The Genesis of the Peoples’ Procuracy in the Democratic Republic of Vietnam*

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The Soviet procuracy has served as a general model for other Communist regimes in devising their constitutional structure, and especially in designing their system of administration of justice. At a particular point in its development, virtually every member of the "socialist bloc" so far has introduced the institution of the procuracy, closely patterned on the Soviet prototype. The move to acquire a full-fledged procuratorial apparatus thus marks a major watershed in the legal evolution of these countries and provides a good index both to the current state of affairs on the legal front and the prospects for further change in line with the native elite's commitment to effect a radical transformation of the fabric of local society pursuant to the precepts of its revolutionary credo.

Quite obviously, for instance, the establishment of a procuratorial branch on the Soviet version makes sense only where a degree of administrative centralization already exists. Since the procuracy was originally conceived in the USSR as an instrumentality for promoting the uniform application of the laws on a national scale, the practical situation has to be right for the agency to discharge such a task with a modicum of success, i.e. there has to be a suitable environment to enable the responsible institution to exercise unitary control over compliance with the law by all segments of the community, the bureaucracy as well as the citizenry.

By the same token, the law itself must satisfy certain minimum standards of completeness and consistency in order to allow the procuracy properly to fulfill a supervisory function over how the relevant norms are observed by the officialdom and the population. A sufficient supply of legal artifacts should be on hand to warrant the creation of a special government organ to oversee the correct execution of the corresponding provisions by the parties concerned. Or a nucleus of regulations should have been duly enacted, and the procuracy can then enter the picture to make sure that these basic postulates are filled with an acceptable common content in the course of subsequent usage. In the first case, the procuracy is called upon to play an essentially watchdog role in that the rules have been set and its job is to guarantee that they are accurately put into effect. In the

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second case, the procuracy positively shapes the law by directing its growth from broad formulas to concrete principles, hammering out its substantive features in the process of tackling specific problems and ultimately distilling a stock of syncretic solutions from the record of diffuse experience. These are not mutually exclusive scenarios, needless to say, and both elements are present to some extent on most occasions; what is important is the proportion of stable versus fluid in any given “mix”, for the relationship will determine whether the procuracy will operate principally as a “law-policing” or a “law-elaborating” agency, thereby mirroring the home state’s level of historical development. In either event, however, the birth of the procuracy indicates that the status of the law is deemed adequate to require the ministrations of an appointed guardian, or now seems on the verge of reaching that stage, so that the procuracy’s appearance on the scene may be expected to help consummate the awaited transition. Quantity of legislation aside, a climate of legal “normacy” must prevail for the procuracy to meet its formal assignment. The kind of spontaneous and ad hoc resort to legal intervention that is characteristic of the early phase of a revolutionary experiment must have been replaced by a more organized routine before the procuracy can begin to monitor the legal pulse of the nation and insure that the incremental development of the law through practice henceforth occurs under strict scrutiny on desired terms. Unless the authorities are committed to a new legal style accentuating established procedures, the procuracy will lack the optimal conditions needed to carry out its duties and the whole venture will have accomplished very little indeed.

Under the circumstances, one can well understand the reasons why the first Constitution of the Democratic Republic of Vietnam, adopted on 8 November 1946, never mentioned the procuracy. To start with, as was noted at the time, that document was remarkably free of Marxist overtones and its drafters, out of sundry tactical considerations, consciously sought to project a public impression of a charter fit for a “western democracy”. The authors of the text, it is fairly safe to conclude, deliberately eschewed stereotyped Communist formulas so that the end product would be appreciated by an audience in the Anglo-Saxon countries, especially, of course, the United States. The logistics of the contemporary international situation counselled moderation, and the leadership of the indigenous liberation movement responded to these exigencies by masking its Marxist coloration and emphasizing instead its adherence to a nationalist democratic agenda. In light of the procuracy’s notoriously Communist pedigree, omission of any reference to that institution in the statute was just about unavoidable because of current political priorities. The decision was also prompted by several other factors. The revolutionary regime’s power was still territorially fragmented and its effective administrative control was limited to a patchwork of mainly rural areas only loosely connected between themselves. All business was run on a local scale and coordination of