

*Ngo Ba Thanh*

**Vietnam's Economic Renovation and the Development of Law**

Law Commission of the National Assembly Socialist Republic of Vietnam, Hanoi 1991, 193 pages, octave, distributed by Vietcochamber, 33 Ba Trieu Str., Hanoi, US\$ 40.00

Religious redemption teachings referring their clientele to the next world may draw their legitimisation solely through administering revelations, relicts, rituals and liturgies. Programmes of political and social change, however, particularly those rooted in philosophies of enlightenment, religious criticism, dialectical and historical materialism, have to account for their promises and projections before the dawn of eternity. After a century of deficit spending on utopia, demands and markets are challenging the prophets and their disciples. The world is witnessing ironic completions of the self-fulfilling prophecies of Marxism on the death of state and law in the submergence of political entities, disintegration of federated empires and collapse of imperative economies under one-party regimes. The destabilising impact of moribund governments and power vacuums on the existing world order is ubiquitous and the community of nations is dependant more than ever on partnerships of mutual confidence and multilateral responsibility.

Those socialist countries, like Vietnam since 1977, opening their national markets to foreign capital, currencies, know-how, high technology and innovations, and entering, under the rule of state monopoly on foreign trade, the world market, will have to meet the harsh dictates on competition of production and commerce, organisation and management, information and documentation as well as ideas and ideals. The protagonists on the other side are not democratically controlled states, but hierarchically organised conglomerates of multinational corporations, well versed in the legal mechanisms of international transactions.

The Vietnamese Constitution of 1980 actually under revision is committed to socialist legality inspired by pre-Perestroyka Soviet and East European schools of thought instrumentalising and politicising legislative acts, reducing checks and balances through the separation of powers, the over-emphasising of criminal penalties and administrative disciplinary regulations and, at the same time, curtailing individual substantial and procedural rights against the state apparatus and the diverse political and social pressure groups. Additionally, whilst customary, common or judicial law is not recognised as legal source, justices on the other hand are obliged to partiality by politico-legal commandments. Decisions of the Supreme People's Court are not officially and regularly published neither does Vietnam espouse of any law reporting system. Judgements and decrees of the judiciary are not binding precedents on lower courts, instead the Supreme People's Court is endowed with the quasi-legislative authority of issuing general instructions and directives implementing Decree-Laws by the State Council or Laws adopted by the National Assembly.

Constitutional or administrative jurisdiction is unknown to Vietnam. According to the Decree-Law on Petitions and Complaints by Citizens of May 2, 1991 unlawful acts by the Executive are controlled and judged by the Administration itself. The Party enjoys legal

immunity insofar as, according to the Constitution, it is the one and only force leading state and society operating within the framework of the Constitution whilst simultaneously framing it on the basis of genuine legislative initiative.

Besides the inflation of sub-legislative acts, another trait of the Vietnamese legal system is the redundancy or duplication of decision making bodies such as the state economic arbitration committees functioning under the supervision of the Council of Ministers and the state people's courts under the Ministry of Justice. International trade and commerce, private international relations in contract, property, tort or inheritance matters are empty pages in the Vietnamese Law Codes. A rare exception is the Maritime Code of Vietnam of June 13, 1990 and the projected Decree-Law of Recognition and Enforcement of Foreign Judgments and Arbitral Awards. After years of judicial abstention and national introversion Vietnam is still a stranger to international treaties on unified laws.

The recent statutes on foreign investment, commercial joint-stock companies, private enterprise, transfer of technology and other instruments of liberal rights to freedom of trade and contract and party autonomy seem to be influenced by Chinese, North Korean and Eastern European examples.

The colonial heritage of the exquisite French legal thinking, crystallized in the Code Napoleon 1804 and other enactments, was waived by the socialist heirs. The Anglo-American jurisprudence, following the common law system, is too alien to a civil law country like Vietnam. Whether the modern "look east" tendency towards Japan (see the Vietnamese version of Akio Morita's "Made in Japan") will result in a reception of Japanese laws remains to be seen.

The host of recent legislation is presented in Ngo Ba Thanh's English Book "Vietnam's Economic Renovation the the Development of Law". It is the first of its kind in any language in Vietnam, where textbooks on law are an exception and are mostly arranged in question and answer form (see *Nguyen The Giai*'s Family Law or *Phan Dang Thanh* and *Nguyen Thi Hoa*'s Inheritance Law). Thanh's book covers items from product liability to customs service. Unfortunately, the book does not fulfill the promises of its presumptuous title, and the price is in no way justified by the volume and its contents. It is a more stringing together of summaries of the different laws, full of repetitions, misprints and mistakes (also with regard to the legal terminology) and it is incomplete, no mention is made of by-laws and ordinances to the main texts. Nearly all the laws have been published, in English, in other Vietnamese publications such as the two volume book "Legal Writings on Foreign Investment in Vietnam" (which should be read as "Legislative Acts") by the State Committee for Co-operation and Investment, the monthly "Business Vietnam" edited by Investip Co., the booklet by the highly efficient Institute for Science Management (Concetti) or the Law Publishing House. No reference is given by Thanh, nor is there an appendix of a bibliography on foreign or vernacular monographies or articles. Overall the book lacks a clear and unified line. The addition of Ho Chi Minh's views on national, human rights and international law (already published in Viet Nam Social Sciences 1/1990 pp. 36-42) is of low juridical profile and the well-meant broad exposition on law and the

global ecology is, in most parts, more a political pamphlet then a concise legal discourse. In the hands of foreign lawyers the manual will be of limited use, but *faute de mieux* it must be recommended to every student of the legal system of Vietnam who has no command of Vietnamese.

The reader will be surprised to learn that concretisation of the constitutional right to housing means the right to legally acquire a house for oneself (for whom else?) or to rent it as stated by the Decree-Law of April 6, 1991. The most crucial point is the question on private ownership of means of production and the property system as a whole, divided by the existing Constitution into state or people's ownership (in joint tenancy or in common?), collective and cooperative ownership and personal (not private) right of property.

The future constitutional legislator still dedicated to socialism is going to adapt the basic law of the state to the previously passed unconstitutional laws which are contrary to the chapter of the economic system laid down in the Constitution in force but were dictated by the moral of the market. The future State Council and the National Assembly will have to accomplish the Sisyphean task of making socialist and liberalist ends meet. But this concerns only the law on the books. The law in action in Vietnam is quite another thing, just try to cross a street in Hanoi, you would not believe Vietnam has a Road Traffic Act dated from December 9, 1989!

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**Der Islam in der Gegenwart**

Entwicklung und Ausbreitung, Staat, Politik und Recht, Kultur und Religion

Verlag C. H. Beck, 2. Aufl., München 1989, 776 S., DM 78,-

Der Kompetenz der Herausgeber wie auch der übrigen Mitarbeiter verdankt dieses Buch auch in der 2. Auflage seine unbestrittene Qualität. Es ist in der Vielfalt und in der Dichte der Informationen, die es dem Leser bietet, ein nahezu lexikalisches Werk über den Islam, welches die historische Entwicklung des Islam und seine doktrinären Grundlagen nachzeichnet, aber auch den Einfluß des Islam in Ländern mit islamischer Population bis in die heutige Zeit umfaßt und damit besondere Aktualität besitzt.

Dabei liefern die Autoren mit einer Fülle von Details aus der politischen Entwicklung der Gegenwart einen gut verständlichen Lageüberblick über das jeweilige Land und merken auch an, wann eine Situation mangels verlässlicher Informationen nicht einschätzbar ist. Dies wird gerade am Beispiel der VR China deutlich, wo die Erkenntnisse über den Einfluß des Islam seit der Kulturrevolution äußerst dürtig und unsicher geworden sind, wenn man einmal von der kommunistisch geprägten und daher vom Staat favorisierten Spielart des