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KOREA AND VIETNAM — TWO CONSTITUTIONAL EXPERIMENTS †

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INTRODUCTION

I HAVE been asked to discuss two recent constitutional experiments which are of more than academic interest to the American intellectual community. It was my good fortune to be able to observe the drafting of both constitutions at very close range and I shall endeavor to outline a few pertinent comparisons.

In the case of the Korean experiment, I was privileged to serve as one of two American advisors to the Constitution Deliberation Committee of the Republic of Korea. This was in the fall of 1962 and my services were rendered at the request and expense of the Korean government. Since that time I have made nine more trips to Korea as the only foreign advisor to the Minister of Government Administration and the Administrative Improvement Research Commission, which was established three years ago.

It has been most gratifying to me to see the implementation of this constitution. Five years ago few Americans had any confidence that the Korean political system could be effectively stabilized and even fewer ventured to believe that the Republic of Korea could achieve significant progress in the economic field. They were wrong, as subsequent developments have clearly demonstrated. Political stabilization has been very evident during the past two years and the economic progress has been more spectacular than most of us thought possible back in 1962

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or even in 1964. None of this has been accidental because the present leaders of the Republic of Korea understand clearly that rapid and balanced economic development could not materialize without effective stabilization.

My assignment in Vietnam was under different auspices. In Korea, as I indicated, I always served in an individual capacity at the request of the Korean government. In Vietnam, I served as Consultant to the United States Department of State. Shortly after my arrival in early October 1966, my advisory role was extended when the Minister of Justice asked me to serve as Consultant to him. At this moment, I am still serving in both capacities.

Let me begin with a few preliminary remarks about recent constitutional experiments in the developing countries.

Constitutional Experiments in the Developing Countries

The so-called developing countries, which gained their independence after World War II, have carried out experiments with various constitutional designs which deserve careful study.

In the new states that were formerly British colonies, the impact of British institutions is quite apparent. But this influence can easily be exaggerated. Institutions and procedures can be copied but they function differently in countries of widely divergent backgrounds. A comparison of India and Pakistan or Jamaica and Trinidad would bear this out.

As already suggested, the Constitution of the French Fifth Republic has exerted considerable influence in the countries of Asia and Africa that were formerly parts of the French Empire. Just as in the formerly British colonies, superficial appearances can be misleading. Political cultures differ from country to country, in spite of their similarity in the formal political patterns.

Some of the communist-controlled countries of East and Southeast Asia have recently been influenced by the

Chinese as well as the Soviet totalitarian design. But, as in the case of the Constitution of the Democratic Republic of Vietnam (1960), the new leaders have demonstrated some originality and ingenuity in using such documents for propaganda purposes.

The American influence has been comparatively slight during the period following World War II. Whatever conscious borrowing there has been has concerned such specific institutions as judicial review, federalism, the office of the president and provisions for more effective administrative management.

There has been a tendency to exaggerate the uniqueness of the constitutional and political experiments that are now under way in the developing countries. We have tended to ignore the fact that many of the Latin American countries have been struggling with similar problems for a century and a half. Nowadays, we pay very little attention to the nation and state building experiments that were carried out in the course of the nineteenth century in Western, Northern and Southeastern Europe. Probably even more relevant are the experiences after World War I in the newly independent countries that were once integral parts of the Austro-Hungarian, Czarist, German and Ottoman Empires.

I would suggest that careful historical and analytical studies would tend to show that many of the problems of the present developing countries are by no means new. A careful study of these experiments would cause us to look more critically upon some of the more provocative theories that have been advanced by some of the authors on the subject of "nation building."

The present behavioral approach to the study of comparative politics has produced many useful insights but it should be balanced by scholarly studies of the stages of constitutional and political developments in many countries and cultures.

If one studies carefully some of the constitutional experiments that were referred to earlier, one might readily conclude that the constitutions that have demonstrated

stability and viability have one common characteristic. They all managed to strike an effective balance between elements of institutional strength and provisions for the responsible exercise of fundamental rights. I use the word *balance* because all the written constitutions which have endured over a long period of time were based upon a dynamic rather than a static equilibrium. This is certainly true of our own United States Constitution, the Swedish Constitution of 1809, the Norwegian Constitution (1814), the Belgian Constitution (1831) and its Western European derivatives (Luxembourg, the Netherlands and Denmark). The Swiss Constitution of 1848 is also a good example. All of these constitutions that are more than one hundred years old have been amended several times but it has been relatively simple to modify certain operational aspects.

I do not mean to suggest that the amendment process was simple. On the contrary, it was usually exceedingly difficult to make major revisions, let alone "total revisions." But it was possible to relax certain types of governmental control in a gradual manner. This can be demonstrated in tracing the modifications in the functioning of most of the political rights. There was usually no need for constitutional amendments to bring this about. Suffrage provisions constituted the exception. On the other hand, some of the important structural relations (legislative-executive, central-local, civil-military) could usually not be adjusted without constitutional amendments.

The liberalization of political regimes in Western and Northern Europe about a hundred years ago was achieved by making the cabinets responsible to their respective legislatures. However, it should be remembered that most of the countries were operating under monarchical forms of government and that the bureaucracy was not directly affected by these changes. The instability resulting from the non-confidence game was cushioned by the high professional performance of career civil servants.

Liberalization also required some commitment to the principle of local self-government or decentralization.

However, this development did not go very far in countries that had copied the Napoleonic pattern of centralized administration.

The principle of civil supremacy over the military establishment was often vigorously demanded but in practice this proceeded very slowly in most European countries. Last, but not least, one should note that the gradualness of the adjustment between the requirement of stability and the desire for liberty was assured to a large extent by the exceedingly slow process of extending the suffrage base.

Today the principle of universal suffrage is almost generally established in the newly independent countries. Thus a major adjustment has already been made. A well-educated electorate, which has learned to use the political party instruments, can expect to make considerable headway in pressing for legislation that would extend economic and social legislation. It can exert considerable pressure to repeal outmoded legislation.

But, as is generally recognized, political parties do not function well in the developing countries and, therefore, parliamentary systems of government have been disappointingly unsuccessful.

The majority of reputable scholars tend to agree that in the developing countries, a strong executive is a prerequisite for the much needed political stability and continuity. Such a system carries with it certain obvious dangers of abuse. However, they need not occur even in periods of emergency if the constitutional framework is well designed to provide for a continually functioning system of checks and balances.

CONTEMPORARY VIETNAMESE CONSTITUTIONAL PROBLEMS AND THE RELEVANCE OF THE KOREAN EXPERIMENT

Early last fall, after the election of the Vietnamese Constituent Assembly, there was considerable discussion in Saigon and in Washington concerning the "Korean model." To the leaders of Vietnam, Korea provided a most heartening success story in the face of very serious and persistent handicaps. Several members of the National Leadership

Committee and the Constituent Assembly had either visited Korea or made a careful study of the Constitution. My own assignment was due to my familiarity with the Korean constitutional experiment. It is, therefore, appropriate to begin with a few general comparative remarks about the two countries.

Vietnam and Korea have much in common. Both countries have been victimized by Communist imperialism and both territories have been divided. Korea fought gallantly and successfully against Communist aggression between 1950 and 1953. With the strong support of the United States, the Republic of Korea, Australia and other forces of the free world, the government of Vietnam has shown great determination in bringing its long and costly struggle to a victorious end. Both countries experienced profound disenchantment over the abuse of power by their first presidents. Factionalism and corruption have had disastrous consequences. Anarchy was prevented by the intervention of the military. Korea introduced a civilian government at the end of 1963. The Constituent Assembly of Vietnam completed work on its new constitution on March 18, 1967, and on April 1 the Constitution was officially proclaimed. A tight time schedule has already been established to pave the way for a popularly elected government.

As the government of Vietnam embarks upon its task of implementing the new Constitution, it may be appropriate to sketch some of the lessons that may be derived from the recent Korean experience.

The most important lesson to be learned is the demonstrated fact that stability can be achieved without sacrificing liberty. In order to achieve this reconciliation, there must be an effective system of checks and balances and there must be ample guarantees for the exercise of fundamental rights. Institutions must be carefully devised so as to provide the basis for the effective political mobilization of all strata of society. There must be ample room for flexibility and adjustment because the Constitution is

merely the indispensable foundation for the continuing process of institution building.

Some of the opinions that have been expressed concerning the Korean constitutional development are based upon the wording of the Constitution. There is as yet no comprehensive study, either in Korean or any other language, of how the system actually works. I shall endeavor to indicate some of these aspects and also try to identify some of the unsuccessful features.

Let me begin by outlining the manner in which the Constitution was drafted.

On August 12, 1961, General Chung Hee Park, Chairman of the Supreme Council for National Reconstruction, had reconfirmed his pledge that civil government would be restored in 1963. A very important step in that direction was taken on July 11, 1962, when nine members of the Supreme Council for National Reconstruction were appointed to serve as the Constitution Deliberation Committee. There was also established an advisory group which consisted of eminent lawyers, political scientists and economists. Most of them were professors, but there were also a few civil servants.

On July 16, 1962, a special committee consisting of nine members was established to prepare a statement of problems that required deliberation and decision. They identified the following problems:

(1) The content of the preamble.
(2) Rights and duties of citizens.
(3) Should reference be made to political parties?
(4) Organization and composition of National Assembly.
(5) Governmental system: presidential or parliamentary?
(6) The judiciary.
(7) How to achieve local autonomy.
(8) Economic provisions.
(9) Constitutional safeguards.
(10) Method of amendment.
(11) Supplementary provisions.

(12) Should there be a new Constitution or merely amendment of the 1948 Constitution?

On August 6, 1962, four small subcommittees were created to formulate the principles that should be incorporated in the Constitution. Nationwide public hearings were scheduled between August 23 and August 30 to ascertain prevailing attitudes toward the already enumerated major problems. There were four teams, each headed by a member of the Constitution Deliberation Committee. These hearings confirmed that there was a strong preference for a presidential system of government and a unicameral legislature. Great emphasis was placed upon the need for effective constitutional safeguards to guarantee the rights of citizens and the security of the country.

Early in October, all the subcommittees had completed outlines of proposed provisions that were to be embodied in various parts of the Constitution. This work was done very thoroughly, both in terms of coverage and draftsmanship. Without this businesslike approach it would probably not have been possible to produce a draft Constitution by the stipulated deadline of November 5, 1962. The whole task of revising the Constitution took about one hundred days.

Early in December 1962, the Supreme Council decided to submit the Constitution Revision Bill in its original form to a national referendum, scheduled for December 17, 1962. The Supreme Council also decided to conduct nationwide speaking tours to explain the Constitution Revision Bill to the people. Thirteen teams were formed, each consisting of a member of the Constitution Deliberation Committee and a well-known local person. Doubts had been expressed by certain commentators in the opposition press that there would be great popular interest in the referendum. As it turned out, some 85 per cent of all eligible voters participated and almost 79 per cent voted in favor of the amended Constitution.

There can be no doubt that the election of a Constituent Assembly to draft a constitution represents a more democratic approach to the problem. However, there were

some democratic aspects in the Korean constitution-making that should not be ignored. It should also be noted that the referendum afforded an excellent opportunity to acquaint large segments of the Korean population with the main features of the new Constitution.

The question is sometimes asked: Why is the present Korean Constitution called the Fifth Amendment when the revision that was carried out in the fall of 1962 was of such a drastic character? The reasons for this can be found in considerations of international law and relations. To the freedom-loving nations of the world, the Republic of Korea remains the only lawful political instrument of the Korean people. However, some states that had earlier supported the United Nations in Korea had come to waver. In view of this, it seemed desirable to emphasize the legal continuity since 1948.

It might also be noted that the original Constitution, as drafted largely by Dr. Chin-O Yu, was a carefully prepared document but it was unacceptable to Dr. Syngman Rhee, who was then the Speaker of the National Assembly. Dr. Rhee argued that the parliamentary type of government would not work in Korea. He insisted on a presidential system. Some Korean writers have oversimplified the changes that were carried out by suggesting that the regime was changed from one modeled on the German Weimar Republic to one embodying the American presidential system. It is true that the original system resembled that of the German Republic, but the amended institutional arrangement that resulted from the sweeping amendments engineered by President Syngman Rhee was a very distorted version of the American presidential system. It could more readily be compared to some of the unfortunate Latin American adaptations of the American model. President Rhee used his war powers to bring into existence a highly personal dictatorship. After the fall of the Rhee regime, Dr. Chang tried to "liberalize" the authoritarian regime, but his reforms and his inability to deal with widespread corruption brought the country to the verge of anarchy. The military intervened in May 1961 and

restored order. Long before the Constitution was revised in the fall of 1962, some important steps were taken to stabilize the country politically and economically.

The following basic changes were introduced as a result of the 1962 constitutional revision. A presidential system, embodying a strong executive, replaced the weak parliamentary regime. A unicameral legislature replaced the bicameral system. Great care was taken to render the judiciary truly independent and to extend the constitutional protection of fundamental rights. Clear provisions were made for the institutionalization of a plural party system. The principle of local autonomy was reaffirmed. Constitutional recognition was given to the need for an effective system of inspection and economic planning. Great care was taken in the drafting of the emergency provisions. All in all, a constant effort was made to reconcile the requirements of political stability and authority with the aspirations of the Korean people for greater freedom.

Certain matters, such as party and electoral provisions, were given an unusual amount of space in the relatively short Constitution. Others, such as local government, were treated in somewhat rudimentary form. But, all in all, the coverage is fairly balanced. In 1962, many intellectuals who disliked and feared the military took the position that the whole constitutional amendment process was likely to be a mere sham, designed to perpetuate the military in power. Today the Constitution is certainly not regarded as a sham and some of the people, who were once highly suspicious of the whole undertaking, now concede that the constitutional revision was the indispensable foundation for political stabilization and economic development.

There is still considerable prejudice against the military, but most reasonable people agree that the military has made substantial contributions to the modernization of the country and to the development of efficiency as well as integrity in the public service. The former military officers have learned the rules of parliamentary democracy and have shown restraint in dealing with irresponsible individuals among the opposition parties.

President Park has conducted himself in a manner that behooves a Chief of State. Contrary to what had been predicted by certain critics, he has not tried to concentrate excessive power in his hands. On the contrary, he has progressively delegated more and more power to his subordinates.

The institution of the Prime Minister, which had been slighted in the Constitution, has come to be of considerable importance in the day-to-day operations of the government. This is a very difficult job because the Prime Minister has to be a skillful political broker and conciliator. He is also expected to be the general coordinator of the entire governmental machinery. To do this job effectively, he needs a staff of outstanding professional administrators.

One institution for which no provision was made in the Constitution is that of Deputy Prime Minister. The position was created by ordinary legislation and linked with that of the Minister of the Economic Planning Board. There is some doubt as to whether this was a desirable innovation because, in practice, the Deputy Prime Minister has tended to become Prime Minister for Economic Affairs. Since he also controls the budget, it becomes quite apparent that he wields considerable power and influence.

Some of the top constitutional agencies do not function as efficiently as had been hoped. The State Council tends to be overburdened with technical details. The Board of Inspection is accountable to the President as well as to the National Assembly, but there is not sufficient follow-up in this arrangement. An Economic and Scientific Council was established in accordance with Article 118 of the Constitution, but it has not yet been effectively utilized.

The operation of all these top-level agencies has been carefully analyzed by a newly created temporary Administrative Improvement Research Commission. This organization has produced some very important reports in the course of some two years of its operation. Its recommendations to the President have been endorsed and the Prime Minister has been instructed to take appropriate action. The implementation of these recommendations requires a

considerable amount of legislative research. This is the responsibility of the Office of Legislation which is attached to the Prime Minister's Office. It is to be expected that this office will be strengthened in the near future.

The Constitution did not specify how many ministries there should be. This was properly left to a government organization law, which has been amended several times.

Substantial improvements have been made in the organization and management of individual ministries. Efforts are under way to achieve more effective inter-ministerial coordination.

The Constitution contains an important article (6) in the General Provisions which declares that "(1) All public officials shall be servants of the entire people and shall be responsible to the people. (2) The status and the political impartiality of a public official shall be guaranteed in accordance with the law."

The rising cost of living has created major problems for the civil servants. Affluent people talk glibly about corruption but they don't realize, or don't wish to admit, that government employees must be paid salaries that compare favorably with prevailing salaries in commerce and industry. The Minister of Government Administration has made strenuous efforts to correct these inequities. President Park realizes that the welfare of public employees must not be sacrificed for the sake of ambitious economic development plans.

With respect to the role of political parties, the Constitution contains an unusual provision (article 7) which guarantees a "plural party system." It would be highly desirable to evolve a functioning system of two national political parties, but this takes time and discipline. Progress has been made to reduce factionalism, but the rules of parliamentary procedure have not yet been firmly established. Some opposition party leaders and would-be leaders have repeatedly attempted to resolve political moves by unparliamentary means. They have encouraged disorderly demonstrations, in spite of the fact that the Constitution

provides adequate means for the redress of legitimate grievances.

The National Assembly has emerged as a more powerful body than was originally expected. Article 57 states that "the National Assembly may inspect the administration of the State, demand the production of necessary documents. . . ." It is widely agreed that there should be a legislative check on the conduct of the administration. However, it has become increasingly evident that many of these inspections are exceedingly time consuming and inconclusive.

Article 58 of the Constitution makes it mandatory for members of the Cabinet to appear in the National Assembly to answer questions if a mere thirty members of the National Assembly make such a request. The opposition has repeatedly used this article to engage in political maneuvers rather than to gain factual information. The issues involved have often been trivial but they have consumed much of the time and energy of busy cabinet members. There are some inconsistencies that may be noted in passing: the National Assembly has the power to impeach the President by a simple majority vote while the impeachment of a National Assemblyman requires a two-thirds majority vote.

The previously cited article 57 which authorizes the National Assembly to "inspect the administration of the State" states specifically that "the National Assembly shall not interfere with judicial trial, criminal investigation in process or prosecution."

With respect to the authority of the judiciary to investigate constitutionality, the Constitution vested this power in the Supreme Court (article 102). At the time that the Constitution was being drafted, there was an alternate view, which favored the establishment of a Constitutional Court. It may be of interest that in recent years some prominent Korean jurists have come to believe that it would have been better to vest this important power in a Constitutional Court. They feel that the Supreme Court should not be

involved in questions that can be highly technical or political.

There are many more aspects that might be of interest to anyone who feels that the comparative study of constitutional experiments is relevant. As I have indicated, the Korean experience is particularly pertinent. One can find some defects in the Korean Constitution but they are outweighed by the many sound features that were embodied in this document. It is an effective instrument of government under conditions of normalcy as well as emergency. In the course of three years, it has demonstrated that it is an effective safeguard of liberty as well as stability.

Some Observations on the New Constitution of Vietnam

One of the main differences in the manner in which the Constitution of Vietnam came into being is that it was drafted by a popularly elected Constituent Assembly of 117 members. This, of course, is a much more difficult and troublesome procedure than the one that was followed in Korea. But it was of the greatest importance that this authority was derived from a popular base.

The creation of the Constituent Assembly was in itself a most important achievement, since the Viet Cong had made strenuous and vicious efforts to intimidate both voters and candidates. But they failed. More than 80 per cent of the registered voters cast their ballots on September 11, 1966. There were 532 candidates competing for 117 seats in the Constituent Assembly. The elected body represented a cross section of all strata of the population of Vietnam. Broken down by religious affiliation, the composition was as follows: 34 Buddhists, 30 Catholics, 7 Confucianists, 10 Hoa Hao and 5 Cao Dai.

With regard to ethnic and regional origin, the Southerners were the dominant group (44 members) followed by 28 Central and 27 Northern Vietnamese. There were 8 Montagnards, 4 Cambodians and 3 Chinese.

In terms of professional background, it was noted that there were 23 educators, 22 businessmen, 18 civil servants,

20 military, 7 farmers and 5 doctors. Only a few lawyers and political scientists were elected to this body. The average age was 39.

The Constituent Assembly met for the first time on September 27, 1966, in the former Opera House in Saigon. It did not get off to a spectacular start. Very few members had the necessary background or experience to draft a Constitution, but they did their homework, studying other constitutions and generally showing considerable common sense in the way they applied the lessons they had learned. They organized themselves into effective working committees, of which the Drafting Committee was clearly the most important.

The members of the Constituent Assembly continued to show great courage and perseverance in the face of Viet Cong terror. Tran Van Van, one of the most influential members, was assassinated on his way from his home to the Constituent Assembly. Dr. Phan Quang Dan, one of the most promising civilian members of the Assembly, narrowly escaped an assassination attempt with only minor injuries.

Anyone who followed the debates carefully came to realize that the constitutional pattern being put together departed considerably from the Korean model. What was emerging was a system based on legislative rather than executive supremacy. If the Korean Constitution of the Third Republic showed resemblance to that of the French Fifth Republic, the first draft of the Constitution of Vietnam showed closer resemblance to the French Fourth Republic, a system hardly suitable for a country at war.

The Constituent Assembly had taken some three months out of the authorized maximum of six to deliberate on the underlying principles that were to be embodied in the constitution. Just before the end of the year, the basic principles were approved and the Drafting Committee was instructed to prepare a Draft Constitution. This they did in record time—a little more than a week.

The Draft Constitution, which was completed on January 10, 1967, still without a Preamble, ran to 135 articles.

The final Constitution, as proclaimed on April 1, 1967, consists of 117 articles and has a Preamble of 117 words. The first draft had avoided any references to Communism, but in the final version article 4 states that (1) the Republic of Vietnam opposes Communism in any form; and (2) every activity designed to publicize or carry out Communism is prohibited. Future constitutional historians will have to explain how and why these changes were made. The Directorate, as the National Leadership Committee is often called, sent several messages to the President of the Constituent Assembly in which they expressed their views concerning certain features of the Draft Constitution. In addition to these formal messages, there was considerable behind-the-scene negotiation, which ultimately produced acceptable modifications.

It must be borne in mind that the Constituent Assembly owed its existence to a decree law enacted by the National Leadership Committee. In this decree the Committee reserved the right to veto the Constitution or any part of it. However, the Constituent Assembly could overrule such a veto provided it could muster a two-thirds vote. But the strategy of the leading members of the Assembly, from the very outset, was to avoid such a showdown.

In any case, it should be noted that very important and largely desirable changes were made during the first two weeks in March. The Constitution in its present form compares favorably with progressive and democratic constitutions anywhere in the world. Certainly chapter II which deals with the rights and duties of citizens, is an impressive contribution to contemporary constitutionalism. It safeguards all the essential rights which have been enumerated in the United Nations Universal Declaration of Human Rights. Future students will find in this chapter interesting examples of how the members of the Constituent Assembly resolved fundamental issues on which Buddhists and Catholics might have disagreed.

In the first draft some of the powers that were to be given to the bicameral legislature were clearly excessive.

The Directorate objected to a number of provisions which seemed to generate uncertainty and instability. Some prominent members objected to the original article 39 which would have given the National Assembly the right to decide when a state of emergency is to be proclaimed. In the final version this power has been deleted. However, it is still authorized to "determine declarations of war and holding of peace talks."

In one area the position of the National Assembly in relationship to the President has been significantly strengthened. The original article 55 of the first draft stated that the President may ask the National Assembly to amend a bill or to reconsider one or more provisions of the bill. In such cases the two houses would meet in a joint session. To overrule the objections of the President, a two-thirds vote of the total membership of both houses was required. In the final version of the article (45) "an absolute majority of the total number of Representatives and Senators" is required.

As far as the Executive is concerned, the Korean model is quite apparent. But in addition to the President, provision is also made for a Vice-President. In the final version the hand of the President has been strengthened in his capacities as Chief Executive and Commander-in-Chief. In the first draft the powers of the President to deal with emergencies were unrealistically limited. Article 78 of that version stated that "if the National Assembly cannot be convened in time," the President may declare a state of emergency. But the same article made it mandatory to convene the National Assembly "within three days after the President promulgates such a decree in order to consider it." This provision was ill-advised for the reason that in cases of real emergency, the President must be able to act decisively. There would be no time for deliberations in the National Assembly. The other provision demanding a legislative review within three days might readily be exploited by using a hit-and-run strategy.

In the final version this important matter has been settled in article 64. It is probably one of the most care-

fully drafted emergency articles in existence and it may be useful to quote the entire text to show how the system of checks and balances continues to function, even under emergency conditions:

(1) In special situations, the President may sign decrees declaring states of emergency, curfew or alert over part or all of the territory of the country.
(2) The National Assembly must meet no later than twelve days after the date of promulgation of the decree in order to ratify, amend or reject it.
(3) If the National Assembly rejects or amends the President's decree, the special situations which were decreed will end or be modified accordingly.

With respect to the judiciary, it should be noted that its independence had never been effectively safeguarded under the Diem regime. It clearly needed to be extricated from the control of the executive. The Constituent Assembly's first draft showed that it had succeeded in doing that but many qualified observers felt that now the judiciary was in danger of becoming the pawn of the legislature. On February 27, 1967, in a letter addressed to the Chairman of the Constituent Assembly, the Chairman of the National Leadership Committee raised strong objections to certain provisions pertaining to the Special Court, the Inspectorate, the Supreme Court and the High Judicial Council. The National Leadership Committee argued that in all of these cases the legislature had been given a disproportionate amount of power. In the final version, the most objectionable features have been corrected.

The provision for elected province chiefs, which appeared in the Draft Constitution, was among the issues that tended to generate dissension between the Directorate and the Constituent Assembly. The Directorate objected to it for several reasons. In their view it would be dangerous to attempt this experiment in times of war. But perhaps no less important is the fact that most of the presently appointed province chiefs are military officers whose positions might be in jeopardy. A solution was found in

article 114 which stipulates that during the first presidential term, the President may appoint province chiefs.

The area in which a serious clash was expected by many qualified observers concerned the transitional provisions. It should be noted that the original decree which provided for the election of the Constituent Assembly stipulated that this body would cease to exist upon completing its task. However, when the Draft Constitution was released on January 10, 1967, readers were surprised to discover that the Constituent Assembly had taken it upon itself to prolong its existence. Some of the members of the Constituent Assembly argued privately that they were not bound by the provisions of the decree because they derived their authority directly from the people.

In the Draft Constitution, article 130 proposed to leave executive powers with the National Leadership Committee "until such time as the President and Vice-President have been elected by the People for their first term."

Article 131 announced that the Constituent Assembly would assume legislative powers "until a constitutional government and the first National Assembly had been established." Under the tentative time schedule provided for in the subsequent articles, the Constituent Assembly might have remained in power for as much as eighteen months.

All this had now been drastically altered due to the newly drafted transitional provisions which had been incorporated into the final version of the Constitution. Article 109 now provides:

During the transitional period, the National Assembly popularly elected on September 11, 1966, representing the people of the nation in the legislative sphere, will:

1. Draft and approve:

   Election laws for the election of the President and Vice-President, Upper House and Lower House; laws organizing the Supreme Court and the Inspectorate; political party and press regulations.

2. Ratify treaties.

Under the provisions of article 110, this limited legislative mandate will temporarily be expanded until the first National Legislative Assembly is convened. In practice, this will amount to four or five weeks, because the presidential elections have already been scheduled for September 1, 1967, and the elections for the National Assembly will be concluded by October 1, 1967.

Now that the Constitution has been promulgated, a tremendous amount of work lies ahead with respect to its implementation. In a short period of time some eighteen major laws will have to be enacted because the Constitution makes this mandatory. A great deal of work will also be required in the area of civil and criminal procedure to bring the existing legislation in harmony with the guarantees which are contained in Chapter II of the Constitution. The Minister of Justice has already appointed a commission to make a careful inventory of the changes that are required, and he expects to have this report by June 1, 1967. Judging from past performance, there will be no delay in "bringing justice closer to the people."

As one reflects on these recent developments, one cannot help but be impressed that such complex matters could be successfully carried out in the midst of war and turmoil. The American people may be slow in realizing it, but Korea and Vietnam have taken decisive steps toward achieving the rule of law.