

Deconstructing the “Socialist” Rule of Law in Vietnam: The Changing Discourse on Human Rights in Vietnam’s Constitutional Reform Process

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Over the past two decades, efforts by the Communist Party of Vietnam (CPV) to build a “socialist” rule of law through legal and judicial reforms have contributed to the vibrant constitutional politics in the country. During the process of amending the 1992 Constitution, the socialist theoretical foundations of the Constitution quietly shifted as a result of new thinking and values. The complex interactions of old and new ideological precepts were prominently reflected by the changing discourse of human rights during debates about amendments to the 1992 Constitution. This article investigates the development of the “socialist” rule of law and the changes taking place in the discourse of human rights during the constitutional reform process in Vietnam. In setting out the context and content of constitutional reform, it seeks to deconstruct the socialist rule of law and interpret the discourse of human rights accordingly. In doing so, the mechanisms by which human rights have been socialized will be unpacked to make sense of subtle changes in the human rights discourse. Furthermore, the paper aims to uncover the implications of such a change for the development of Vietnam’s human rights regime.

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Since the collapse of the Soviet Union and the socialist bloc in the early 1990s, the one party-state of Vietnam has made a concerted effort to adapt its socialist theoretical foundations and substantially transform key legacies. Since then, the concepts of the “socialist oriented” market economy and the socialist law-based state have been hailed as the most important theoretical achievements of the Communist Party of Vietnam (CPV). The doctrine of socialist law-based state has been claimed by CPV theorists as a distilled version of the rule of law towards which Vietnam is marching.¹ Building on the legacy of “socialist legality”, the concept of the socialist law-based state has been given multiple meanings and dimensions. It is developing concurrently as a fundamental value, a basic principle of the Constitution and as a set of institutions to support its realization. However, the concept has insufficiently and inconsistently constructed a human rights regime, exposing disconnects with the international human rights laws that Vietnam recognizes. The dynamic discourse of human rights has emerged in Vietnam within this broader context rather than evolving independently.

The literature on the concept of socialist law-based state and human rights in Vietnam tends to be disparate. Little attention has been paid to the subtle shifts in the discourse of human rights taking place within the broad parameter of the socialist-law based state and their implications. This paper argues that the changing discourse on human rights in Vietnam is likely to transcend the socialist-law based state concept and create a new human rights identity. This identity-shaping process will have important implications for the future development of human rights in Vietnam both as an ideal and regime. The process is characterized by the contestations and challenges over ideas and values among party-state actors and various non-state actors that are unprecedented in the Vietnamese political and legal discourse.

With that in mind, this paper begins by investigating the development of the “socialist” rule of law from socialist legality to a socialist law-based state. It then proceeds to link this development to the human rights regime and the changes taking place in the discourse of human rights during the constitutional reform process in Vietnam. In setting out the context and content of constitutional reform, the paper seeks to deconstruct the socialist rule of law and interpret the discourse of human rights accordingly. It notes subtle changes taking place in the discourse of human rights as the party-state engages more deeply and substantively with international human rights law. With a view to making sense of

these changes, it is important to unpack the mechanism of socialization of human rights against the background of Vietnam’s politically closed authoritarianism. Furthermore, the paper aims to uncover the implications of this change for the development of Vietnam’s human rights regime and ideals.

Gradual Moves to a Rule of Law Discourse in Vietnam

In Vietnam, the discussion of human rights comes within the broad framework of *Nha n oc phap quyen xa hoi chu nghia* (the socialist law-based state). The reason why the discourse on human rights does not have an independent standing separate from the state doctrine is because it is rooted in the traditional dominance of the socialist legality concept (*phap che xa hoi chu nghia*) and the doctrine of a socialist law-based state. The latter has been developed as an indigenous variant of “rule of law” since early 1990s. In this context, the point of departure for any research on the discourse of human rights in Vietnam is socialist legality and the law-based state.

Socialist Legality

The core idea behind the concept of socialist legality is that the state attaches increasing importance to the role and rule of law in governance. However, there is a vigorous debate among local actors as to the scope and level of its significance. As John Gillespie argues, “for most of Vietnam’s history, laws were marginalized and play a relatively minor role compared with regulation through moral virtue, administrative measures, and self-regulation by village officials or families”.² Mark Sidel details how, during its early period in power, the CPV marginalized laws and recounts the efforts of legal scholars and intellectuals like Nguyen Huu Dang, Nguyen Manh Tuong and Vu Dinh Hoe to gain recognition from the CPV for the role of laws in governance.³ They made little headway: in 1959 the CPV even abolished the Ministry of Justice (mirroring the Soviet state apparatus) and only re-established it in 1980. CPV leaders from generation to generation have continued to emphasize leadership by revolutionary moral principles and rule by virtue, both core neo-Confucian governance values. Writings by Ho Chi Minh such as “Revolutionary Morality” (1958) and “Improving Revolutionary Morality, Sweeping Clean Individualism” (1969) have become classic texts for educating and training CPV members.⁴ They have left a profound imprint on every Party Congress resolution, in many CPV

Central Committee Plenum Resolutions, and in discussions by CPV theorists and scholars such as Dang Xuan Ky, Nguyen Duc Binh, and Le Huu Nghia.⁵ In recent years, campaigns for “studying and following Ho Chi Minh’s moral example” and “criticism and self-criticism” have clearly emphasized moral virtue as the most critical value in governance.⁶

The realities of CPV governance, however, showed that leadership by moral virtue is insufficient and demonstrated the need for laws to regulate state-society relations. In particular, excesses in the execution of Chinese-style land reforms during 1953–56 required, ultimately, public apologies by Ho Chi Minh and Vo Nguyen Giap — top CPV leaders who were regarded as highly virtuous — and the demotion of Party Secretary Truong Chinh. Recognizing the need for governance through legal rules, the CPV imported the Soviet idea of socialist legality in the late 1950s to provide a legal-rational basis as a supplementary source for governance that sees law as a political expediency. For the first time, the CPV officially endorsed the socialist legality doctrine at its Third National Congress in 1960.⁷

This doctrine has been reaffirmed as essential to improving the effectiveness of state management by all Party Congresses since then, including the most recent Party Congress in 2011. As pointed out by Gillespie, four fundamental principles underlie the socialist legality doctrine: the Party’s leadership rule; the class-based nature of law (law as expressing the will of the ruling class); the ready substitution of policy for law; and the predominance of the collective interest over individual rights.⁸ These four core principles are theoretical strongholds of the CPV and continue to prevail in the official political and legal discourse. However, they have been subject to periodic challenge since the country embarked upon *Doi moi* (market-based reforms) in 1986 and have been eroded to an extent.

The paramount principle of party leadership over the state and society — affirmed in Article 4 of both the 1980 Constitution and the 1992 Constitution — is ambiguously understood and inconsistently practised. Despite continued calls to strengthen the party leadership in every aspect of governance, Party Congresses regularly criticize the state apparatus’ lack of effectiveness. As a consequence, socialist legality has not been well observed and has even been weakened. The Political Report presented to the 6th Party Congress in 1986 acknowledged that “it is increasingly common that the laws and discipline of the state are violated”.⁹ The CPV has recognized that overlaps in the functions, tasks and organization of the party and

the state is a root cause of this problem, but it has struggled with “renovating the way of party leadership”.¹⁰

Gainsborough observes that a key question for any attempt at political reform in Vietnam is how to redefine the relationship between the party and the state.¹¹ This key question is closely linked to the other three core principles of the socialist legality doctrine. It points to an inherent tension between party supremacy and effective governance. The CPV itself has been well aware of this issue since the early 1990s: “Realities over the past few years have indicated that for the renovation and improvement of the political system, the building and practice of socialist democracy, *the pivotal issue is to clearly delineate functions and well handle the relationship between the Party, the State and mass organizations*; resolutely combat bureaucratic bad practices and acts infringing on people’s mastership, and at the same time criticize and overcome distortions”¹² [emphasis added]. Socialist Vietnam’s strong emphasis on the class-based nature of law is being called into question now that the country has opted for a market economy and integration into the global economy. Further, if law is considered to represent the will of the ruling class, it might be interpreted that the CPV has failed to execute that will or fulfill its leadership mission. The Political Report to the 7th Party Congress in 1991 admitted the problems: “Many laws and ordinances that have been promulgated have not [been] strictly and consistently implemented. Many cases of breaching laws have never been brought to court, there have been delays in court hearings or the judgments are not strict.”¹³ Law understood as the will of the ruling class depends to a great degree on the CPV’s discretionary control. In a market economy, this notion poses difficulties for the business sector. There have been numerous complaints regarding “opaque and constantly changing regulations, intrusive government inspection and official corruption”.¹⁴ The introduction and practice of a market economy as well as international economic integration require the law to be characterized by stability, transparency, accessibility, consistency and constrained discretion and in accordance with widely accepted standards. In short, law that is enforced or not according to what the party-state considers expedient is incompatible with the smooth operations of a market economy.

Furthermore, the party-state has found it difficult to restate policies and guidelines as laws with a view to regulating economic and social activities. In 1991 the CPV acknowledged that it needed to turn policies and guidelines into laws, pointing out that “there

has been a lack of many necessary laws in the economic field and in the field of internal affairs and administration”.¹⁵ The frequent conflation of policy and guidelines with laws and an absence of a clear delineation between them have resulted in ineffective governance and inconsistency, overlap and a lack of viability as well as enforceability within the legal system. The crux of the problem is the long established tradition that party policies and guidelines have regulatory power not only over party members but over the whole of society as well. That notion has proven hard to sustain in a market economy where only laws possess such a power. Hence, increased legalization efforts by the CPV are essential to infuse legal-rational type of authority into its legitimacy to rule.¹⁶

When individual rights are arbitrarily subordinated to collective interests that often are vaguely and loosely defined, and thus easily manipulated by powerful interest groups, there is a significant risk that people’s legitimate interests will be damaged and their rights blatantly violated. Such problems have been particularly evident and increasingly pressing in the policies and laws regarding land rights since the first land law in the *Doi moi* era was enacted in 1987. There have been many voices calling for greater respect for individual rights to ensure justice for the people. They often come in the form of petitions initiated by well-known intellectuals and former high-ranking officials like the Group of 72 who advanced a radical seven-point petition on constitutional amendments in January 2013 or those in the Bauxite mining controversy in 2009. These issues have captured the attention of the party-state and require new theoretical development.

Socialist Law-based State and Human Rights

Socialist legality had become insufficient for the demands of governance after *Doi moi*. However, party theorists and legal scholars sought to defend the relevance of socialist legality with its core principles. They argued that the doctrine simply needed to be revised and updated. Inspired by the Soviet doctrine of *pravovoe gosudarstvo* (law-based state),¹⁷ and the idea of the rule of law as a critical governance value in Western liberal discourse, the CPV has developed the doctrine of the socialist law-based state. Matthieu Salomon and Vu Doan Ket refer to this doctrine as “dualist thinking, mixing ‘rule of law’ and ‘rule of the Party’”.¹⁸ While it captures a prominent feature of the doctrine, this view can be reductionist. This is because “rule of the party” is only one, albeit possibly the most

important, principle of socialist legality. To provide a more nuanced account, I argue that the socialist rule of law version advocated by CPV theorists as the most significant theoretical achievements in the post-*Doi moi* era represents a syncretism of socialist legality and law-based state, which embraces broader meanings.

Once exposed to international standards and values in governance as a consequence of its decision to adopt an open-door policy, the CPV was attracted by the rhetorical power of the rule of law. However, the road to a socialist law-based state has not been smooth.¹⁹ Basically, it has reflected dualist thinking by the CPV on how to organize state powers. On the one hand, the CPV continues to cling to the doctrine of “unity of powers” or concentration of powers and repudiates the theory of separation of powers or a “check and balance” system. Thus, the concept of judicial independence has little space to be brought into play and, as noted by Ginsburg, “the scope of judicial power in the regulatory arena is subject to ultimate control by strong political powers”.²⁰ In this regard, not only can the CPV control judicial power but the legislative and the executive can exercise influence as well.

However, faced with widespread corruption and abuse of powers by bureaucrats, the CPV has sought to establish a formal normative structure to check bureaucratic powers. In this aspect, normative structure means a collection of norms and institutions that can regulate and prescribe behaviour, constitute identities and shape the interests of social and political actors. Traditionally, the CPV relies on its own apparatus, especially the “control committee” system at every level of party organization and the practice of “criticism and self-criticism”, to monitor and punish bureaucratic errors and malfeasance. However, it has also become clear to the party that these alone are insufficient to curb rampant corruption and rapidly growing complaints from the public. The need for legal-rational processes to control state powers has become obvious, but the CPV hesitates to grant more substantive powers to the branches of government, steps that would increase their independence from the party leadership. The CPV has been struggling to find an acceptable way to accept constitutional and legal constraints on its power, while retaining the capability to deal with mounting governance problems.

While “strengthening socialist legality” continues to be reaffirmed at every Party Congress, the term “socialist legality” has fallen out of use since the doctrine of the socialist law-based state was formally endorsed by the Seventh National Congress Resolution of the CPV in

1991 and was subsequently incorporated into the 1992 Constitution by a resolution of the National Assembly on constitutional amendments in 2001.²¹ The doctrine has been popularized by party-state documents and writings by party theorists and scholars. The core principles of socialist legality remain unchanged, and are incrementally updated by the CPV to flesh out the notion of the socialist law-based state. As noted by Gillespie, in Vietnam, “writers use *nha n oc phap quyen* as a convenient rubric to smuggle socialist legality and liberal democratic ideas into the ‘rule of law’ discourse”.²² In most writings by Vietnamese theorists and scholars, its characteristics are highly abstract and vague. When it comes to more concrete details and key questions about the socialist law-based state, analysis and discussion are usually missing or simply adhere to the official line set by party documents. Due to this lack of substantive discussion, consensus has been slow to emerge with regard to tensions between the liberal democratic concept of rule of law and socialist legality. The doctrine of the socialist law-based state is indeed a response designed to embrace the rhetorical power of the rule of law and at the same time to reconcile inherent tensions.

The first major tension to note is between party leadership powers and state powers, or between the traditional notion of unity of powers and the separation of powers. The CPV has tried to manage this tension by highlighting the requirements for clearer coordination, allocation and control of powers among the legislative, executive and judicial branches. The insertion of the term “control of power” into the 11th Congress Resolution in 2011 was the result of a consensus that emerged from long-standing and heated internal debates to define a key characteristic of the socialist law-based state. In so doing, the CPV has come to accept that powers should be checked. Apropos, the CPV in 2007 dissolved some of its powerful specialized commissions, transferring their functions to state institutions.²³

Greater recognition of the role of judicial power — and efforts to reform the court system for the purpose of clarifying bureaucratic and judicial powers to make it more effective in dealing with cases — are important steps to build the law-based state. Both the legislative and executive branches have been granted more discretionary powers. The National Assembly has shown growing confidence in holding the executive accountable — albeit with limited effect — and has actively embraced broader powers of parliamentary oversight and the making of legislation. The government (executive power)

has become more dynamic and autonomous in decision-making and administration.

Concern has been expressed that without an established formal normative structure, the CPV can at any time withdraw these powers at its own discretion. That is in fact what happened in mid-2012, when the Anti-Corruption Central Steering Committee was returned from the government (executive power) to the CPV, with the General Secretary as its head, and the CPV's Commissions on Internal Affairs and Economic Affairs were reconstituted.²⁴ This has led to difficulties in applying the anti-corruption law. The prevailing party decision over the law in this case sent a mixed message about whether the party-state was genuine in its intention to build the rule of law.

The second tension is the role of the Constitution in relation to party policies and its power to regulate party organizations and members. On the one hand, party lines and resolutions continue to prevail. CPV General Secretary Nguyen Phu Trong asserts that the Constitution's significance is second to that of the CPV's political platform.²⁵ On the other hand, the CPV has placed more emphasis on the importance of the Constitution and laws, and on the expression of policies in the form of laws. It stresses that “the state manages society by law”, basically meaning that rule by law will replace “rule by decree”. Although it continues to hold an instrumentalist view of law, the CPV has signalled that it will refrain from using policies, guidelines, instructions and directives for the purpose of regulatory governance. The formal supremacy of the Constitution is widely accepted, the need for a more effective mechanism of enforcing constitutional protection is recognized and there have been various efforts to make the Constitution itself less a party policy document and more a legally enforceable text. There have been increasing pressures for more conspicuous and concrete constitutional and legal constraints on the party's operations and its members.²⁶ These efforts aim to ensure equality of party members and non-members before the law²⁷ and accountability to the law by the CPV and its members.

The final tension to be reconciled concerns human rights and their meaning within the party-state structure. Before 1990s, human rights were downplayed in the mainstream political and legal discourse in Vietnam. They also had little influence on the behaviour of the party-state. Human rights basically mean individual rights whereas the party-state's dominant notion has been to promote state interests and collective interests. However, as Vietnam has integrated into

regional and global frameworks, the party-state has become conscious of the need to give more effective respect and protection to human rights. In principle, it has accepted that because a human rights regime is an integral part of the rule of law, the state is obliged to acknowledge, respect and protect it. How, then, can the party-state embrace these internationally recognized governance values within the doctrine of the socialist law-based state? This is the critical arena where the discourse of human rights emerges in Vietnam.

The official view of human rights is rooted in the tradition of socialist thought with a legal positivist view that sovereign rights prevail over human rights, reflecting “deeply entrenched communitarian views that human rights should be assessed according to broad social outcomes rather than individual needs”.²⁸ Therefore, the party-state enacts laws to guarantee human rights to the extent that they do not encroach on sovereign rights. Further, human rights can only emanate from the laws promulgated by the state.

As noted by Gillespie, socialist legality can be seen as “an extreme manifestation of legal positivism”²⁹ where there is no space for natural rights. Thus, the official discourse has only addressed state interests represented by the CPV. Human rights have been a politically sensitive topic or even a taboo in the state-regulated media and public discussions. Nevertheless, the term “human rights” has sporadically appeared in the discourse of top leaders. In a speech to the 5th CPV Congress in 1982, General Secretary Le Duan stressed that the establishment of the people’s administration, national independence and reunification along with achievements in economic, cultural, and social fields in themselves “guarantee authentic human rights”.³⁰ To put it another way, the official view was that because socialist legality ensured human rights, the discourse on human rights would be either unnecessary or irrelevant, but instead should shift to focus on socialist legality.

The Development of Human Rights Ideals in Post-Doi Moi Vietnam

The notion and practice of human rights started to change markedly by the late 1980s when the country adopted market-based reforms and opened its economy to the world. The development of the socialist law-based state from 1992 onwards has brought the human rights language into the official discourse. Since it is — like the concept of rule of law itself — too rhetorically powerful to be ignored, human rights has emerged as an important theme and gained currency in the political and legal sphere in Vietnam.

This new development under the doctrine of socialist rule of law has been attributed most importantly to the transition towards a market economy and the increasingly deeper integration of Vietnam into the international community, economically and politically, *inter alia*.

Traditionally, the Vietnamese party-state has taken a communitarian view of human rights with a focus on economic, social and cultural rights at the expense of individualistic political and civil rights. The economic success following *Doi moi* — resulting in poverty reduction and progress towards achieving UN millennium development goals — has helped support the CPV’s claim that it has protected and advanced human rights in Vietnam. However, the introduction of market reforms and the requirement for increased legalization to accommodate development needs has given the human rights discourse a turn towards more recognition and protection of individualistic political and civil rights.

The incorporation of a human rights discourse into the legal sphere was first evidenced by recognition in the revised Criminal Code of 1985 and Criminal Procedures Code of 1988 of the presumed innocence of individuals brought to trial and to a victim’s right to compensation.³¹ In 1992, the Party Secretariat issued Directive No. 12 on “Human rights and the viewpoint, policy of the Party”, stating that the state should “be prepared to express willingness to cooperate in international relations for human rights, and at the same time, fight against plots to take advantage of the issue against us”.³² However, the party-state leaders and theorists needed fresh ideas to reconcile the inherent tension between socialist legality and human rights. In the early 1990s, an opportunity coincidentally arose when the “Asian values” debate took place in the Asia-Pacific region. Vietnamese leaders and officials could find important elements from the argument of cultural relativism and the “developmental state” model to refine their approach to reconciling human rights with the doctrine of the socialist law-based state. It incorporated exactly the performance-based legitimacy that Vietnam’s party-state has been seeking since *Doi moi*.³³

The arguments advanced in favour of Asian values have in fact provided important building blocks for the Vietnamese doctrine of the law-based state and a sharper theoretical weapon to respond to international criticism of Vietnam’s human rights record. That explains why, as some commentators have put it, “laws are not promulgated to furnish people and groups with new and equal rights, but primarily to enable the central state agencies to rule

the country and the new market economy in a more effective and legitimate way”.³⁴ In Vietnam’s model of the socialist law-based state, individual rights are secondary to the interests of the state and every citizen is obliged to contribute to the collective good.

The prevailing mindset in Vietnam asserts an exclusive association between ‘development’ and state-led industrialization.³⁵ This trend has been reinforced by the country’s impressive economic development and political stability after *Doi moi*. Thanks to economic growth, the middle class in Vietnam has grown substantially in size and has become increasingly more vocal in demanding rights and democratic freedoms. At the same time, Vietnam’s party-state has shown growing confidence in opening up the discourse of human rights to the international community. In 2013 Vietnam successfully bid for a seat on the UN Human Rights Council. It has also engaged in dialogue on human rights with Western countries including the United States, Australia, Switzerland, the European Union (EU) and Norway. In this discourse, Vietnam’s party-state has revived various elements of the Asian values argument to justify its practices. It is not alone in this respect: the legacy of the Asian values debate is still strongly embedded in the discourse of many Asian countries like China, Cambodia and Laos.

Until a more effective theoretical response emerges to justify their approach to human rights, Asian states with authoritarian regimes still have to rely on the line of defence from Asian values when they are criticized by the international community. More importantly, an implicit reason is, as a German critical theorist has put it, the audience that the Asian values thesis addresses is “not the West, and Western values, but emancipated, well-educated Asians, especially those in the new middle class”.³⁶ This middle class is a growing audience in Vietnam, and it is not surprising that the party-state’s model of socialist law-based state continues to develop the core Asian values argument. The idea is explicit in the writing of Vietnamese Foreign Minister Pham Binh Minh:³⁷

During dialogues, Vietnam has always emphasized the necessity to implement harmoniously civil, political rights and economic, social, cultural rights. Moreover, we highlight the difference in historical, political, economic, cultural, and social context of Vietnam from other countries, particularly the United States and other Western countries, thus affirming the difference in our approach to human rights from that of other countries. At the same time, we stress the principle of national independence and sovereignty, of not using human rights to impose any viewpoint and interfere in each other’s internal affairs.

Although it remains firm on many traditional understandings of human rights embedded in the Asian values argument, this formulation reflects two important changes. First, there is clearly a departure from the orthodox socialist notion of the hierarchy of rights in which economic, social and cultural rights always prevail over civil and political rights. The emphasis on a harmonized approach to all these rights indicates that no particular rights shall either be prioritized or prejudiced over others. Second, promoting human rights is no doubt the obligation of the state. It is different from the traditional message by the party-state that it is everyone's obligation to promote human rights. The people's support for the party-state and their political participation is conditional on the state's effective implementation of its obligations, ending the age-old perception that the state grants rights and well-being to the people for which the latter should be thankful.

The change in the approach to human rights is modelled on the legalization efforts by the party-state in building the socialist law-based state. It represents a trend of juridification which Ran Hirschl terms rationalized processes.³⁸ The obvious change during these processes is the gradual spread of human rights discourse into political, social and legal spheres from which it was previously excluded or had a minimal role. A key element of the rule of law which has also been incorporated into the law-based state doctrine is that the laws and practices of the state are consistent with international human rights norms and standards.

The mixed-market economy and law-based state model resulted in pressure for increasing legalization efforts and for the localization of international norms and standards on human rights. Vietnam's strengthened relations with the United States, the EU, World Bank, International Monetary Fund, World Trade Organization as well as its membership of the Association of Southeast Asian Nations (ASEAN) have all contributed to the new thinking and values in governance. The ASEAN Charter — of which Vietnam is a signatory and which serves as the organization's constitution — has codified adherence to the rule of law and protection of human rights as interlinked and mutually reinforcing principles of governance. Meanwhile, the engagement by Vietnam's government with the Universal Periodic Review (UPR) mechanism under the UN Human Rights Council has given more vibrancy to the discourse of human rights and has facilitated the participation of different social actors such as NGOs and hybrid actors.³⁹

However, the task has only begun. Despite tremendous efforts to develop the legal system and strengthen the judicial system by the Vietnamese party-state over recent decades, there exist many loopholes in the formal guarantees of human rights and, further, considerable discrepancy between legal rules and practices and their enforcement. Notably, limited access to justice and the relative weakness of the judicial system pose a significant obstacle to the protection of human rights.

The Vietnamese party-state is well aware of many issues arising with respect to the intersection of its criminal code with international human rights standards. In a Ministry of Justice report on the review of compatibility of criminal law and criminal procedures law with international human rights treaties to which Vietnam is a party, these shortcomings are identified:

Relating to some detailed issues, there remain some incompatible problems between Vietnam's criminal law, criminal procedures law and international standards, including legal rules on protection against arbitrary and illegal detention and imprisonment, the right to fair trial, some groups of rights of children and women ... *Some specific crimes stipulated in the Criminal Code shall be amended in accordance with requirements of international legal instruments.*⁴⁰ [emphasis added]

While these issues are now on the political agenda of the party-state, the process of amending the Criminal Code and Criminal Procedure Code in that direction is likely to be problematic.

Within Vietnam, these issues continue to prompt many critical voices and generate pressure from intellectuals and scholars. Heated debates are taking place in cyberspace and in the blogosphere where the party-state's control is limited. The Internet and social media have provided an effective vehicle for circulation and deliberation of different ideas given that more than 32 million Vietnamese — just over a third of the population — regularly use the Internet.⁴¹ Generally, these mediums are used by the new middle class to demand greater democratic freedoms.

The Discourse of Human Rights in the Constitutional Reform Process

Public debates on constitutional issues in post-*Doi moi* Vietnam date back to the period of 1991–92 during the framing of the 1992 Constitution. They focused on the Constitution's incompatibility with

new economic priorities, the need for greater individual freedoms, separation of powers, rule of law and the government efficiency.⁴² By and large, discussions were mostly limited to party-state sponsored channels for deputies of the National Assembly, government officials and scholars in state-owned institutions. Heated debates around various key constitutional issues also took place in 2001 before some minor amendments to the 1992 Constitution were made, though it remained silent on human rights provisions. However, since then, discussions on human rights issues as a core theme have gained new momentum. This reached an unprecedented level during the constitutional reform process between 2011 and 2013.

As outlined above, the discourse of human rights in Vietnam over the last two decades has undergone a subtle shift from unalloyed legal positivism to a more open and substantive debate. This change is highly evident in the discussion of constitutional reform in Vietnam with human rights as a key theme, a consequence of efforts by progressive and radical intellectuals and scholars to identify a more effective legal-rational model to promote and protect human rights in Vietnam. Anthony Langlois notes that this alternative model has “its roots in natural law and right, ascertained by the proper use of right reason and enshrined in positive law” and “underlies most contemporary thought on human rights theory”.⁴³ Thus, discussion related to the constitutional amendment process has challenged the conventional assumption that “discourses that shape official attitudes to human rights primarily take place within party and state circles”.⁴⁴

In this context, growing support for liberal universalism, particularly the school of natural rights, has been evident. It has gained legitimacy in the discourse by invoking the values of the first Constitution of Vietnam in 1946 which — promulgated at the outset of the revolution against the French colonial regime — was of a liberal-democratic character. The tide of support for liberal universalist concepts is based on a general consensus among scholars and intellectuals in Vietnam about the relevance of many great legacies of constitutional ideas and culture for the building of a law-based state and the recognition and protection of human rights.⁴⁵ It is important to note that the liberal universalist discourse in Vietnam has mostly focused on the conception of human rights in terms of negative freedoms, i.e., “the absence of external restrictions or constraints on the individual, allowing freedom of choice”.⁴⁶ Proposals from prior years to draft laws on freedom of association, the right to demonstrate, access to information and

efforts to institutionalize Article 69 of the 1992 Constitution have been revived.⁴⁷ Although these proposals have all been shelved until now, the current challenges to the dominant socialist ideology and the party-state's firm control over this political and constitutional discourse is considerable.

Human rights are recognized, provided and guaranteed by the state in the Constitution and by a number of laws. As noted by Randall Peerenboom, the government's desire for legitimacy both domestically and internationally is an important force pushing for rule of law and new rules and human rights norms.⁴⁸ The 1992 Constitution devotes a chapter to rights and obligations, but it frames human rights rigidly within the context of citizens' rights.⁴⁹ For years, however, this framework has been called into question because the result is that human rights are actually "reduced to the will of the state".⁵⁰

In the current debate, advocates of liberal universalism have been allowed to voice their criticisms of this reductionist approach, maintaining that these are natural rights with universal moral standards that do not depend on the state granting them. The major issues are succinctly presented by a leading Vietnamese academic expert as follows:

It is wrong to conflate human rights with citizens' rights as in Article 50 of the current Constitution and causes misunderstanding that in Vietnam, only Vietnamese citizens have human rights but foreigners shall not. [...] Another problem in the Constitution of Vietnam is that human rights are stipulated as granted by the State. It is easily misunderstood that human rights are something the State bestows on the people. The rules are evident in the Chapter on the rights and obligations of citizens in constitutions of Vietnam like Article 53, 54, 56, 57, 58, ... of the 1992 Constitution which all provide that the State recognizes and gives citizens the rights in a wishful thinking and at its own discretion, not in the way that citizens are naturally entitled to these rights.⁵¹

The rigid formula fixed by the "socialist legality" mentality about the state granting human rights is evident throughout the 1992 Constitution; it appears more than twenty times.⁵² A new generation of scholars educated in the West and inspired by the liberal universality of human rights — such as Vu Cong Giao, Bui Ngoc Son and Vo Tri Hao — have been sharply critical of the strong entrenchment of the Soviet mentality in Chapter V of the Constitution. They argue that this orientation contravenes the supreme object and purpose of the Constitution to protect human rights. Thus, there has emerged a

broad consensus among these scholars that human rights should be distinctly separated from citizens’ rights in the new constitutional amendments.

Vo Tri Hao points out the detrimental effects of stipulating that human rights are equated with constitutional rights of citizens which are, in turn, equated with legal rules that are embodied in every legal normative document.⁵³ The criticism holds that the dominant Soviet mentality in the Constitution deprived the constitutional rights of citizens of their substantive meaning, directly affecting their applicability in courts and a citizen’s ability to be protected. The term “in accordance with laws” is frequently criticized for its ambiguity and the potential abuse of power by the authorities.⁵⁴ In a detailed analysis of many different articles in the second draft of the 1992 Constitutional Amendments released for public consultation in January 2013, Hoang Xuan Phu made a number of critical comments on how some human rights are being reduced in the new draft: “The regressive changes in the draft Constitutional Amendments have been made with intention and careful deliberation. They even make use of sophisticated legal tactics to implement and conceal their purposes.”⁵⁵

The party-state has come to acknowledge some problems with the rules and norms about human rights in its approach. The concern is partly reflected in the Ministry of Justice’s report identifying the possible scope of constitutional amendments related to human rights.⁵⁶ The report places emphasis on a clear delineation between human rights and citizens rights, concretization of substance and procedures for implementation of some direct democratic rights of citizens (participation in referenda, governance over the state and society, access to information, peaceful assembly and association), and the addition of some important rights in accordance with international human rights treaties (prohibition of the death penalty, torture and double jeopardy for the same crime, the right to enjoy development, a healthy and peaceful environment and social security). The Ministry of Justice argues that human rights and freedoms and citizens’ rights can only be limited by laws enacted by the National Assembly and the laws should make explicit their scope, timeframe, conditions and procedures. The Ministry further stresses the obligation of state institutions to respect, guarantee and promote human rights and citizens’ rights and to harmonize human rights, citizens’ rights and popular sovereignty in a socialist law-based state.

Faced with sustained criticisms and contestations during the constitutional debates — particularly from prominent members of

the Group of 72, full-time deputies of the National Assembly and various scholars on online forums and in the mass media — the third draft of the 1992 Constitutional Amendments and the final version approved by the National Assembly in November 2013 indicated some concessions in this regard: “In the Socialist Republic of Vietnam, human rights and citizens’ rights in the political, civil, economic, cultural and social sphere are recognized, respected and protected in accordance with the Constitution and law.” However, the response by the Vietnamese party-state has still been highly cautious and reserved. It has justified key ideas about limitation of rights, abuse of rights, duties inseparably from rights, and individual right to land ownership by invoking state socialism, popular sovereignty and some key elements of Asian values which argue for cultural relativism. The Constitution Amending Committee resolutely defended their position on these issues as the stronghold of a socialist law-based state. The final draft of the amended Constitution approved in 2013 keeps that view.

This analysis demonstrates that the discourse of human rights in the constitutional amendment process of Vietnam is neither as static nor as fixed as the orthodox “socialist legality” doctrine might suggest. Even when the amended Constitution was ratified in November 2013, it remained uncertain which particular strand of thought dominated the articles on human rights. Although influenced by liberal ideas, no consistent body of ideas inspired a comprehensive and definitive set of amendments to the Constitution. Rather, because the final outcome depended on the decision of political authority — not the rhetorical power or appeal of any ideologies — the result has been once again a syncretic combination of many different ideas. What can be certain from this discourse is that the doctrine of “socialist legality” is being further undermined.

Last but not least, there is an important change to note in the emergent discourse of human rights. Until quite recently the emphasis on the class-based nature of law and the binary dichotomy between the socialist character and the capitalist one on the legal rights of individuals were still dominant in Vietnamese legal discourse. However, in the debates over amendments to the Constitution, the interest in the class-based nature of laws has sharply declined and there is no longer any class-based typology of human rights in the discourse. This significant change paves the way for more dynamic interpretations of human rights and stronger recourse to international human rights law as a higher ground for reasoning.

Conclusion

Vietnam’s introduction of a market economy, the development of a socialist law-based state doctrine and the exposure of Vietnam’s long-held socialist norms of human rights to liberal universalism have paved the way for the discourse of human rights. As can be seen from the 2011–13 constitutional amendment debate, the discourse of human rights is dynamic and changing. Throughout this process, serious contestations and challenges took place where many participants have argued strongly for moving the discourse of human rights from the periphery to the core of the evolving doctrine of socialist law-based state and rule of law despite resistance by CPV ideologists. The new chapter on human rights and citizens’ rights in the amended Constitution in 2013 reflects that the new human rights ideals influenced by liberal thought are gaining ground against the orthodox socialist ones.

It should be noted that efforts to institutionalize a more effective and consistent legal-rational model of human rights have so far failed in Vietnam. Although the Constitution was amended to include references to human rights, the prospects of a coherent and consistent human rights regime remains uncertain. As can be seen from the debates and the final constitutional amendments, the “new thinking” on the rule of law and human rights has been basically imported from the West. Although they can be attractive and appealing to many due to the rhetoric of universality, freedom and egalitarianism, these theoretical proposals still need to be subject to more critical examination and deliberation. The contestation during the constitutional amendment process could mark the start of Vietnam’s long march towards building a strong human rights regime under the rubric of the rule of law.

Proponents of the “new thinking” have attempted, in effect, to substitute another set of universal normative principles, implying its ideological hegemony over other perspectives. In fact, the proponents have not done justice to “the plurality of traditions of reason — among which liberalism is only one — and to the plurality of values exhibited around the world”.⁵⁷ In this respect, they have fallen into the same trap and followed the same path as the proponents of orthodox socialist ideas.

Thus the more effective and consistent legal-rational model that most scholars seek simply does not work or is just utopian, and only a political model of human rights can serve Vietnam’s current circumstances. The foregoing analysis sheds light on the ongoing

constitutional amendment process and the responses by Vietnam's party-state. While the party-state has accepted the universality of human rights at a high level of abstraction, it disagrees with Western countries and international institutions over the content, justification, interpretation and implementation of these rights in practice. The interim solution to this impasse is necessarily a syncretism that enables "new and contradictory substantive ideas to enter and enlarge the range of values applied to new situation".⁵⁸ While the socialist legality doctrine is in decline and a law-based state is still in an embryonic state, such a syncretism can only survive with a more dynamic and tolerant political model of human rights sanctioned by the Vietnamese party-state.

NOTES

- ¹ See, for example, Hoang Chi Bao, "Tu nhung dac diem cua thoi ky qua do len chu nghia xa hoi den viec xay dung Nha n oc phap quyen xa hoi chu nghia o Viet Nam hien nay" [From characteristics of a transitional period to socialism to the construction of a socialist law-based state in Vietnam nowadays], *Tap chi Triet hoc* [Journal of Philosophy] 1 (2002): 28–33; Tran Ngoc Hien, "Kinh te thi tr ong dinh h ong xa hoi chu nghia voi nha n oc phap quyen va xa hoi dan su n oc ta" [Socialist-oriented Market Economy, the Law-based State, and Civil Society in our Country], *Tap chi Cong san* [Communist Review] 787 (May 2008): 50–55; Tran Ngoc Duong, "Kiem soat quyen luc nha n oc trong xay dung nha n oc phap quyen xa hoi chu nghia Viet Nam" [Checking the state power in the construction of a socialist law-based state in Vietnam], *Tap chi Nghien cuu lap phap* [Journal of Legislative Studies] 16 (2011): 5–9.
- ² John Gillespie, "The Jurification of State Regulation in Vietnam", in *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes*, edited by John Gillespie and Albert H.Y. Chen (London: Routledge, 2010), p. 78.
- ³ Mark Sidel, *Law and Society in Vietnam* (New York, NY: Cambridge University Press, 2008).
- ⁴ See *Ho Chi Minh toan tap* [Ho Chi Minh's collected works], vol. 9 (1958–1959) (Hanoi: Nha xuất bản chính trị quốc gia, 2000), pp. 288–301 and the CPV official website, available at <http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30178&cn_id=152053>.
- ⁵ See Dang Xuan Ky, "T t ong dao duc Ho Chi Minh" [Ho Chi Minh's thought on ethics], *Tap chi Cong san* [Communist Review] 5 (May 1994); Nguyen Duc Binh, "Xay dung Dang ta that vung manh" [Building and strengthening our Party], *Nhan dan*, 23 February 2006; Le Huu Nghia, "Nam m i nam phan dau thuc hien loi day cua Chu tich Ho Chi Minh ve hoc tap nghien cuu ly luan va dao tao, boi d ong can bo" [Fifty years of striving for implementing the teachings of President Ho Chi Minh on studying theories and training cadres], *Tap chi lich su Dang* (2007), available at <<http://www.hcma.vn/B%C3%80IV I%E1%BA%BETCHUY%C3%8AN%C4%90%E1%BB%80/tabid/94/ctl/Details/mid/439/ItemID/597/Default.aspx>>.

- ⁶ In December 2011, the 4th Plenum of the 11th Tenure Central Committee of the CPV issued the resolution on “Some urgent issues on party-building now” and relaunched the campaign for “criticism and self-criticism” at every party organization level.
- ⁷ See the CPV National Congress Resolution in 1960, available at <http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=220&id=BT990537556>.
- ⁸ Gillespie, “Jurification of State Regulation”, op. cit.
- ⁹ See the CPV CC Political Report at the Sixth National Congress in 1986, available at <http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=223&id=BT1260354904>.
- ¹⁰ Ibid.
- ¹¹ Martin Gainsborough, “Elites vs. Reform in Laos, Cambodia, and Vietnam”, *Journal of Democracy* 23, no. 2 (2012): 34–46.
- ¹² See the Seventh CPV National Congress Resolution in 1991, available at <http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=224&id=BT2440658679>.
- ¹³ See the CPV Central Committee Political Report at the Seventh National Congress in 1991, available at <http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?topic=191&subtopic=8&leader_topic=224&id=BT1260354741>.
- ¹⁴ Gillespie, “The Juridification of Administrative Complaints”, op. cit., p. 207.
- ¹⁵ CPV Central Committee Political Report at the Seventh National Congress in 1991, op. cit.
- ¹⁶ For the Weberian idea about the legal-rational source of legitimacy of the Vietnamese state, see Carlyle Thayer, “Political Legitimacy of Vietnam’s One Party-State: Challenges and Responses”, *Journal of Current Southeast Asian Affairs* 28, no. 4 (2009).
- ¹⁷ John Gillespie, “The Conceptions of Rule of Law in Vietnam”, in *Asian Discourses of Rule of Law*, edited by Randall Peerenboom (London: RoutledgeCurzon, 2004), p. 151.
- ¹⁸ Salomon, Matthieu and Vu Doan Ket, “Achievements and challenges in developing a law-based state in contemporary Vietnam: How to shoe a turtle?”, in Gillespie and Chen, *Legal Reforms in China and Vietnam*, op. cit., p. 136.
- ¹⁹ Do Muoi, *Sua doi Hien phap, xay dung nha n oc phap quyen Viet Nam, day manh su nghiep Doi Moi* [Amending the Constitution, Establishing a Law-based State, and Promoting Doi Moi Cause] (Ha Noi: Nha xuất bản Su that, 1992).
- ²⁰ Tom Ginsburg, “The Judicialization of Administrative Governance: Causes, Consequences and Limits”, in *Administrative Law and Governance in Asia: Comparative Perspectives*, edited by Tom Ginsburg and Albert H.Y. Chen (London: Routledge, 2009), p. 16.
- ²¹ See Resolution No. 51/2001/QH10 dated 25 December 2001 issued by the National Assembly of Vietnam and Article 2 of the Constitution 1992 amended in 2001, available at <http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=22863>.

- ²² Gillespie, “The Conceptions of Rule of Law in Vietnam”, op. cit., p. 152.
- ²³ Five Commissions were either abolished or merged into other party commissions in 2007: the Commission on Internal Affairs, the Commission on Economic Affairs, the Commission on Science and Education, the Commission on Internal Political Security and the Commission on Finance and Administration.
- ²⁴ These decisions were made at the 5th and 6th Plenums of the CPV Central Committee in May and October 2012 respectively.
- ²⁵ See “Tong Bi th: De phong the luc muon xoa bo Dieu 4 Hien phap” [General Secretary: Take caution of hostile forces’ attempt to remove Article 4 of the Constitution], *VnExpress*, 28 September 2013, available at <<http://vnexpress.net/tin-tuc/thoi-su/tong-bi-thu-de-phong-the-luc-muon-xoa-bo-dieu-4-hien-phap-2886937.html>>.
- ²⁶ Nguyen Van An, former Chairman of the National Assembly of Vietnam; Nguyen Dinh Loc, former Minister of Justice, and the Central Committee of the Vietnam Fatherland Front have all publicly voiced their opinions about the need for a law on the CPV.
- ²⁷ A constitutional rule under Article 52 of the 1992 Constitution.
- ²⁸ John Gillespie, “Evolving Concepts of Human Rights in Vietnam”, in *Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA*, edited by Randall Peerenboom, Carole J. Petersen and Albert H. Y. Chen (New York: Routledge, 2006), p. 477.
- ²⁹ Gillespie, “Concepts of Law in Vietnam”, op. cit., p. 151.
- ³⁰ See the CPV CC Political Report at the Fifth National Congress in 1982, available at <http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/details.asp?to pic=191&subtopic=8&leader_topic=222&id=BT590634673>.
- ³¹ See texts of the revised Criminal Code of 1985 and the Criminal Procedures Code of 1988, available at <<http://thuvienphapluat.vn/archive/Bo-luat-Hinh-su-1985-17-LCT-HDNN7-vb37003.aspx>>.
- ³² Pham Binh Minh, “*Doi thoai cua Viet Nam voi cac n oc ve Dan chu, Nhan quyen*” [Vietnam’s Dialogues with Other Countries on Democracy and Human Rights], *Tap chi ly luan chinh tri* [Journal of Political Theory] 7 (2010): 18.
- ³³ Carlyle Thayer, “Political Legitimacy in Vietnam under Challenge”, in *Political Legitimacy in Asia*, edited by John Kane, Hui-Chieh Loy and Haig Patapan (New York, NY: Palgrave Macmillan, 2011), pp. 39–59.
- ³⁴ Tine Gammeltoft and Rolf Hernø, “Human Rights in Vietnam: Exploring Tensions and Ambiguities”, in *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, edited by Michael Jacobsen and Ole Bruun (Richmond, UK: Curzon Press, 2000), p. 170.
- ³⁵ *Ibid.*, p. 168.
- ³⁶ Dieter Senghaas, *Clashes within Civilizations: Coming to terms with Cultural Conflicts* (London: Routledge, 2002), p. 85.
- ³⁷ Pham Binh Minh, “Vietnam’s Dialogues with Other Countries on Democracy and Human Rights”, op. cit., p. 19.
- ³⁸ Ran Hirschl, “The New Constitutionalism and the Judicialization of Pure Politics Worldwide”, *Fordham Law Review* 75, no. 2 (November 2006): 721–54.

- ³⁹ For example, in June 2013, sixty local NGOs prepared and submitted a “shadow report” under the United Nations Human Rights Council’s Universal Periodic Review to make an assessment of and recommendations on Vietnam’s implementation of its obligations on human rights. Hybrid actors are those which “can resemble state agencies but pursue private (non-state objectives) or look like non-state agencies but aim to realize state policies”. John Gillespie, “The Juridification of Administrative Complaints and Review in Vietnam”, in *Administrative Law and Governance in Asia*, et al., p. 28.
- ⁴⁰ Ministry of Justice of Vietnam, “Report on the Review of Compatibility of Criminal Law and Criminal Procedures Law with International Human Rights Treaties to which Vietnam is a Party”, prepared for *the first Legal Policy Dialogue in 2012* on “Improvement of Laws on Human Rights” organized by Ministry of Justice of Vietnam and the United Nations Development Program in Vietnam, Hanoi, 23 May 2012.
- ⁴¹ Vietnam Internet Centre, Ministry of Information and Communication, available at <http://www.thongkeinternet.vn/jsp/thuebao/table_dt.jsp>.
- ⁴² Russell Heng Hiang Khng, “The 1992 Revised Constitution of Vietnam: Background and Scope of Changes”, *Contemporary Southeast Asia* 14, no. 3 (1992): 221–30.
- ⁴³ Anthony Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (New York, NY: Cambridge University Press, 2001), p. 9.
- ⁴⁴ Gillespie, “Evolving Concepts of Human Rights”, op. cit., p. 478.
- ⁴⁵ Nguyen Si Dung, “*Hoc o Hien phap 1946*” [Learn from Constitution 1946], *Tia Sang*, 16 September 2011, available at <<http://tiasang.com.vn/Default.aspx?tabid=116&CategoryID=42&News=4377>>.
- ⁴⁶ Andrew Heywood, *Political Ideologies* (New York, NY: Palgrave Macmillan, 2007), p. 31.
- ⁴⁷ Article 69 of the 1992 Constitution states “citizens have the right to freedom of speech, freedom of press, access to information, the right to assembly, association and demonstration in accordance with legal rules.”
- ⁴⁸ Randall Peerenboom, “Varieties of Rule of Law”, in Peerenboom, *Asian Discourses of Rule of Law*, op. cit., p. 15.
- ⁴⁹ Article 50, Chapter V, 1992 Constitution, available at <http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=11243>.
- ⁵⁰ Anthony Langlois, “Human Rights”, in *Introduction to International Relations*, edited by Richard Devetak, Anthony Burke and Jim George (Port Melbourne, Australia: Cambridge University Press), p. 444.
- ⁵¹ Nguyen Dang Dung, “*Cach tiep can hay la cach thuc guy dinh nhan quyen trong Hien phap*” [An approach to or a way of stipulating human rights in the Constitution], *Tap chi Nghien cuu lap phap* [Journal of Legislative Studies] (2011), available at <http://www.nclp.org.vn/nha_nuoc_va_phap_luat/cach-tiep-can-hay-la-cach-thuc-quy-111inh-nhan-quyen-trong-hien-phap>.
- ⁵² Bui Ngoc Son, “*Phan tich thuc nghiem ve muc do chi tiet hoa Hien phap va mot so goi mo cho sua doi Hien phap 1992*” [An empirical analysis of the detailed rules of the Constitution and some suggestions for the amendments of Constitution 1992], *Tap chi Nghien cuu lap phap* [Journal of Legislative Studies]

(2011), available at <http://www.nclp.org.vn/nha_nuoc_va_phap_luat/phan-tich-thuc-nghiem-ve-muc-111o-chi-tiet-hoa-hien-phap-va-mot-so-goi-mo-cho-sua-111oi-hien-phap-1>.

⁵³ Vo Tri Hao, “*Hoan thien ky thuat lap hien doi voi Ch ng V Hien phap*” [Improving constitutional techniques for Chapter V of Constitution 1992], *Tia Sang*, 2 July 2012, available at <<http://www.tiasang.com.vn/Default.aspx?tabid=116&CategoryID=42&News=5338>>.

⁵⁴ Ibid.

⁵⁵ Hoang Xuan Phu, “*Teo dan quyen con ng oi trong Hien phap 1992*” [Shrinking human rights in Constitution 1992], Hoang Xuan Phu Blog, 15 January 2013, available at <<http://hpsc.iwr.uni-heidelberg.de/hxphu/index.php?page=readwriting&w=TeoDanQuyenConNguoiTrongHienPhap-20130115>>.

⁵⁶ Ministry of Justice of Vietnam, “Report on the Review of Criminal Law and Criminal Procedures Law”, 23 May 2012, available at <http://www.moj.gov.vn/http://datctcclvbvq/Lists/CacTaiLieuThamKhao/View_Detail.aspx?ItemID=30>.

⁵⁷ Langlois, *Politics of Justice and Human Rights*, op. cit., p. 7.

⁵⁸ Gillespie, “Concepts of Law in Vietnam”, op. cit., p. 172.