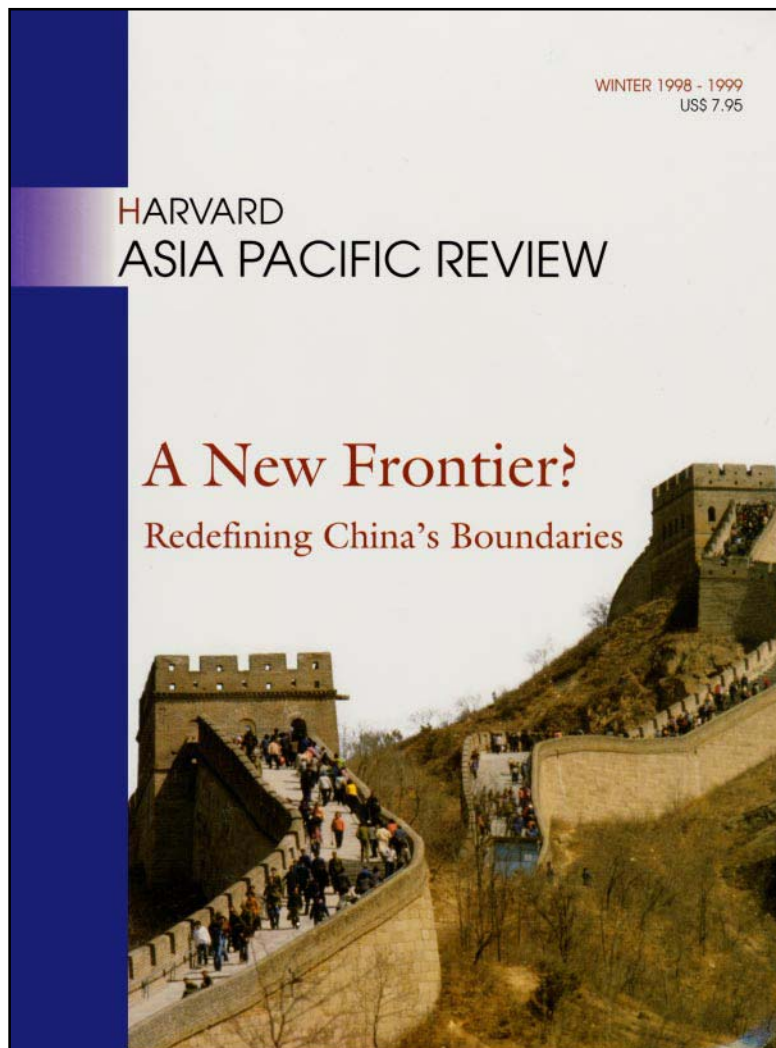


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From the Belly of the Beast

The Law's impact on the Vietnamese Press

RUSSELL HIANG-KHNG HENG

I MUST BEGIN BY EXPLAINING WHAT LED ME, A Singaporean researcher, to examine the media in Vietnam. I have been criticized in the past for commenting on press restrictions in Vietnam when an equally unsatisfactory situation exists in Singapore, but I believe that my experience as a journalist in the belly of the beast has helped me to understand this other authoritarian press system. Writing about Vietnam frequently evokes a sense of empathy in me for the trials that my Vietnamese colleagues must endure. Quite often, their experiences mirror similar episodes that I have witnessed in Singaporean newsrooms.

Political authorities in both Singapore and Vietnam have the means to persuade, cajole, and order editors to reflect the official line—these actions are sufficient to classify them as authoritarian press systems. This article is not a comparative study. Instead, I shall focus on the law in Vietnam and its impact on the media. It is interesting, nonetheless, to note an apparent difference between Singapore and Vietnam: Singapore is often perceived as a country in which laws are precise, strict, and efficiently implemented; in Vietnam, the legal situation is frequently a mess. Herein lies an interesting conundrum. Though Singapore has a more rigorous rule of law, its journalists and po-

litical elite have never thought of or spoken about relying on legal protection to ensure freedom of the press. On the other hand, the Vietnamese press and political leadership do refer to their 1990 Press Law as an article that safeguards certain rights of the media. I must warn you that I have no complete answer to this conundrum.

Legal Reform in Vietnam

In recent months, there have been several officially-sponsored conferences in Vietnam discussing the need to amend the 1990 Press Law. If legislative conventions in Hanoi are followed, the issue of press freedom will get an airing in public and there will be some coverage in the mass media. This level of discourse no longer surprises anyone who is familiar with the relatively more liberal society that has come with *doi moi* (self-reliance). Foreign observers are also likely to analyze any new

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press code in terms of whether it expands or constricts journalistic space. What will finally emerge after debate and legislation in the National Assembly will be a mixed package of proscriptive and protective regulations.

In Vietnam, legal reforms in all fields, including the media, are familiar to those who have been watching the country since 1986. In this year, the

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ruling Communist Party formally embraced a liberal political and economic reform program. Vietnam's old laws, written in the spirit of socialist state-building, are simply not adequate to regulate a society that is increasingly governed by market principles rather than central planning. This, however, is only half the story. The other half is that laws, whether old or new, have never been very effective in Vietnam. To remedy this problem, the reformist Vietnamese state has decided to strengthen its institutions. It is hoped that better-crafted statutes will contribute to a firmer establishment of the rule of law.

This raises specific questions about the country's 1990 Press Law. How has it been overtaken by reality in the past eight years? How have its provisions

fallen short of stated objectives? And how can the laws be amended to enhance the rule of law? These questions all add up to a larger uncertainty about the value of legislation in Vietnam.

Flaws of the 1990 Press Law

A little history is necessary to understand the current situation. The 1990 Press Law was enacted so that Vietnam's legal regime could catch up with the socioeconomic realities of *doi moi*. Its precursor, enacted in 1957, simply did not address these realities. For example, the 1957 Press Law, which was drafted by a Communist Party newly in power in Hanoi, did not deal with advertisements, because the Party did not then intend to promote this capitalist practice. By 1990, it was clear to

the leadership that advertisements could provide newspapers with the funds that the socialist state could no longer afford. Today, several newspapers make profits as a result of these advertisements, particularly those directly belonging to the Communist Party such as *Sai Gon Giai Phong*, Ho Chi Minh City's sole daily.

The 1990 Press Law was controversial from its inception: after protracted negotiations over several drafts failed to produce a consensus, it was ushered through the National Assembly. Its liberal critics claimed that the law proscribed the press, rather than protecting it. Evidence of this included its clear injunction against the private ownership of media sources, something that even the 1957 Press Law did not limit. Worse, the 1990 Press Law is written in insipid and imprecise language, lending itself to considerable discretionary interpretation.

A Changing Political Climate

Discussion about the relative merits of the 1990 Press Law frequently neglects one important point: the most liberal years for the media in Vietnam were 1987 and 1988, when the media did not have the benefit of its judicial protection. During those two years, before the collapse of the Soviet bloc frightened the Hanoi leadership into slowing down *doi moi*, the Vietnamese press was able to cast aside many taboos. The media focused the spotlight on corruption in high places, the systemic failures in almost all aspects of life, and the unhealthy monopolization of power by the Communist Party.

What gave the press substantive new liberties was an overarching political climate clamoring for liberal reforms. The regulations about the press that were written to promote that



Poisonous knowledge



larger liberal mood were introduced in the form of key party resolutions or directives instead of new state laws. Examples are the Party Secretariat's Order 15 (issued in September 1987), which gave more power to editors; and Politburo Decision 5 (issued in November 1987), which encouraged the country's literati to write candidly about the country's many social injustices. This period of exhilarating media reforms preceded the 1990 Press Law—and the new-found press freedoms of the late 1980s certainly could not be attributed to the old 1957 Press Law.

Reform in the Face of Violence

I want to draw attention to the fact that Vietnam has two legal regimes—that of the Party and the state legislature. The Party is by far the more important of the two. Unfortunately, it is difficult to analyze the more potent and frequent party directives and the internal party processes which produce them. The Party is still reluctant to expose its internal debates to public scrutiny, preferring the National Assembly to be the forum where ideas are publicly contended. Sometimes the directives issued by the party are even semi-classified and restricted only to senior members of the media.

Despite its shortcomings, the legislative agenda in Vietnam is more than mere political theatrics. Legal reform is important and must begin somewhere. Existing press laws in Vietnam are of some use to journalists in their pursuit of news. A good example occurred in Hanoi in July 1996 when the press checked on several policemen who were attempting to forcibly evict some residents from a building. The officer-in-charge warned reporters against covering the event, but they, in return, in-

voked the 1990 Press Law which stipulated that it was illegal to stop journalists in their legitimate pursuit of news. The officer then threatened them with arrest, hit a reporter, and smashed his camera; another reporter had his press card torn and camera confiscated. The journalists lodged reports with the city's legal office and wanted the office to press charges. These incidents found

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their way into the media and the police were keen to avoid a confrontation in court. That same year, a reporter was prevented from tape-recording courtroom proceedings. He challenged the court, citing articles in Decree 133 issued by the Council of Ministers. Finally, the court backed down. I should add that these two incidents were not anecdotes told in confidence but were stories reported in the press.

An Evolving System

These incidents underline three important points about press laws in Vietnam. First, legislation is still very much a part of the country's evolving legal culture and is therefore unsettled in many ways. This means that some injunctions and protective clauses have to be negotiated on a case-by-case basis during implementation.

Second, a sound knowledge of the law does provide journalists with more

resources when they are obstructed by bureaucrats in the system. However, success at overcoming these obstacles depends on the status and confidence of the journalist, the political resources he can call upon to protect himself if necessary, and the seniority of his target. Only bureaucratic technicalities of the sort described in the two examples can be challenged and press targets should be confined to officials on or below the middle level of the state-party hierarchy. Only a naive journalist would think that the law has the same efficacy when invoked against the upper echelons of power.

Third, Vietnam's journalists are able to negotiate certain obstacles because of the discretionary and ambiguous nature of their laws. This ambiguity may allow for the strengthening of legal reforms in the long run. Vietnamese journalists claim that direct confrontations with officialdom are rare in their media culture, but the two cited incidents were not the first, nor are they likely to be the last. Such challenges to authority are likely to remain cautious in pace and scope, but it is important that they continue.

In conclusion, at the current stage of legal development in Vietnam, people should not expect anything dramatic from revisions that are made to laws. That said, the press laws are important to the media. A complete picture of the media environment requires more attention on the party-administered regulatory regime; it is far more potent, but unfortunately far less visible than the laws of the state, which are meant to be public. Like anywhere else in the world, Vietnam's laws promoting freedom of the press need breathing room and require a more liberal political environment. Vietnam does not yet have that political environment. ■