

## BOOK REVIEWS

---

---

***Vietnam and the Rule of Law.* Edited by Carlyle A. Thayer and David G. Marr.** Political and Social Change Monograph 19. Department of Political and Social Change, Australian National University, 1993. 190 pp.

This volume is a collection of papers delivered at the conference on Vietnam Update 1992, which was the first in a series of annual conferences. Vietnam Update is modelled after the better-known annual conference, Indonesia Update, which has served to provide a forum for exchanges on the latest developments in Indonesia. Similarly, Vietnam Update helps to quench the thirst among many quarters for information and analyses on developments in Vietnam. Both conferences are organized by the Australian National University's Research School of Pacific and Asian Studies.

Assuming that the collection comprises all the papers delivered at the conference, this was a well-balanced meeting. Adam Fforde provided a concise overview of changes in the Vietnamese economy. He reviewed these changes and concluded that Vietnam has a good capacity to absorb foreign economic assistance. The outlook for the Vietnamese rural sector is good if the state is able to carry out the required reforms. He also thought that a group of technocratic élites (as part of the process of political evolution that responded to the need for change and reform) was likely to emerge in response to the challenge of modernization.

Given that in 1992 the Vietnamese State Constitution was revised in significant ways, it was probably not too heavy in emphasis to have had three papers analysing changes in the Constitution and their impact on the country. Thayer's piece on the impact of the constitutional changes

on the elections held in the same year was illuminating as it shed some light on changes in voting patterns. From the way the results of the election were presented in his paper, we could infer some pertinent issues regarding the selection of future electoral candidates by the Vietnamese Communist Party if the party decides to retain elections and stay elected. Ngo Ba Thanh devoted her piece to the impact of the revised Constitution on issues in constitutional law, such as private freedom versus state rights, the political structure, and human rights. She also offered historical and cultural perspectives to the legal system and distinguished the Vietnamese legal tradition from that of the United States, England and France. Levien Do's analysis of the impact of constitutional changes on foreign investment is systematic, concise and comparative.

Within the collection there are also specialist papers that deal with changes in the laws covering selected sectors of the economy and the issues engendered, such as private commercial freedom, real estate, labour, and income tax. These specialist papers, given their details, are very enlightening. For example, Nguyen Qui Binh's work on land law provides an introduction to various aspects of legislation which are relevant to both businessmen and individuals. These papers should prove useful to those who need some in-depth information on the laws regarding various economic activities.

Judging from the papers presented, it appears that the conference participants agree that the drive for legal reform in Vietnam stems from two needs: to provide legitimacy for the "withering away" of laws that buttress the old ways, and to make the laws more compatible with economic goals. This reading is essentially correct, and even confirmed by knowledgeable Vietnamese. Apparently, Vietnam believes that the move from a centrally planned system to a market economy must be legitimized by written laws. This it believes to be the basic principle of the rule of law. The other imperative for legislative reform is the extent to which the speed of reforms has been retarded by the lack of proper laws to deregulate economic activities and provide a favourable environment for private and foreign business enterprises. While statistics on the real extent of retardation are difficult to obtain, during the early years of *đổi mới* it was a popular sentiment that laws on foreign investments in Vietnam were not transparent enough to provide a sufficient level of protection from fraud or bullying by the local bureaucracy or local partners. In response to the above imperatives, far-reaching reforms in legislation pertaining to economic activities have been undertaken. From the Constitution to tax laws, all efforts are being made to ensure that laws do not impede economic activities that can generate wealth.

The theme of the conference, entitled "The Law in Vietnam", was

appropriate because by 1992 many important legislative changes had taken place. Instead of using the conference theme title for the collection of papers, however, the editors decided to use the title *Vietnam and the Rule of Law*, which was adapted from the original title of Ngo Ba Thanh's paper, "The 1992 Constitution and the Rule of Law". There is a subtle difference between the title of the conference and that of the volume with regard to scope and emphasis of analysis. Beyond the semantic debate, however, this difference is a matter of life and death for Vietnam since, from its viewpoint, the rule of law is more important than simply the enactment of laws. It will serve us well to remember this difference.

A government with a good working majority in parliament will not find laws difficult to pass, even more so in the case of Vietnam where the National Assembly is dominated by the Vietnamese Communist Party. However, it is self-evident that the existence of laws do not secure adherence to them, and this is an issue that one found needed more in-depth treatment. The rule of law is not maintained just by passing relevant laws. To achieve the desired goals, laws have to be enforced in relevant ways or risk losing their bite, and even losing respect for them if they are either abused or ignored. By "relevant ways" is meant that the laws need to be publicized, referred to, and used as the only yardstick by every level of government when assessing the legitimacy of activity. To avoid arbitrariness, the government needs to rely on honest and effective local government officials who share the vision of the centre. To ensure honesty and integrity, there needs to be a complete transformation of the socialist bureaucracy — in the methods of recruitment and pay — in favour of the principle of merit. There must also be stiff penalties that discourage corruption. In these areas, Vietnam is facing tremendous problems. In December 1993, the government acknowledged in a closed parliamentary session that the number of cases of official corruption and smuggling was rising — the figure for 1993 was twice that of 1992. Losses to corruption in 1993 were estimated at 285 billion dong (US\$29 million). The fact that this parliamentary session was allowed to be reported by the official news agency, coupled with Prime Minister Vo Van Kiet's tough public stance on corruption, are perhaps indications of the government's resolve to ensure the rule of law.

In a country which stresses the importance of the family and loyalty to one's family, clan, and group, it is inevitable that connections built up through such associations are used to clinch deals. Many people have highlighted the importance of *guanxi* (connections) in China for doing business there — an approach which is not necessarily illegal. To a certain extent, given that Vietnam also has a Confucian past, *guanxi* is just as important in Vietnam. It is of course a mistake to describe *guanxi* as

exclusive to East Asia, but that is a topic for another paper. It is probably too broad-sweeping to say that *guanxi* is undesirable, because if used legitimately, it can help push things along in a desired direction. For example, the *guanxi* between political and business leaders of two countries can help to facilitate co-operation between the countries, which may otherwise be slow-moving.

In its negative social context, the use of *guanxi* can go against the rule of law when it is used to bury from official and public eyes illegal and wrongful doings. In fact, many people immersed in the negative *guanxi* culture — and the Chinese or Vietnamese are not alone in this — may believe that *guanxi* will help them to accomplish anything outside the clear demarcations of the law. During a recent trip to a town near the Malaysian–Thai border, a friend boasted that given his *guanxi*, he was able to traverse both sides of the border at any time without valid travel documents and bring with him anything that he wanted, despite the fact that the border is closed for part of the day. These are instances where *guanxi* can accomplish more than what the law provides for individuals.

In addition, the Vietnamese way of life makes the enforcement of the rule of law difficult. In Vietnam's history before this century, the concept of the rule of law was virtually absent since Confucianism granted an absolute but benign ruler the final powers of arbitration. This practice was followed in the provinces and villages where the customary and imperial authority of the governors and chiefs was supreme. In the revised 1992 Constitution, local people's committees are given the right to approve the use of land and the kind of industry or business to have in their village. No doubt the philosophical basis of this right is the old Vietnamese adage which says that "the law of the sovereign gives way before the custom of the village".

The preference for customs over the rule of law can lead to negative consequences. National laws become clouded when they are countermanded by local decisions. The resulting confusion can have the effect of causing problems for economic planning. It may also encourage the bypassing of national laws. Perhaps the people's committees are given power in order to minimize unhappiness over unpopular planning decisions, but if local customs are to reign unreservedly, investors will find investing in Vietnam a very complex affair since they would have to deal with each province and village on its own terms. Thus, we find in Vietnam a basic contradiction between the needs of modernization and respect for tradition. Such a situation may not be conducive to the rule of law in the long term from Hanoi's point of view.

In the long term, if Vietnam is to attract foreign investments from overseas, it will find itself having to subscribe more and more to the

international (Western or otherwise) legal culture which oils that market machinery. This probability supports the claim that economic transformation brought about by capitalism (admittedly, with a number of variants) will make the world more homogeneous in outlook and interests, thus reducing the probability of international conflict.

On the whole, *Vietnam and the Rule of Law* is a good source book on recent developments pertaining to legal reform in Vietnam, more than sufficient for the general reader who does not want long-drawn-out and in-depth academic analysis. One minor point: questions and comments on the papers presented at the conference often make interesting reading and are invaluable contributions from non-presenting participants. These contributions reflect the mood of the conference of which the presenters are only a part. As such, including questions and comments in the published record of the conference may appear to be the natural thing to do. On the other hand, for the sake of clarity and neatness of the book, most writers and editors would have had the papers revised to take into consideration the questions and comments. Whether it is better to adopt this approach, or to leave the original papers intact and publish the questions and comments as appendices to the papers is moot. A compromise may be to publish revised papers, the questions and comments, and to note that the latter have been taken into account in revising the papers. Perhaps this is a point for editors of proceedings of future conferences to consider.

DAVID KOH

*Institute of Southeast Asian Studies*

***Vietnam: The Struggle for National Identity.* By D.R. SarDesai.** Second Edition. Boulder: Westview Press, 1992. 192 pp.

The first edition of this book was published in 1988 by Paramilla and Co., New Delhi, under the title *Vietnam: Trials and Tribulations of Nation*. Its bibliography was updated and a chapter on the Cambodia question and U.S.-Vietnamese relations added when its current edition was published by Westview Press in 1992.

In less than 200 pages, SarDesai sketches Vietnamese history from its ancient beginnings to 1991. This one-volume history of modern Vietnam would have been a welcome contribution to the public had the author succeeded in bringing us "an objective history of the modern period in