

BUDDHISM AND HUMAN RIGHTS IN TRADITIONAL VIETNAM

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INTRODUCTION

After years of negotiation, the landmark Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief came in 1981 and served to elaborate on the articles on religion and belief in the International Covenant on Civil and Political Rights. Only in the 1980's did the scholarly analysis of the protection of religion and the relationship between human rights and religions start in earnest, with the rise of religion to prominence on the world arena. Several recent international developments have prompted scholars to pay more attention to religion as a human right issue. First, the United States passed with unanimous votes in both houses the 1998 International Religious Freedom Act, making religious freedom a central aspect of American foreign policy, appointing an ambassador at large for international religious freedom, requiring the State Department to submit an annual report on religious freedom worldwide and the President to adopt both carrot and stick measures to discourage other states from committing violations of religious freedom. Second, in the last few years, a number of European countries have tried to restrict new religious sects or cults. Third, increased attention has been paid to the so-called "clash of civilizations" between different religions, and the violence and rights abuses committed in the name of religion, such as the brutal suppression of women's rights in Afghanistan by the Taliban in the name of Islam, which was revealed when the United States pursued the terrorists in that country after the events of September 11, 2001.

In this context of world events, there has been a lot of discussions and writings about the historical clash between Islam and Christendom. During the eight Crusades spanning over almost five centuries, from 1095, when the First Crusade was declared, to 1578, when the last Crusade was launched against the Turks in Morocco, human rights were violated by both sides. For example, in the First Crusade, led by religious knights, armies of Christians from France, Germany, England and other countries marched through the territory of present-day Hungary to Constantinople, then to the Holy City of Jerusalem, where, in their effort to recapture it for the Christians, they sowed destruction and committed massacres. For the Muslims, whose memory of the brutal Crusades was always vivid, the world outside the world of Islam is called the House of War, inhabited by "infidels" (*kafir*), and many interpret that the word "jihad" bequeathed by the Prophet means the "striving in the path of God" and consider that, in the armed struggle for the advancement of Muslim power toward world domination, the primary rivals have been the Christians. However, since the failure of the Turkish in the 1683 siege of Vienna, Christian European forces inflicted defeat after defeat on the Muslim world.

This historical tendency of Christians and Moslems to monopolize state power and exclude other competitors in their struggle for religious superiority stands in contrast to the Buddhist philosophy of tolerance and respect for the human rights of other people. To illustrate that particular trait of Buddhism and the Buddhists, it is worthwhile to attempt the following review of the historical record of the impact of Buddhism on human rights in traditional Vietnam. This study provided relevant proof, within the Buddhist tradition of one Asian country, that human rights standards are fundamental world values accepted by peoples of different places and times. Tokyo University Professor Nakamura said that Buddhism, with concepts of universal appeal, has become a world religion as Christianity and Islam, transcending national boundaries. (*Journal of Oriental Studies*, vol.2/1989, pp.50-67).

In particular, this study also facilitates the much desired inter-religion dialogue, especially Buddhist-Christian dialogue. Because of the human rights position of Buddhism, including its ideas on respect for life (no killing, no wars of religion), on equality (all living creatures are equals and potential buddhas) and on freedom of thought (pluralisms of many buddhas, compassion and respect for others), optimistic prospects exist for the dialogue between Vietnamese Buddhists and Vietnamese Catholics who, in June 1988, celebrated with the Pope the canonization of 117 Catholic martyrs who died in prior-20th century Vietnam. It is important to make clear the position of the Buddhists on peace, compassion and freedom of religion, and to allocate blame to the appropriate persons for the historical persecution of the Catholics in Vietnam. It would take a whole article or chapter of a book (1) and moreover, the detailed life histories of the disputed cases among these 117 figures, to render a definitively fair judgment on the issue of whether, as the Communist Vietnamese Government charged, some of the martyrs were collaborators of the French colonialists. But that is not our purpose here. Our purpose here is the settlement of one side-issue of the persecution, which is important to the Vietnamese Buddhist-Christian dialogue: whether the Buddhists had anything to do with Catholic repression in old Vietnam? The present study, as will be seen below, shows that the Vietnamese Buddhists, with their tolerant philosophy and respect for human rights, were in no way responsible for, but were outsiders vis-a-vis, any repression of the Catholics under the Le and Nguyen Dynasties. If that fair conclusion can serve as a bridge of understanding for Buddhist-Christian dialogue among the Vietnamese, especially the Vietnamese *diaspora* that should unite to overcome their weakness for being scattered around the world as minorities among other peoples, and thereby survive their individual isolation and collective identity crisis, it would be a rewarding result for the author.

The story of the Vietnamese Buddhists' influence on government human rights policy is particularly illuminating because this was one of the few cases where the Buddhists directly influenced governmental affairs and was directly responsible for government policy on human rights. Finally, if the evidence is clear that a religion can influence the government policy on human rights, we can say that the facts solidly prove that the Marxist theory of historical materialism—i.e. the infrastructure of a society determines the superstructure—is wrong.

Talking about human rights, many Westerners immediately refer to the constitutional rights in Western countries, which are recognized as enforceable by the constitutions and therefore could be properly called "rights". Two-thirds of the constitutions were promulgated since World War II and most of their authors were "constitutional copycats"... "The principal models for the content and style of bills of rights have primarily been the English Bill of Rights of 1689, the French Declaration of the Rights of Man and Citizen (1789) and the American Bill of Rights (the first ten amendments, 1791)" (2). Is it true that human rights are the product of Western civilization and that as for traditional Asian countries—Vietnam among them--there was only what some scholars have called "Oriental despotism"? (3). Our book *The Vietnamese Tradition of Human Rights* (Institute of East Asian Studies/University of California/Berkeley, 1988), has come to the conclusion that the legal norms and practices of traditional Vietnam adhered to many of today's international standards and even exceeded them in the area of many economic and social rights (made them enforceable). The reader who is interested in the total subject may read this general treatise of the thousand-year history of human rights in Vietnam. In this smaller study, we focus only on the influence of Buddhism on the human rights policy of the state in traditional Vietnam.

When mentioning Buddhism in imperial Vietnam, historians often refer to the dynasties of the Ly (1010-1225) and the Tran (1225-1400), during which Buddhism was flourishing. During the Le dynasty (1428-1788), the influence of Buddhism waned, because neo-Sung-Confucianism became the dominant ideology of the ruling officials, Le emperors (especially Thanh Tong), and Trinh and Nguyen Lords. In the Nguyen dynasty (1802 to the French conquest at the end of the 19th century), the Gia Long Emperor and especially the Minh Mang Emperor adopted faithfully not only the administrative institutions of Ch'ing China, but also its Code *Ta Ch'ing Lu Li* (adding only a few articles). Confucianist principles prevailed upon Buddhist tenets. This dominance of Confucianism during these centuries had an indirect consequence on the freedom of religion of the Catholics, as briefly mentioned below, at a time when the Buddhists no longer exercised any impact on the government. Therefore, when we discuss the influence of Buddhism on the human rights policy of the state in traditional Vietnam, we have to concentrate on the Ly and Tran dynasties, when the Buddhists had the role and therefore the responsibility in the government policy, to detect any causal relationships between Buddhism and human rights; any references to the Le and Nguyen dynasties--when the Buddhists no longer swayed the government--would serve only as contrasting cases or "controlling data" to verify the findings in the main period under study (prior to 1400)--according to the standard social science research method.

POLITICAL AND IDEOLOGICAL ROLE OF BUDDHISM IN TRADITIONAL VIETNAM, FROM EARLY HISTORY UP TO THE END OF THE TRAN DYNASTY(A.D. 1400)

Buddhism has begun to have influence in Vietnam since the Chinese colonial period (111 B.C.-A.D.939). China adopted the policy of cultural assimilation of the masses and, concurrently, of discouragement of advanced learning from Chinese books (that might provide a channel for upward social mobility). This practice resulted indirectly in the importance of Buddhist monks, who were the most learned in Chinese (to study the script), and the influence of Buddhism in Vietnam from very early times. Once independence was regained, three dynasties--the Ngo (939-967), the Dinh (968-980), and the Former Le (980-1009) --followed in rapid succession. Because the dynastic rulers were military men busy consolidating their shaky power, they relied on the learned Buddhist monks, both in domestic affairs and in diplomatic relations with China, using their knowledge and at the same time not having to worry about any Confucian doctrine of loyalty to one ruler when serving a new dynasty that took over from that ruler. Monk Ngo Chan Luu, descendant of the Ngo dynasty, served Emperor Dinh Tien Hoang who appointed him Chief Monk of the Buddhist Church and gave him the title of Khuong Viet Dai Su (The Great Monk who administered the Viet country). During his reign, Dinh Tien Hoang also determined the hierarchy of grades for monks, who were considered public officials. After Le Hoan took power from Dinh Tien Hoang's successor and became Emperor Lê Dai Hanh, all state affairs were handled by the monk Khuong Viet. He and the monk Lac Thuan assisted the emperor in receiving the Chinese ambassador (4). Monk Van Hanh was consulted on state affairs by Emperor Lê Dai Hanh during his campaign against the Sung and the Cham Kingdom. This monk saw portents in a tree struck by thunder, then predicted that the cruel Le Ngoa Trieu would be the last emperor of the Former Lê Dynasty and advised Ly Cong Uân to take the throne (5).

Ly Cong Uan, or Emperor Thai To (the First) of the Ly Dynasty, was an illegitimate child and adopted by Monk Khanh Van. Thus the Ly dynasty (1010-1225) was closely connected with

Buddhism from the beginning. Although the political role of the monks was not dominant as before, their influence was still very strong, and Buddhism was given the widest freedom and support ever known in traditional Vietnam. More learned than their predecessors, the Ly emperors appreciated Buddhism in a more spiritual way.

During this dynasty, power resided with the imperial household ; some princes had private armies. There were also more Confucians in the court, which was organized according to the Chinese model. In 1070, Ly Thánh Tông built the Literature Temple (*Van Mieu*) where he sent the crown prince for study and where Confucian classics were stored. He also had statues of Chou Kung, Confucius, and the seventy-two saints fashioned. In 1075, Ly Nhan Tông organized the three-stage examination to recruit Confucian scholars into officialdom, thus beginning the Confucian examination system in Vietnam. In 1076, he established the National College (*Quoc Tu Giam*). Because of the Confucians' increasing role, the monks did not have as dominating a role in political affairs as previously.

However, in the spirit of coexistence of "The Three Religions, i.e. Confucianism, Buddhism and Taoism, the famous monks still retained their overall influence and this Buddhist influence imbued the human rights policy and practice (or law) of the government with tolerance and compassion, as will be pointed out below. The monks exercised their influence in three ways. First, many were sons or nephews of the emperors, the empresses, or the great officials, and therefore, still exercised an indirect, though personal, influence on emperors and officials. Monk Man Giác was Ly Hoai To's son; Nun Dieu Nhan was Emperor Ly Thanh Tông's adopted daughter; Monk Vien Chieu was Empress Linh Nhan's nephew. Second, they were always highly respected as religious leaders by the emperors and the queen mothers (the supreme empresses) who often invited them to manage the temples in the capital and to lecture on Buddhism in the imperial palaces. The monks Hue Sinh and Vien Chieu were invited by Ly Thai Tô to the palaces. Emperor Ly' Nhan Tông and his mother, Empress Linh Nhân, were devout Buddhists and often summoned well-known monks to discuss religious issues. Many monks were well esteemed by Nhan Tông and other Ly emperors, among them Thông Biên, Man Giác, Chan Khong, Giác Hai and Không Lo(6). Third, many emperors became monks themselves upon retirement: Thanh Tông (founder of *Thao Duong* sect), Anh Tông, Cao Tông and Hue Tông. The retired emperors (the supreme emperors), who were buddhist monks, still had a lot of power over the ruling emperors; therefore the influence of Buddhism on the government was strong.

Under the Tran (1225-1400), the influence of Buddhism over the government was further reduced than under the Ly. In an effort to maintain cohesion within the Tran clan, the imperial clan members were given a more important role in ruling the country than their counterparts in the Ly dynasty: they occupied important civilian and military posts, were given territories to tax and levy corvee on, and princes had separate armies (these fought the Yuan invaders). Officials (professional bureaucrats), recruited through civil service examinations (more developed under the Tran than the Ly), filled the appointive positions down to the village level. Inevitably, the influence of Buddhism lessened. Near the end of the dynasty, in 1396, Tran Thuân Tông applied a measure similar to one in China's Ming Code: the Buddhist monks and the Taoist priests under the age of fifty had to be defrocked. Confucian scholars openly attacked the Buddhist influence in government policies.

However, Buddhism still exerted a great influence on the religious beliefs and practices of the emperors. The Tran continued the official ideology of coexistence of "The Three Religions" and if Confucianism was a social philosophy governing state organization and social relations, then Buddhism was recognized as the religion of all, rulers and people. In the preface to his book *Thien Tong Chi Nam* (Guide to Zen), Emperor Tran Thai Tong told the story of his abandonment of the throne to go to the Yen Tu Temple to look for a Zen master and of his return to the capital only after the threat by Grand Counselor Trần Thu Do to move the whole court to the pagoda. He wrote: "*From early childhood when I began to have ability to understand, I already benefited from the teachings of the Zen masters. I inquired and pondered about Zen Buddhism. My heart has been yearning for a master and devoted to the Way.*" Later, after becoming supreme emperor, Thai Tong became a monk, creating a precedent for his successors to follow. Most of the succeeding Tran emperors were devout buddhists, enjoyed conversation with monks, and entered temples themselves upon retiring and becoming supreme emperors: Thanh Tong, Nhan Toing, Anh Tong, Minh Tong. A situation could develop in which an emperor supported Buddhism while his retired father, the supreme emperor, traveled as a monk among the people to promote Buddhism. Such a situation could only lead to the maintenance of a strong Buddhist presence. When Supreme Emperor Nhan Tong entered the capital in 1304 as head of the Truc Lam Buddhist Sect, Emperor Anh Tong and all his court went to meet him; the emperor asked to become a Buddhist disciple and all his court followed suit (7).

Even though Buddhism indisputably exerted a great spiritual sway over the rulers of the Ly and Tran, if we remember that the day-to-day secular state affairs were handled by the Confucian scholars-officials, some of whom--as pointed out below--had tried to cut down the role of Buddhism, we still must formulate the central research problem very precisely : Did Buddhism have any influence on the governments' human rights policies?

INFLUENCE OF BUDDHISM ON THE HUMAN RIGHTS POLICIES OF THE LY AND TRAN DYNASTIES.

To discuss the human rights policies of a government means to consider what constitutional rights are granted the citizens, or in an era where no constitution existed yet, what principles of law, especially in criminal law and criminal procedure, regulated the human rights such as the right to life, to liberty and to security of the person, or the right to freedom of thought or religion ,or the right to economic and social benefits, etc..

Enough Le and Nguyen legal collections were extant to permit us to treat the human rights record of these dynasties in a comprehensive manner. For the Ly and Tran dynasties, we have no compendium left, because General Chang Fu of China's Ming Dynasty, during the brief Chinese occupation of Vietnam after the Tran Dynasty, had reportedly confiscated the Vietnamese books and brought them all to Peking. The official history of Vietnam, *Dai Viet Su Ky Toan Thu* (hereinafter abbreviated as *TT*) mentioned a number of codes, but they are no longer extant. In 1042, Emperor Ly Thai Tong promulgated the *Hinh Thu* (Book of Punishments), which was praised by the historian of the later Le Dynasty in *TT* : "*Up to that time, lawsuits in the country were very complicated. The judges stuck to the letter of the law, to the extent of being harsh and condemning the innocent. The emperor, having sympathy for them, thereupon ordered that the laws be edited to bring them up to date, to classify them and to reduce them to articles in the Book of Punishments ,*

so that people could easily understand them.”(8). This *Hinh Thu*, which must have been imbued with the humanitarianism of Buddhism, no longer exists. The Tran dynasty also promulgated two codes : *Quoc Trieu Thong Che* (General Laws of the National Dynasty), in 20 books, in 1230, supplemented in 1244 with provisions on applying criminal law ; and *Hinh Thu*, compiled in 1341 by Truong Han Sieu and Nguyen Trung Ngan at the order of Emperor Du Tong. According to Le Qui Don, Tran laws were most complete at the apex of this Dynasty. Unfortunately ,we no longer have these codes from the Tran, and the only remnant of Tran laws is *An Nam Chi Luoc* (Brief history of An Nam), an unofficial history by Le Tac, a Vietnamese mandarin who defected and followed the Yuan invaders to China in 1285. In the last analysis, in order to discuss Buddhist influence on the human rights policies of the Ly and the Tran dynasties, we have available only scattered references in historical records to edicts, policies and events. Because we do not have legal documents, our analysis of the Ly and Tran periods can cover only a few human rights for which we have found vestiges in the official history and not all the rights enumerated in today's international legal documents.

A. The Integrity of the person

According to the United Nations documents, under this rubric, we have the right to life, the freedom from servitude or bondage, and the security of the person in the legal process, such as the guarantee against arbitrary arrest and detention, the right to a fair public trial without delay etc...The integrity of the person is a prerequisite to the enjoyment of equality, or other civil and political rights as well as economic and social rights

1. The right to life. Under the current international law of human rights, the right to life is not absolute. Although a number of international organizations (for example, Amnesty International) struggle for the abolishment of the death penalty as a violation of the right to life, and although a number of states in the United States did abolish the death penalty on the same ground, in today's international human rights law, the true meaning of the right to life is merely that it cannot be deprived of arbitrarily. With due process, both substantive and procedural, death sentence may be imposed by the state in most countries: a competent court of law can convict a person to death for a serious crime punished under the law in force, in accordance with legal procedure, on the basis of clear evidence.

Under the later Le and the Nguyen dynasties, death sentence imposed by the lower courts had to be approved by the highest level of the judiciary—under the Le, this would be *Tham Hinh Vien* or Criminal Review Agency; under the Nguyen, it would be a collectivity of agencies ,i.e. *Hinh Bo*, or the Board of Punishments, and *Tam Toa*, or the Three High Courts, which consisted of, first, the *Hinh Bo* itself, second, *Dai Ly Tu* or The Court of Revision, and third, *Ngu Su Dai* or The Censorate--and then the sentence, if affirmed, had to be forwarded to the emperor for final decision.(The only deviance from today's human right standard was that death might be imposed for some crimes not punishable by death today: fornication with an aunt, for example).

We do not have documentary proof whether The Ly and The Tran dynasties had that same elaborate procedure for imposing death penalty or not, but it is conceivable that if the Nguyen dynasty adopted China's Ch'ing dynasty's procedure for death sentence, and if China's Sung dynasty imitated the Ly dynasty in military organization, the Ly might have adopted the institution

of *Tham Hinh Vien* of the Sung. In 1052, Ly Thai Tong ordered that a bell be manufactured and placed in the courtyard of Thien An Palace for the people to ring to claim their innocence (9). Under the Tran, besides the Censorate and the Board of Punishments, there was also the Criminal Review Agency to review and issue opinion on the penalties imposed by the lower judges (10). These appellate levels would make it difficult to deprive life arbitrarily, especially if the emperors were benevolent, as we will see later.

The Ly and the Tran dynasties might not have gone so far as to abolish the death penalty, but their legal philosophy, influenced by Buddhism (especially the abhorrence of killing), led to the decrease in the number of crimes punishable by death and the possibility of redemption of the death penalty.

Ly laws punished killing by striking with only 100 strokes of the heavy stick, tattooing of 50 characters on the face and condemnation to be a hard-work menial; and killing with a sharp weapon during a land dispute with only 80 strokes of the heavy stick and penal servitude (11). Later dynasties punished fleeing the country to follow foreigners with death, but in 1125, Mac Hien, administrator of the Quang Nguyen district, who fled to Sung China the previous year and was sent back, was only exiled to Nghe An and then Thanh Hoa, while his wife and children converted to serfs (12). High treason, against the emperor, should have been punished by death under traditional law in China and Vietnam (decapitation, sometimes with exposure of the head, was the standard penalty). But with the exception of the death by slicing of General Nguyễn Khanh in 1035 (13), many cases of high treason under the Ly were waived the death penalty. In 1028, when the Thai To Emperor passed away, three princes brought troops into the palaces to contest the throne with Ly Thai Tong, the legitimate successor; one perished while the other two fled and then returned to surrender. The emperor pardoned them and gave back their titles to them. After that, another prince rebelled in Truong Yen and after surrender, he was also pardoned and his position and title restored (14). In 1096, the high dignitary Le Van Thinh was charged with high treason, but was only exiled to Thao Giang area because of his great past achievements. The allegation was that as the emperor was sailing in a fishing boat on lake Dam.Dam, watching fishermen at work. Suddenly, fog rushed in on the area and amidst the fog, the sound of paddles of an approaching boat was heard. As the fog cleared off, a tiger was seen in that boat. The fisherman, Muc Than, threw a net over the tiger which then became Le Van Thinh. The emperor's leniency probably arose from the lack of concrete evidence: the truth might be that Lê Van Thinh was boating out into the lake to look for the emperor when fog was coming, and the emperor did not see him clearly and mistakenly took him for a tiger. But the influence of Buddhism was so annoying to the Confucianist officials that later, they still complained that the emperor's leniency for Le Van Thinh was motivated by Buddhist inspiration (15). The emperor's tolerance extended even to the ethnic minority people who committed high treason. In 1041, the rebel Nung Tri Cao was captured and brought to the capital. Moved by the fact that the rebel's father had already died in a previous revolt in 1039, Emperor Ly Thai Tong pardoned him and permitted him to continue to serve as chief of Quang Nguyen district and even to administer additional areas, including Tu Lang district. A year later, Nung Tri Cao was given a seal and the high honorary title of Thai Bao. One result of this benevolent policy toward minority leaders was their effective support for the dynasty in the successful campaigns against the Sung invaders (16).

Death penalties under the Tran were more severe. A husband was allowed to kill his wife's lover and to treat his guilty wife as a serf, to indenture or sell her. A thief committing the third offense would be put to death (17). However, in practice, the death penalty might be redeemed. In a case where an anonymous letter was used to defame the state in 1283, Emperor Nhan Tong condemned to death one Manh, serf of Prince Tran Lao, but permitted the Prince to redeem his death penalty with 1000 *quan* of money and condemned him only to penal servitude(18).

Given the image of the lenient Confucians, often advanced by Western students of Chinese civilization, it is especially interesting that Vietnamese scholars and historians of later, more Confucian times found the law of the Ly to be overly lenient. Many of these scholars blamed this leniency on the influence of Buddhism.

On the heavy stick penalty and penal servitude provided for killing by striking, Ngo Thoi Si (1725-1780), also known as Ngo Ngo Phong, was highly critical:

“Ancient laws punished those who killed with death. It is unacceptable that an offender who kills by striking is punished only by the heavy stick and penal servitude. Given such a light punishment, petty tyrants and crafty wrongdoers would readily take revenge without any respect for human life. Dishonest people would violate the law easily and good people would have to suffer the injustice. What a major error in criminal policy! The rulers should never forget the comments on leniency by Tzu Ch’iao and Ts’ui Shih.” (19)

On the light penalty for killing during a land dispute, the fifteenth-century Confucian historian Ngo Si Lien (14??-14??) also strongly disapproved of the Ly : *“Ancient laws punished with death those who killed. To punish homicide in the same manner as other crimes is to fail to distinguish between crimes of different degrees of severity.”* (20)

Ngo Si Lien was also critical of Ly Nhan Tong's decision to impose only exile on Le Van Think in 1096: *“To exempt from death a subject who attempted to kill the emperor and seize the throne was a mistake in criminal policy. This was due to the emperor's faith in Buddhism”.* (21)

On the lenient treatment of rebels, Le Van Huu, a thirteenth-century official historian (1231-????) blamed the pardon of Nung Tri Cao on the influence of Buddhism:

“Previously, when his father Nung Ton Phuc committed treason, usurped the title [of emperor], and established a separate state, Emperor Thai Tong only punished the father and exempted the son Tri Cao. Now that Tri Cao followed the treasonous path of his father, he deserved, for his serious crime, the death penalty or [at least] the deprivation of title and land previously granted and demotion to the status of commoner. However, Emperor Thai Tong pardoned him, gave him additional districts to rule, conferred on him a seal and the noble title of Thai Bao. This is not a justifiable policy of punishment and reward... All is due to the fact that Emperor Thai Tong was infatuated with the petty humanitarianism of the Buddhists and forgot about the great principles of a king.”(22)

On this Nung Tri Cao affair, Ngô Si Lien also commented about the impact of Buddhism : *“The emperor, deluded with the Buddhist doctrine of love and humanitarianism, pardoned a traitor. Therefore, his benevolence became marred. That was his defect.”* (23). Thus, the influence of the Buddhist respect for life caused the Ly dynasty's policy on the application of the death penalty to be very lenient.

2. The security of the person in the legal process . We find historical vestiges on three rights within this area

a) One of the basic element of the security of the individual involved in the legal process is *the presumption of innocence until conviction by a court* ,and therefore, the accused is to be separated from the convicted. During the severe winter of 1055, Emperor Ly Thanh Tong told his Court officials:

“Living in the palaces heated up with coal stoves and wearing plenty of warm clothing, I still feel this cold. I am quite concerned about the detainees in jails who are miserably locked up in stocks and manacles, without enough food to eat and without clothes to warm their bodies, or some even undeservedly dying while their guilt or innocence has not been determined. I feel a deep compassion for them.”(24)

Thereupon, he ordered blankets and mats to be distributed to the prisoners and two meals a day to be provided them. It seems that the emperor considered the detainees to be innocent until proved guilty and to deserve humane treatment. This line of legal thinking may be compared to the modern human rights law principle of presumption of innocence until conviction in a trial. This was a gem in the history of human rights in Vietnam.

b) *The guarantee against double jeopardy* means that no one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure . This is the logical outcome of the principle of *res judicata pro veritate habetur* or the principle that a matter already adjudged is to be considered as the truth. Such a principle was recognized under the Ly (edict of 1128) and continued in later dynasties, including the Le and the Nguyen (25).

c) *Avoidance of inhuman treatment or punishment.* Article 5 of The Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights use identical language : "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

We see in the above statement and order of Ly Thanh Tong a policy of humanitarian treatment of detainees. Due to the influence of Buddhism, the same emperor also wanted to apply lenient punishment to convicts. In 1064, while presiding over a trial in Thien Khanh Palace, he pointed at Princess Dong Thiên, who stood in attendance next to him, and told the judicial officials: *"I love my people as much as I do my own daughter. They commit offenses because they do not know [the law] and I have much compassion for them. From now on, I want all offenses, grave or light, to be judged with indulgence."* (26). The lenient Ly punishments for homicide or treason mentioned above, in connection with the right to life, reflected this policy of humane punishment, which the Confucian scholars deemed a wrong criminal policy and attributed to Buddhist inspiration.

The Trần dynasty's penalties were more severe, but as stated, there was the possibility of redemption. Moreover, the policy toward minor infractions among the population in general seemed to be easy-going. One example: to control the population and its movement within the national territory, the court required each person to register. According to Phan Phu Tien, a number

of Confucian scholars submitted a memorial to Emperor Tran Minh Tong (1314-1329) about vagrants and adventurers who escaped from the population registers in order to evade taxes and corvee. The emperor replied that if there were no such vagrants and adventurers, the era could not have been dubbed a peaceful era; moreover, what good did it make to punish these people?(27)

The Ly as well as the Tran emperors many times ordered general amnesties for criminal convicts: 14 times under the Ly and 17 times under the Tran, especially on occasions such as births of princes, temple constructions, and statue castings.

This tolerant policy toward the offenders was criticized by the later Confucianists who blamed it on Buddhism. On the subject of an amnesty granted in 1129 by Ly Than Tong, Ngo Si Lien indicated that he considered the ancient *Shu Ching* (Book of History) a better guide to amnesty policy than Buddhism:

“Emperor Nhan Tong's frequent use of the occasions of Buddhist holidays to grant amnesty was wrong, but at least he used the pretext of Buddhist celebrations . As for the Emperor [Than Tong], he did not have any such pretext and yet he granted amnesty.... If everybody were pardoned, the dishonest fellows would luckily escape punishment and this would not be of benefit to honest people. The ancient sages knew that in governing men, it would be impossible to eliminate pardons, but also realized that one had to think of the harm arising from pardoning.... The Shu Ching says, 'pardon a mistake, but punish a willful crime'. Such should be the right policy.” (28)

When the later-day Confucianists thus criticized the humane criminal policy of the Ly and Tran, they proved to have no compassion, a sentiment the Ly and Tran emperors had been imbued with, thanks to their adherence to Buddhist tenets. From the vantage point of twentieth century, we can see that the Confucianists themselves should be considered as "petty", because the notion of compassion as an element of the law was not peculiar to Ly and Tran dynasties and not due only to Buddhist influence. In the United States today, Supreme Court Justice Brennan said that in the last analysis, the purely legal principles must be guided by compassion, because compassion is another face of justice.

B. Equality

Equality constitutes the most fundamental right and the single dominating theme pervading all the international structure of human rights. The Universal Declaration states in its article 1 that "*all human beings are born free and equal in dignity and rights*" and in its article 2 that: "*Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property or other status*".

Confucianization of the law in traditional China and Vietnam gave birth to some legal inequalities on the basis of particularistic considerations of social status (imperial relatives, officials ,commoners, serfs), family status (senior relatives, junior relatives), sex (husband, wife), national or ethnic origin (people of Han culture, people of alien culture--the Minh Mang Emperor of the Nguyen hoped that the highlanders and Cambodian minorities would dropped their barbarian habits and adopted 'Han' [Sino-Vietnamese] customs). One must say that these inequalities were

tempered by the Vietnamese custom of equality in property rights between men and women--which was embodied in Le law-- and the policy of equality for minorities at least in the legal process, if not in political and civil rights .

In contrast to Confucianist sanctioning of inequalities, Buddhism treats all living creatures on the same equal footing. Each person can perfect himself/herself to become a buddha and escape the vicious circle of *karma*. Each person is responsible for the events that happen to him or her in this life because they are the results of his/her acts in the previous incarnation. The equality and dignity of everyone in Buddhist doctrine is very close to the international legal standard of equality of all human beings.

Such notion of equality was operative in the laws of the Ly and the Tran. For example, under the Ly, the powerful families could not oppress the commoners. The edict of 1129 protected the latter from the former's act of oppression through their serfs: if the serfs of princes or officials beat up a commoner, the serfs would be seized for the state and their masters would be subject to penal servitude (29). The Tran dynasty seemed to adhere even more strictly to the principle of equality under the law, as if the severity of the penalty was balanced with this equality of treatment of all. The law was strictly enforced in all circumstances vis-a-vis all, including imperial relatives, without concession to consideration of social status. In 1264, Linh Tu Quoc Mau, former empress of Ly HueTong and wife of the all powerful Grand Counselor Trân Thu Do, refused to descend from her palanquin in passing the Forbidden Area gate (a gate to the Imperial living quarters) and was therefore stopped by the officer of the guard; she complained to her husband but the latter rewarded the officer for "adhering to the law" (30). In another instance, the same lady asked him to give a man preferred appointment as a warrant officer. Thu Do told the man: "*As the princess has asked for you the favor of being appointed warrant officer, you are not like other warrant officers. You must have one toe cut off as a distinctive mark*". The candidate begged off. After this, no one dared to ask Thu Do for special favors (31). Several incidents from the reign of Emperor Minh Tong (1314-29) indicated attempts to keep the conduct of the wives of the emperors within legal boundaries. In 1320, the supreme empress wanted to let Lady Huy Tu, natural mother of the ruling Emperor Minh Tong, use the supreme empress's palanquin to accompany Supreme Emperor Anh Tong. The latter told the supreme empress, "*If you like her, you could let her use other things; as for the palanquin, there are ancient rules about it, you cannot let her use it.*"(32) Huy Tu was found in violation of sumptuary regulations on another occasion, when an official cut off some ropes to reduce the number of boats pulling her barge to the two permitted a person of her status; this official was congratulated by Emperor Minh Tong (33). Another wife of the supreme emperor improperly seized land from people; when her daughter married, Emperor Minh Tong gave the bridegroom the victims' complaints and advised him to return the land, which he did (34).

C. Freedom of thought and religion.

Although traditional Vietnam was not an *etat engage* (committed state) with one ideology upheld as the only truth--as in, say ,an Islamic state of Iran category, it was heavily influenced by orthodox Confucianism, which in turn was reinforced by the authoritarianism of the monarchy which justified its power position on the Confucian principle of loyalty to the emperor (*trung quan*). The ruling class of officials under the emperor was supposed to uphold the Confucian ideology in their study, their examination for induction into officialdom, and their daily work in the

public service. For these reasons, it can be anticipated that there would be limitations to freedom of thought. Thus, the question of freedom of thought and religion in traditional Vietnam can be reduced to this: to what extent did the ruling Confucianists tolerate other ideologies or religions, especially in the actual practice or propagation?

During the periods of the Ly and the Tran, when there was the policy of coexistence of Confucianism, Buddhism and Taoism, and when the Buddhists had political and ideological influence on the rulers, there was a remarkable tolerance of freedom of thought and religion in the government policies. We will contrast this situation with controlling data from the later Le and Nguyen dynasties, when Confucianism was in complete ascendancy, as well as some data from other countries and periods, to verify the finding that tolerant Buddhism indeed enhanced freedom of thought and religion when it had influence over the governments of the Ly and the Tran.

The Buddhists have had a great tolerance of freedom of thought and religion. Gautama Buddha saw in the immense universe many worlds and many spiritual beings. He never belittled any spiritual beings who were worshipped by the peoples of his time. He told the youth Thien Sinh to respect other religions. If there are many stars or suns in the universe, that fact would not decrease the importance--in terms of light and heat for living-- of the Sun closest to the peoples on this earth. In the same manner, the observation of Buddha and his disciples that there were many spiritual beings in this universe should not be a reason to belittle any other religion practiced by any people, past or present, because that religion is "the sun" of that people. In the context of such tolerance of freedom of thought and religion, many sects flourished within Buddhism itself without any serious disputes. In old India, monks from Hinayana and Mahayana peacefully coexisted in the same monastery. Buddhism has never demanded an absolute cult of any of its religious figures and has never caused a crusade such as the ones in Europe and the Middle East. In Buddhist perspective, Jesus, with his immense compassion, could be considered as a great buddha. In 19th century Vietnam, Christian priests, persecuted and pursued by the Van Than Confucianists, fled into buddhist temples and were protected by the monks.

In contrast, some religions proclaim only they hold the Truth. Neo-Confucianism promoted since China's Sung dynasty narrowed the minds of many scholars and made them think of other ideologies as "maverick doctrines". Professor Woodside described the enslavement of the thinking of the Nguyen Dynasty Confucian scholars as follows: *"The ghosts of the twelfth-century Chinese Sung neo-Confucian philosopher Chu Hsi and his followers hovered over Nguyen examination sites... Individual discretion and originality were reduced."*(35) because students were learning by rote from the same old books and dared not deviate from the neo-Confucian viewpoint in taking examinations, afraid as they were of flunking for propagating "maverick" doctrines. Buddhist tolerance for the freedom of thought and religion no doubt had influenced the human rights policy of the Ly and the Tran governments in this area. The "Three Religions" of Confucianism, Taoism and Buddhism were important in the study and examination of the scholars-officials. More noteworthy, the Confucianist rulers supported Buddhism in property acquisition, personnel recruitment and religious activities. The Ly emperors built and repaired hundreds of Buddhist temples, many of which are still standing today in North Vietnam, such as Mot Cot Temple [One-Pile Temple] (built in 1049), Quan Thanh Temple(1102), Hai Ba Temple [Temple of the Two Ladies] (worshipping the two Trung sisters who threw out the Han Chinese rulers, built in 1160), Voi Phuc [Prostrated Elephants] Temple(11??). The process of construction began as soon as Ly

Thai To ascended the throne and continued throughout the dynasty. Supreme Empress Linh Nhan (formerly Y Lan) alone built more than a hundred temples. Money and land as well as corvee men were provided to establish and maintain these temples. The Dinh Dynasty's hierarchy of grades for monks continued to be adopted. Certificates of monkhood were given to thousands; in 1016 alone, more than a thousand individuals were chosen for monkhood in the capital. Exempt from corvee and military service, the monks were aided materially by the people and the emperors. The government also ordered the procurement, editing, and storage of Buddhist scriptures in depositories and organized many Buddhist festivals or ceremonies. In 1179 and 1195, near the end of Ly Cao Tong's reign, examinations on three religions were held (36). All the above added up to the highest degree of religious freedom and development for Buddhism in the history of Vietnam.

Toward the end of the Ly dynasty there were indications that the Confucians, who had been growing impatient with the free reign given the Buddhists, succeeded temporarily in oppressing them. In 1179, Ly Cao Tong ordered apprentice monks to sit through a test on Buddhist scriptures. In 1198, the Confucian official Dam Di Mong memorialized the emperor:

"At the present time, the number of monks nearly equals that of corvee men. They form cliques, select their masters, and commit many dirty acts, such as eating meat and drinking wine in places of abstinence or having secret sex in temples. They hide during daytime and go out at night, in the same manner as the mice and the foxes. They corrupt the custom and ruin the culture. If we do not crack down on them, they will become exceedingly odious."(37)

The emperor agreed with Dam Di Mong and had him order the monks in the country to assemble in various temples. About ten well-known monks were permitted to remain as monks, but the rest were forced to have their arms tattooed and to unfrock.(38)

Despite this attack by the Confucians, however, the influence of Buddhism did not decline. Ly Cao Tong and his successor Ly Hue Tong remained pious Buddhists and entered temples upon retirement. Buddhism was still so popular among the people that later on, under the Tran, the Confucian Le Quat, a doctoral degree holder, complained in a stele set up in Thieu Phuc Temple at the time :*"Buddhist temples exist in all villages but nowhere does one find the worship of Confucius."*(39)

As stated above, Buddhism as a religion still exerted a great spiritual influence over the Tran rulers. More than that, The Tran continued the examinations on the three religions begun under the Ly (40). Emperor Tran Thai Tong wrote the treatises *Thien Tong Chi Nam* (Guide to Zen) and *Khoa Hu* (Lessons on the Empty Life) in which he made reference to Buddhism, Confucianism and Taoism on every topic discussed (41). Given this eclecticism, Buddhism was actively supported by the Tran government, as much as under the Ly, in terms of material assistance and exercise of religious freedom. In 1231, Emperor Thai Tong ordered the people to install Buddhist statues in every public office and place of meeting (42). In 1248, he invited the monk Truc Lam to review the Buddhist scriptures before printing (43). New Buddhist temples were built and new Buddhist schools were opened during the reign of Tran Thanh Tong (44). After Emperor Nhan Tong retired and went into a Buddhist temple, he became the head of the Truc Lam Buddhist Sect, preached throughout the country, and attracted many disciples. During Emperor

Anh Tong's reign, Buddhist scriptures brought back from China by Ambassador Tran Khac Dung were printed and distributed among the people (45).

However, Confucian officials never ceased their efforts to attempt to undermine Buddhism. For example, Truong Han Sieu wrote the text of a stele in a Buddhist temple in Bac Giang Province:

"The ruined temple has been reconstructed, but that was not on my own initiative . As a scholar-official, I would not talk about anything but Yao and Shun. I would not write about anything but Confucianism. And yet I have to discuss Buddhism. Can I mislead anybody?" (46)

Toward the end of the Tran dynasty, in the period 1358-69, during the reign of Emperor Du Tong (1341-69), the Confucians consolidated their position briefly by again putting forward a proposal already rejected once by Emperor Minh Tong (1314-29) and having Sung law and institutions adopted on a large scale by the government. They succeeded for a while. Although Emperor Nghe Tong (1370-72) later repealed these changes proposed by the "pale-faced students" and returned to the old system of Vietnamese law and institutions, the underlying impetus of neo-Confucianism was to persist and become influential in later development, affecting the religious freedom of all other religions, including Buddhism. In 1381, Emperor Tran Phe De decreed that Buddhist monks be drafted into the expeditionary force to fight in the campaign against the Chain Kingdom. In 1396, Emperor Tran Thuan Tong issued an edict unfrocking a number of Buddhist monks and Taoist priests who had not reached fifty years of age.(47) The policy was launched by the determined Confucian Ho Qui Li, the all-powerful Court Advisor of the time. This measure, to be continued by the later Le dynasty, was to mark the beginning of the decline of religious freedom that accompanied the ascendancy of Confucianism.

CONTROLLING DATA FROM OTHER TIMES AND PLACES.

When Confucianism triumphed under the Le and the Nguyen dynasties to the detriment of other ideologies, the fading away of Buddhist influence in the governments paralleled with restriction on religious freedom.

A. Le's and Nguyen's policy of limited freedom for Buddhism, Taoism and the popular cults

Although the laws and policies of these dynasties still granted a degree of religious freedom to Buddhism, Taoism and popular cults among the people, it was a closely regulated freedom.

Control over the clergy. The government had a monopoly over the issuance of ordainment certificates to Buddhist monks or Taoist priests, and only persons fifty years or older were eligible to receive such certificates. Any attempt to obtain private ordainment certificates or to enter monkhood or priesthood without a certificate would lead to the punishment of penal servitude(Le) or the stick penalty (Nguyen). In order to identify the monks or priests clearly, those who were not monks or priests were not allowed to shave their heads or wear the clothes of priests (48). Apparently, monks and priests were examined on their morality and knowledge of scriptures before the ordainment certificates were issued to them. Any one who failed would be unfrocked (49). The policy of controlling the number of clergy was officially explained by the economic concern

over the depletion of corvée laborers caused by their induction into the clergy ranks. According to the official commentary on Article 75 of the Nguyen Code and Decree 3 following that article, the government believed that if no limit were imposed on the number of Buddhist monks and Taoist priests, who were not listed in their family households and were thus exempted from corvee, the population would decrease; also, since the clergy did not till land or exercise any trade and depended on the people for their food and clothing, national resources would be wasted. Therefore any attempt to put young men sixteen years old or older outside the family (i.e., into the clergy) would lead to punishment (50). The indirect effects of the limitation on the number of clergymen were a restriction upon the free exercise of religion and the limited development of the Buddhist, Taoist, and other religions. John Crawford, reporting on a trip in Southeast Asia in 1821-1822, described the condition of the clergy in Vietnam in these terms:

"Coming from countries like Hindostan and Siam, where systematic and national forms of worship are established and where religion exerts so powerful a sway over society, we were surprised at the contrast which Cochinchina presented in this respect. The ministers of religion, instead of being honored, revered, and powerful, as in Buddhist and Brahminical countries, are few in number and the meanest orders and little respected."(51)

Emperor Minh Mang of the Nguyen even interfered in the internal organization of the churches, giving the title of Hoa Thuong to monk Giac Ngo alone and ordered all the Hoa Thuong in the country to be dubbed Tang Cang (monk-controller), implying that they were government-appointed supervisors of the Buddhist church. Legal sanctions were imposed on violations of purely religious rules such as eating meat, drinking wine or fornication and marriage.

Control over temple building and statue casting. Under both the Le and the Nguyen, government permits were required for these activities. Under the Nguyen, no new monasteries or convents could be constructed, except with imperial authorization. The penalty was exile.(52)

Control over printing of religious books. Under the Le, Buddhist and Taoist books could be printed only with government permission; violation of this rule led to penal servitude. The ban was supposed to prevent dishonest monks' preying upon the people and "worming" away their money. The ban was considered so important that official had the duty to arrest offenders and memorialize the throne; if they failed to do so, they would be demoted.(53)

Control over the popular cults. The practice of ancestor worship, promoted by Confucianism, received official preferential treatment. It was a legal obligation to reserve part of the inheritance property for the ancestor cult; and whoever sold this portion of ancestor worship property would be severely punished for lack of filial piety, one of the ten heinous crimes.(54) On the other hand the other forms of popular cults, such as worship of animist spirits, gods, human figures was disfavored by the ruling Confucians. To worship their guardian spirits in the communal temples, the villages had to obtain a patent from the emperor; whoever took the liberty of installing statues of deities in temples without imperial authorization would be subject to penal servitude. (55) Control over the religious practices began to take on the characteristics of religious oppression when the death penalty was imposed on "perverse religions" in some provisions of the Nguyen Code, which were, of course, adopted from the Ch'ing Code. The Nguyen Code punished with strangulation those religious masters or "sorcerers" who evoked "diabolical spirits", "saints", and all other "faked religious doctrines", or who formed unauthorized religious societies, thereby "sowing confusion

among the people". Neighbors who did not denounce and officials who failed to suppress these offenders would be themselves punished.(56)

To punish the above purely religious activities, if they did not violate state security, would be the punishment of "thought crimes", in violation of the modern standard of freedom of thought and religion.

B. The Le government's and the Nguyen government's policy toward Christianity and the attitude of the ordinary Buddhist monks of the same periods toward Christianity, as controlling data

The Buddhists no longer had influence in the Le and Nguyen governments. Therefore, one must leave the Buddhists out of the debate on these governments' policy toward Christianity, and only the Confucian rulers, emperors as well as officials, were responsible for any repression of the Christian priests and followers. Moreover the friendly attitude of some ordinary Buddhist monks toward the Christians during these periods actually stood in contrast to the governments' restrictive policy toward the latter. All these data confirm the conclusion that when the Buddhists could influence governments' human rights policy, it would be toward more freedom of thought and religion.

This is not the place to discuss fully the Le and Nguyen governments' policy toward Christianity. It is discussed in another study. For purposes of briefly contrasting, on the one hand, the Ly's and Tran's generous religious policy, influenced by Buddhist tolerance, and, on the other, the Le's and Nguyen's restrictive religious policy toward Christianity, we need to summarize our conclusions on this restrictive policy toward Christianity, which we reached in our book *The Vietnamese Tradition of Human Rights*:

a) Religious tolerance was more the rule than the exception for Catholics in sixteenth-through-nineteenth-century Vietnam. During the greater part of these four centuries, either the people enjoyed freedom in adopting the Catholic faith and practicing this religion in ceremonies or church building (even princesses were permitted to adopt the faith), or the edicts of prohibition were either not enforced or were repeatedly withdrawn.

b) The initial prohibition was accompanied by mild penalties. Although some killings of foreign missionaries occurred in the 18th century, the Catholics were free to spread the gospel up to the period of the Gia Long Emperor of the Nguyen Dynasty (his testament ordered the tolerance of all big religions such as Confucianism, Buddhism and Christianity). The bloody repression of Vietnamese Catholics began only with the Minh Mang Edict of 1833 and ended in 1862 under Emperor Tu-Duc. Tu Duc thereafter changed his policy toward tolerance for the Catholics, and used military force to suppress the Van Than Confucianists who persecuted the Catholic population and put the Van Than leaders to death.

(c) The defiant way in which the missionaries and their Vietnamese followers rejected traditional values, such as the ancestor cult or respect for Confucius and Buddha (A. de Rhodes vilified Confucianism as "falsehood" and Buddha as "this black liar"), was the original cause of the escalating ill will between the Catholic population and the ruling Confucian scholar-official class

who at the beginning demanded only that the missionaries leave. But the emperors' and their Confucian officials' later intolerance of any dissent from Confucian norms (ancestor worship, submission to the imperial will even in the spiritual realm), and their demand that those Catholics who committed no crime step over the cross to forsake their faith and thus escape penalty, were clear evidence of the violation of religious freedom.

(d) In many cases, suppression of the Catholics was motivated and might be even justified by security considerations for the dynasty or the state, especially when foreign priests collaborated with foreign powers with the hope of creating a country more favorable to evangelism. (For example, actions taken by Trinh Tac in 1659; by Nguyen Phuc Khoat in 1750; by Minh Mang in 1638 after the Le Van Khoi-Marchand revolt; by Thieu Tri after de Genouilly's shelling of Da Nang in 1847, which was instigated by information given by some Catholics; or by Tu Duc after the 1858-59 French and Spanish attack on Da Nang and Saigon at the suggestion of Bishop Pellerin). Moreover, the competition between the Jesuits, The French Mission Etrangère, and the Portuguese induced them to denounce one another as spies and made the Vietnamese government more suspicious. However, for the government to disperse indiscriminately, or to subject to the death penalty, those ordinary Vietnamese Catholics who were not involved with foreign intervention and whose only crime was refusing to abandon their faith, was a violation of the basic human rights of religious freedom and freedom from cruel punishment. Moreover, such overreactions led to the vicious circle or repression-resistance-foreign intervention-repression etc.. Probably to avoid any recurrence of this vicious circle in today's Vietnam that may arise if the government suspects the Catholics to carry out subversive activities against the national security of Vietnam, and to ensure the survival of religious freedom for the Catholics in Vietnam, Pope John Paul II had this homily for the overseas Vietnamese assembled in the Vatican on June 19, 1988:

"The Church in Vietnam, with its martyrs and through its testimony, has been able to proclaim its willingness and commitment not to reject the cultural tradition and the legal institutions of the country. It has declared and demonstrated that it wants to become part of it, contributing with fidelity and truth to the building of the country... I know that in the depths of your heart, you retain a fundamental fidelity to your country of Vietnam, to your people, to your culture, particularly to the relatives and brothers you have left behind... Be faithful to these deep roots..."

After this allocation of blame and responsibility for the repression of the Catholics in traditional Vietnam, it is worthwhile to mention the attitude toward Christianity on the part of the ordinary Buddhist monks, who were out of any government under the Le and the Nguyen and not accountable for any government policy on human rights during those periods. Some monks adopted the Catholic faith, for example the one who followed A. de Rhodes and The Trinh Lord in the campaign against the South, taking the Christian name of Jean (John).⁽⁵⁷⁾ Others helped the Catholic missionaries, such as in the case of father Baldinotti⁽⁵⁸⁾. Still other monks participated in seminars on religious doctrines with the other religions, including Christianity; for example the three-day Four-Religion Seminar during Lord Trinh Sam's reign, organized by the Lord's uncle whose mother was Catholic, on the topics of "the origin of man", "the purpose of human life", "life after death", with the attendance of fathers Castanheda and Vinh Son and representatives of Confucianism, Buddhism and Taoism ⁽⁵⁹⁾.

C. Buddhist tolerance in other countries.

The Buddhist respect for freedom of thought and religion not only revealed itself in Vietnam but also in Buddhist-oriented societies such as Ceylon, Burma, Laos, Cambodia and Thailand, where the Christian missionaries found it much easier to carry out their evangelical work than in traditional China or Japan --where Confucians dominated the governments.

A FINAL THOUGHT.

In the last few decades in Vietnam, the Buddhist social and political resurgence has alarmed some people, especially after the 1963 coup d'etat in South Vietnam. But during the finest hours of the Buddhists in South Vietnam, from 1963 to 1966--when the political influence of the monks were strongest and seemed to threaten the military regime of Nguyen Van Thieu-Nguyen Cao Ky-- The Reverend Tri Quang declared that the Buddhists never wanted to seek a domineering position in the political arena and only asked for democratic general elections, through universal suffrage, for a constituent national assembly. Those who were alarmed may not have read our long history carefully enough and may have been shaken by the *Time* magazine cover story about this "Man who shook America" !

The influence of the Vietnamese Buddhists on the human rights policy of the governments in traditional Vietnam is clear. This is not to say, as we have alerted the reader at the beginning of this presentation, that the Confucians in the government were "the big bad boys" endangering human rights, because our broader study, i.e. the book *The Vietnamese Tradition of Human Rights*, gives ample evidence that the Confucians, whether emperors or scholar-officials, did respect human rights standards to a great extent.

If the French and the British have read more about the human rights record in East Asia in general and in Vietnam in particular, they might have quarreled less about their respective claims of who among them invented human rights first. On the occasion of the interviews during the July 1989 Bicentennial of the French Revolution, British Prime Minister Thatcher declared that the French had not invented human rights with their "Declaration des Droits de l'Homme et du Citoyen", because these rights went back to Ancient Greece, the Bible and the Magna Carta. The French government did not take kindly to that remark, punishing Mrs. Thatcher with request for accreditation papers and identity photos from all members of the British delegation, herself included. If the French and The British had known more about East Asian and Vietnamese human rights traditions, they might have seen that their quarrel was pointless. In particular, the human rights tradition of the Vietnamese Buddhists has been a great contribution to the civilized humanity.

NOTES

1. See Ta Van Tai, *The Vietnamese Tradition of Human Rights*. Institute of East Asian Studies/University of California/Berkeley, 1988, 157-176. This book uses today's comprehensive list of international human rights standards as a framework for analysis and touchstone for evaluating Vietnam's record in the areas of integrity of the person (life, liberty and security in the legal process), equality, civil and political rights, economic, social and cultural rights.
2. Ivo B. Duchacek, *Rights and Liberties in the World Today*. Santa Barbara, CA: Clio Press, 1973, 4
3. A comprehensive statement on this "despotic power--total and not benevolent" can be found in Karl Wittfogel, *Oriental Despotism*. New Haven: Yale University Press, 1957
4. Hoang Xuan Han, *Ly Thuong Kiet*. Hanoi, 1949, 400 and 403; Dao Duy Anh, *Viet Nam Van Hoa Su Cuong* (Brief Cultural History of Vietnam), Saigon, 1951, 234 .
5. Hoang Xuan Han, 403-4; *Dai Viet Su Ky Toan Thu* (The Complete Book of the Historical Records of Dai Viet), hereinafter *TT.*, official history of the Lê Dynasty. Translation into Vietnamese by Cao Huy Giu, Hanoi, 1967, I :185.
6. Hoang Xuan Han, 401, 404-5
7. Nguyen Lang, *Viet Nam Phat Giao Su Luan* (History of Buddhism in Vietnam), Saigon, 1974, 307-8
8. *TT.*, I:219
9. *TT.*, I:226
10. *TT.*, II: 21
11. *TT.*, I:255, 278
12. *TT.*, I:254, 264
13. *TT.*, I:212
14. *TT.*, I:203-4
15. *TT.*, I:242
16. *TT.*, I:218, 221
17. Le Tac, *An Nam Chi Luoc* (History of An Nam), translation into Vietnamese, Hue, 1961, 222-3
18. *TT.*, II:49
19. Phan Huy Chu, *Lich Trieu Hien Chuong Loai Chi—Hinh Luat Chi* (Annals of the Laws and Institutions of Successive Dynasties-Legal Section). Hereinafter abbreviated as *HLC*. Translation by Cao Nai Quang, Saigon, 1957, 523. Tzu Ch'iao or Tzu Ch'an (581-522 B.C.), prime minister of Cheng who carved a criminal code on a bronze tripod, told Tzu T'ai-shu on his deathbed: "When I die, power will be in your hands. Only the virtuous men can control the people by clemency; for others, it is better to use severity. When fire is blazing, the people look to it with awe, and few of them die from it. On the other hand, water is weak, the people despise and make sport with it, so that many die from it. It is difficult to govern with mildness" (James Legge, *The Chinese Classics*, vol.5, 684). Ts'ui Shih belonged to a famous lettered family during the reign of Han Huan-ti (I 47- 168) and his successor. He wrote a *Discourse on Government*, the main idea of which was that clemency could be used only by strong governments; in troubled times, severity should be the norm.
20. *HLC*, 525 ; *TT.*, I:278
21. *TT.*, I:242
22. *TT.*, I:221
23. *TT.*, I:228
24. *TT.*, I::229-230

25. *HLC*, 522; *TT*, I:263
26. *TT*, I:242
27. *TT*, II:145
28. *TT*, I:264-5
29. *TT*, I:266
30. *TT*, II: 33-34
31. *TT*, II:34
32. *TT*, II:109
33. *Ibid*
34. *TT*, II:106
35. *Vietnam and the Chinese Model*, Harvard University Press, 1967, 207, 208, 215
36. Hoang Xuan Han, 309-402
37. *Ibid*, 402
38. *Ibid*.
39. *Ibid*
40. Dao Duy Anh, 255
41. -Dao Duy Anh, 235, 236; *TT*, II:20; Thich Nhat Hanh, *Vietnam: Lotus in a Sea of Fire*, 1967, 8-10
42. *TT*, II:11, Thich Mat The, *Viet Nam Phat Giao Su Luoc* (Short History of Buddhism in Vietnam), Saigon, 1960, 145
43. Nguyen Lang, 228
44. Thich Mat The, 149-150
45. Thich Mat The, 151, 162
46. *TT*, II:141
47. *TT*, II:176, 198
48. *Quoc Trieu Hinh Luat* or the Code of the Le Dynasty. Translation and annotation by Nguyen Ngoc Huy and Ta Van Tai as *The Le Code (LC)*, Ohio University Press, 1987, article 288. *Hoang Viet Luat Le* or The Nguyen Dynasty Code (*NC*), translation by Philastre as *Le Code Annamite* 1909, article 75 ; *TT*, III:227
49. *TT*, III:70
50. Philastre, *Le Code Annamite*, I:336
51. *Journal of an Embassy to the Courts of Siam and Cochinchina*, 1928, 499
52. *LC* 289, *NC* 75
53. *LC* 215
54. *LC* 388, 400; *NC* 87
55. *LC* 600
56. *NC* 144. This article mentioned the monks and the priests guilty of these acts
57. Alexandre de Rhodes, *Histoire du Royaume du Tunquin*, Lyon 1651, 147-8
58. Phan Phat Huon, *Viet Nam Giao Su* (History of Catholicism), Saigon, 1965, I:85
59. *Ibid*, I:222-3