Thu, 1697; Viet Nam Su Luoc, 1920). On the other hand, Confucianism rose as the Confucian education was embraced, and competitions and exams were organized annually to find officials (Dai Viet Su Ky Toan Thu, 1697). The Later Le dynasty went through many conflicts from Mac Dang Dung’s usurpation to the Trinh-Nguyen lords period when Le monarchs were puppets so that the “Later Le dynasty” this research discusses is mostly the Le So period (1428 - 1527) when the Le emperor still maintained the highest power.

Tang laws were adopted under the first king - King Le Thai To - which were generally divided into five forms: flagellation using a rattan and bastinado with a bamboo stick, penal labor, exile with penal labor, and death by strangulation (garrote) or decapitation; capital punishment, specifically, had three steps for crimes such as strangling and slashing, crime of beheading, and lingchi (Duyen, n.d.). With the impact of Confucianism’s virtue of being loyal and the place of royalty, king’s relatives and nobles were elevated to another level: the change and adoption in political system eliminated the closeness of emperors and the people; before the Hong Duc laws, King Le Thai To determined “Eight Deliberations” (Dai Viet Su Ky Toan Thu, 1697). The cases or crimes committed by “Eight Recommendations” must be asked for deliberation and then be reviewed by the king after the recommendation: if they commit an offense, they would not have to suffer a penalty except for the death penalty (Duyen, n.d.). “Eight Deliberations” included 1. Relatives of the king; 2. Old acquaintances of the king; 3. Individuals with great virtue; 4. Individuals with great ability; 5. Meritorious individuals; 6. High officials; 7. Individuals exceptionally zealous at their government duties; and 8. Guests of the king (Duyen, n.d.).

In the first monarchs’ reigns of the Later Le dynasty, there were cases of capital punishment to demonstrate the high power of the emperor, which Confucianism highly embraced, and the nation’s independence, which led to people who hid the Ming coins being executed (Duyen, n.d.). For example, Tran Cao received the death penalty by poison because of his failure in attempting treason (Duyen, n.d.; Viet Nam Su Luoc, 1920).

In the Le Chi Vien case, this was the first dynasty to introduce the penalty of “tru di tam toc,” which means executing three branches of the criminal’s clan, and had two theories of the clans executed: first it was told to be dad’s clan, mother’s clan, and wife’s clan; and the second theory was that it was those who committed crimes’ siblings,

children, and grandchildren. In 1442, King Le Thai Tong rested at high official Nguyen Trai's house during his tour to the east for a night and the king was served by Nguyen Trai's wife Nguyen Thi Lo; unfortunately, the King was found dead in the morning (Duyen, n.d.; Viet Nam Su Luoc, 1920). Nguyen Thi Lo was accused of assassinating the emperor, leading to the "tru di tam toc" sentence and execution of Nguyen Trai himself and his relatives, which included hundreds of innocent people; however, later in the dynasty, Nguyen Trai and his wife were exonerated by the emperor (Duyen, n.d.; Viet Nam Su Luoc, 1920). This brutal execution showed the rise of the emperor's power in society, which had a connection with Confucianism because even in the Dinh dynasty, a dynasty came from the warlord era and had harsh laws or executions. King Dinh Tien Hoang and Prince Dinh Lien's murderer Do Thich was only beheaded himself with his corpse tortured (Dai Viet Su Ky Toan Thu, 1697).

In 1483, Quoc Trieu Hinh Luat (Hong Duc Laws) was published with 144 out of 660 laws involving the death penalty and additions were made in 1777 in the LeMat period containing 149 laws out of 722 laws including capital punishment: the percentage of capital laws covering the death penalty was from 20% to 22%, even higher than the rate of 14.89% in 1985 Criminal Code of Vietnam (Duyen, n.d.; Luong, 2021; Tran & Vu, 2019). Despite the humanitarian and promotion of tolerance affected by Confucian dogmas, the use of capital punishment was still specified (Tran & Vu, 2019).

Favoring Confucianism which rigidly indicated the relationships and how people should act and treat others in society, volumes of the Hong Duc laws regulated the social relations that the authority considered needing to be governed; despite the nature of the relations, capital punishment - the cruelest punishment - was used as a threat in case the laws were violated (Tran & Vu, 2019). Most of the death penalty offenses are related to the safety of the commune, the safety of the king and the royal family, and the dignity of the royal lineage, such as Whoever freely climbed over a wall condemned slashing (Duyen, n.d.). The "Ten Abominations" continued to be applied in laws with little change (Duyen, n.d.).

Criminal liability of treason, great treachery, or conspiracy to oppose is an act that can harm social safety and dignity of the king; royal family is subject to joint responsibilities, executed along with those who committed crimes: "In article 411: Those who conspire to trespass, who plots to do great things are condemned to beheading, the culprit and the pro-party know it must be guilty of slashing, his wife and children are confiscated as public. The bureaucracy that deliberately tolerates or hides it behaves like a criminal. Article 412: Those who plotted to betray the enemy against the enemy were executed; If he acted, then condemned the offense, those who know it are also guilty" (Duyen H. D.). The opposition of monarchs was strengthened in the Later Le dynasty under Confucianism's dominance that even in the Trinh-Nguyen lords period of the dynasty when the emperors became the lords' puppet, they were never upthrew by the lords (Dai Viet Su Ky Toan Thu, 1697; Viet Nam Su Luoc, 1920).

In 1028, under the Ly dynasty, Prince Khai Quoc committed rebellion but was defeated by King Ly Thai Tong; the king forgave Prince Khai Quoc and let him keep the title (Dai Viet Su Ky Toan Thu, 1697). Further, under King Tran Thai Tong's reign of Tran dynasty, he also forgave his brother Prince Tran Lieu after the older brother committed rebellion and let him keep the title, Tran Lieu's descendants were high officials (Dai Viet Su Ky Toan Thu, 1697). In comparison, in 1459 under Later Le dynasty, King's brother and Prince Nghi Dan murdered King Le Nhan Tong and coronated himself which scholars such as historian Phan Phu Tien and article Trung Hung Ky under King Le Thanh Tong's reign showed grief and sorrow (Dai Viet Su Ky Toan Thu, 1697); Le Nghi Dan only ruled for eight months before the officials and general made a coup and murdered him and his supporters in the court, Prince Tu Thanh then was made King Le Thanh Tong when his brother Nghi Dan never considered a rightful king in the history (Dai Viet Su Ky Toan Thu, 1697; Viet Nam Su Luoc, 1920).

The humanitarian in Confucianism could be coherently observed: those aged 80 or over or ten years or younger, and disabled people who commit death crimes are also entitled to this. If a person aged 90 or over or seven years old or younger commits a deadly crime, he/she cannot be executed (Article 16) (Duyen, n.d.).

Confucianism in the Later Le dynasty gave the dynasty the well-known title as "the pinnacle of feudalism in Vietnam." Continuing on the later dynasty of Nguyen, the emperors, especially the influential and second emperor

Minh Mang, passionately embraced Confucianism and increased the number of policies published to centralized power to the emperors (Viet Nam Su Luoc, 1920).

The Nguyen dynasty lasted for 143 years from 1802 to 1945. However, the legal system of the Nguyen dynasty considered in the research would only be from the establishment of the dynasty and the first emperor Gia Long's coronation in 1802 to the year 1884 when the Treaty of Patenotre or the Treaty of Hue, a completed version of the Treaty of Harman in 1883, began French colonization in Vietnam with its own laws. Under this era, the most popular criminal code was "Hoang Viet Hinh Luat" (Imperial Viet Criminal Code) or "Luat Gia Long" (Gia Long Laws) published by emperor Gia Long in the 1810s (Viet Nam Su Luoc, 1920). It included 22 volumes, consisting of 398 provisions and 105 of them threatened capital punishment, which was approximately 26% of the provisions (Tran & Vu, 2019; Viet Nam Su Luoc, 1920); other research suggests that there were 353 articles with 122 stipulated capital punishment, making the percentage of provisions 35% (Duyen, n.d.) In comparison with other dynasties and modern days, both are extremely high. Most of "Hoang Viet Hinh Luat" was adopted from the Great Qing Code and a minor part from Hong Duc Laws (Duyen, n.d.; Viet Nam Su Luoc, 1920).

Similar to Confucian impact in Hong Duc Laws, and even further enhanced, the safety of the royal family and keeping the control in the emperors' hands became an ethical standard for the legal system (Lan, 2021); most crimes being threatened by capital punishment were related to the dignity of royalty, especially emperors, with regard to the relationship to the army, father, and wife, which was defined in Confucianism (Duyen, n.d.). For example, General Le Van Khoi, famous and honored general Le Van Duyet's adopted son, led a rebellion in Phien An and committed treason but was defeated; despite his clan's reputation and his father's credit in supporting emperor Gia Long in regaining his power, Le Van Khoi faced the death penalty in 1835 under the reign of Minh Mang who appreciated Confucianism (Duyen, n.d.; Viet Nam Su Luoc, 1920). "Eight Deliberations", which assure the privilege of the emperors' relatives and nobles, continued to be applied and broadened in the legal system: Not only people in "Eight Deliberations" but also people having a father or grandfather in "Eight Deliberations" would only be sentenced with death after the consideration of the emperor, not the laws (Duyen, n.d.).

In the first half of the 19th century, Christianity in Vietnam witnessed prohibition and a vast massacre from the imperial court with emperors' discrimination: Christian believers and pastors, even foreign ones from Europe, were arrested and executed; officials conducted military campaigns in order to find and murder Christians (Lan, 2021; Viet Nam Su Luoc, 1920). Explaining this act, besides preventing the possibility that European empires use Christians to spy on the nation and the threat of those empires' invasion (Viet Nam Su Luoc, 1920), emperor Minh Mang, in comparison with Confucianism, stated: "Learning is to know how to be human. So, every person in the world needs to learn, but must learn in the right way. I want you people to study hard and build your moral character well. The doctrine of Emperor Yao and Emperor Shun only focuses on filial piety, while Confucianism takes benevolence and righteousness as its core. Those are what you should learn. As for superstitious doctrines, don't let yourself be fooled or tempted by them. Christianity is even more absurd: it allows men and women to rub shoulders with each other, encourages uncivilized acts and promotes bad deeds, which deserves the death penalty..." (National History of the Nguyen Dynasty, 1965).

In conclusion, the Nguyen dynasty considered Confucianism the national ideology which was capable of being observed in the criminal code that highly centralized the authority to the ruling monarch with capital punishment as a threat to anyone trying to harm the emperors' right of power. The increase in the number of conflicts against the imperial court, both from inside the nation such as rebellions, treason, fighting authority's policies and foreign empires trying to find novel colonies and trading places in Southeast Asia, trigger the criminal code to threaten more severe punishment to keep a stable regime.

Alternative Perspective & Restatement of The Thesis

The thesis statement about Buddhism and Confucianism's impact on the legal system, especially the most severe punishment death penalty, cannot be perfect and there is still room for alternative perspectives, points of view, or

arguments. Firstly, there could be factors besides the dominant philosophy to affect monarchs and dynasties' attitudes toward capital punishment. Secondly, there were aspects or details in imperial Vietnam's criminal codes that did not get along with deities or virtues from philosophies which are supposed to be dominant ideologies of the current dynasties such as Buddhism or Confucianism.

About other factors apart from Buddhism and Confucianism, it could be dependent on the monarchs themselves or other reasons: conflicts and wars, royal family's origin, or reliability of historical records. For example, the minor period from 938 to 1009 - including the Ngo dynasty, the Dinh dynasty and the Early Le dynasty - applied severe execution such as boiling criminals, tearing them into pieces or leaving them with a tiger to death which may be in order to suppress people (Ngu, 2009) due to the fact that these dynasties witnessed lots of conflicts and chaos threatened the kings' - who mostly were generals under previous dynasties - position (Dai Viet Su Ky Toan Thu, 1697). Some dynasties in China could have exerted an influence on several imperial Vietnamese dynasties' external and internal policies which led to criminal codes being impacted: Later Le dynasty adopted Tang dynasty's laws when the Nguyen dynasty submitted to the Qing dynasty which led to its adoption of China's policies, political system, and especially legal system (Duyen, n.d.; Tran & Vu, 2019). Historical records' reliability could be a problem too because there were not enough primary scriptures or books under the Ly dynasty and the Tran dynasty due to them being destroyed under foreign invasions (Tran & Vu, 2019) and kings' usage of capital punishment could be illustrated wrongly by later monarchs for political reasons and benefits.

Secondly, there were policies or parts of criminal laws that did not get along with the dominant ideologies' virtues and teachings of that dynasty. For example, the Later Le dynasty contained innovative laws in order to maintain gender equality and protection for women in their households and in the society, which go against Confucianism's deities as this philosophy embraces men's authority and dominance over women that created large injustice in society (Gao, X., 2003); consequently, another dynasty with Confucianism's dominance - the Nguyen dynasty - assigned the wives to husbands to take care of (Duyen, n.d.). The Tran dynasty, despite Buddhism's dominance and its dogmas of humanitarianism, still established harsh laws and diverse punishment for those committing similar crimes: some who committed treason were excluded from all liability, some were humiliated, and some were severely executed (Dai Viet Su Ky Toan Thu, 1697; Duyen, n.d.). Nevertheless, this problem may come from the lack of primary sources' full versions that are left or reliable scriptures which were mostly burnt or demolished under conflicts such as the important Ly dynasty's criminal code *Hinh Thu* and the Tran dynasty's legal texts of *Quoc Trieu Dai Dien*.

However, Buddhism and Confucianism still were dominant ideologies in imperial Vietnam and covered almost every aspect of the society, from the peasants to the ruling classes; despite other factors and exceptions, these philosophies managed to keep a superior impact on any dynasty's policies of capital punishment as demonstrated previously. The lack of primary resources in older periods were lost mostly but the main ideas and their foundations were still recorded in later scriptures. These ideologies were not capable of covering every law related to capital punishment but were demonstrated as the paramount basis for the legal system and were supreme reasons for monarchs to execute or absolve those who committed crimes.

Conclusion

Buddhism and Confucianism were dominant philosophies in imperial Vietnam and influenced every aspect of the society along with its classes from farmers, artisans, generals, dukes, and even emperors. They both emphasize humanitarianism and argue against capital punishment but at different rates: for Buddhism, its teaching was rigidly against any kind of harming or killing even that which was authorized such as capital punishment. Similar to Buddhism, Confucianism criticized capital punishment but only without considerations and preferred educating individuals who committed crimes before sentencing them to death. As they touched every corner of the society under imperial Vietnam, these ideologies also impacted policies relevant to capital punishment.

Buddhism and Confucianism affected the death penalty both directly and indirectly. The direct way was that the philosophies were coherently discussed in legal scriptures and used as reasonings for the death penalty's stages

and the level of harshness or even its subject. Some exceptions in laws or in historical events often came with quotations from Buddhist or Confucian thoughts and teachings. Indirect impacts mostly came from the way Confucianism embraced monarchs' positions in society that led to the increase of capital punishment despite its humanitarianism such as is promoted in Buddhism. In some eras, they still kept the highest roles in society but also had to combine with other ideologies due to the authority's interests.

Although Buddhism does not currently have as dominant of a role as in the Ly or Tran dynasty and Confucianism has gone through a movement of decline in modern Vietnam, they still have influence on the law. Examining them can reveal reasonings for both sides in the argument of abolishing the death penalty: from Confucian teachings can support death penalty as a tool to maintain the government's stability; on the other hand, Buddhist thoughts on humanitarianism and human rights can enhance abolishing movement.

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