Regulating Marriage and Sexuality: States and Laws in Early Modern Southeast Asia

Presented to an International Conference on the Early Modern World
University of Chicago
June 3, 2005

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Introduction

In his influential study, Southeast Asia in the Age of Commerce, Anthony Reid has identified the rise of the “absolutist state” as a feature of the period we are now calling “early modern.”¹ One outcome of this coalescence of political and economic power was the production of a corpus of written documents which scholars have grouped under the rubric of “legal texts.”² For various reasons historians have approached this material somewhat warily, despite its undoubted relevance to state development. In the first place, the manner in which Indian, Islamic and Chinese models may have changed indigenous practices is unclear. Second, most “law codes” represent statements of intent rather than descriptions of how indigenous judicial systems functioned, while dating and provenance are uncertain. Third, even the definition of a “legal text” is problematic because Western categories dividing written law from orally-transmitted custom, or from “literature” and “history” are simply inapplicable. One can well understand why European observers in early nineteenth-century Indonesia expressed doubt as to whether the mixture of narrative, religious tenets, and punitive details they encountered qualified as a legal system.³

Recognizing the historiographical pitfalls, this paper nonetheless accepts the reasoning put forward by David Moyer in his study of Sumatran law codes. It is, he contends, of little importance whether these injunctions were actually put into practice; rather, they should be seen as “statements about the social order of the society for which they were written.”⁴ A historian of gender should also take on board R.W. Connell’s contention that a state’s legal promulgations can be interpreted in terms of “definable gender regimes” which were intimately connected with the power distribution on which government rested. As historians of Europe have so clearly shown, a state’s “gender dynamics” could serve as a decisive force in determining the

direction of male-female relationships, especially in times of rapid economic change.\(^5\)

This discussion is highly pertinent to Southeast Asia not merely because the early modern period is acknowledged as a time of commercial expansion and state consolidation, but because local laws often diverge from their imported models, especially in attitudes towards gender.\(^6\) In addition, I would argue that the legal texts produced during this period represent an important aspect of an ongoing redirection of male-female relations that was intended to stabilize household populations and connect them more directly to the state. As the focus of state regulations, communities themselves were receptive to the persuasive messages emanating from distant centers of prestige and power because they too saw stability and order as a priority for their own well-being. This coalescence of interests was important, I suggest, because ultimately the most effective regulation of gender came not through the enforcement of “law” but through the surveillance exercised by the family, arguably the state’s most concerned and effective agents.

**The State, the Family and Gender**

As early modern states attempted to impart tangibility to abstractions such as “authority” and “obedience,” the arrogation of the symbols and vocabulary associated with the family becomes almost universal. Historians have made the case most strongly in Europe, where the household model, rationalizing and justifying political inequities, evolved into a formidable instrument of social control. In turn, the persuasiveness of the ruler-parent/subject-child allegory relied heavily on official projections of the union between husband and wife as the pivot of the social and political order. “Marriages,” said a French edict in 1666, “are the fecund sources from which the strength and grandeur of states is derived.”\(^7\) A similar sentiment was expressed by the VOC Governor of Ceylon, Rijklof van Goens, well-known to

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Southeast Asianists because of his detailed description of seventeenth-century Java. “How much,” he wrote, “depends on good and bad marriages, from which countries and cities must take their rise.”8 One could well argue that similar understandings of the obligations implicit in kinship and gender interaction were even more significant in affirming the socio-political hierarchies that supported “government’ in the non-Western world.

In Southeast Asia’s political history the perception of “the state” as a family writ large is a recurring theme, since ideas about the relationship of husbands to wives, of fathers to mothers, of parents to children were embedded in the power distribution on which authority rested. The conceptualization of family relationships as a template for dealings between ruler and subject represents, in a sense, indigenous theorizing about the nature of state power. As a Malay code puts it, “In this world, father and mother and kings must be considered great rulers, taking the place of Almighty God,” and the depiction of the ruler as “the father and mother of his people” is commonly applied to other authority figures as well.9 Again, the linchpin in this personification was the communally-acknowledged union of a husband and wife. While oaths taken by Vietnamese officials equated filial duty towards parents with a subject’s loyalty to the emperor, marriage – “the basis of social relations” – ultimately depended on recognition of the male-female hierarchy.10 Cultural interpretations of immorality acquired added intensity because the hierarchies of gender and sexual control were implicit in the allocation of power. The insistence that a man’s authority over his wife mirrored larger political and diplomatic relations threads though indigenous material. As Tony Day has reminded us, the “continuous and ambiguous interplay of gendered forces” meant that the masculinization of authority was never absolute, but the principle that patriarchy was intrinsic to the natural order was rarely questioned. The Nguyen-controlled region of southern Vietnam may have been “less Confucian” than its northern counterpart, but once a year the hierarchy binding inferiors and superiors was publicly affirmed – subjects prostrated before rulers, servants before masters,

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children before parents, and wives before husbands. Missionaries even recorded the adage that “sons are slaves to the king and daughters slaves to the boys they marry.” The status of women in the matrilineal culture of Minangkabau continues to attract anthropologists, but an oft-quoted saying found among migrant communities on the Malay Peninsula laid down that “the raja rules the country/The chief rules the district/The headman rules the clan/The leader rules his followers/The husband rules the wife.” Probably dating from the eighteenth century, a northern Thai chronicle likewise notes that “servants respect their masters. Wives respect their husbands. Children respect their parents . . . Younger brother and sister respect the older.”

The concept of the male as household head – husband, father, or (in matrilineal societies) mother’s brother – had important ramifications for marital relations. Legally, the authority of the man was legally paramount, and many cultures considered that the payment of a bride-price gave a man not merely conjugal rights over his wife but entitled him to sell her or give her away. Whatever the reality of people’s lived lives, a Mon Dhammasat even lays down that a wife needs her husband’s consent before she can give religious donations or offerings, since he “owns” her. A husband was also advised that he could administer “gentle chastisement” by beating his wife on the buttocks “with a cane, split bamboo, or the palm of the hand” in the case of transgression. Although the murder of a spouse is everywhere a great crime, it is invariably more serious for a woman to kill her husband than vice versa.

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Assertion of this household hierarchy was emblematic of patriarchal structures that in turn spoke to more extended relationships of power. While the husband-wife metaphor was frequently invoked in indigenous diplomacy, it was particularly freighted when used in dealing with Europeans. The Javanese ruler Amangkurat I (1646-1677), for example, compared his relationship to the VOC with that of a married couple, with the Dutch displaying the quality of *strijbaarheid* (severity) and the Javanese in the humble role of wife, “ignorant and lax in discipline.” European governors and officials found the same parallels useful in dealing with local rulers, with themselves invariably cast in the male role. Joseph Collett, Deputy Governor of the East India Company post in Bengkulen, remarked in 1712 that he treated Malay rajas “as a wise man should his Wife, am very complaisant in trifes but immovable in matters of importance.”

Marriage, Property and State Oversight

The perception of marriage as the bedrock of a prosperous community had wide-ranging repercussions as Southeast Asian governments began to construct the ideal family as a sedentary and male-headed kin-group that transmitted approved cultural values, monitored its members, and was responsive to state demands. The state-sanctioned union of a man and a woman ensured the perpetuation of kinship structures, guaranteeing a settled and growing population that could render support to its members and help fulfill collective obligations. A wedding ceremony thus symbolized far more than the conjoining of two individuals, for marriage was, as a Vietnamese adage puts it, “the work of the family.” Notwithstanding the stories of romantic love that entertained so many Southeast Asian audiences, matrimony was essentially a pragmatic arrangement which was expected to lay the basis for a domestic order that was economically viable, congenial and co-operative. Disengagement was certainly possible should a wife or her husband fail in their duties, but humiliation, resentment and disputes over property remained a real

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possibility. In such cases, the task of the community and of the state – and thus of “law” – was to determine the appropriate means for restoring social equilibrium.

At the village level this task was made easier by the general understanding that both bride and groom made their own contribution to the household economy, leading logically to the view that individual worth could be measured in terms of pecuniary benefits. Written into state codes, customary law recognized the right of parents to exchange their daughters for a negotiated amount, or in some cases allowed a husband to “mortgage” his wife in payment for some debt. In fact, the sign given by Filipino parents to indicate they had accepted the promised dowry for their daughter was the same as that following a market transaction, “to signify that the price has been agreed upon and the sale cannot be made to someone else.”

In societies where documentation was rare and where “contracts” regarding the disposition of goods and property were verbal rather than written, these economic underpinnings of marriage required public and communal witness. A typical betrothal in the Visayas, wrote the Spanish encomendero Miguel de Loarca, could only take place after negotiations had established the amount of the dowry, and a ceremony was held in which the intentions were made clear. Loarca specifically noted, however, that this ceremony did not occur among people who had no property, for whom marriage was a much simpler affair.

The cultural collateral generated by wedding and betrothal exchanges supplied the necessary safeguards for ownership and inheritance precisely among those settled communities that the state favored. Accordingly, in their incorporation of customary laws, written documents devote considerable attention to regulations governing the return of gifts and compensation when a betrothal is broken or a marriage fails. As in any contract, failure to deliver, or the delivery of damaged goods, cancelled the arrangements. Gifts and money should be restored, for instance, if either partner died or was killed, or was found to be deficient (codes often list insanity, handicap, impotence or disease), or was in some other way unsuitable.

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While the possibility of disputes over the reallocation of property and the consequent threat to communal harmony helps explain the attention given betrothal exchanges by indigenous governments, European intervention had rather different motivations. Unhappy about the payment of bride-price because it effectively made a man indebted to his wife’s family, sometimes for life, Dutch and English officials in Sumatra actively sought to eliminate the payment of *jujur* or bridewealth. Spanish authorities in the Philippines similarly disapproved of “selling” a daughter, and the alternative custom whereby a poor man worked for the parents of his betrothed for three years or so in lieu of a brideprice. However, legislation was not enforced with any vigor and bride service was still a reality into the nineteenth century.

Indigenous preoccupation with the compensation due in the case of a broken betrothal or a failed marriage attests the importance placed on the restoration of amicable relations that would enable the marriage cycle to start afresh. The ease of divorce is often cited as a common feature of Southeast Asian societies, and it is certainly true that among smaller tribal communities an adverse omen, such as a dream, might be reason enough for a couple to separate, with little ceremony involved. When property and the division of children were involved, however, marital ruptures could be complicated. The solemn ritual described in a Javanese text, which involved the breaking of a gold piece in the presence of witnesses, the bathing of the face with special water, and the acceptance of unhusked rice, conveyed an explicit message: divorce was not a casual matter. A number of texts express the hope that a woman who drinks, quarrels with her husband or spends time with other men or away from her house can be “reformed” through instruction, and

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that an estranged couple can be reunited. All states were insistent that a woman should remain faithful to an absent husband for times varying from one to eight years, even if he left her to live with another woman.

There were situations, however, where indigenous texts made provisions for divorce was appropriate, and even desirable, at least for a man. An unassailable justification for repudiation was a wife’s failure to bear children, or even, according to a 1707 Mon dhammasat, only daughters. On the other hand, written laws were not necessarily unsympathetic towards a woman’s marital unhappiness. For instance, it was quite acceptable for a Muslim woman to leave a man if he was affected by a serious disease like leprosy, or was impotent or otherwise failed to satisfy her sexually. The repudiation of matrimonial bonds in Vietnam was mandatory in seven specified instances, but in theory at least a wife should not be set aside if she had mourned correctly for her husband’s parents, if her own parents were no longer living, or if the couple had become wealthy after the marriage. In addition, in some cases women could buy themselves out of a marriage: “If a woman wishes to divorce her husband,” says the Lan Na chronicle, “let her beg his pardon with 110 pieces of silver; if she is poor, let her pay 52.” No such ruling, however, could have any legal standing in a European jurisdiction. Since a Christian couple had vowed before God that they would remain together until death, marriage was in principle indissoluble and bigamy was deemed even worse than adultery. Despite lapses in their own morality, Spanish friars were indefatigable in enforcing the permanence of matrimony and tireless in their condemnation of the casual manner in which Filipinos had previously ended their unions. Separation of husband and wife “from bed and board” for adultery, cruelty, heresy and lunacy was certainly obtainable, but the parties were only free to remarry if the marriage was annulled. This method of ending a marriage was especially evident in Vietnam, where missionaries pressured converts to repudiate a spouse if he or she refused to adopt

24 Hoadley and Hooker, An Introduction to Javanese Law, p. 164; Nai Pan Hla and Okudaira, Eleven Mon Dhammasat Texts, pp. 542, 545.  
25 Nai Pan Hla and Okudaira, Eleven Mon Dhammasat Texts, p. 557.  
26 Nai Pan Hla and Okudaira, Eleven Mon Dhammasat Texts, p. 557; Hoadley and Hooker, An Introduction to Javanese Law, p. 196; Wichienkeeo and Wijeyawardene, The Laws of King Mangrai, p. 42; Maung, Law and Custom in Burma, p. 73; Liaw, Undang-Undang Melaka, pp. 103-05, 131.  
28 Wichienkeeo and Wijeyawardene, The Laws of King Mangrai, pp. 26, 58, 70.
the new faith. At the same time, the assertion of patriarchal privilege that has been
tracked in European marriages was also extended into evolving colonial states.
According to a VOC edict issued in Ambon in 1680, a Muslim wife who left home
without her husband’s consent could be placed in the house of correction and a fine
levied on those who had sheltered her.²⁹

**The State and Morality**

James Scott’s comment that prior to the enlightenment the social order “had been
more or less taken by early [European] states as a given” does not, I think, transfer
easily non-Western world.³⁰ It seems to me that the attention given to the
relationship between men and women in Southeast Asian “legal” texts reflects a
deep-seated conviction that the natural and social order was inherently fragile and
could be directly affected by the community’s sexual conduct. The idea that
reprehensible actions by human beings can result in earthquake, plague, shipwreck,
death was a powerful influence in formulating the way early Southeast Asian
societies thought about the relationships between men and women. From their very
inception, it would seem, Southeast Asia’s legal codes were conceived as
instruments for regulating individual and communal attitudes and behavior,
particularly between men and women. The earliest example of a Malay Islamic
code, the fourteenth-century Terengganu stone, thus lists a variety of punishments
for sexual crimes, including stoning, flogging and fining. A partially legible section
prescribes penalties for women who “do not have a husband” and who “cause
trouble.”³¹ If pre-nineteenth century Vietnam is placed more securely in the
Southeast Asian orbit, it may be significant that the Le Code devotes a separate
chapter to sexual offences, rather than including them under a “miscellaneous”
section, as did its Tang model.³² In the Vietnamese case Nhung Tuyet Tran has
pointed out that the root of the character gian (illicit sexual intercourse) is also found

1986), p. 404; Alain Forest, *Les Missionnaires Français au Tonkin et au Siam XVII-XVIII Siècles*
³⁰ James Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition have Failed*
³¹ M.B. Hooker, “The Trengganu Inscription in Malayan Legal History,” *JMBRAS* 49, 2 (1976), 128;
Pustaka, 1994), 52
in the term for treason against the state, suggesting a connection “between sexual
fidelity and political order.”

It is also worth remembering, as one scholar has reminded us, that “there is no
such thing as a “purposeless” text in South-East Asia.” While the tendency to
attribute catastrophe to individual or communal immorality helps explain the
preoccupation with sexuality in Southeast Asia law codes, somewhat similar
connections also shaped the priorities of the nascent colonial presence in Southeast
Asia. In the pockets of Portuguese control, and in the Spanish Philippines, where the
Catholic Church continued to exercise jurisdiction over morality, the greatest
ecclesiastical attention was always given to abuses of the marriage vow because illicit
sexual relations would endanger the soul. Despite the secular framework of the
English and Dutch trading companies, their perceptions of crime and the state’s role
in punishment also had strong overtones of moral rectification. The state was an
arbiter of morals, so that sexual crimes could be included among the most serious
offences. Although missionaries in Vietnam were never powerful enough to organize
a state, they too tried to reshape relationships between the sexes in accordance with an
ideal image of how men and women should interact.

Obviously, many of the penalties assigned in “traditional” law codes remained
theoretical and negotiable. Nonetheless, the widespread religious message that
humans were fundamentally lustful and could not control their own passions
strengthened the view that the state should shoulder the burden of maintaining moral
standards. A Malay text which declares that “a strange man is to a woman as the sun
is to the moon; they should be always apart” goes on to assert that the parents of a
child born out of wedlock should wed “because if there are many unmarried Muslims
in the country it is a reproach towards its ruler.” In pursuit of the public good, no area
of family life was considered “private” or immune to state intervention; quarrelling
between co-wives, for instance, could be a matter for official interest, a crime for
which Vietnamese law prescribed shaving of the head. From a historical perspective
this preoccupation with enforcement of sexual restraint deserves particular attention

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35 Greg Bankoff, Crime, Society, and the State in the Nineteenth-Century Philippines (Quezon City,
Philippines: Ateneo de Manila University Press, 1996) and In Verbo Sacerdotis: The Judicial Powers
of the Catholic Church in Nineteenth-Century Philippines (Darwin : Centre for Southeast Asian
Studies, Northern Territory University, 1992), 13-17.
because of the common assertion that in Southeast Asian societies pre-marital sex was regarded with some toleration. Helen Creese, however, has demonstrated that such comments do not apply to the upper classes in socially hierarchical states like Bali, where a high priority was placed on virginity at first marriage. In this sense Southeast Asia differs little from marital patterns traced by historians in other societies, with expectations of pre-marital chastity applying to any girl of good birth but being far less pertinent to women at lower socio-economic levels.38

In village Southeast Asia a widespread toleration of sexual relations among young couples meshed easily with the common practice whereby a youth lived and worked with the family of his betrothed as a substitute for bride-price. As early as 1471 lam-re (perform [the role of] son-in-law) had been categorically prohibited by Le Thanh Tong in an “Instruction on Moral Reform” because it created a shocking situation by which a young man and his betrothed wife lived together and were effectively brother and sister.39 Other regimes, however, were more tolerant. French envoys in seventeenth-century Ayutthaya commented that men lived with their future parents-in-law prior to marriage and Burmese texts formalize the expectation that a second daughter should be offered to the prospective husband if the woman promised him should die within this period.40 The frequency of abduction, a convenient means of avoiding the expensive payment of betrothal gifts, also helps explain the leniency with which villages regarded sexual relations between unmarried youth. At times, such practices were endorsed even in collations of written law. Thus, while the fifteenth-century Undang-Undang Melaka imposes a fine for rape, the text also notes that the crime is negated should the couple follow custom and marry, an interpolation that is not found in Islamic fikh. It is clear, too, that Islamic law could be subject to considerable reinterpretation. In the words of

38 Edicts in Tokugawa Japan, for instance, admonished peasant girls to withdraw from male company after the age of ten, but where surveillance was weak such rulings were ignored See Anne Walthall, “The Life Cycle of Farm Women in Tokugawa Japan,” in Gail Lee, ed. Recreating Japanese Women, 1600-1945 (Berkeley: University of California Press, 1991), p. 51. Studies of European communities in the same period have demonstrated that in areas where labor was in short supply parents were relatively indifferent to prenuptial sex, and in England it has been estimated that between a fifth and a half of all brides were pregnant at marriage. Merry E. Wiesner-Hanks, Christianity and Sexuality in the Early Modern World: Regulating Desire, Reforming Practice (London: Routledge, 2000), p. 82; Hull, Sexuality, State and Civil Society, pp. 70-71; Hanley, “Engendering the State,” p. 11.
one Minangkabau text, “It is a great offence for a girl to be pregnant with an unknown father, but when the child is born, she is free of offence according to custom, but by religious law she is taken to the mosque on a Friday and forty people spit on her.”

Nonetheless, although farming and peasant communities might regard premarital sex with equanimity, they were at one with state authorities in the categorization of adultery and incest as the two great sexual crimes, and in agreeing that both threatened the wellbeing of all. Precise definitions could vary, but incest was universally regarded as heinous, a crime for which customary law meted out the heaviest of fines, and imposed lengthy and expensive rituals of purification. In many cases references to religious and legal textual authority helped justify penalties more extreme and more inflexible than those dictated by tradition or handed down by village elders. Southeast Asian laws also have a great deal to say about adultery, although here again there is a concealed history of how “immorality” was interpreted. Despite the ideals projected in religious teachings and literary images, “virginity” and “marital fidelity” were not rigid categories, even among the elite, and travelers frequently commented on the fact that married women could be sexually available to foreigners as a mark of hospitality. However, while women sometimes themselves initiated these encounters, the agreement of husbands and fathers was normally critical in absolving any resulting sexual exchanges from the taint of adultery. A Lan Na text even cites the case of a bodhisattva who told his fifty wives to take care of a male guest. “There was no sin by the women, nor by either of the men,” for “if two friends like each other, and one says to the other, ‘Go sleep with my wife’, and he does, there is no fault, for permission was given.” If a woman had just slept in another man’s house, and no intercourse had occurred, says the same code, she simply had to beg her husband’s forgiveness, because even though she was “very bad”, her actions were not rated as a serious crime.

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40 Gervaise, The Natural and Political History, p. 80; Nai Pan Hla and Ryuji Okudaira, Eleven Mon Dhammasat Texts, p. 542.
43 Wichienkeeo and Wijeyawardene, The Laws of King Mangrai, pp. 37, 58.
By contrast, sexual intercourse that was not condoned or at least tolerated by the husband was an egregious offense, a clear challenge to a man’s marital rights. Condemnation was particularly vehement in the Malay-Indonesian world, and the *Agama*, a compilation of Javanese laws probably dating to the mid-sixteenth century, even sees the crime of violating a married woman as equivalent to someone who slanders the king. One Malay code acknowledges that in Islamic law “he who kills should also be killed” but according to “the custom of the country” there would be no litigation against a man who took the law into his own hands in the case of adultery.\(^{44}\) The perception that sexual access to a woman was effectively “owned” by some male relative, and that illicit relations challenged those is similarly found in legal codes drawn up under the aegis of Theravada Buddhism. Despite religious prohibitions against taking life, such texts generally agree that in principle a husband can kill his wife’s lover if they are actually discovered in the act.\(^{45}\)

Although alternative recompense such as the payment of fines was frequently sufficient to allay “dishonor,” the idea that a wronged man could act on his own cognizance sat uneasily with the emerging assumption that judicial authority was ultimately located beyond the family, and in legal structures responsible to the state. Melaka legists hence noted that it was wrong for a husband or father to kill a man who has been found in a compromising situation with a wife or daughter, since no one except the judge or another high ranking official was authorized to order an execution.\(^{46}\) In Vietnam too, Tran rulers (1226-1400) had permitted a husband to kill his wife’s lover, but such acts were not condoned by the succeeding Le dynasty. A person who murdered a man involved “in criminal sexual intercourse” would be condemned to “penal servitude” or corporal punishment according to the rank of the woman involved. Those found guilty of other sexual offences could be condemned to penal servitude, with women performing menial work such as breeding silkworms, agricultural labor, or paddy husking, often on military farms. Yet the sources also throw up disturbing reminders that written codes are always prescriptive, and that “law” as practiced by ordinary people could be very


\(^{46}\) Liaw, *Undang-Undang Melaka*, pp.79, 83.
different. In southern Vietnam, claimed the silk merchant Pierre Poivre (1719-50), a wife found guilty of adultery was put to death by being put into a sack together with a pig and thrown into the river.⁴⁷

To use Connell’s terminology, the ideology associated with a given “gender regime” does not necessarily correspond to a society’s larger “gender order.”⁴⁸ Efforts by the state to address this divergence, which was often manifested in the differences between documentary law and customary practice, were particularly evident in areas under Christian-European control. While the severe punishments theoretically prescribed for sexual transgressions were not consistently enforced, monogamy and fidelity were still seen as fundamental characteristics that should mark off Christian believers. The most hardened attitudes against sexual crimes were probably found among the Calvinist Dutch, who waged an incessant if unsuccessful campaign against “fornication” among Christian converts. Finally approved in 1650, the Statutes of Batavia classified adultery, like prostitution, as a criminal offence, and the Church authorities regularly reviewed the moral condition of parishioners, punishing sexual misconduct, adultery, concubinage and unlawful divorce by excluding sinners from communion. Those pronounced guilty experienced retribution that was ferocious and unforgiving. Whereas Javanese law codes used mutilation and other types of physical punishment sparingly, the VOC institutionalized punishments such as flogging, branding and exposure for sexual crimes. In early seventeenth-century Batavia, for example, a girl of twelve and a boy of seventeen were accused of having illicit relations; he was executed, she was exposed naked and beaten. The same principles were applied with equal savagery in other Dutch posts, especially when adultery had occurred across religious lines. In Amboina in 1672 a Muslim man and a Christian woman, found guilty of sexual intercourse, were condemned to flogging and working in chains (he for two years, she for one year).⁴⁹

Perhaps reflecting the contrast between Dutch and Iberian values, colonial authorities in the Philippines were more sympathetic towards a Spaniard who felt his masculinity had been impugned. A missionary even commented that “after knowing Spanish ways, some of those [natives] who reckon themselves more enlightened have sometimes slain the adulterers.” However, the Catholic Church was intent on checking any flouting of the marriage vow among the native population because the union between men and women was deemed part of “natural law.”50 Hardly inclined to countenance a Filipino taking the law into his or her own hands, Church authorities rarely referred the sins of adultery and bigamy to the secular courts. As the unchallenged agents of the Crown, it was generally priests who determined appropriate sentences for sexual crimes.51 It is thus ironic that although Spanish officials used condemnations of immorality to bring down a rival, it was still common for a friar (who was himself the law in the provinces) to maintain a “housekeeper” with little fear of reprimand, and even to initiate or demand sexual relations with married women.

In short, then, the criteria by which blame for sexual misconduct was apportioned were hardly neutral. The negative counter to the virile male with his trail of sexual conquests was the female virago, wanton and unrestrained, whose behavior directly contradicted the chaste and modest ideal. Even “good” women, however, must contend with an underlying female weakness which meant that their sexual desire could only be retrained with great discipline. A Mon law thus advises husbands to maintain control over their wives and female attendants because they so often tried to entice a man by “letting something fall as if accidentally, and picking it up in such a manner as to show off their figures.”52 The celibacy demanded of Catholic priests encouraged the view of women as sexual temptresses, and the Tagalog translations of sermons by Francisco Blancas remind men of God’s anger should he “live with a woman who is not his . . . her mouth is as big as a deep well, into which he will fall.”53 The Thai Traibumikatha depicted the ghosts of the Buddhist hells as preponderantly female, including nuns with golden bodies but pig-

50 Bankoff, In Verbo Sacerdotis, pp. 10, 13-17, 43, n.75; Carolyn Brewer, Holy Confrontation: Religion, Gender and Sexuality in the Philippines, 1521-1685 (Manila: Institute of Women’s Studies, St. Scholastica’s College, 2001), p. 43.
51 Bankoff, In Verbo Sacerdotis, pp. 13, 22.
52 Nai Pan Hla and Okudaira, Eleven Mon Dhammasat Texts, pp. 550, 571; Maung, Law and Custom in Burma, pp. 11-12.
53 Brewer, Holy Confrontation, p. 93.
like mouths who had been disrespectful to monks. Muslim scholars had similar views, and the great Sufi al-Ghazali (d. 1111 CE), whose name was always invoked with reverence in Muslim Southeast Asia, recorded that the Prophet himself had said “I looked into hell, and found most of the occupants to be women.”

**Gender and Legal Codification**

It bears repeating that even when written codes existed, the exercise of “law” in most of Southeast Asia remained localized, personalized and arbitrary. Yet the dissemination of text-based knowledge that accompanied political centralization was critical to what William Cummings has called “the codification of culture” because the very process of writing down ancestral sayings, rulings of ancient kings or the commands of sacred scriptures imparted a new authority to traditional injunctions. Humiliation had long been key to the enforcement of village morality, but the customary “right” of an aggrieved wife to pull the ears or the top-knot of any woman who had slept with her husband must have been strengthened by its incorporation into written legal codes. Like northern Thai texts, Burmese laws also dictated that a man who had intercourse with an underage girl should be shaved and paraded in the village, while a Malay man discovered attempting to seduce another’s wife was required to humble himself in the presence of a community assembly. In Ayutthaya, the use of tattoos to identify wrong-doers, including an adulterous wife, became a recognized punishment and in Vietnam tattooing of the forehead and face with up to eighty characters could also be imposed for moral crimes or to identify serfs of either sex.

In these environments, the village councils that were largely responsible for ensuring compliance with local custom fed into an evolving court system where the details of disputes and crimes were presented before literate judges regarded as

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“learned in the law.” The status of legists is especially apparent in Vietnam because of the Chinese model, but it was also evident in other mainland states, and foreign visitors to Ayutthaya observed that officials were expected to be familiar with established practices and that details of specific cases were recorded in writing.\textsuperscript{57} Given the present state of research, it is difficult to generalize about the ways in which this slowly emerging “legal system” affected Southeast Asia women. On the one side, one might cautiously suggest that courts did provide an arena for complaint and reparation, especially when official documents recorded legal rights. In Ayutthaya Gervaise specifically commented on the vitality of the courts, where “...each party pleads his own cause without dissimulation and in good faith. Since the women are more lively and more articulate than the men, they almost always receive a more favorable hearing, and they know much better how to defend their interests.”\textsuperscript{58} An example from Vietnam example concerns the first wife of a man who contracted a second marriage to the daughter of a wealthy family following his success in the 1757 civil examinations. When she complained about her relegation to a lesser place in the commemorative procession, she received a sympathetic hearing and her husband was removed from the list of those recommended for official posts.\textsuperscript{59} In the European-controlled areas women also saw civil and ecclesiastical courts as a public venue for the airing of grievances. This was highly significant because in these largely urban settings the machinery for community conciliation was largely non-existent and substantial numbers of former slaves were separated from their kinfolk. Cases commonly concerned inheritance and property rights, but courts under VOC aegis were also much frequented by Christian converts who wanted a legal dissolution of their marriage. In Batavia, it was said, two-thirds of the cases that clogged the courts were brought by local Christian women seeking divorce from errant and allegedly adulterous husbands.\textsuperscript{60}

The expanding textualization of law also provided a vehicle by which specific breaches of sexual norms could be categorized and then matched with


\textsuperscript{59} Insun Yu, \textit{Law and Society in Seventeenth and Eighteenth Century Vietnam} (Seoul, Korea: Asiatic Research Center, Korea University, 1990), pp. 60, 63.

\textsuperscript{60} Th. Salmon, \textit{Hedendaagsche Historie of Tegenwoordige Staat van alle Volkeren} (Amsterdam: Isaak Tirion, 1739) II: 165
appropriate penalties, which were increasingly commuted into a monetary equivalent. In northern Thailand, for instance, “grasping the hand or touching the breast of another man’s wife” is one of the sixteen categories of contention, for which the actual fine depended on the offender’s own marital state, and the extent to which the woman’s body had been exposed.61 As monetization penetrated the marketplace the trend towards compensation as a substitute for other forms of punishment probably benefited women, who (with access to their own income) could buy themselves out of an unsatisfactory marriage or offer recompense for some misdeed. Thus, while one Malay code lays down that a seduced woman should be put in stocks at the door of the mosque and her head shaved, it also makes provision for her to pay a fine and be released.62 The great value of reckoning reparation in this manner is that amounts could be finely tuned to the nature of the offence and the status of offenders and victims. In Java a widow or divorced woman with children could receive monetary compensation of ten silver rials [or the equivalent] if she had been sexually assaulted; should she be childless, however, she would receive only four rials, the same as an unmarried woman.63 At the same time, the fine imposed should reflect the status differentials of those involved. In Lan Na a headman who beat his wife was thus required to pay a larger fine than ordinary men, and an official who seduced the wife of another official might be levied as much as 2,200 pieces of silver.64 In this regard Vietnamese law was very “Southeast Asian” in the imposition of fines (phat) and demotion (bien) in lieu of physical punishment. Unlike China, the Le Code also sentenced offenders to pay reparation for moral and well as actual damage, so that the shame a woman might suffer in cases of adultery, rape, seduction, or a broken betrothal could be given a monetary equivalent.65

In practice, then, the payment of fines, suitably adjusted, could make recompense for virtually any moral fault, even incest and adultery. In writing of state regulation of sexuality in early modern Germany, Valerie Hull notes that fines are not merely simple to enforce, but are also preferred by offenders to other penalties such as public humiliation, beating, banishment or confiscation of

64 Wichienkeeo and Wijeyawardene, The Laws of King Mangrai, pp. 30, 31, 38.
property.\textsuperscript{66} It is thus intriguing that some Southeast Asian texts are self-consciously aware of the advantages of imposing fines rather than physical punishments, particularly when family or individual honor is involved. Explaining that a man who inadvertently marries a woman suckled by his own wife can make retribution by distributing alms in the mosque, a Malay code from Perak continues, “for in this world, provided the parties are able to pay, one can be freed from any offence against adat.” A similar view is expressed in a northern Thai source: “Compensation in money should be paid so that people will not be stirred into seeking revenge.” The payment of a fine becomes a curative process which allays anger and wipes out demerit. The Perak document puts the case even more strongly. “The use of money and the reason for its having been given to us by Allah is so that those who possess it should live in comfort and be free of the consequences of their misdoings. If it were otherwise, what would have been the use of Allah sending it into the world for his servants?”\textsuperscript{67} The practical application of such views is evident in a 1708 case from Cirebon. A peranakan woman, Sinio, had physically attacked another Javanese woman who later died of her wounds. Sinio was detained in the VOC fortress, awaiting extradition to Batavia. The case was then referred to the Cirebon princes, who found Sinio guilty but imposed a fine and a prison term rather than the normal punishment of death by the kris.\textsuperscript{68}

Sinio’s case, however, is a reminder that even when extenuating circumstances mitigated the severity of her punishment, it was men who made the judicial decisions and it was men who handed down the penalties. If anything the codification of law strengthened the belief that women were somehow culpable for lapses in moral standards. Parakara (legal guidelines) from Makassar (Sulawesi), for example, held a woman twice as accountable as a man for committing adultery; both offenders were wrong, “but the woman was doubly wrong.” A man was therefore fined one rial, and a woman two.\textsuperscript{69} Increasing surveillance by the center further militated against the flexibility of customary law, and in an environment where literacy was favored a defendant who could produce the written documents in

\textsuperscript{66} Nguyen Ngoc Huy et al, The Lê Code II: 55; see also Liauw, Undang-Undang Melaka, pp. 103; Nai Pan Hla and Okudaira, Eleven Mon Dhammasat Texts, p. 560.
\textsuperscript{67} Hull, Sexuality, State and Civil Society, pp. 81, 99.
\textsuperscript{68} Hoadley, Selective Judicial Competence, p. 96.
\textsuperscript{69} Cummings, Making Blood White, p. 187.
support of his or her case undoubtedly had the advantage. Well before the turn of the
eighteenth century Vietnamese law no longer accepted tokens such as a split coin or
a broken chopstick to indicate a mutually-agreed divorce, and a signed document
was now required to establish legality.\textsuperscript{70} As in Europe, it may be possible to detect a
trend whereby a woman’s sexual history could influence court decisions. In 1805,
for instance, a Thai woman named Pom sued for a divorce from her husband in a
provincial court, obtaining restoration of her premarital property. Pom’s husband,
successfully challenged this decision, arguing that his wife’s alleged adultery
negated her case.\textsuperscript{71} The tendency of male officials to favor men’s conjugal rights,
especially when compensation was involved, also militated against formal
annulment of marriage. Although the details are not provided, it is worth noting that
in 1810 a Burmese woman claimed that she had been forced to ask three times
before the headman granted her a divorce.\textsuperscript{72}

Yet it was not the judgments of zealous officials or the “cultural
codification” generated by literacy that were ultimately the most effective custodians
of community morality. In guarding against sexual transgressions and regulating
male-female relationships the priorities of local communities often overlapped with
those of the state, since they too wished to avoid social disruption and the conflicts
that could arise when women were dishonored or property contested. Indeed,
embedded in written documents was a recognition of the force of communal
oversight. State regulation of sexual conduct might have only limited success, but it
nonetheless placed a heavy load on the community. Underpinning community
surveillance, the family – itself providing a rationale for the authority of the state –
could in turn be recruited as an ally in the realization of state priorities. In the words
of a Malay text, “parents and children, brothers and sisters, share the same family
fortune and the family repute. If one suffers, all suffer.”\textsuperscript{73} And while vigilance was
incumbent upon all family members, the greatest burden of culpability almost
invariably fell on the parents. Thus, although Vietnamese laws exonerated the wider
kinship circle from blame, the immediate family was still answerable for individual
infractions. Accordingly, should a woman flout her husband’s wishes, her parents

\textsuperscript{71} David K. Wyatt, “The “Subtle Revolution” of Rama I of Siam,” in David K. Wyatt and Alexander
Woodside, eds. \textit{Moral Order and the Question of Change: Essays on Southeast Asian Thought} (New
\textsuperscript{72} Htin Aung, \textit{Burmese Law Tales}, pp. 44-45.
would be held responsible.  This helps explain why appeals might be made to a court when a daughter’s honor had allegedly been violated, and why village communities could sometimes treat a woman accused of “licentious behavior” so harshly.  

Perhaps the most powerful weapon in the family’s armory was the self-regulation that stemmed from the fear of religiously-sanctioned punishments for sexual misdeeds. Thai sources remind men that offenses such as touching a woman’s breasts could result in painful hands and feet, diseases of the eyes and ears, or other illnesses but some of the peta (hell-beings) described in popular Thai stories are women who had “lacked reverence for a husband or had been disrespectful to a mother-in-law, or even caused a co-wife to miscarry.” Since sexual misdeeds by females were regarded as public offenses that brought down great dishonor on their families, it is not surprising that the agonies offenders will suffer are a favorite subject in religious buildings. Carvings at a Daoist pagoda in contemporary Ho Chi Minh City thus depict a hell where the stomachs of adulterous women are slit open, their tongues cut out, and their bodies thrown to hungry tigers and dogs.  

In promoting ideal forms of female behavior, judges, officials, elders, parents could also draw on a pool of cautionary tales which revolved around religious or semi-mythical personages who could be recruited as exemplars of the moral order. A story included in the Malay Hikayat Bayan Budiman (one manuscript of which dates from 1600) thus cautions a woman whose trader husband is absent that she should not succumb to the advances of a prince. According to the Koran and the hadith, says the wise mynah bird, married women who commit adultery will be impaled by the angels in hell for a thousand years. The early seventeenth-century poet Hamzah Fansuri similarly assured his listeners that those guilty of fornication would be assigned to perdition, where they would suffer for their misdeeds into eternity.

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73 Rigby, Ninety-Nine Laws, p. 69.
77 R.O. Winstedt, ed. Hikayat Bayan Budiman, or Khojah Maimun (Singapore: Methodist Publishing House, 1920), pp. 6, 42; Drewes and Brakel, The Poems of Hamzah Fansuri, pp 75-77
Conclusion
The expanding capacity of political centers to galvanize human resources and extract revenue is regarded as a feature of “early modernity” in Southeast Asia, though this was always limited by low levels of urbanization, geographical distance, and inaccessible terrain. Whether indigenous or European, all administrations placed a high priority on settled communities, which could be more easily tapped for labor and for tribute, and through which approved values and beliefs could be transmitted. Metaphors of kinship relationships remained immensely relevant in societies where images of stern yet loving parents, obedient children, and supportive siblings could be invoked to justify hierarchies in a variety of different situations. Rulers and governments in Southeast Asia, like their counterparts in seventeenth-century Europe, also understood that the successful operation of subject households, and by extension, their usefulness to the state, was ultimately dependent on the maintenance of the male-female hierarchy. In effect, the state controls men, men control women, and women perpetuate the social order. It is hardly surprising, then, that the legal promulgations by which Southeast Asian states sought to tighten the links between subjects and government also endorsed new scripts for male dominance. At the same time, the agency of the family in fostering these links is a salutary reminder that women, despite undoubted subversion and counterfeiting of male privilege, were themselves co-signatories to a cultural compact by which a husband-dominated household became the template for social and political patriarchy.