

Reaching for the Rule of Law in South Vietnam

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MILITARY operations alone cannot provide lasting solutions to the real problems in Vietnam. Defeat of the Communist military forces will not rectify the social and economic conditions that give rise to much of

the unrest there. These underlying problems must be attacked now or they will continue to feed the Communist cause and reverse whatever gains are won on the battlefield. Vietnam is a political war in every sense. It is exactly in this type of war that the rule of law can make a substantial contribution. This is not to suggest that focusing upon the legal system will provide some magic solution for our Vietnam dilemma. Nor is it the purpose of this article to

urge the abandonment of any existing efforts, either military, social, or economic.

There is an immediate need, however, for a greater recognition by lawyers and policymakers alike of the prerequisite role that law and legal institutions can play in such a conflict. They can provide a means through which underlying social and economic problems can be alleviated, and can aid the government in winning the popular support.

No government can long hope to survive, much less carry out its programs and policies, without the aid

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of a responsive, properly functioning legal system. Governments must act largely through laws, using legal institutions as tools for implementing and enforcing their programs.

Under an effective legal system, these programs are translated promptly into sound laws which serve to complement, and at times lead, attempts to solve national problems. If the system fails in this respect, the ability of national leaders to act in the public interest will be seriously impaired, and ultimately major barriers to the achievement of order and progress will have been erected.

It should be understood from the outset that Vietnam has an established legal system of considerable sophistication and tradition. However, there are indications that this system is not geared to meet the complex and growing demands of conditions in Vietnam today.

Lacks Popular Acceptance

The most significant problem facing the Vietnamese jurist is the gap that exists between the law and the majority of the people—that is, the lack of popular acceptance and understanding of the legal system. Formal legal institutions as such really exist only in the urban areas of Vietnam. Rural areas are hardly touched by these more organized institutions, and, instead, follow various forms of tribal and customary law.

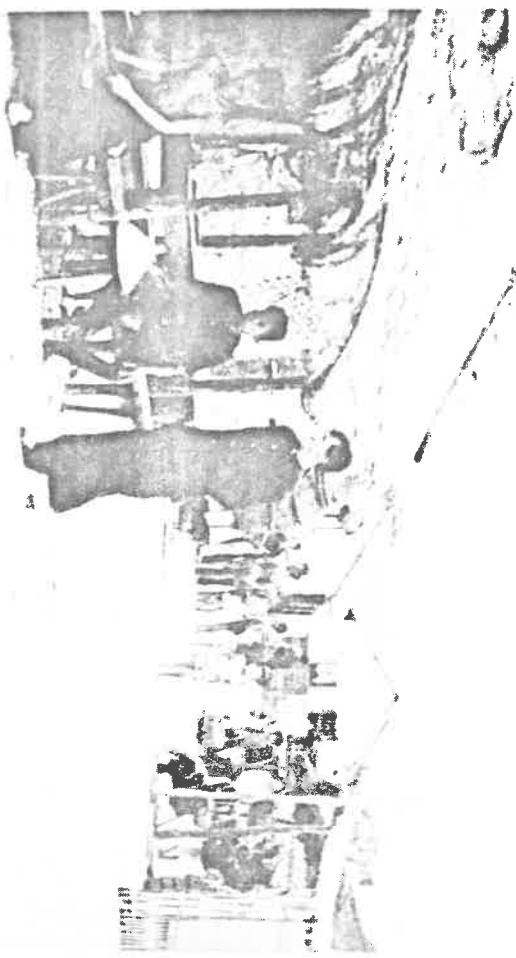
The peasant majority is almost totally unfamiliar with the law, the courts, and the values of the formal legal system. There is an air of mystery enshining courts and laws that is a formidable barrier to these people. While most Americans are able to go into their courts with the conviction that they will be heard fairly, the Vietnamese peasant has no such

it difficult to place trust or confidence in a system that he does not understand or, worse, suspects of corruption.

This lack of appreciation of most Vietnamese for their laws has deep

colonial period was rejected by the people through this same suspicion and antagonism.

As a result, most Vietnamese have never learned to trust or respect the concept of a rule of law. The law was



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never their own institution. It belonged to others and was imposed from above rather than growing from within the society. Because the law did not protect the people, they protected themselves from the law—by circumventing it and by circumventing it

Whenever possible, violating the law became an accepted expression of nationalism or patriotism.

Whether this fear and antagonism are national or not, they are still real and must be dealt with if the rule of law is to be accepted as a desirable means of insuring order, justice, and individual rights. One must not be fooled into thinking that it is an easy task to undo these centuries of hostility and suspicion.

Educational Programs

Whatever the best approach to the people, it will most likely require some sort of educational program. While this is a difficult, complicated undertaking, there are numerous avenues through which the Vietnamese people might be reached effectively. The government's Revolutionary Development Program could serve as a vehicle for sending properly trained cadres of young lawyers into the rural areas to aid the development and acceptance of legal institutions.

Substantial progress in making the Vietnamese people familiar with their laws could also be made by appropriate use of posters, articles in newspapers and magazines, and talks by prominent public officials and members of the bench and bar.

Furthermore, the Vietnamese have a love of the performing arts that could be used to advantage through skits or plays emphasizing the importance of law, and produced by drama groups in the safe portions of the country or broadcast by radio or the growing television network. Theatrical groups have been used frequently as a propaganda tool by the Communists in Asia and are particularly useful in reaching the large illiterate portions of the population.

also be encouraged to institute an all-out attack on the present lamentable lack of interest on the part of most Vietnamese in the basic duties, responsibilities, and rights of good citizenship. Among the most important people to be reached are the youth. Citizenship should be taught in the schools, commencing in the primary grades.

Equally important are parallel programs carried on by various civic organizations such as police boys' clubs, 4-H clubs, and Boy Scouts. By taking part in the community service projects of these organizations, the participants not only learn by doing, but tend to acquire, at an early age, a pride of identification with the community. This is an important step in achieving popular support of the government.

Legal System

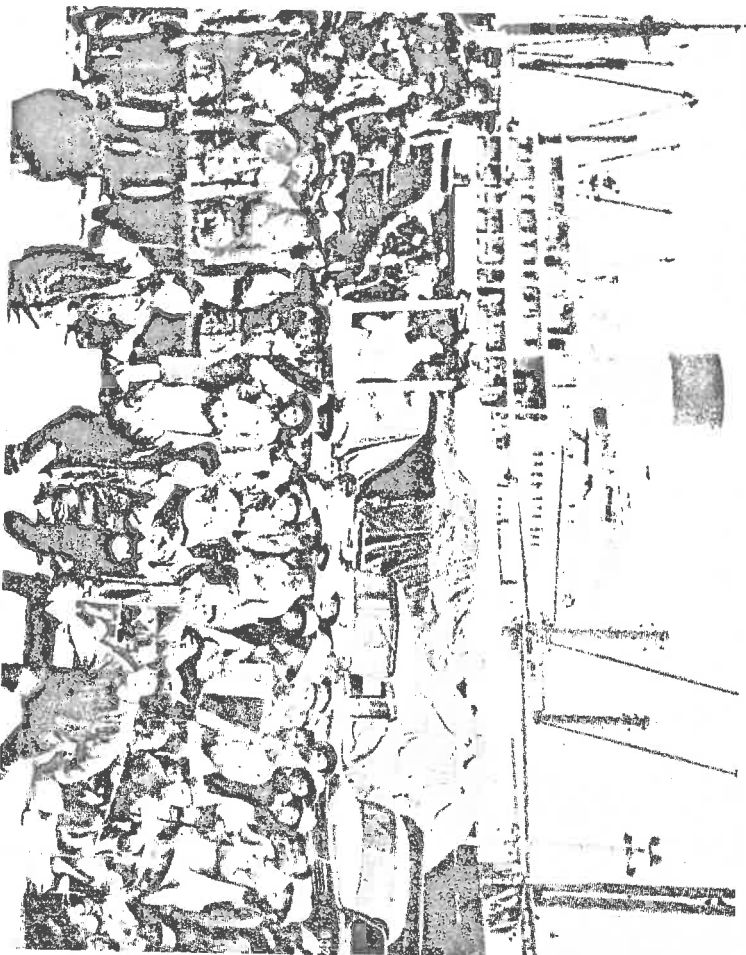
Obviously, popular acceptance and understanding can be achieved only by a legal system that functions well and is responsive to the needs of the people. It is, therefore, necessary to look at the law and legal institutions of Vietnam with an eye toward uncovering those areas of the system that might be improved.

The legal system of ancient Vietnam was primarily a copy of that of the Chinese who dominated the country until the 10th century. Later, the Vietnamese Emperors who ruled until the French takeover did little to abate the lingering Chinese influence. The Hong Duc Code, promulgated in the 15th century, and the Gia Long Code, promulgated in the 19th century, both reflected a strong Chinese heritage and became basic documents of civil and criminal law.

During the period of French rule,

all of Vietnam was placed in the Indochinese Federation under a French Governor General. At that time, Vietnam had three major regions: Tonkin, now North Vietnam; Annam, the central portion of Vietnam; and Cochinchina, the southern part of Vietnam which includes Saigon and the Mekong Delta area. Each region was treated

of many newly emerging nations that the legal codes of the colonial period are sure to be incompatible with the new era. This notion has been all too often accepted unquestioningly with regard to Vietnam, which tends to obscure a more objective assessment of the French influence. Actually, there are still areas of rural Vietnam



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differently from an administrative point of view. Even today each has its own legal codes.

The French restructured the courts along French lines, and the codes enacted during the colonial period—most of which today are still the law of Vietnam—were similar to the codes in effect in France at the turn of the century.

It has been the subject of the folklore

where French law has yet to make any impact whatsoever.

In those areas where the French system has developed, it has introduced distinct improvements. While there are many inconsistencies between the system imposed by the French and the traditional Vietnamese approach, the French, nevertheless, erected a basic legal foundation upon which the Vietnamese can build

answers to the drastic challenges of today.

Since the mid-1950's, the South Vietnamese Ministry of Justice has been making efforts to recodify the penal, civil, procedural, and commercial codes. The progress has been slow, and there is some question whether the recodification is really a critical, creative attempt to provide codes reasonably based upon national needs and traditions or whether it is simply a rewriting of existing laws.

Emergency Decrees

Beyond this effort, the last 12 years have seen the promulgation of a long list of emergency decrees dealing with measures to control both population and resources under insurgent conditions. These include laws and regulations which place strict controls upon the press; require government permission for all meetings, including family gatherings; enlarge police powers to search, seize, and arrest; regulate the handling, storage, and transportation of rice and other vital foods; punish numerous acts decreed to be subversive; forbid membership in the Viet Cong; regulate the use of medical supplies; and control the use of roads and other transportation facilities.

Under the Anglo-American system, the doctrine of habeas corpus protects persons who are illegally confined. Whatever protection of this nature might once have existed in Vietnam has effectively been suspended by the establishment of a state of emergency. Conditions now prevailing in Vietnam certainly require stern measures, but authority to confine and hold suspected dissidents indefinitely without trial is no solution.

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...certain areas of government action.

There is a supreme court, the *Cour de Cassation*, which sits in Saigon. Below this court are two courts of appeal—one in Hue and one in Saigon. They take appeals from the courts of general jurisdiction—the courts of first instance, and the courts of peace with extended jurisdiction. Below these trial courts are courts of peace which handle the most minor cases.

There are also specialized courts, including labor courts to hear employer-employee disputes, juvenile courts, agrarian courts to handle litigation arising as a result of agrarian reform, and port courts to govern disputes between landlords and tenants.

Military Courts

During the present state of emergency in Vietnam, military courts have been empowered to try civilians as well as military personnel, particularly for offenses against national security. These are generally not of the same rank as the Viet-Nam Army Code of Military Justice, but rather are made criminal through the emergency orders. While many cases tried by the military courts are appealable to the *Cour de Cassation*, there is no appeal allowed in most of these national security cases. However, in both instances can be exercised without the approval of the Chief of State.

The administrative court system in Vietnam consists of three bodies: the Council of State, which is the highest of the administrative bodies; a Administrative Court, which is the first instance court, which is the Administrative Tribunal; and the Administrative Tribunal, which is the final instance court. The Administrative Tribunal is composed of administrative judges and judges over provincial districts and village elections.

complaints regarding allowances of veterans.

Problems of the Judiciary

It is difficult to assess the present effectiveness of the Vietnamese courts. Objective analysis is inhibited by language problems, abounding historical and cultural obscurities, the war, and governmental chaos.

Historically, the Vietnamese courts have been stronger in the urban areas than in the rural areas. The hostile control of numerous rural areas further deteriorates this situation. At present, in most provinces, there is one court of general jurisdiction, usually sitting only in the largest town. A few of these courts must serve two or three neighboring provinces. Thus, even without the problems created by war, there is need for an expanded judicial system to serve rural areas more adequately.

Most Vietnamese judges are intelligent, well-qualified men who are greatly overworked. They are civil servants who, unlike their American counterparts, are not elected or appointed to a specific court. Instead, lawyers aspiring to become judges must pass special examinations administered by the Ministry of Justice; successful completion leads to assignment in the judicial system, usually as an assistant prosecutor in a lower court. From this position, a man must work his way to higher courts. Promotion, demotion, and discipline of the persons within the system are determined by the Ministry of Justice.

The nearly 200 lawyers in South Vietnam are concentrated in Saigon and a few other cities. All of these attorneys are members of either the Saigon or Hue Bars. The primary need of Vietnamese lawyers is the

people into the profession and the development of a greater sense of public responsibility. There is no easy solution to the problem at any time, and particularly not when so many other demands are being made.

Today, most recent male law school graduates are being drafted into the army where they are generally assigned nonlegal duties. This limits the number of practicing lawyers, further contributing to an already critical nationwide shortage.

Multitudinous pressures are working drastic changes in Vietnamese society. War has separated family members and carried them throughout the reaches of the country where they are exposed to a variety of conflicting influences. Men who serve in the army are learning new standards and developing new expectations. The

deteriorated that it is now not uncommon to find brother fighting against brother, one for the South Vietnamese and the other for the National Liberation Front.

The laws and legal institutions that sufficed in quieter days are no longer adequate to meet the complex demands of a nation struggling for existence and identity. However, it is important to realize that the existing legal system constitutes an excellent foundation upon which a more modern institution could be built. The problem is the building of this institution.

The key to the growth of the rule of law in Vietnam or any other nation lies with its people. There can be no respect for a system of law that the people do not understand, in which the people do not participate, or that the people do not trust.

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