

*The Tradition of Human Rights in China and Vietnam.* By Stephen B. Young and Nguyen Ngoc Huy. The LAC-VIET Series no. 10. New Haven, CT: Council on Southeast Asia Studies, Yale Center for International and Area Studies, 1990. Pp. x, 480. Annex, notes, bibliography.

The average reader coming on this book may begin incredulously by asking, "What tradition? What rights?" This average reviewer, having read all 480 pages of this paperback, might answer, "Neither; they do not exist". That is because the common perspective is that of the rights of the individual, based on the rule of law, in the modern fashion. Asian history generally has been based upon the rule of men, and often blood-thirsty at that. Power is all. There is precious little here to change that opinion. When a Vietnamese scholar addressed a laudatory epistle to a high court official, Emperor Minh Mang had the poor chap executed "for toadying to high dignitaries" (p. 362). The founder of the Ming Dynasty in China after AD 1368 introduced new forms of execution, such as being sliced up with a knife in 3,357 slices exactly (p. 220). It takes a highly developed civilization to think up such refined forms of cruelty. But here's the point. "Ming" means bright, brilliant, enlightened. Although Emperor Chu was a tyrant of the first water, who soaked his subjects in blood, the name was adopted to symbolize the virtue of the ruler, as a source of legitimacy, linking Earth and Heaven. We find throughout this story the greatest contrast between the theory of government and its practice.

We must therefore follow our two authors, one American, one Vietnamese, through this exegesis of legal and administrative principle and practice down the years. The title of the book is in some sense a misnomer, for it is about much more than human rights. We find here, in great detail, whole structures of government and bureaucracy, legal codes, notions of authority, social behaviour, and innumerable personages and anecdotes thronging the pages of this great history. The first chapter is cast in terms of Western political philosophy, treating relations between the subject and the ruler, the people and the state. There then follow four chronological chapters on China: Feudal, Warring States, Imperial System, and Opposition to the Imperial Order. There is

one chapter on the Failure of Orthodoxy in Vietnam, and some final brief conclusions. There are Notes, an Annex, and a Bibliography, but no Index (which admittedly would have been a mammoth task). Instead of the normal BC and AD periodization, BCE (Before the Christian Era) and CE (Christian Era) are used throughout. This seems strange, but perhaps it is a current American fad. The erudition of the two authors is deeply impressive. They met in Vietnam during the war, where both had practical experience of seeking to promote social democracy.

This mass of material is difficult to summarize. "Axial principles" are adduced for each period, such as found in Confucius (*te* = self-restraint) and Legalism (*shih* = power). An important distinction is made between "negative" and "positive" rights. The former turned on a proper sense of duty: "The superior man does what is proper to the station in which he is" (p. 59). If all behave with self-discipline and keep their place, there will be social order, with the negative right to enjoy peace and prosperity, and the reins of government can be light and the ruler inconspicuous. Legalism, on the other hand, substituted authority and power and the bureaucratic state as its axial principle. This was most eloquently exemplified by China's first emperor, Ch'in Shih Huang Ti, after 221 BCE, and whose own state of Ch'in gave its name to the whole country: "The King of Ch'in has a waspish nose, eyes like slits, a chicken breast and a voice like a jackal. He is merciless, with the heart of a tiger or a wolf. When in difficulties, he willingly humbles himself; when successful, he swallows men up without a scruple" (p. 137). This was the man praised by Mao Tse-tung, and whose system became a political model for successive dynasties lasting until 1911. Where then, in all this, was the rule of law? There never was such an outpouring of codes, maxims, and prescriptions more honoured in the breach. That is the paradox. Never mind filial piety, the Doctrine of the Mean, the Great Learning, the Six Injunctions, and all the necromancy and signs and portents of the Five Elements and *yin* and *yang*, life for subjects of the Empire could be characterized as generally "nasty, brutish, and short".

Much the same was true of Vietnam. Han rule was imposed on Nan Yueh in 111 BCE and lasted a thousand years. There then ensued an ambivalent relationship with China, as vassal or rebel, autonomous or

independent, but always heavily influenced by Chinese thought and practice, that has continued to this day. Huy's chapter here nevertheless points to some significant differences based on a separate cultural heritage, such as the role of personal charisma, indigenous administration at the lowest levels, and the position of women in public life. On the basic issue of state and society, however, there seems little difference. Vietnam's first emperor, Dinh Bo Linh (971–979 CE), "kept a cauldron of oil in which to boil offenders, and raised tigers in the palace to dispatch others who displeased him" (p. 312). Brothers contended for power: a third son beat off the second and ninth sons, but was murdered by the fifth son, "who then had to fight the fourth, sixth and ninth sons before he could secure his throne" (p. 313). Perhaps the first, seventh, and eighth sons were wise to keep out of it. No heavenly mandate here, obviously. What price, then, *nhan* (humaneness) and *nghia* (justice), and the 722 articles of the Le Code which reproduced the Chinese structure of imperial order? It might be comforting to know that you could only be tortured three times (p. 337). "For thievery, eighty blows of the heavy stick were given for the first offence, hands and feet were cut off for the second offence, and death imposed for the third offence" (p. 320). Theft with no hands or feet would surely require some ingenuity and determination. In 1835 Minh Mang forcibly incorporated Cambodia into his empire, which itself was soon to be incorporated into the French empire. More than any moral precept, success in fending off Chinese attack seems to have been a firmer basis for legitimacy of Vietnamese rulers.

There is little here to gladden the heart of democrats, whatever elements of constitutionalism may be detected in Chinese and Vietnamese jurisprudence. The trend was towards autocracy, and its practice was unspeakable. The conclusion of the authors is that "where private power, especially rights of private property, is recognised, the society in question will be more likely to achieve the Rule of Law" (p. 378). Possibly, but rulers themselves must be under the law as well as their subjects. Otherwise, as China and Vietnam show, no amount of codes, precepts, and constitutions will make it secure. As the old English saying has it, "Fine words butter no parsnips". Without rock-solid

buttressing and diffusion of power, human rights can be ignored by strong governments. Unfortunately, that is the fate of much of mankind today.

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