

A Perspective About the Indigenous Status through Civil Laws in French Indochina

Nguyen Thi Trang

Institute of Social Research and Cultural Studies
National Yang Ming Chiao Tung University

When the French removed the three countries' names Vietnam, Lao, and Cambodia from the world map, at the same time, they pushed these natives of countries in an ambiguous status. The native people were no longer subjects of the King in the Absolute Monarchy, nor were they slaves. Whether they were imperial citizens and how their statuses were determined is still an issue in discussions until now. Therefore, in this study, I would like to clarify 1) How was Vietnamese, Laotian, and Cambodian citizenship status in new civil laws? 2) How was the process of converting protected subjects and subjects into French citizens? 3) How was the ambiguity in rights and rights conflicts? This study provides new insights into the change in citizenship status and ambiguous citizen rights, which caused the discrimination and unequal between the ruler and the ruled in Indochina Union under the new civil laws.

Keywords: citizenship, subjects, protected subjects, French Indochina, indigenous

Hannah Arendt highlights that in the name of the people's will, the state was forced to recognize only "nationals" as citizens, grant full civil and political rights only to those who belonged to the national community by right of origin and fact of birth (Arendt, 1973, p.230). Thus,

Citizenship is a legal status accorded to subjects of a nation that confers to its members a host of rights, protections, and obligations. Citizenship is the institution through which states may grant or deny such rights and duties to the inhabitants of a national territory, and thereby positions the state as the ultimate arbiter and guarantor of equality and justice. With the rise of the nation-state form, citizenship became a necessity for realizing what had been imagined as inalienable human rights, insofar as these rights could be practically claimed and administered only if recognized by a nation-state entity (Jun, 2015, p.20).

While the definitions of citizenship in each country are quite clear, the concept of imperial citizenship is a complicated aspect because the empire is not a unified state but a collection of countries with different demographic, racial, ethnic, religious characteristics. Thus, imperial lawmakers sought to create imperial citizenship, an idea which consisted of two interconnected parts: the desire to foster a greater sense of a shared imperial identity and the effort to codify this shared identity in law (Gorman, 2006, p.1).

In fact, the law is a kind of technique that the state uses to establish new identities, while old identities are permanently erased. In all the forms of knowledge and technologies of rule involved, citizenship and naturalization laws are perhaps the most dramatic and overt (Smith, 1966, p.34). Because there is only a statement that a certain group of people will become citizens while the rest groups are not citizens in law will have a strong impact even, transforming individuals and society. By sorting people in as either members or outsiders, citizenship and naturalization laws play an important, even central, role in the work state agencies do in nation-building. These laws outline who can and cannot belong and reveal "ideal" characteristics of the nation. Thus, they usually indicate in quite clear terms the key principles around which the nation or empires have been developed or currently is legitimized.

For the imperial French, the civil code, applied for her metropolitan citizens, was comprehensive and united. On the contrary, they did not enact the general law for the whole of the empire but used separate laws for each territory. Especially, granting French citizenship rights for native people was very complicated and extremely limited. The Constitution in 1791 in France noted that: "the natives were to remain forever 'subjects' rather than the French citizens (LEFEBVRE, 2003, p.32). This view was explained more clearly when the French colonizers opposed extending citizenship to culturally backward and politically immature natives in Indochina and Africa. For Henri Brenier, the colonial government should only extend political rights to natives if they (natives) are worthy of understanding the rights' use and importance. Likewise, Sarraut argued that granting French citizenship to colonial masses would be "an error as pernicious to our protégé as France itself" (Wilder, 2005, p.33). In other words, the indigenous need to be transformed and educated before they became French citizens through assimilation or association. Therefore, when the French occupied Vietnam, Laos, and Cambodia, they also applied or established new laws to recognize subjects and grant citizenship to natives. However, this process had implemented for a long time and has not been completed.

This paper mentions civil codes as an effective tool to recognize, categorize, regulate, and transform indigenous' characteristics. This paper is divided into three headings: 1) A new citizenship system through Civil codes a) 2) The transform of subjects and protected subjects into the French. 3) The ambiguity in rights and rights conflicts.

1. The indigenous people status and rights through civil codes

Indochina was a large area with 736,560 square kilometers. The total population of the Indochinese Union reached 19.195.332 people, including 6.926.893 inhabitants in Tonkin, 5.277.157 inhabitants in Annam, 3.728.612 inhabitants in Cochinchina, 2.445.670 inhabitants in Cambodia, and 819.000 inhabitants in Laos (Khérian, 1937, p.6). Before the French governed Indochina, these areas were separate monarchies countries with different legal systems; Vietnamese obeyed Gia Long law (1802), Cambodians followed the Khmer code; ethnic minorities also had their own rules and customs. Between 1887 and 1900, the Indochina Union was established with various legal statuses. Cochinchina became the French colony while Cambodia, Annam, Tonkin, Laos, and Kouang-Tchéou-Wan became French protectorates.

Although the French established the Indochina Federation successfully, they failed to create a union with Indochinese identity and nationality. Instead, the French administration offered various legal identities for the "indigenous" living within this Union. From 1862 to 1939, the French enacted a local

law series (see table 1), but it was an empirical construction, suffering from its lack of consistency. Christian Bruschi wrote that colonial law was shaped "under empiricism and territorial division, floating along with historical and geographical circumstances." (Jaluzot, 2019, p.5). Moreover, these laws were built to categorize indigenous people based on their territory, race, and ethnicity rather than finding ways to gather indigenous people into a united Union. Hence, indigenous status and citizenship rights sound quite ambiguous, unstable, and extremely diverse from place to place and time to time.

Table 1. The presence of civil code in Indochina

Country & territory	Year	Law
Cochinchina	1864	The decree in Cochinchina
	1883	A decree of October 3, 1883, applied a limited number of articles from the French civil code concerning nationality to the population of Cochinchina
	1884	Civil code in Cochinchina (French in Cochinchina and Cambodia) [1]
Cambodia	1920	The civil code
	1924	The penal code
Lao	1908	The codification of Lao customs
	1924	Stopping to apply the codification of Laos customs
	1927	The new Laotian codes
	1933	The penal codes
Tonkin	1931	The civil code
Annam	1936	The civil code

(Exposition coloniale, 1931)

These civil codes regulated that those born in the French colony of Cochinchina were the "Cochinchinese" and became French "subjects" (*sujets français*), not French citizens (*citoyen français*). Those coming from the protectorates (that is the 'Annamese,' 'Tonkinese,' 'Laotians,' Cambodians, and the native denizens of Kouang Tcheou Wan) were considered legally to be French-protected subjects; not French citizens (*protégés français*) (Goscha, 2012, p.99). These rules for identifying French citizens, subjects, or protected indigenous are specified in detail in the civil laws that France implements separately for each region. In particular, we can understand the

roles, legal responsibilities, and specific interests of each type of object through analyzing these civil laws.

1.1. The subject of French (Cochinchina)

The decree of July 25, 1964, is the first act establishing the French judicial authority in Cochinchina, and its implementation aimed at European people (Exposition coloniale, 1931, p.42). The French decrees highlighted that the French and foreigners would follow the French law; however, the Cochinchinese subjects still followed the Gia Long codes and would continue to apply the law and indigenous customs. The French said that this was an inescapable necessity because it is materially impossible to organize French courts overnight in sufficient numbers and capable of rendering justice to all the territory's inhabitants. However, in years of occupation, step by step, French justice was installed throughout the territory of Cochinchina, extending its jurisdiction over all the inhabitants of the colony. Following on these civil codes:

- 1) *The French, Europeans, and foreigners were governed by French law.*
- 2) *The natives and assimilated Asians were, for civil and commercial matters, governed by the law and the customs of the Annamese, but in penal matters, French law applied to them except for certain modifications made necessary for them by the conditions of the environment and their natural tendencies.*

Then, the decree of May 25, 1881 confirmed the unity of the judicial organization for the colony and suppressed the native jurisdictions by installing regular French courts throughout Cochinchina. Finally, indigenous courts were removed by the decree on January 6, 1902. As a result, Cochinchina had no indigenous courts since all the indigenous inhabitants of this colony are French subjects and, therefore, subject to the sole French tribunals (Exposition coloniale, 1931, p.26).

1.2. The French-protected subjects (Tonkin, Annam, Laos, Cambodia, and Kouang-Tchéou-Wan)

Tonkinese, Annamese, Laotians, Cambodian, and Kouang-Tchéou-Wan were protected subjects. Therefore the regulations and laws in these territories were different from these of Cochinchina. However, protected subjects' status in protected countries was complicated because it depended on the treaty signed by the Protector State and the protected state. On the whole, in Indochina's protected territories, the law of state protectorate was higher than the local law. Still, the sovereignty of the protected state does not disappear; it remains under the control of the protecting state (Camerlynck, 1938, p.25). Through these civil laws, we were thus able to illuminate the status of the protected French.

- 1) *They were neither subjects nor French citizen*

They were not French citizens since the independent sovereignty of the protected State belongs to being maintained. Thus, they could not claim the exercise of civil and political rights that France recognizes only to its own nations. Likewise, they were not French subjects either because the protected State's territory still existed (Camerlynck, 1938, pp 25-26).

- 2) *They were nevertheless subject to French power*

Since the sovereignty of the protected State was exercised only under the control of the protecting State. Therefore the protected state would keep its power under the control of the protecting state. The protective State, in fact, through the participation which it would take in the governance and administration of the protected State, would exercise influence and action on the legal condition of the subjects of this State that it could never exercise with regard to the subjects of a fully independent State. Its power would even go to a certain extent to legislate for protected subjects (Camerlynck, 1938, pp 25-26).

1.3. The status of minority ethnics and foreigners in civil codes



“May 1921, French Indochina --- Two women discuss the day's news” by © M. Branger & Sons/National Geographic Society/Corbis

For ethnic minority groups live on the mountains of the Annamite chain and in the northern regions. French colonizers did not also control them. The French did not implement any survey about the population of ethnic groups. Especially, Vietnamese legislation was not applied to them (Sombsthay, 1898, p 83). The status of subjects belonging to other races would continue to be governed by their

customary law (Jaluzot, 2019, p.11). Meanwhile, for foreigners who had been assimilated, they must comply with the Annam law; if they were Europeans, they must comply with France's law.

2. The transform of subjects and protected subjects into the French

As previously mentioned, the status of subjects and French protected subjects was unstable. They could change their identity or nationality. However, as regards the subjects (Cochinchinese), this measure's effect was to transform his former status into that of French citizens. By contrast, as regards French -protected subjects, it was a real change of nationality. For instance, he becomes a French citizen from Annamese subjects. In fact, the naturalization policy was inspired by the Arab and Algeria citizenship policies on July 14, 1865. Then, the decrees of May 25, 1881, February 7, 1877, May 26 and November 25, 1913, and May 18, 1915, provided for naturalization rights for subjects and French-protected subjects or foreigners. The decree of November 4, 1928, facilitated accession to French citizenship for French-Indochinese hybrid or European origin (Exposition coloniale, 1931, p.80). Finally, the decree of July 23, 1937, sets out a series of conditions to become a French citizen like: Having a good and ethical lifestyle; being able to read, writing and speaking French; approaching French civilization by its life and social habits; not showing hostility towards the French in speeches, actions, and behaviors; gaining the Legion of Honor or the Military Medal and Medal of Honor; marriage with the French; having French race original and so on.

This means that if the subject or protected subject could fulfill the French requirements, they could apply for French citizenship. However, the number of Vietnamese who could get French citizenship was small (Camerlynck, 1938, pp.37-42). Each year, for instance, there might be no more than three applications. They were clerks in the administration, nursing orderlies in the military hospitals, telegraphists in the postal services. Do Huu Phuong - the reliable auxiliary based in Cholon was the first to apply in 1881. Until 1905, the Vietnamese receiving French citizenship only achieved 254 people (Osborne, 1997, p.128)

In short, Indochina's indigenous civil status was divided into two main groups: French subjects and French protected subjects. Besides, the French government also specified foreigners' status, who were either assimilated with Indochinese and who had not been assimilated. In particular, in the first phase, the French did not manage the ethnic minority groups, so they continued to use customary laws. However, above all, France's law would be in a higher position than the protected national law, and if there was a dispute or conflict between the French and indigenous peoples, the French law would be applied.

3. The ambiguity in rights and conflicts

Various civil laws applied to each region have resulted in ambiguity in determining subjects' legal status, especially those who migrate from other parts of the federation.

First, the determination of nationality for people born in another country in the alliance was not specified by law. For example, what was the legal status of an Annamese born in Cambodia?

Second, civil laws made immigration and settlement rights in regions more difficult. For example, before the French domination, the Tonkin people could migrate to Cochinchina easily. Still, after the civil law was enacted, this migration process became more difficult because Cochinchina was no

longer part of Vietnam's territory. Therefore, to settle in these areas, they must naturalize and obey the host country's laws. Without naturalization, they were threatened with deportation from these countries. This led to benefit conflicts among indigenous groups in the Indochina Federation.

Third, although civil law was a combination of French law and local law, regulars in civil laws were foreign to indigenous communities. This was because French courts were empowered to publish indigenous laws. However, this was a difficult task since most of the judges were jurists of French origin sent temporarily to the colonies. They did not have easy access to local legal resources. The courts' knowledge of local laws came through two ways: translation of ancient texts and testimonies from lettered people (local scholars) on unwritten usages. To improve the quality of conflict resolution, judges endeavoured to obtain legal writings on indigenous rules. However, there was still a bias in making special laws that favour the French over the natives. So the conflict between the natives and the French was inevitable.

Conclusion

For indigenous peoples, civil laws were a development step in building the legal system in Indochina. It removed the ambiguity between civil law and criminal law in feudal laws. These laws' provisions also affect the later formation of Vietnam, Laos, and Cambodia's civil laws.

However, as a French legal tool in identifying, classifying, and dividing indigenous objects, Civil law promoted divisions between regions, races, and ethnicities in Indochina. By granting certain groups the same privilege as French citizens, others who did not receive it led to Union conflicts. Besides, these laws broke the unity of the country and people like Vietnam. It has also led to increasing rivalry, envy, and discrimination between ethnic groups, such as Vietnamese and Cambodians, which remained until now.

Notes

1. In Indochina an ambiguous colonization 1858 -1954, author notes that Civil Code in Cochinchina began in 1883.

References

Arendt, H. (1973). *The origins of totalitarianism*. Harcourt, Brace, Jovanovich.

Camerlynck, G. H. (1938). *Cours de droit civil annamite*. Sirey.
<http://sach.nlv.gov.vn/sach/cgi-bin/sach?a=d&d=tcwcHS1938>

Exposition coloniale. (1931). *Exposition coloniale internationale. Paris, 1931. Indochine Française. Section d'administration générale. Direction de l'administration de la justice. La justice en Indochine. Organisation générale. La justice indigène*. Hanoi : Imprimerie D'Extrême-Orient.
<https://gallica.bnf.fr/ark:/12148/bpt6k9744346w?rk=21459;2>

- Gorman, D. (2006). Imperial citizenship. In *Imperial citizenship* (pp. 1–38). Manchester University Press. <http://www.jstor.org/stable/j.ctt155jg89.6>
- Goscha, C. E. (2012). *Going Indochinese contesting concepts of space and place in French Indochina*. the United Kingdom by Marston Digital.
- Jaluzot, B. (2019). Civil Law in the French Asian Colonies. In *Civil Law Reforms in Post-Colonial Asia* (pp. 3–20). Springer.
- Jun, H. H. (2015). Citizenship. In *Keywords for Asian American Studies*. NYU Press.
- Khérian, G. (1937). *Le problème démographique en Indochine*. Hanoi : Imprimerie D'Extrême-Orient.
- Lefebvre, E. L. (2003). Republicanism and Universalism: Factors of Inclusion or Exclusion in the French Concept of Citizenship. *Citizenship Studies*, 7(1), 15–36. <https://doi.org/10.1080/1362102032000048684>
- Osborne, M. E. (1997). *The French presence in Cochinchina and Cambodia*. White Lotus Co.Ltd.
- Smith, A. L. (1966). Citizenship in the Colony: Naturalization Law and Legal Assimilation in 19th Century Algeria. *Political and Legal Anthropology Review*, 19(1), 33–49.
- Sombsthay, E. (1898). *Annam et Tonkin. Cours de législation et d'administration annamites*. Paris. <https://gallica.bnf.fr/ark:/12148/bpt6k3734023.textelimage>
- Wilder, G. (2005). *The French Imperial Nation-State: Negritude and Colonial Humanism between the Two World Wars*. The University of Chicago Press Chicago and London.