

Shortly before and after the fall of Saigon to Ho Chi Minh's forces in April 1975, over 200 000 people escaped from the South in panic and fear. They were to be followed, in successive waves over the next fifteen years, by an estimated one and a half million.²

For the majority of the Vietnamese though, there was no thought of leaving in the early days of the new Republic. For many, the defeat of the Americans was the defeat of yet another colonial power. The task of reconstruction, however, was massive, especially since foreign aid from the US was cut off. From personal accounts of people who chose initially to stay but later escaped, it is clear that the new government was inexperienced, inept and strongly influenced by hierarchies within the Communist Party which distributed goods first to party leaders, second to government managers and lastly to common citizens. Almost immediately, standards of living fell dramatically, food was scarce and freedom of movement became a thing of the past. The presence of security agents dominated every facet of life and authorities required no warrant to make arrests on the basis of vague, circumstantial or even incorrect information.³

It can be seen from this thumbnail sketch of Vietnamese history, that refugees from Vietnam bring with them a long tradition of struggle against foreign domination and a strong patriotism. For most older refugees, escape was a temporary solution until their country returned to normal and it is only later, after traumas of flight and initial settlement are over, that the fact of final settlement impacts on them. They also bring with them the experience of thirty years of war and the memory of the pervasive destruction of their country and their people. Refugees under 30 in 1975 have known nothing else.

Culture, religion and values

Buddhism, the religion of the majority, came to Vietnam via India in the 2nd Century AD. Since that time it has given rise to native sects and sub-sects and combined with Confucianism and Taoism into a Vietnamese Buddhism which is a synthesis of all three belief systems. Although Christianity enjoyed some successes in the 16th century, it was seen as a foreign faith associated with white explorers, merchants and ruling classes.⁴

From 1817 on, missionaries were persecuted and it was not until after conquest by France in the 1880s that the

prohibition on Catholicism was lifted. Christianity as a result, was again associated in Vietnam with domination by a foreign power. In addition, some Buddhist monks had been in the front line of peaceful resistance to the French and been tortured for their trouble. They were venerated as heroes and martyrs by the resistance movements. Buddhism is thus strongly linked to nationalist sentiments.

Vietnamese Buddhism, however, is much more than a political vehicle for the gaining of independence. Its values are embedded in the Vietnamese way of life and are foundational to Vietnamese relationships with others. By far the most important of these values are those associated with the family, where individual interest is subordinate, if not irrelevant, to the welfare of the whole group. Strong and extremely complex bonds of filial respect combine with parental responsibility for support and guidance in a wide-ranging kin network. Family honour is paramount and stringent social censure is applied to family members dishonouring the family name. Should such a disgrace occur, families are accustomed to dealing with those matters internally and without help from outside. Thus honour is maintained without loss of face. In practical dealings with others therefore, the Vietnamese will avoid unpleasant confrontation and foster harmony through the use of tact, delicacy and gentleness.

This very brief outline of Vietnamese history and culture does not do justice to the richness, variety and complexity of traditional Vietnamese values but serves only to illustrate, however sketchily, the uniqueness of the Vietnamese refugee experience as opposed to that of other refugee groups. It means that when we consider how Australia can go some way to meeting the adaptive needs of Vietnamese people accepted in Australia for resettlement, we need to understand that they are not just another wave of immigrants but rather that they are migrants, refugees and of Vietnamese origin.

It also needs to be understood that there are social divisions, bounded by ethnicity, class and religion, which exist within the Vietnamese population in Australia. Media reports, however, often highlight cultural differences and produce stereotype images which presume a social and racial homogeneity amongst all Asian refugees including those from Cambodia and Laos.

There are other characteristics of the Vietnamese population which need to be

taken into consideration. At the end of 1982, 57 777 Vietnamese had entered Australia. They were a comparatively young group with large numbers needing employment and a high proportion of school age children. There were very few elderly people and most refugees were unskilled by Australian standards. Fifty percent of the population were married but did not necessarily have their spouses with them and there was an overall low number of complete families. There were also ethnic, class, regional and religious differences within the group with Catholics and Chinese Vietnamese being over-represented.

Structural barriers

It needs to be remembered in the following discussion that the way families manage the transition to a new life is influenced by their time of arrival, employment, ethnicity, family structure, class and culture. It is also vital to understand how the Vietnamese perceive and react to the various services with which they come into contact in terms of their own cultural expectations. All the settlement studies consistently report that refugees were reluctant to voice criticism; for example, when clothing was too large, food distasteful, language classes too difficult, and housing inappropriate. Their customary behaviour of withdrawal from confrontation, tolerant acceptance of situations, their polite wish to please rather than to offend and their traditional diffidence and respect towards authority all combine to mask both the internal and external difficulties they may be experiencing. Their desire not to appear ungrateful is a further brake on their willingness to express dissatisfaction.

Migrants and the legal system

With all other migrants, the Vietnamese lack knowledge of the English language, both oral and written, to deal with the numerous legalities of daily life. Simple contracts for the purchase of household goods will be a mystery; buying, owning and driving a car a nightmare if there is an accident. Occupational Health and Safety Laws will be unknown and, in exploitative work situations, not communicated. Where discrimination occurs, where landlords break the law, when consumer goods are faulty or people negligent, most migrants will probably not know of their rights.

In terms of criminal law, migrants in Australia, the US, Canada, Europe and Britain all have low crime rates in the first and second generations.⁵ Even so, for those migrants encountering the law,

concepts of bail are foreign – often mistaken as payment of a fine – as is the waiting for months or years for a case to come to trial. The adversarial system itself and the notion of a person being innocent until proven guilty produce only confusion for migrants who have no conceptual understanding of their purpose.

It is perhaps in matters of family law that most migrants will experience the greatest difficulties. Many other cultures, especially those within non-English speaking countries, have traditions of customary law surrounding marriage and divorce which are quite different from, and often conflicting with, those in Australia.

It is usual, for instance, for marriages to be arranged by either the man's or woman's family and not uncommon for first cousins to be considered as suitable partners. Complex exchanges of property also take place at the time of marriage which can either become the property of the husband, be retained by the wife or be administered jointly for the duration of the marriage. Likewise, divorce or separation can be acceptable, frowned upon or forbidden. Whatever the case, it is, however, unlikely that state procedures will be involved. In countries where Islamic law prevails, the process of dissolving a marriage is a purely religious affair and, where familial law dominates, a matter to be settled between the families involved.

Custody and access provisions, under the *Family Law Act* in Australia, can be alien concepts for a number of migrant groups. In many patrilineal societies, it is customary for the father's family to take responsibility for children of the marriage, especially sons, but this does not require formal custody or adoption procedures. In fact, in cultures where extended kin networks define family composition there is no notion of children belonging, exclusively, to their natural parents. When born, they are automatically members of the whole family group and, with or without the divorce of their parents, may be cared for by any number of other family members.⁶

It is clear, then, that Australian regulations on marriageable age, custody of children, women's rights, property entitlements and divorce itself can be quite alien concepts which often strike at the core of migrant cultural values.

Refugees and the legal system

For refugees these difficulties are multiplied. If they fled from the chaos of war and/or starvation, their only thoughts on

arrival in a safe country of resettlement are for continuing survival. They display fear in the face of authority, and are suffering from grief and guilt for lost or dead relatives. In the circumstances their overriding concerns are less for themselves than for separated family members. With few, if any, possessions and in an alien environment, they can absorb very little information. Those refugees who live first in hostels are told some things about the Australian legal system in the few months that they spend there but it is well documented that this is a waste of time. They have other things on their minds.⁷ It is not surprising then, that refugees will have little concern for their legal rights in the first years of settlement. They are thus easily victimised and exploited as they struggle to make a new life in lowly paid jobs without language, familial, financial or cultural supports.

The Vietnamese and the legal system

As noted earlier, the unique barriers which exist between the Vietnamese and the Australian legal system are a result of their history and culture. Historically, the legal system in Vietnam has been that imposed by the colonial French since the 1880s. In that sense it is a foreign system to the Vietnamese. Their traditional, and in some ways still dominant, method of solving disputes has been that it takes place within and between families. As a colonised people they were subject to French law which was often, for them, harsh and cruelly oppressive. Thus, the law of governments was something to be avoided and, if possible, subverted. Vietnamese who lived in or near cities were familiar with the law's demands and had to learn its bureaucratic ways, but for the rural dweller it may as well not have existed.

The French judicial process is, as we know, inquisitorial. Simply put, this means that judges in the system take an active role in searching out the truth of facts in a case, both investigatively and in the questioning of defendants and witnesses. The contrast between their role and that of Australia's derivatively English judiciary could not be more marked. Needing to be seen as impartial, but in fact appearing impassive, those Vietnamese who may be involved in court proceedings can have no sense of judicial interest in their fate and no idea of how justice may be achieved.⁸ This kind of outcome for Australian citizens flies in the face of the basic philosophy underlying our legal system that justice

must not only be done, but must also be seen to be done.

To their colonial history we must add the recent history of Vietnam, that of over 30 years of war, where the rule of law and order became meaningless. Unstable populations, with diminishing food supplies, had to rely on black markets and bribery for survival, on a false economy provided by the presence of American largesse, on deceit and subterfuge to escape death. When we remember that very large and disproportionate numbers of young people under 25 were among the first Vietnamese settled in Australia,⁹ it is obvious that notions of binding contracts, licences to drive, to fish, to build, or to carry a weapon are outside their experience. This is not to suggest that the Vietnamese are not a law-abiding people (quite the contrary is true), but that there can be no understanding of how Australian law is constituted when there has only been the law of survival in their past.

If their history was all the Vietnamese brought with them, we could reasonably suppose that time would heal discordant memories and adaptation to new ways of life would take place. This does in fact happen, but not without a further confrontation with cultural differences.

As we have already seen, the family is the source of Vietnamese identity, support, guidance, well-being and welfare. So it is with their law. Codes of honour and reciprocity proscribe conservative and strict models of behaviour, especially for the young. Even older children are obedient to their parents until the parents die and it is a source of great distress for Vietnamese in Australia if parents are elsewhere and the family cannot be reunited.

Members of the family who do not conform to these codes of honour – who break the law in other words – are dealt with by internal mechanisms of conflict resolution. There is much discussion between offending members and their elders until the member conforms, or leaves. To be bereft and in prison in Vietnamese culture is to be without a family and, although such censure might sound harsh to Australian ears, we would have to question whether what we do to restrict non-conformists is any better. Be that as it may, problem solving in the Vietnamese family is a much gentler and co-operative process than our reliance on confrontational methods of policing and court appearances. In passing, it is also much cheaper.

The Vietnamese and the law

This familial system of law is not without its injustices – to the young, to women, to the individual and to the outsider – as it is in the Australian system. However, it is dependent on a cohesive, integrated society which the Vietnamese no longer have to support them. Fragmented families cannot function in the same way although they struggle to do so. When confronted with breaches of the law in Australia, be they of regulations, the criminal code or matters of divorce and custody, the Vietnamese have no conceptual framework to deal with such perceived public shame. As their customary behaviour dictates submission to authority, absolute politeness, a patient willingness to please and withdrawal from confrontation, their interaction with authorities easily leads to misunderstandings on both sides.

Another dimension to this cultural conflict is the fear and mistrust the Vietnamese have of the police. In the post-1975 government of Vietnam, information given to the police would result in the disappearance of family members to New Economic Zones or 're-education camps' from which few people returned. To be apprehended by police meant arrest and imprisonment, without trial, for an unspecified time. Small wonder that a speeding ticket in Australia is enough to

induce trauma in Vietnamese people or that when caught in minor misdemeanours they will be afraid to give their name or implicate others.

Conclusion

To resolve the many issues surrounding the inequality of migrants before the law is no simple task. The Australian Law Reform Commission, in its present research, is aware of the problems and prejudices within the Australian legal system, as it endeavours to seek out discriminatory practices.¹⁰ Their approach in seeking submissions from ethnic groups about cultural conflicts in legal matters will provide much needed information on the multiplicity of factors which disadvantage migrants in the legal system. Their efforts are a beginning but, as we have briefly demonstrated here in the case of the Vietnamese, much, much more needs to be done.

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6. See Des Storer, (ed) *Ethnic Family Values in Australia*, Sydney, Prentice-Hall, 1985, for accounts of traditions in Italy, Yugoslavia, Greece, Turkey, Lebanon, Pakistan, Sri Lanka and Vietnam.
7. *Indo-Chinese Refugees in Victoria*, Victorian Ethnic Affairs Commission, East Melbourne, 1983, p.122.
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9. Of 133 000 refugees arriving between 1977 and 1985, more than 38 000 were aged between 15-24. Hazelhurst, K.M., *Migration, Ethnicity and Crime in Australia*, Canberra Institute of Criminology, 1987, p.101.
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LEGAL STUDIES

1. Many Vietnamese have had experiences of harsh and oppressive systems in their homeland. How might this affect their response to police and courts in Australia?
2. Refugee migrants have special concerns and needs beyond other migrants. What might these be?
3. What special training should legal officials have when dealing with Vietnamese who come in contact with the law? Give reasons (police, lawyers, judges, etc.)
4. Discuss the role of an interpreter in dealing with a non-English speaking person in a legal context.
5. How effective have anti-discrimination laws been in changing attitudes to Vietnamese Australians?
6. What are Australia's obligations to refugees in general and Vietnamese refugees in particular?
7. In criminal matters people are entitled to be judged by a jury of their peers. Discuss in relation to a Vietnamese person on trial.
8. If it is acceptable within other cultures for a girl to marry at 13 years of age, does the Australian *Marriage Act* accommodate this? How?
9. Do you think a lawyer qualified in Vietnam should be allowed to practise in Australia? Give reasons.

10. What could be done to improve the Vietnamese community's awareness about its people's rights and obligations under Australian law?

Debate:

Vietnamese refugees should be judged by the same standards and sentenced in the same way as any other Australian.

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