

ASIAN SOCIALISM & LEGAL CHANGE

THE DYNAMICS OF VIETNAMESE
AND CHINESE REFORM

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AND CHINESE REFORM

John Gillespie & Pip Nicholson (eds)



E P R E S S

Asia Pacific Press at
The Australian National University



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Co-published by ANU E Press and Asia Pacific Press
The Australian National University
Canberra ACT 0200, Australia

National Library of Australia Cataloguing-in-Publication entry

Asian socialism and legal change: the dynamics of Vietnamese and Chinese reform.

Bibliography

ISBN 0 7315 3715 7

ISBN 1 9209 4227 0 (Online)

1. Law and socialism. 2. Socialism - China. 3. Socialism - Vietnam. 4. Law reform - China. 5. Law reform - Vietnam. I. Gillespie, John. II. Nicholson, Pip.

340.115

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Editor: Matthew May

Design: Annie di Nallo

Printed by Digital Print Australia, Adelaide

First edition © 2005 ANU E Press and Asia Pacific Press

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ABBREVIATIONS

| | |
|--------|---|
| ADB | Asian Development Bank |
| AFP | Agence-France Presse |
| ALL | Administrative Litigation Law |
| ASEAN | Association of Southeast Asian Nations |
| BTA | bilateral trade agreement |
| CIEM | Central Institute for Economics and Management |
| CPL | Criminal Procedure Law |
| CPC | Communist Party of China |
| CPV | Communist Party of Vietnam |
| DRVN | Democratic Republic of Vietnam |
| HCMCLU | Ho Chi Minh City Law University |
| HEI | Higher education institutions |
| IT | information technology |
| JICA | Japan International Cooperation Agency |
| LNA | Legal Needs Assessment |
| MITI | Ministry for International Trade and Industry |
| MOET | Ministry of Education and Training |
| MOJ | Ministry of Justice |
| MPS | Ministry of Public Security |
| NGO | non-governmental organisation |
| NPC | National People's Congress |
| ODA | official development assistance |
| OECD | Organisation for Economic Cooperation and Development |
| PAR | public administration reform |
| PRC | People's Republic of China |
| RETL | re-education through labour |
| SOE | state-owned enterprises |
| SAPR | Security Administrative Punishment Regulations |
| SRVN | Socialist Republic of Vietnam |
| UK | United Kingdom |
| UNDP | United Nations Development Programme |
| USSR | Union of Soviet Socialist Republics |
| WTO | World Trade Organisation |

Contributors

Bui Thi Bich Lien was a Lecturer at Hanoi Law University from 1993 until 2003. She is now practising law at the Vietnam International Law Firm (VILAF—Hong Duc).

Sarah Biddulph is Associate Director (China) of the Asian Law Centre at the University of Melbourne. She is a graduate of Sydney University in Law and Chinese Studies. Her research and teaching interests are Chinese law and society and administrative law.

Yet Bryant is a Senior Lecturer in the Faculty of Law at Monash University. Her research interests include environmental law, international law, planning law and civil procedure. She has a particular interest in Vietnamese environmental law and building and construction law.

Michael Dowdle is from the Regulatory Institutions Network of the Research School of Social Sciences at the Australian National University. Michael works on issues of Chinese and comparative constitutional and public law development. He has taught at Columbia University, New York University, and Beijing University; and for the summer of 2002 was appointed to the Qinghua (Tsinghua) University Law Faculty as the Himalayas Foundation Distinguished Visiting Professor in comparative constitutional law.

Adam Fforde is Principal Fellow of the Melbourne Institute of Asian Languages and Societies at the University of Melbourne. He has spent over two decades researching Vietnam and the Vietnamese economy. He has combined this with a range of consultancy and humanitarian activities. He is interested in a wide range of matters related to contemporary issues of development and development policy, and also modern Vietnam studies.

John Gillespie is Associate Professor of the School of Law at Deakin University. He is a graduate in Science and has a Master of Laws from Monash University. He is the editor of *Commercial Legal Developments in Vietnam: Vietnamese and Foreign Commentaries* (Butterworths Asia, 1997) and has written numerous articles on commercial law and law reform in Vietnam.

Peter Hansen lectures in the History of Asian Christianity at the Catholic Theological College, Melbourne. He graduated in Law from the University of Melbourne in 1978. He practised in Sydney and Melbourne until the end of 1988, thereafter studying for the Catholic priesthood, and was ordained a priest of the Archdiocese of Melbourne in 1996. From 1990-1993, he worked in refugee camps in Hong Kong and the Philippines, providing legal advice to Vietnamese Asylum Seekers. He has since been an annual visitor to Vietnam, and in 2000 completed an M.A. at Monash

University on aspects of the history of Vietnamese Church-State relations. He is the Executive Director of the Mary of the Cross Centre in Fitzroy, a drug and alcohol treatment Centre providing services particularly to members of Melbourne's Vietnamese community.

Brad Jessup graduated from Monash University in 2001 with Honours degrees in Law and Science. Brad complements his research interest in the development and implementation of international environmental law working as a lawyer in private practice with a leading Australian commercial law firm. He specialises in international and Australian environmental law and Australian planning law.

Nguyen Hung Quang is Director of NH Quang and Associates, Vietnam, based in Hanoi. A graduate of the Hanoi Law University, Quang is a member of the Vietnam Lawyers Association and the Hanoi Bar Association. His interests include advocacy generally and commercial law, civil law, taxation and labour law.

Pip Nicholson is Associate Director (Vietnam) of the Asian Law Centre at the University of Melbourne. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University, Pip teaches on the Vietnamese legal system, comparative law and Australian public law. Pip's doctoral research focused on the Vietnamese court system between 1945 and 1976, in the course of an analysis of the extent to which the Vietnamese legal system mirrored or diverged from its Soviet parent. Her recent research interests include Vietnamese court reform, legal reform, comparative legal theory and legal consciousness in Vietnam.

Pham Duy Nghia graduated from the University of Leipzig, Germany in 1988 (magna cum laude) and earned his PhD degree from that School in 1991. He is Head of the Business Law Department at the Vietnam National University, Hanoi. He was visiting scholar at the Japan Institute for Invention and Innovation (1997), Stanford Law School (1998), Max Planck Institute for Foreign and International Private Law (Hamburg, 2001) and was most recently a scholar at Harvard Law School (2002-2003). He is a member of the Vietnam Bar Association and arbitrator of the Vietnam International Arbitration Centre (VIAC).

Elizabeth St George recently completed her doctoral dissertation on education and policy implementation in Vietnam, with the Australian National University. Between 1999 and 2003 she worked with the government of the Lao PDR on public administration reform and development policy. She currently works in similar fields in Hanoi.

Kerstin Steiner is a Doctoral candidate at the Asian Law Centre, Faculty of Law, The University of Melbourne. She completed her undergraduate law degree in Germany before coming to Australia and pursuing her interest in international law, comparative law and Asian law. She holds a Master of Laws from the University of Melbourne.

Chao Xi is a doctoral candidate at the School of Oriental and African Studies (SOAS), University of London. He is also a part-time lecturer of the University of London LLM program and research assistant of the Centre of East Asian Law (CEAL), SOAS. He now serves as the vice-president of the United Kingdom Chinese Law Association (UCKLA).

Martin Painter is Associate Professor of the Department of Public and Social Administration at the City University of Hong Kong. He previously worked at the University of Sydney, where he was Head of the Department of Government and Public Administration from 1996 to 2000. He studied for his undergraduate and postgraduate degrees at the University of Sussex and the Australian National University. He has held visiting positions at the University of Oxford, the Australian National University and Queen's University Canada. In 2000 he took on the role of Principal Researcher, Building Institutional Capacity in Asia Project at the Research Institute for Asia and the Pacific at the University of Sydney.

Preface

Vietnam and China have occupied an important place in Australia's history. The Chinese came very early to the nascent colonies and the Vietnamese came in increasing numbers, particularly over the last three decades. They have formed large and vibrant communities in Melbourne, greatly enriching the life of the city. It is not surprising that Melbourne is also home to some of Australia's, indeed the world's, leading specialists in the field of Vietnamese and Chinese law. This book is the welcome product of a conference organised by two of the Vietnam specialists. Using the pooled resources of Deakin Law School and the University of Melbourne Law School, a conference about 'Law and Governance: Socialist Transforming Vietnam' was held during 11–13 June 2003. Vietnam experts joined leading Chinese law scholars to debate the many meanings of socialism and its dynamic transformations within Asia. This book, which evolved from those conference discussions, will be essential reading for legal specialists and policymakers interested in the development of law and governance in Asian Socialist states.

I had worked with Associate Professor John Gillespie of Deakin Law School on an earlier project with the Australian International Legal Cooperation Committee (AILEC), which focused its attention on developing links with Vietnam, Cambodia and Laos between 1993 and 1997. John was the driving intellectual force behind a Conference in Hanoi that resulted in the publication *Commercial Legal Development in Vietnam: Vietnamese and foreign commentaries* in 1997.¹ Pip Nicholson was also at that Hanoi Conference, in the early stages of her research program on the role of the courts in Vietnam. Later she would join the Asian Law Centre at the University of Melbourne, adding a formidable expertise on Vietnam to the Centre's program, which already was a strong base for teaching and research on China. The value of their contribution to academic life in Melbourne is borne out by the quality of the papers delivered at the conference and reworked for publication here. There had not been much collaborative scholarship produced on Vietnamese law between the Hanoi and Melbourne Conferences, although individuals have produced key analyses of specific areas. This book will fill a void. The publication also debates how to compare and contrast Chinese and Vietnamese legal change.

The joint editors have written a lengthy introductory chapter outlining the themes of the publication and the key arguments of each contributor. I will not try to précis their work. What stands out, however, is the range of inputs into the process of law-making in Vietnam and China, the complexity of Vietnamese and Chinese society and politics, and the importance of a historical perspective when analysing both states. It also brings out the Vietnamese government's persistent endeavours to maintain its independence in charting the future role of law in their country, and the folly of those who conflate Vietnamese and Chinese approaches to law and governance. This volume brings together experts from Australia and overseas to present a range of very interesting interpretations of a complex phenomenon.

The conference was the third in a series of international conferences in which the Asian Law Centre has played a key role. The first, in 2001, was held in Mongolia, opening that hitherto closed system to scrutiny. The second, in 2002, took up the theme of Islamic Law and its impact on the West. The fourth, in 2005, evaluated legal education reforms in Japan at the end of their first year of operation. Each conference has focused the Australian expertise in the relevant area and so far has produced lively exchanges and valuable published proceedings. The Asian Law Centre under Tim Lindsey's leadership is to be congratulated on its choice of strategic themes, its role in bringing diverse expertise together, and its openness to cooperative academic ventures.

China and Vietnam are now the world's first and second largest socialist states. This volume provides the first sustained account of how socialism influences legal development in these countries, by drawing on Confucianism, religion, education, public administration and international treaty practice. The book also provides comparative insights into the similarities and differences in legal development in these countries.

Those who attended the conference will welcome the chance to read the polished versions of the papers. Those who did not attend are about to be rewarded with a rich offering of views on Socialism and governance in two of the world's oldest and most unique civilizations.

Malcolm Smith
Chuo Law School
(former Director of the Asian Law Centre and member of AILEC)
April 2005

NOTES

- ¹ Gillespie (ed.), J., 1997. *Commercial Legal Development in Vietnam: Vietnamese and foreign commentaries*, Butterworths, Sydney.

Acknowledgments

On 12–13 June 2003 about 60 scholars, practitioners and ‘legal experts’ gathered at the University of Melbourne to debate the many meanings and manifestations of Asian transitional socialism. The conference was enabled by the generous funding provided by the Australian Agency for International Development (AusAID), Deakin University and the Asian Law Centre at the University of Melbourne. Deakin University and the Asian Law Centre also supported this subsequent publication.

The discussion was much enriched by the presence of our Vietnamese and Chinese colleagues. AusAID is to be congratulated for bringing Vietnamese academics and scholars to the Conference under the International Seminar Support Scheme. Their support enabled constructive and focused discussions across complex issues, giving participants new ways of understanding governance and legal reform.

The seamless organisation of the conference was a credit to Kathryn Taylor, Manager of the Asian Law Centre. In her inimitably low-key style Kathryn led a team of doctoral candidates, namely Nguyen Hien Quan and Kerstin Steiner, who together looked after speakers and attendees at the conference. Subsequently, this team took on the first edit of the manuscript. We enjoyed working with these keen scholars. Thank you.

We have enjoyed the support and excellent editing of Matthew May at Asia Pacific Press, who, together with Maree Tait, has produced this publication with a minimum of fuss and a great deal of charm.

We wish to thank our families for the many evenings spent discussing Vietnam. In addition, Pip thanks her young children for their many questions and her partner, Stephen McLeish, for continuing to support her absences and idiosyncracies.

Finally, these papers offer diverse views on various contentious subjects. The views expressed are those of the authors and the editors and those thanked are not responsible for them.

John Gillespie and Pip Nicholson
Melbourne
June 2005

