

EXPLORING THE ROLE OF LEGITIMACY AND IDENTITY IN FRAMING RESPONSES TO GLOBAL LEGAL REFORMS IN SOCIALIST TRANSFORMING ASIA

JOHN GILLESPIE*

ABSTRACT

A burgeoning literature about socialist transforming Asia (China and Vietnam) shows that economic development is possible without fully functioning legal systems based on laws and institutions derived from North America and Europe. What is less clear is whether over time the regulatory systems in these countries will evolve toward more economically efficient globalized forms of Western governance, as some commentators suggest, or follow a more complex pattern of convergence and divergence. This article advances the debate by investigating the factors that motivate actors in these countries to look beyond domestic regulatory systems and embrace global regulatory regimes. I argue from empirical research the need to decenter the analysis of legal globalization to take into account the myriad local actors, state, non-state and hybrid that interact with global regulatory regimes. I conclude that conventional explanations for the formation of regulatory preferences that are based on cost-benefit calculations tell only part of the story. Perceptions of legitimacy and identity also profoundly influence regulatory preferences and steer domestic responses to global regulatory regimes.

*Professor of Law and Director of the Asian Pacific Business Regulation Group, Department of Business Law, Monash University. I benefited from feedback on an early presentation of this project from Randy Peerenboom, Pitman Potter, and Frank Upham at the conference – Interpreting Legal Transfers: A Comparative Analysis in Prato, 2009 and Towards an ‘Asian Regulation’? The regulation of Competition in East-Southeast Asia and the West conference in Dublin, 2010. I gratefully acknowledge funding from ARC Grant DP0985927.

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I. INTRODUCTION

A burgeoning literature about socialist transforming Asia shows that economic development is possible without fully functioning legal systems based on laws and institutions derived from North America and Europe.¹ Scholars such as Donald Clarke, Curtis Milhaupt and Frank Upham argue that economic development is possible because domestic regulatory institutions in China and Vietnam perform functionally equivalent roles.² What is less clear is whether the regulatory systems in these countries will over time evolve toward more economically efficient Western systems, as some commentators claim,³ or follow a more complex pattern of convergence and divergence.

In this article I advance the debate by investigating why economic actors in socialist transforming Asia might look beyond domestic regulatory institutions toward “best practice models” (BPMs) based on Western regulatory regimes. I argue from empirically research that conventional explanations for regulatory preferences that are based on cost-benefit calculations tell only part of the story. Perceptions of legitimacy and identity also profoundly influence regulatory preferences and steer domestic responses to BPMs.⁴

¹ For a critique of the literature that claimed only Western laws were capable of sustaining economic development see DAVID TRUBEK & ALVARO SANTOS (EDS.), *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL*, (2006); Mathias Reiman, *The Progress and Failure of Comparative Law*, 50 AM. J. COMP. L. 671 (2002); William Twining, *Social Science and Diffusion of Law*, 32 J. L. & SOC'Y 203, 204-207 (2005).

² See Donald Clarke *Economic Development and the Rights Hypothesis: The China Problem*, 51 AM. J. COMP. L., 89-111 (2003); Donald Clarke *'Nothing but Wind' The Past and Future of Comparative Corporate Governance*, 59(1) AM. J. COMP. L., 75 (2011); Frank Upham, *From Demsetz to Deng: Speculations on the Source*, 41(3) N. Y. U. J. INT'L L. & POL., 522-602 (2009). Also see William Twining, *Social Science and Diffusion of Law*, 32 J. L. & SOC'Y 203, 204-207.

³ Influenced by notions of social and economic efficiency, evolutionists content that less developed countries will inexorably absorb laws from more economically developed countries. See generally AVINASH DIXIT, *LAWLESSNESS AND ECONOMICS: ALTERNATIVE MODES OF GOVERNANCE AT 70* (2004); Robert Cooter, *The Theory of Market Modernization of Law*, 16 INT'L REV. L. & ECON. 141, 142-49 (1996).

⁴ Few scholars have written about domestic cognitive constraints to the globalization of law, but see David Gerber, *Globalization and Legal Knowledge: Implications for Comparative Law* 75 TULANE L. REV., 949 (2001); SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006); Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences*, 61 (1) MOD. L. REV., 11-32 (1998); John Gillespie, *Developing a Discursive Analysis of Legal Transfers into Developing East Asia*, 41(2) N. Y. U. J. INT'L L. & POL. 101-161 (2008). Some

Conventional law and development theory treats certain BPMs, such as the OECD's "Recommendations and Best Practices on Competition Law and Policy" as "one-size-fits-all" development templates.⁵ It assumes that BPMs act like conduits that transfer encoded knowledge from senders to receivers. BPMs include not only texts, but also the sets of principles, rules, and processes used by international agents to promote particular legal and regulatory objectives. International agents place considerable faith in the capacity of BPMs to accurately convey meaning to recipients in developing countries. Given sufficient legal and other technical training, they assumed that recipients can decode and understand BPMs in predetermined ways. The conduit metaphor predicts that well resourced reforms will only occasionally fail to convey the *intended* meaning of BPMs across geopolitical and cultural boundaries. Yet despite billions of dollars spent by international agents, law reforms based on BPMs have mostly yielded disappointing results.⁶

A growing body of socio-legal scholarship provides a welcome alternative to the conventional law-and-development scholarship.⁷ It maintains that the conduit metaphor is based on a conceptual error, and rather than conveying intrinsic meaning, BPMs are socially constructed by recipients. Recipients translate, reconceptualize, or simply reject reforms based on BPMs.⁸

Turning conventional law-and-development scholarship on its head, this school of thought shifts attention away from the sender and the

New Institutional Economics scholars, such as Douglass North have come to recognize the importance of cognition to ordering economic behavior. See DOUGLASS NORTH, UNDERSTANDING THE PROCESS OF ECONOMIC CHANGE (2005).

⁵ For a critique of how international donor agencies use "best practice models" see Dani Rodrick *Second-Best Institutions*, 98 AM. ECO. REV., 100 (2008). For a review of the development theories followed by international donors, see DAVID TRUBEK AND ALVARO SANTOS (eds.), THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL (2006).

⁶ See MICHAEL TREBILCOCK & RONALD DANIELS, RULE OF LAW REFORM AND DEVELOPMENT: CHARTING THE FRAGILE PATH OF PROGRESS, 37-42 (2008); WILLIAM EASTERLY, THE ELUSIVE QUEST FOR GROWTH: ECONOMICS' ADVENTURES IN THE TROPICS (2001).

⁷ For a representative view of this interpretive perspective in a variety of disciplines, see David Gerber, *supra* note 4, at 949; Pitman Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29(2) L. & SOC. INQUIRY, 465-495 (2004) (comparative law); SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2006) (law and society); AVNER GREIF, INSTITUTIONS AND THE PATH TO THE MODERN ECONOMY (2006) (economics); Teubner, *supra* note 4 at 11-32 (systems theory); Doris Bachmann-Medick, *Introduction: The Translation Turn*, 2(1) TRANSLATION STUD., 2-16 (2009) (cultural studies).

⁸ See Martin Fuchs *Reaching Out, or, Nobody Exists in One Context Only Society as Translation*, 2(1) TRANSLATION STUD., 21, 22-23 (2009).

message. It assesses the meaning of BPMs from the recipient's perspective. What follows is that it is virtually impossible to know what BPMs mean in recipient countries without interrogating recipients.

In this article, I aim to build upon and expand this analytical approach in three significant respects. One, much analysis about law-and-development reforms focuses on elite lawmakers. It shows national elites in developing countries cooperating with transnational agents such as the WTO and World Bank to re-enact global treaties, codes of practices, and transnational laws into domestic legislation.⁹ Research considered in this article suggests a more decentred process in which the key dynamic is not necessarily between BPMs and the state, but rather between BPMs and the multiple actors (state and non-state) that constitute the domestic regulatory systems.¹⁰ These are the type of regulatory institutions found in China and Vietnam that Clarke, Milhaupt and Upham argue can replicate some of the functions performed by BPMs in the West.

To explain this kind of polycentric dynamic, regulatory theorists use the notion of "regulatory space", an arena in which different regulators – state, non-state, and hybrid – compete and cooperate to control particular types of behavior.¹¹ This conceptualization suggests that what we recognize as BPMs – sets of rules, norms, and practices – do not so much control behavior directly, as coordinate and interact with other pre-existing state and non-state regulatory orders, such as business associations and networks. I will respond to this polycentric understanding of regulation by decentring the analysis and treating states as only one of many regulators competing to interpret and implement BPMs. This analysis will examine the limits to law reforms based on BPMs.

Two, research about the global dissemination of BPMs reveals uneven patterns of interpretation and implementation, not only between

⁹ See generally JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION* (2000); Bruce Carruthers & Terrence Halliday, *Negotiating Globalization: Global Scripts and Intermediation in the Construction of Asian Insolvency Regimes*, 31(3) L. & SOC. INQUIRY, 521 (2006).

¹⁰ See JOHN GILLESPIE AND RANDAL PEERENBOOM (EDS.), *REGULATION IN ASIA: PUSHING BACK ON GLOBALIZATION* (2009).

¹¹ See generally LEIGH HANCHER & MICHAEL MORAN (EDS.), *CAPITALISM, CULTURE AND ECONOMIC REGULATION* (1989). For a discussion that empathizes the cyclical nature of norm development in domestic law reform, see: Terrence Halliday, *Recursivity of Global Normmaking: A Sociological Agenda*, 5 ANNUAL REV. L. SOC'Y 263, 269-277 (2009).

different developing countries, but also within the same country.¹² To better understand why there is no uniform convergence toward BPMs, we need a framework for assessing what factors shape the interpretation and localization of BPMs. Scholars from a wide range of disciplines argue that recipients understand new ideas (such as BPMs) from the interpretive traditions in which they are embedded.¹³ A limitation with this social constructionist approach is that it does not systematically explain how recipients choose between competing regulatory systems, such as reforms based on BPMs (Best Practice Reforms (BPRs)) and self-regulatory business networks. I aim to correct this shortcoming by developing an analytical framework that uses perceptions of legitimacy to evaluate what recipients think about competing regulatory systems. Three types of legitimacy – pragmatic, normative, and cognitive – provide insights into whether recipients are likely to shift their regulatory preferences and back BPRs.

Three, to refine the legitimacy framework, I will examine how identities shape collective perceptions about the role and purpose of regulation. I will argue that recipients who move between “traditional” and “modern” cosmopolitan identities are more likely to embrace BPRs than those bound by strong “traditional” identities. This inquiry provides promising insights into how recipients are likely to respond to not only BPRs, but also to the legal modernization project more generally.

Part I describes the global diffusion of laws and regulations from the developed North to the developing South, and clarifies what is meant by best practice models. It also distinguishes between the diffusion of BPMs through social praxis and explicit diffusion through law reform projects promoted by transnational agents. Part II investigates why the conduit metaphor fails to account for the uneven reception of BPMs in developing countries. It then critically examines the potential for social constructionist theories to explain this global phenomenon. In Part III, I propose a new analytical framework that brings cultural analysis that examines local discourses and social action into contact with structural theories that explore the patterning of social connections among

¹² See e.g. David GERBER, *GLOBAL COMPETITION: LAW, MARKETS, AND GLOBALIZATION* (2010); also see: William Twining ‘Diffusion and Globalization Discourse’ 47 *HARV. INT’L L. J.*, 507 (2006).

¹³ See e.g. David Gerber, *supra* note 4, at 949; Esin Örüçü, *Law as Transposition*, 51 *INT’L & COMP. L.Q.* 205, 205-08 (2002).

¹³ See Pitman Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29(2) *L. & SOC. INQUIRY*, 465 (2004).

individuals and groups. I use legitimacy criteria and collective identity to explore what motivates or persuades recipients to change their regulatory preferences and embrace BPRs. Part IV outlines the legal and regulatory context of three case studies that are explained in Part V. Here I draw on over 400 interviews with entrepreneurs¹⁴ to develop three case studies that represent the main economic sectors in Vietnam: namely state-controlled enterprises, medium-sized globalized firms, and relationally bound trading networks. It is argued that the political economy and regulatory environment in Vietnam is sufficiently similar to China to generalize findings to socialist transforming Asia. In Part VI, I analyze the cases studies, suggesting reasons why the state-controlled enterprises and relationally bound trading networks have not engaged with BPRs, while globally integrated medium-sized firms have selectively embraced such reforms. I conclude by discussing the potential for legitimacy and identity theory to furnish fresh insights into what motivates recipients in Socialist Asia to embrace BPRs and adopt standardized regulatory regimes – the primary goal of legal modernization.

II. MAPPING BEST-PRACTICE REFORMS

A framework for analyzing the diffusion of BPMs into East Asia requires attention to the actors that create and disseminate these norms and practices. An important distinction exists between diffusion that occurs implicitly as part of social praxis and explicit diffusion. BPMs diffuse into developing countries implicitly through dialogical exchanges that are not supported by mediating actors such as international donors.¹⁵ For example, global norms enter discourses in recipient countries through media, literature, cinema, and foreign education.

In this discussion I focus on the explicit diffusion of BPMs in programs sponsored by transnational organizations such as the OECD, IMF, and World Bank, international standards organizations as well as

¹⁴ The interviews were conducted with 60 firms in the construction, wood processing, copper wire and batteries trading, and computer and sunglasses manufacturing industries. The interviews were conducted in northern and central Vietnam by the author with the assistance of Vietnamese law firms (NH Quang and Associates) and research assistants between March 2004 and April 2010.

¹⁵ See David Levi-Faur, *The Global Diffusion of Regulatory Capitalism*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 59812-32 (2005).

private transnational actors.¹⁶ These bodies project local norms and rules primarily (although not exclusively) developed in Western domestic legal systems onto the international stage. Which sets of norms, rules, and practices dominate particular BPMs often depends on power struggles played out in international forums among international agencies.¹⁷ Most, but certainly not all, BPMs are constructed in transnational settings where agents representing international bodies, dominant nation-states, and industry/professional bodies come together to steer global governance.

Different international agencies may promote different iterations of BPMs. For example, the World Bank and Asian Development Bank differed slightly in the discretionary power they thought appropriate for the bankruptcy courts in East Asia.¹⁸ BPMs change over time. International donors such as the World Bank have shifted their emphasis from neo-liberal deregulatory reforms to post-Washington consensus reforms in which the private economy no longer entirely dominates, and other objectives such as human rights and poverty alleviation have gained prominence.¹⁹

By shifting government responsibilities to private actors, new governance reforms have led to a rise in transnational rulemaking by a variety of non-state actors.²⁰ Transnational rulemaking comes in many forms such as standard setting and codes of practice. The International Organization for Standardization protocol ISO 9000:2000 provides an interesting example, because it contains corporate governance norms and processes that resemble but have no formal connection with provisions in corporations legislation. Some new governance norms bypass states

¹⁶ See JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION* (2000); ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2005); DAVID HELD & M. KOENIG-ARCHIBUGI (EDS.), *GLOBAL GOVERNANCE AND PUBLIC ACCOUNTABILITY*, (2005).

¹⁷ *Id.*

¹⁸ For example, the IMF promoted an American-inspired insolvency law in East Asia, while the ADB advocated a greater discretionary role for bureaucrats. See Bruce Carruthers and Terrence Halliday, *Negotiating Globalization: Global Scripts and Intermediation in the Construction of Asian Insolvency Regimes*, 31 (3) L. & SOC. INQUIRY, 521 (2006).

¹⁹ See TRUBEK & SANTOS, *supra* note 2; Tor Kveier *The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model*, 52(1) HARV. INT'L L. REV., 288 (2011).

²⁰ See Ben Cashmore, *Legitimacy and the Privatization of Environmental Governance: How Non-state Market-driven (NSMD) Governance Systems Gain Rule-making Authority*, 15 GOVERNANCE, 502 (2002); also see Franz Von Benda-Beckmann & Keebet von Benda-Beckmann, *Transnationalisation, Globalisation and Pluralism: a Legal Anthropological Perspective*, in *GLOBALISATION AND RESISTANCE: LAW REFORM IN ASIA SINCE THE CRISIS* 60-64 (Christoph Antons & Volkmar Gessner eds., 2007).

entirely and engage directly with non-state actors in areas where the state claims jurisdiction and in areas where it does not. Take for example private transnational treaties, such as supply chain agreements, which contractually bind recipients to implement corporate governance BPMs.

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III. THE ANALYTICAL CONTEXT

A. THE CONDUIT METAPHOR

In promoting BPMs, many transnational agents are profoundly influenced by the conduit metaphor.²² International donor agencies, such as the World Bank and UNDP, assume that the language used in BPMs is not only transparent, but is capable of conveying a predetermined meaning to recipients. They believe that meaning is encoded and stored in BPMs, and is later retrieved by recipients. Legal and regulatory meaning is treated as an objective reality.

One explanation for this preoccupation with the delivery of the message is the instrumental positivism that underpins much donor thinking.²³ Most donors treat BPMs as exogenous variables – a “thing out there” – that can communicate norms, understandings, and processes across geopolitical and cultural boundaries. BPMs are assumed to have an inherent and ahistorical meaning that can be decoded by appropriated trained technicians in recipient countries.

International donor agencies acknowledge that misinterpretations of BPMs routinely occur. A failing they often attribute to a lack of skills and knowledge on the part of recipients to *correctly* interpret BPMs.²⁴ To minimise misunderstandings, many donor projects use legal education and training to ensure that recipients have the appropriate linguistic and legal skills to decode the messages embedded in BPMs.

At first glance, some empirical evidence seems to support this approach. Research shows a strong interchange of ideas in conversations

²¹ See JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION*, 39–63 (2000); FREDERIC DEYO, RICHARD DONER & ERIC HERSHBERG EDS., *ECONOMIC GOVERNANCE AND THE CHALLENGE OF FLEXIBILITY IN EAST ASIA* (2001).

²² See Katharina Pistor, *The Standardization of Law and its Effect on Developing Economies*, 50 AM. J. COMP. L. 101 (2002); David Gerber, *supra* note 4, at 949.

²³ See Krever *supra* note 19 at 288, 294–306.

²⁴ See Trebilcock & Daniels, *supra* note 6, at 281–2

among lawmakers educated in similar legal systems.²⁵ But another body of research²⁶ suggests that legal training and education may familiarize recipients with the precepts and language of global law, and yet not convince them to go along with BPRs.

In an industry as large and varied as law and development, naturally some research sponsored by international donors and transnational advocacy groups examines the recipients' perspectives.²⁷ Much of this work is informed by attempts by practitioners on the ground to reconcile projects that promote BPMs with local regulatory institutions.²⁸ Nevertheless, as David Trubek²⁹ observed in a wide ranging survey of law and development projects, too often this work is reinterpreted by donors to support a predetermined BPM. This disconnect between project design and country-specific research is recognized by prominent law-and-development commentators.³⁰ They encourage donors to use social science methods to more firmly ground project designs on the underlying capacity and demand for regulatory change in recipient countries.

There are many possible explanations for the failure of BPRs to induce behavioral change of the kind desired by donors. The recipient society may lack the necessary infrastructure to accommodate the laws. Judges and lawyers must be trained and resources committed to courts and law enforcement. A growing body of research suggests that adequate resources can only be committed when countries reach a certain stage of economic development.³¹ Others argue that spatial factors, such as

²⁵ See James Gordley, *Comparative Legal Research: Its Function in the Development of Harmonized Law*, 43 AM. J. COMP. L. 555, 561 (1995).

²⁶ See Bui Bich Thi Lien, *Legal Education and Legal Profession in Contemporary Vietnam: Tradition and Modification*, in LEGAL REFORMS IN CHINA AND VIETNAM: A COMPARISON OF ASIAN COMMUNIST REGIMES 299-319 (John Gillespie & Albert Chen eds., 2010).

²⁷ See eg E. Wojkowska, *Doing Justice: How Informal Justice Systems Can Contribute*, UNDP, Oslo Governance Centre, Democratic Governance Fellowship Program (2006), 25-44.

²⁸ See Linn Hammergren, *International Assistance to Latin American Justice Programs*, in BEYOND COMMON KNOWLEDGE 290-335 (Eric Jensen & Thomas Heller eds., 2003).

²⁹ David Trubek, *The 'Rule of Law' in Development Assistance: Past, Present and Future*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 74-95, (D. Trubek and A. Santos eds., 2006)

³⁰ See, e.g., YVES DEZALAY & BRYANT BRYANT, THE INTERNATIONALIZATION OF PALACE WARS, (2002); David Berkowitz, Katrina Pistor & J. Richard, *The Transplant Effect*, 51 (1) AM. J. COMP. L., 163 (2003).

³¹ See Gilson & Milhaupt, *supra* note 2, at 227-288; Randall Peerenboom, *Rule of Law, Democracy and the Sequencing Debate: Lessons from China and Vietnam*, in LAW REFORM IN COMMUNIST ASIA: COMPARING CHINA AND VIETNAM 29-50 (John Gillespie and Albert Chen, eds., 2010).

proximity to markets and capital,³² limit the capacity for governments to implement BPRs. These are germane issues, but I will argue that they are connected to the conceptual environment in which recipients are embedded, which profoundly shapes responses to BPRs.

B. THE SOCIAL CONSTRUCTION OF BPRS

Scholars in a wide range of fields including comparative law,³³ law and society,³⁴ sociology,³⁵ and neo-institutional theory³⁶ challenge the conduit metaphor. They argue that the deep beliefs in society form a network or web that determines what ideas, arguments, and facts shape attitudes toward BPRs. As Sally Engle Merry³⁷ put it, “communities make sense of global ideas by referring to ‘local webs of meaning based on religion, ethnicity, or place.’” These webs of meaning provide a conceptual framework that makes particular types of laws and regulations, such as BPRs, appear to be the natural and logical way to order the world.

C. HOMOGENOUS OR HETEROGENEOUS LEGAL CULTURES?

The social constructionist tradition encompasses wide ranging views about the possibility, and even desirability, of using BPRs to influence behavior.³⁸ At one end of the spectrum Pierre Legrand thinks that BPRs have little prospect of engineering predetermined outcomes. He argues that recipients read global laws “anew, and reconstruct, and recreate the text of the transplant.”³⁹ What distinguishes him from others

³² See Michael Dowdle, *The Geography of Regulation*, in HANDBOOK ON GOVERNANCE (D. Levi-Faur ed., 2011).

³³ See David Gerber, *supra* note 4, at 949; see generally: Lawrence Lessig, *The Regulation of Social Meaning*, 62 (3) UNL. CHICAGO L. REV., 992 (1995).

³⁴ See Susan Silbey, *After Legal Consciousness*, 1 ANNUAL REV. L. SOC. SCIENCE 323 (2005).

³⁵ See Martin Fuchs, *supra* note 8, at 21-40.

³⁶ See David Frank, D. and John Meyer, *The Profusion of Individual Roles and Identities in the Post-War Period*, 20 SOCIOLOGICAL THEORY 86-105 (2002).

³⁷ Sally Engle Merry, *New Legal Realism and the Ethnography of Transnational Law*, 31(4) L. & SOC. INQUIRY 975, 991 (2006).

³⁸ For a review of this area see generally David Nelken and Johannes Fees eds., LEGAL CULTURES, (2001); Special Issue 27 MICH. J. INT'L L. (2006).

³⁹ See Pierre Legrand, *The Impossibility of 'Legal Transplants'*, 4 MAASTRICHT J. EURO. & COMP. L. 111, 114 (1997). Legrand is influenced by Montesquieu's proposition that “the political and civil laws of each nation...must be so peculiar to the people for whom they are made; it is a very great accident should those of one Nation suit another.” See CHARLES DE SECONDAT

in the social constructionist tradition is his conviction that countries are comprised of distinct “mentalities” (norms, epistemologies, and habits) that constitute all embracing national cultures. From this vantage point, he sees too much interaction between BPMs and domestic legal cultures for BPRs to induce the intended behavioral responses.⁴⁰

Legrand’s notion that national legal cultures are all encompassing is contradicted by studies that locate culture in local practices, discourses, and norms.⁴¹ This research shows that diverse educational, economic, legal, and social experiences have generated differences in the distribution of knowledge within societies.⁴² Such discrepancies in knowledge are especially pronounced in rapidly transforming societies,⁴³ such as those found in developing countries in Asia. Peter Berger and Thomas Luckman⁴⁴ characterized this fragmentation of knowledge as “socially segregated sub-universes of meaning”. By this they meant that societies comprise a series of social sub-groups (or epistemic communities) that make sense of the world from different cognitive perspectives. This heterogeneous understanding of culture challenges Legrand’s claim that countries respond en masse to BPRs and explains why globalized elites in developing countries may embrace BPMs that are subsequently rejected or ignored by other social groups.

D. DISCURSIVE INTERPRETATIONS OF BPMs

A growing body of scholars stress the importance of language and epistemic understandings in the interpretation of BPMs.⁴⁵ They note

MONTESQUIEU, *DE L’ESPIRIT DES LOIS* (THE SPIRIT OF LAWS), Chapter three (J. P. Mayer & A. P. Kerr eds., Livre I Gallimard, 1970).

⁴⁰ PIERRE LEGRAND (ed.), *DERRIDA AND LAW* (PHILOSOPHERS AND LAW), 2009; Pierre Legrand, *European Legal Systems Are Not Converging*, INT’L COMP. L. Q., 45 (1996).

⁴¹ Socio-legal theorists such as Susan Silbey and Sally Engle Merry have built on earlier cultural studies by Clifford Geertz. See CLIFFORD GEERTZ, *LOCAL KNOWLEDGE* (1983); Susan Silbey, *After Legal Consciousness*, 1 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 323 (2005); Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC. REV., 869-896 (1988). Also see Mark Pachucki and Ronald Breiger, *Cultural Holes: Beyond Relationality in Social Networks and Culture*, 36 ANN. REV. SOCIOLOGY, 205-24 (2010).

⁴² See PETER BERGER & THOMAS LUCKMAN, *THE SOCIAL CONSTRUCTION OF REALITY* (1967).

⁴³ See P. DiMaggio, *Culture and Cognition: An Interdisciplinary Review*, 23 ANN. REV. SOCIOLOGY, 263-87 (1997).

⁴⁴ Berger and Luckman, *supra* note 42, at 65. Also see ALBERT BANDURA, *SOCIAL LEARNING THEORY* (1977).

⁴⁵ For a general review of law and communication, see David Nelken, *Law as Communication: Constituting the Field*, in *LAW AS COMMUNICATION* 3, 3-30 (David Nelken ed., 1996); also see

that much of what we think about new laws and regulations is expressed in discourse.⁴⁶ What unifies this discursive approach is the notion that meaning is inter-subjective and generated within epistemologically compatible social sub-groups.

Take for example the work of Esin Örucü. She used the term “legal transposition” to stress that recipients reinterpret the meaning of BPMs according to inter-subjective or situated patterns of thought.⁴⁷ Her research demonstrated that recipients in Turkey frequently misread legal texts borrowed from the EU by applying incorrect epistemological assumptions. In a similar vein, Pitman Potter showed how the interpretation of international human rights charters by Chinese social actors depends upon the norms and epistemic assumptions circulating within particular party, state, and academic communities.⁴⁸

Discourse does not, of course, capture the full range of responses to BPMs. There is a long standing tradition⁴⁹ insisting that individuals act in habitual, conventionalized ways, rarely consciously reflecting upon their preferences. Annalise Riles,⁵⁰ for example, showed that Japanese derivative traders generate shared meaning through repetitive processes. Significantly for our discussion, recent social science research points to limitations in the capacity of unreflective habitual responses to convey complex information.⁵¹ It found that only sustained reflective dialogue

Julia Black, *Regulatory Conversations*, 29 (1) J. L. & SOC'Y 163 (2002) (discussing how normative ideas ideally emerge from a deliberative process); David Gerber, *System Dynamics: Toward A Language of Comparative Law?*, 46 AM. J. COMP. L., 719-737 (1998); John Gillespie, *Towards Discourse Analysis of Legal Transfers into Developing East Asia*, 40(3) N. Y. U. J. INT'L L. & POL., 657-721 (2008).

⁴⁶ Discourse is taken to mean ‘all forms of spoken interaction, formal and informal, and written texts of all kinds,’ especially political, economic, moral, cultural, and legal modes of communication. JONATHON POTTER & MARGRET WETHERELL, *DISCOURSE AND SOCIAL PSYCHOLOGY* (1987).

⁴⁷ See e. g., Esin Örucü, *Law as Transposition*, 51 INT'L & COMP. L.Q. 205, 205-08 (2002).

⁴⁸ See Pitman Potter *International and Domestic Selective Adaptation: The Case of Charter 08 in* JOHN GILLESPIE AND PIP NICHOLSON EDS., *NARRATIVE AND LEGAL TRANSFERS: INFORMING LAW AND DEVELOPMENT*, (2012). Also see Pitman Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 (2) L. & SOC. INQUIRY, 465-495 (2004).

⁴⁹ Bourdieu acknowledged the possibility of reflective choice under specific circumstances. See PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE*, 78-86 (trans. Richard Nice, 1977).

⁵⁰ Annalise Riles, *The Anti-Network: Private Global Governance, Legal Knowledge, and the Legitimacy of the State*, 56 (3) AM. J. COMP. L., 605-630 (2008). For a critique of Riles’ “anti-network” argument see Marietta Auer, *The Anti-Network: A Comment on Annalise Riles*, 56 AM. J. COMP. L. 631-638 (2008).

⁵¹ See John Roberts, *Point-Counterpoint: Limits to Communities of Practice*, 43 J. MANAGEMENT STUD., 623-39 (2006); Beth Bechky, *Sharing Meaning Across Occupational Communities: The*

could generate and convey complex meaning in knowledge-intensive fields such as law reform.

David Gerber united these analytical threads into a theoretical framework that explains how recipients interpret transnational laws and texts.⁵² He takes a strong position against the conduit metaphor, arguing that the language of texts used in BPRs does not tell recipients how the new idea will influence behavior in new socio-legal settings. Gerber also stresses the importance of the “knowledge-shaping (or ‘cognitive’)” role of language in influencing what recipients think about global scripts.⁵³ He identifies a set of epistemic settings that he calls “authority heuristics” which order and prioritize the way actors interpret and operationalize global laws. For Gerber, “They enable those within the system to ‘know’ the law.”⁵⁴

Like Örucü and Potter, he argues that problems arise when recipients use the wrong authority heuristics to interpret BPMs. Gerber claims that this misreading occurs when a recipient “translates the concepts, structures, and institutions of the foreign system into her own legal language, and this inevitably creates distortions.”⁵⁵ To minimize misunderstandings, Gerber suggests the development of “authority templates” that provide “basic information regarding the influence of the text on selected types of decisions.”⁵⁶ This information has the potential to reveal who uses the BPMs, how they are used, and what influences they exert over key legal and political institutions. Gerber’s “authority templates” advance this discussion by locating normative and epistemological factors in a broader context of power structures and strategies.

Transformation of Understanding on a Production Floor, 14 ORGANIZATIONAL SCIENCE, 312–30 (2003).

⁵² See David Gerber, *supra* note 4, at 949; David Gerber, *System Dynamics: Towards a Language of Comparative Law?*, AM. J. COMP. L., 719 (1998).

⁵³ David Gerber, *Authority Heuristics*, 79 CHICAGO-KENT L. REV. 959 (2004); also see David Gerber, *Economics, Law and Institutions: The Shaping of Chinese Competition Law*, 26 WASH. UNI. J. L. POL’Y 271-299 (2008); David Gerber, *System Dynamics: Toward a Language of Comparative Law?*, 46 AM. J. COMP. L., 719 (1998).

⁵⁴ Gerber (2004), *supra* note 53, at 960.

⁵⁵ *Id.* at 964-970.

⁵⁶ *Id.* at 973-976.

E. SOCIAL ACTION AND SOCIAL CONSTRUCTIONISM

Clifford Geertz advocated an ‘interpretive’ turn in anthropology and the social sciences more generally.⁵⁷ He cautioned against earlier anthropological traditions that sought to understand social perspectives through empathy or immersion in other cultures. For Geertz, effective interpretation came through a methodology of “reading” the meanings of discourse, texts, and social action.⁵⁸ His notion that discourse, coupled with social action and power relationships, shapes legal and regulatory meaning is pertinent to our discussion.

Taking this idea further, Yves Dezalay and Bryant Garth in their pioneering study about international commercial arbitration centers stressed the importance of power relationships to the interpretation of global norms.⁵⁹ They found that the meaning ascribed to global norms depends on which recipients support reforms, where they are located in the structure of government, and whether they enjoy close working relationships with the international development agencies promoting the reform. They use power differentials as proxies to represent the complex dialogical and hierarchical structures that shape legal meaning.⁶⁰

Bruce Carruthers and Terrence Halliday deployed this actor-centred approach to examine the transfer of global insolvency law into East Asia.⁶¹ On the surface, insolvency laws in East Asia seemed to

⁵⁷ See generally Clifford Geertz, *Thick Description: Toward and Interpretive Theory of Culture*, in THE INTERPRETATION OF CULTURES: SELECTED ESSAYS, 3-30 (Clifford Geertz ed., 1973); Clifford Geertz, *From the Native's Point of View: On the Nature of Anthropological Understanding*, in., LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY, 55-70 (Clifford Geertz ed., 1983).

⁵⁸ See Clifford Geertz, *Thick Description: Toward and Interpretive Theory of Culture*, in THE INTERPRETATION OF CULTURES: SELECTED ESSAYS, 3-30 (Clifford Geertz ed., 1973). Also see BRIAN TAMANAHA, REALISTIC SOCIO-LEGAL THEORY, 144, 170-172 (1998).

⁵⁹ Yves Dezalay's and Bryant Garth's work is among the most cited in the field of legal globalization. The most cited works are THE INTERNATIONALIZATION OF PALACE WARS LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES (2002); Yves Dezalay and Bryant Garth, *The Import and Export of Law and Legal Institutions: International Strategies in National Palace Wars*, in ADAPTING LEGAL CULTURES, 241-53 (David Nelken and Johannes Fees eds., 2001).

⁶⁰ The actor centered approach developed by Dezalay and Gath, and more recently adapted by Carruthers and Halliday, draws heavily from Bourdieu's social field analysis. See Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS LAW JOURNAL, 805 (1987).

⁶¹ See Bruce Carruthers & Terence Halliday, *Negotiating Globalization: Globalization and the Construction of Insolvency Regimes in East Asia*, 31(3) L. & SOC. INQUIRY (2006). Halliday later teamed up with a member of the Korean drafting committee to explore the interaction between the globalized bankruptcy law and the Korean legal system. See Soogeun Oh & Terence Halliday,

converge. International donor agencies convinced lawmakers throughout East Asia to adopt a standard BPM. Delving below the surface of legislative adaption, Carruthers and Halliday uncovered a more complex story in which the interpretation of the insolvency laws depended on the types of relationships state actors enjoyed with the donor agencies, as well as their powerbase within the government.

This actor-centred approach adds a useful dimension to our analysis by showing how meaning is shaped by strategy and power. But it also reveals the need for a structural framework in which to place and analyze discourse and social action. We need to bring cultural analysis that examines local discourses and social action into communication with structural theories that explore the patterning of social connections among individuals and groups. Systems theory is one of the few structural theories that attempts to accommodate these twin dynamics.⁶²

The next section briefly outlines how systems theory applies to BPRs.

F. SYSTEMS THEORY

Systems theorists⁶³ advance this discussion by explaining how communicative acts order legal and regulatory systems. They begin with the observation that legislatures cannot simply import BPMs and expect that they will translate into laws that produce predetermined behavioral changes. Uneven reception patterns are attributed to the different ways that social sub-systems (state and non-state) interpret BPMs. According to Gunther Teubner⁶⁴, BPMs act like “legal irritants in host-country legal

Rehabilitating Korea's Corporate Insolvency Regime 1992-2007, in REGULATION IN ASIA: PUSHING BACK ON GLOBALIZATION, 238-269 (John Gillespie & Randall Peerenboom eds., 2009).

⁶² Also see Simmel on social meaning, reciprocity, and interaction; DiMaggio on genres and structural equivalents; and Bourdieu on fields and social relations. See Georg Simmel, *On Individuality and Social Forms* in GEORG SIMMEL ON INDIVIDUALITY AND SOCIAL FORMS: SELECTED WRITINGS (D. Levine ed., 1972); Paul DiMaggio, *Meaning and Measurement in the Sociology of Culture*, 2(4) POETICS, 263-371 (1994); Pierre Bourdieu, *supra* note 60, at 805-853.

⁶³ The literature on systems theory is vast. See e.g., MICHAEL KING & CHRIS THORNHILL (eds.), LUHMANN ON LAW AND POLITICS: CRITICAL APPRAISALS AND APPLICATIONS (2006); RICHARD NOBLES & DAVID SCHIFF, A SOCIOLOGY OF JURISPRUDENCE (2006); Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences*, 61(1) MOD. L. REV., 11-32 (1998). Also see Hugh Baxter, *Autopoiesis and the 'Relative Autonomy' of Law*, 19 CARDOZO L. REV. 1998 (1987).

⁶⁴ Teubner, *supra* note 63 at 12, 15-20.

systems; they interpret laws on their own terms. They unleash an evolutionary dynamic in which the external rule's meaning will be reconstructed and the internal context will undergo fundamental change."

He ascribes this "irritation" to dialogical exchanges between legal and other social sub-systems. Although sub-systems are self-constituting, self-organizing and self-reproducing, they co-exist and co-evolve in complex ways with one other. It is the social relationships and deliberative links formed between different sub-groups that facilitate the negotiations and discussions that generate co-evolution.⁶⁵ Provided the sub-systems share normative and epistemic assumptions – a common conceptual grammar – over time discourse reconciles differences and identifies common objectives.⁶⁶

Teubner calls this co-evolution "structural coupling". If the legal, political, and social sub-systems are normatively aligned, structural coupling ensures that most people are receptive to state legal norms and precepts. Conversely, where BPMs are imported from regulatory systems with different norms and operational logics, they are unlikely to generate deep structural coupling or fundamentally reorder pre-existing social sub-systems.

Structural coupling provides a new explanation for a long observed phenomenon. As Karl Polanyi⁶⁷ noted over half a century ago, laws designed to privilege market freedoms and to protect property rights (BPMs) lack social and economic relevance in developing societies where markets are not yet disembedded from non-economic regulatory forces such as relational business transactions, village spirituality, and traditional identities.

Systems theory provides a broad analytical structure and coherence that is lacking from the more narrowly focused actor-centred approaches. It provides a conceptual architecture for understanding how sub-groups learn from each other and collectively steer responses to BPRs. It encourages us to inquire whether dominant sub-groups (especially the state) use their political power to discredit rivals and promote hegemonic interpretations of BPRs. It also sheds light on the recursive processes in which the interpretation of global scripts by social

⁶⁵ See Bob Jessop, *Regulationist and Autopoieticist Reflections on Polanyi's Account of Market Economics and the Market Society*, 6(2) NEW POLITICAL ECONOMY, 213–32 (2001).

⁶⁶ See Bob Jessop, *supra* note 65, at 213–32. Also see Robert Post, *The Relatively Autonomous Discourse of Law*, in LAW AND THE ORDER OF CULTURE, vii–ix (R. Post ed., 1991).

⁶⁷ See GARETH DALE, *THE LIMITS OF THE MARKET POLICY* (2010).

actors feeds back and influences the original meaning of BPMs promoted by dominant regulators.

Yet at this point, systems theory seems incomplete. It postulates the importance of structural coupling to interpretation but does not offer a methodology for observing this process at a micro-level. Its use of nebulous metaphors such as disturbances, perturbations, and irritations to describe the interaction among sub-systems lacks precision.⁶⁸ It does not investigate at close range what stimulates co-evolution and convergence among different sub-systems. Systems theory connects to middle-range research on organizational and institutional governance that examines the factors that shape attitudes to laws and regulations.

IV. DEVELOPING A FRAMEWORK TO ANALYZE RESPONSES TO BPMS

System theory proposes a regulatory space where BPMs variously compete and collaborate with pre-existing state and non-state regulatory traditions. As the case studies will presently reveal, in Vietnam neither state propaganda campaigns nor coercion are capable of compelling business networks to follow BPRs. Even in authoritarian states effective governance does not “grow out of the barrel of a gun”. In this contested regulatory space state and non-state actors need some way of evaluating the different regulatory regimes to determine which set of norms and rules should apply in particular situations.

Within regulatory studies and sociology there has been a revival of interest in using legitimacy as a means of understanding why social actors follow particular regulatory regimes.⁶⁹ A common theme in this work is the notion that individuals and groups assess the legitimacy and desirability of external norms and rules from the “web of meaning” in

⁶⁸ See Bend Hornung, *The Theatrical Context and Foundations of Luhmann's Legal and Political Sociology*, in LUHMANN AND LAW AND POLITICS: CRITICAL APPRAISALS AND APPLICATIONS, 210 (Michael King & Chris Thornhill eds., 2006).

⁶⁹ See e. g., Tom Tyler *Introduction: Legitimizing Ideologies* 18 SOCIAL JUSTICE RESEARCH 211 (2005); Karen Hegtvedt & Cathryn Johnson *Power and Justice: Toward and Understanding of Legitimacy* 53 (3) AM. BEHAVIORAL SCIENTIST 376 (2009) (sociology). Also see Also see: Steven Bernstein & Benjamin Cashmore, *Can Non-state Global Governance be Legitimate? An Analytical Framework*, 1(4) REG. & GOVERNANCE, 347–71 (2007); Julia Black, *Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes*, 2 REG. & GOVERNANCE, 1–15 (2008) (regulatory studies).

which they are embedded.⁷⁰ As Mark Suchman⁷¹ put it: “Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions.” The socially constructed systems to which Suchman refers are, of course, epistemic communities.

This concept of socially constructed legitimacy differs from the more familiar Weberian definition which treats legitimacy as a resource that regulators deploy to increase their authority and promote particular regulatory policies.⁷² Socially constructed legitimacy acts like an endowment; something that cannot be possessed or exchanged, but rather something that is conferred.⁷³ Recipients use legitimacy in this guise to assess which regulators and regulatory modes should prevail in particular circumstances. Mark Suchman identified three types of legitimacy – pragmatic, normative, and cognitive – that are likely to inform regulatory preferences.⁷⁴

A. PRAGMATIC LEGITIMACY

A vast literature attributes many aspects of human behavior (including regulatory legitimacy) to expectations about material benefit. A dominate trope underlying this work is that when firms in developing countries grow in size, the cost of relational transactions increases, compelling them to adopt low-cost legally enforceable transactional rules based on BPMs.⁷⁵ In other words, recipients embedded in relational transactions may assess the utility or pragmatic legitimacy of BPRs by

⁷⁰ See Margaret Levi & Audrey Sacks *Legitimizing Beliefs: Sources and Indicators* 3 (4) REG. & GOVERNANCE 311 (2009).

⁷¹ Mark Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20(3) ACADEMY MANAGEMENT REV., 574 (1995).

⁷² See Michael Hetcher, *Legitimacy in the Modern World*, 53 (3) AM. BEHAVIORAL SCIENTIST 279 (2009)..

⁷³ RICHARD SCOTT, ORGANIZATIONS: RATIONAL, NATURAL AND OPEN SYSTEMS, 213–14 (5th ed. 2003).

⁷⁴ Mark Suchman, *supra* note 71, at 577–85.

⁷⁵ See AVINASH DIXIT, LAWLESSNESS AND ECONOMICS: ALTERNATIVE MODES OF GOVERNANCE AT 70 (2004); Micheal Trebilcock & Jing Leng, *The Role of Formal Contract Law and Enforcement in Economic Development*, 92 VA. L. REV 1517 (2006); Ronald Gilson, *Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange*, 60 STAN. L. REV. 633 (2007).

reflecting on whether the new rules and practices will reduce transaction costs and provide other material benefits.⁷⁶

Complicating this trope, a growing body of empirical studies shows that people critically evaluate material benefits according to the norms and tacit assumptions in which they are embedded.⁷⁷ This may, and often does, result in outcomes that cannot be predicted by a narrow cost-benefit calculation of economic interests. What constitutes a material benefit is assessed by reference to a deeper, normative base.⁷⁸

B. NORMATIVE LEGITIMACY

People make reflective normative judgments about regulators, processes, and the values embedded in particular modes of regulation. For example, empirical studies⁷⁹ show that recipients take the origin of laws into account when conferring legitimacy. They bestow legitimacy to laws drawn from prestigious legal systems and withdraw consent from laws that are considered alien and imposed.⁸⁰

Research also shows that recipients are more likely to recognize the authority of imported norms when the norms are tied to pre-existing local concepts – new wine in old bottles. For example, Sally Engle Merry⁸¹ shows how social activists convinced Indian lawmakers to extend legislative protection against domestic violence to Indian women. The activists achieved this result by linking global ideas to analogous but slightly different domestic norms about bodily protection. Once tied to familiar idioms and concepts, the new ideas changed the way lawmakers thought about domestic violence.

Recipients may also evaluate the legitimacy of BPRs by assessing their social impact. One important variable is whether the law achieved the predicted objectives – the instrumental effectiveness of

⁷⁶ See Julia Black, *Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes*, 2 REG. & GOVERNANCE, 1-17 (2008).

⁷⁷ See Mark Granovetter, *The Impact of Social Structure on Economic Outcomes*, 19 (1) J. ECO. PERSPECTIVES, 33-50 (2005); Matha Finnemore & Stephen J. Toope, *Alternatives to 'Legalization': Richer Views of Law and Politics*, 55(3) INT'L ORG., 743-58 (2001).

⁷⁸ See Daniel Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L. J., 1490-1561 (2006).

⁷⁹ See Berkowitz, Pistor & Richard, *supra* note 30, at 163; Sally Engle Merry, *New Legal Realism and the Ethnography of Transnational Law*, 31(4) L. & SOC. INQUIRY, 975-991 (2006).

⁸⁰ See Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43(1) AM. J. COMP. L., 93-117 (1995).

⁸¹ See Sally Engle Merry, *supra* note 79, at 984-989.

regulation.⁸² Another variable is whether it enhances community notions of equity and justice. In one example Thai farmers resisted BPRs that granted intellectual property protection to naturally occurring plant and seed varieties. They were concerned that the new law would give foreign investors powers to override community norms of public access to seeds and communal farming practices.⁸³

In other cases the normative content of BPRs may not be an issue, but the procedures implementing the norms can influence perceptions of legitimacy. Many studies have shown that people are generally willing to defer to authorities that make procedurally fair determinations. Halliday and Carruthers provide a clear example from Indonesia.⁸⁴ To bail Indonesia out of the Asia Financial Crisis the IMF extended a loan in 1998 on the condition that the government enact a new bankruptcy law and establish a bankruptcy court. Despite a broad consensus that bankruptcy provisions introduced during the Dutch colonial period were unsuited to a modern global economy, the new law and court encountered considerable domestic resistance. Both state and private lawyers questioned the legitimacy of the bankruptcy reforms because the IMF bailout was tainted by duress. It was widely perceived that the government had limited capacity to resist the bailout conditions because of Indonesia's dire financial predicament.

C. COGNITIVE LEGITIMACY

Cognition also shapes perceptions of legitimacy. It is closely allied with ideology, because it builds consensus or resistance to particular norms and ideals (such as BPMs) by creating an evaluative frame of reference.⁸⁵ It coordinates members of epistemic communities to act collectively, carry out joint tasks, and construct community cohesion. It also acts as the interface between individual practices and collective

⁸² See Alexander Wendt, *Driving with the Rearview Mirror: On the Rational Science of Institutional Design*, 55(4) INTERNATIONAL ORGANIZATION, 1019–49 (2001).

⁸³ See Jakkrit Kuanpoth, *Globalization and Civil Society in Thailand*, in REGULATION IN ASIA: PUSHING BACK ON GLOBALIZATION 200–1, 207–9 (J. Gillespie and R. Peerenboom eds. 2009).

⁸⁴ See Terrance Halliday & Bruce Carruthers, *Foiling the Financial Hegemons: Limits to the Globalisation of Corporate Insolvency Regimes in Indonesia, Korea and China*, in GLOBALISATION AND RESISTANCE: LAW REFORM IN ASIA SINCE THE CRISIS 255–301 (Christoph Antons & Volkmar Gessner eds. 2007). Also see TOM TYLER, WHY PEOPLE OBEY THE LAW: PROCEDURAL JUSTICE, LEGITIMACY, AND COMPLIANCE (1990).

⁸⁵ See Tom Tyler, *Psychological Perspectives on Legitimacy and Legitimizing*, 57 ANN. REV. PSYCH., 375–400 (2006).

action, compelling people to regard a regulator and its procedures and outcomes as inevitable and necessary.⁸⁶

D. COLLECTIVE IDENTITY

Social science research builds on cognitive legitimacy by demonstrating the importance of identity as a framework through which social meaning is interpreted.⁸⁷ Given that both fields (cognitive legitimacy and collative identity) recognize the social construction of laws, it worth briefly reflecting on their differences. Not all cognitive collaboration generates collective identities.⁸⁸ For this to occur, members of epistemic communities need common interests, experiences, and solidarity; in short, a sense of togetherness or empathetic connection with other members of the group. Recent scholarship about collective identities shows how personal or situated identities serve as an organizational force, binding actors with shared ideas and emotional connections and creating boundaries that exclude others. The thrust of this research is that when “people take on the same identity, experience the same reality, and observe one another’s parallel emotions and collateral behaviors, a sense of common destiny and empathic connection arises.”⁸⁹

Collective identity research brings to our discussion the insight that we cannot separate ourselves from the process of interpreting new ideas, because “we all occupy (‘represent’) a socio-political position, and we all attempt to carry something from one context to the other when translating (interpreting).”⁹⁰ This means that recipients interpreting BPMs are not outside the social context of the interpretation, but rather they are

⁸⁶ Bernstein & Cashmore, *supra* note 71 at 355.

⁸⁷ For a discussion about the connection between discourse and collective identity see Nikki Slocum-Bradley *Identity Construction in Europe: A Discursive Approach*, 10 (1) IDENTITY, 50, 52-58 (2010). See, generally Timothy J. Owens, Dawn T. Robinson & Lynn Smith-Lovin, *Three Faces of Identity*, 36 ANN. REV. SOCIO., 477 (2010); James Gibson, *Group Identities and Theories of Justice: An Experimental Investigation into the Justice and Injustice of Land Squatting in South Africa*, 70 (3) J. POL., 700-716 (2008).

⁸⁸ See Deborah. Prentice, Dale Miller, Jennifer Lightdale, *Asymmetries in Attachments to Groups and to their Members: Distinguishing between Common-Identity and Common-Bond Groups*, 20 SOCIAL PSYCH’Y BULLETIN, 484-93 (1994).

⁸⁹ See Owens, Robinson & Smith-Lovin, *supra* note 87, at 477, 490. Also see Marilynn Brewer & Wendi Gardner, *Who is this ‘We’? Levels of Collective Identity and Self Representations*, 71 J. PERSONAL SOCIAL PSYCH’Y, 83-93 (1996).

⁹⁰ Martin Fuchs, *supra* note 8, at 25. Also see James March, Johan Olsen, *Institutional Perspectives on Political Institutions*, 9 GOVERNANCE, 247-64, (1996).

embedded in a particular context. They may however move from one interpretative context to another.⁹¹ For example, in the footwear manufacturing case study discussed below, the managers oscillated between the interpretive context of traditional Vietnamese business managers to the context of cosmopolitan professionals. In shifting from one type of collective identity to another, their perceptions about the desirability and utility of BPMs changed.⁹²

In the next sections, I will apply the legitimacy (pragmatic, normative, and cognitive) and identity frameworks to three case studies to better understand how business networks in Vietnam respond to BPRs. But first it is useful to set the stage by briefly describing the recent history of BPRs in Vietnam.

V. MAPPING BPRS IN VIETNAM

A key difference between the transformations from socialism in Asia and Eastern Europe is that in China and Vietnam, reforms did not bring about political collapse.⁹³ The communist party in Vietnam survived *doi moi* (renovation) economic and political reforms during the 1980s intact. It then went on to play a leading role in adopting pro-market BPMs into domestic legislation. As in China, the party's contradictory aims were to protect private commercial rights and promote market competition without fundamentally disrupting state ownership and control over the market.

Party leaders incrementally dismantled many aspects of command planning during the late 1980s, and by the early 1990s, market signals regulated the supply and price of most goods and services.⁹⁴ A gradual relaxation of state monopolies, accompanied by the decriminalization of private commerce, saw a rapid increase in the number and diversity of private firms entering previously protected

⁹¹ Anthony Giddens attributed the development of multiple identities as a response to the social complexities of late modernity. See ANTHONY GIDDENS MODERNITY AND SELF-IDENTITY: SELF AND SOCIETY IN THE LATE MODERN AGE (1991).

⁹² Research in China has shown similar responses to global regulation. See Victor Nee, *Organization Dynamics of Institutional Change: Politicized Capitalism in China*, in THE ECONOMIC SOCIOLOGY OF CAPITALISM, 53, 55 (Victor Nee & Richard Swedberg eds. 2005).

⁹³ See PETER NOLAN, CHINA'S RISE, RUSSIA'S FALL: POLITICS, ECONOMICS AND PLANNING IN THE TRANSITION FROM STALINISM, 1995; MELANIE BERESFORD & DANG PHONG, ECONOMIC TRANSITION IN VIETNAM: TRADE AND AID IN THE DEMISE OF A CENTRALLY PLANNED ECONOMY (2000).

⁹⁴ See BERESFORD & PHONG, *supra* note 93.

economic sectors such as service industries and manufacturing. Meanwhile, the party ignored World Bank advice to rapidly privatize state firms, and following China's lead, it encouraged large state-owned or -controlled firms to dominate the "commanding heights" of the economy in sectors such as telecommunications, electricity generation, and construction.⁹⁵ State domination of core industries played a major role in stabilizing markets and exciting rapid economic development.

In tandem with economic reforms, the party and state embarked on an ambitious legislative program to enact commercial laws. Just as they had during the high socialist period (1945-1986), the party placed their faith in the modernizing power of laws to develop the economy.⁹⁶ Starting with a foreign investment law in 1997, lawmakers gradually developed a comprehensive legislative framework that now covers most aspects of the mixed market economy.⁹⁷ With few exceptions, legislation was based on BPMs imported from international treaties (e. g. TRIPs and the Berne Convention for the Protection of Literary and Artistic Works), international organizations (e. g. UNCITRAL and WIPO), and Western countries – sometimes via third party donors such as Japan and China. For example, the Competition Law 2005 is based on the European Community Code, but also draws on Japanese experiences.⁹⁸

By any measure, the laws based on imported BPMs have not been especially successful in changing economic behavior. Studies show that most firms do not consummate business relationships with contracts; intellectual property rights are routinely infringed; firms build anti-competitive cartels; and commercial litigation is primarily the prerogative of foreign investors and state-owned companies.⁹⁹ Such

⁹⁵ See Dwight Perkins & Vu Tu Anh, *Vietnam's Industrial Policy Designing Policies for Sustainable Development' Policy Dialogue Paper Number 3 Harvard Kennedy School and UNDP*, 2-6 (2009); MARTIN GAINSBOROUGH, *VIETNAM: RETHINKING THE STATE*, 25-49, 72-75 (2010).

⁹⁶ Soviet legal advisers during the late 1950s urged Vietnamese authorities to methodically substitute ancient customary and colonial rules with "rational, progressive socialist legislation". George Ginsburgs, *The Genesis of the Peoples' Procuracy in the Democratic Republic of Vietnam*, 5 REV. SOCIALIST L. 187, (1979).

⁹⁷ See JOHN GILLESPIE, *TRANSPLANTING COMMERCIAL LAW REFORM TO VIETNAM: DEVELOPING A 'RULE OF LAW' IN VIETNAM* (2006); Alice Pham, *The Development of Competition Law in Vietnam in the Face of Economic Reforms and Global Integration*, 26 (3) NORTHWESTERN J. INT'L L. & BUS. 547 (2006).

⁹⁸ See Pham, *supra* note 97, at 547; Also see Le Thanh Vinh, *Tu duy phat trien va van de thuc thi Luat Canh tranh tai Viet Nam* (Development Thinking and the Competition Law Enforcement in Vietnam), 15 (4) TAP CHI NGHIEN CUU LAP PHAP, 42-47 (2010).

⁹⁹ The IFC study conducted in 2003. See Stoyan Tenev, Amanda Carlier, Omar Chaudry & Quynh-Trang Nguyen, *Informality and the Playing Field in Vietnam's Business Sector*

findings add to the burgeoning literature that suggests business networks, rather than state laws, are the main market regulators in socialist-transforming Asia.¹⁰⁰ It is these networks, often in collaboration with state agencies, that scholars like Clarke, Milhaupt and Upham argue perform functionally equivalent roles to BPMs.

Commentators have identified three main types of business networks in Vietnam that closely resemble networks in China.¹⁰¹ One, “cadre capitalist” networks are comprised of large state-owned-and-controlled firms that sometimes operate joint ventures with foreign investors. They draw on close connections with the party and state to dominate key economic sectors,¹⁰² and together they account for approximately 40 per cent of national non-farm production (NNFP). Two, medium sized private firms and foreign investors form business networks that mobilize resources to compete with each other.¹⁰³ Together they generate about 30 per cent of NNFP.¹⁰⁴ Three, small-scale domestic firms – sometimes misleadingly called the “informal sector” – form

Washington DC: IFC World Bank, 45-74 (2003); Also see the study conducted in 2009: Cling Jean-Pierre et al. *The Informal Sector in Vietnam: A Focus on Hanoi and Ho Chi Minh City*, 74-86 (2010).

¹⁰⁰ See generally Yusheng Peng, *Kinship Networks and Entrepreneurs in China's Transition Economy*, 109(5) AM. J. SOC., 1045-74 (2004). For a discussion about Vietnam, see John Gillespie, *Testing the Limits to the 'Rule of Law': Commercial Regulation in Vietnam*, 12 (2) J. COMP. ASIAN DEVELOP., 245-272 (2009).

¹⁰¹ For the research about Vietnam see Berhanu Abegaz, *The Diversified Business Group as an Innovative Organisational Model for Large State-Enterprise Reform in China and Vietnam*, 5 (5/6) INT'L J. ENTREPRENEURSHIP & INNOVATION MANAGEMENT, 379-400 (2005); Martin Gainsborough, *supra* note 95, at 25-49. Similar networks have been identified in China, see Barry Naughton, *SASAC and Rising corporate power*, 24 CHINA LEADERSHIP MONITOR, (Winter 2008), <http://media.hoover.org/documents/CLM24BN.pdf>.

¹⁰² See Martin Gainsborough, *The (neglected) Statist Bias and the Developmental State: the Case of Singapore and Vietnam*, 30 (7) THIRD WORLD Q. 1317-1328 (2009); Scott Cheshier & Jonathan Pincus, *Minsky au Vietnam: State Corporations, Financial Instability and Industrialisation*, in MINSKY, CRISIS AND DEVELOPMENT, 188-206 (Daniela Tavasci & Jan Toporowski eds. 2010).

¹⁰³ Only 19 per cent of the 631 firms with capital over VND 200 billion (approximately 10 million USD) are privately owned. See: UNDP *Assessment Report on 2-Year Implementation of the 2005 Enterprise Law and Investment Law*, 27.(December 2008). See generally Taussig, Markus. *Business Strategy During Radical Economic Transition: Vietnam's First Generation of Larger Private Manufacturers and a Decade of Intensifying Opportunities and Competition*, 7-9 (United Nations Development Programme, December, 2009); JEAN-PIERRE CLING ET AL. *THE INFORMAL SECTOR IN VIETNAM: A FOCUS ON HANOI AND HO CHI MINH CITY*, 41-72 (2010).

¹⁰⁴ See UNCTD, *Investment Policy Review Viet Nam*, 5-10 (2008).

defensive networks to protect markets and minimize contact with state agencies.¹⁰⁵ They conservatively contribute 30 per cent of NNFP.¹⁰⁶

VI. CASE STUDIES

In this section, I first construct three case studies that represent the different types of business networks in Vietnam, and then use the legitimacy and identity frameworks to understand why the networks responded to BPRs in different ways.

A. CONSTRUCTION FIRMS CASE STUDY

1. BACKGROUND PROFILE

This study is based on interviews with the senior managers of state-owned or -controlled construction firms in Nam Dinh and Nghe An provinces in north and central Vietnam.¹⁰⁷ During the high socialist period (1954–1986), the governments in these provinces assigned construction work to SOEs according to five-year plans. As the command planning began unravelling in the late 1980s, the central government introduced tendering regulations based on BPMs that allowed private firms to compete with SOEs for state-funded construction projects.¹⁰⁸ The Competition Law 2005 and Tendering Law 2006 reinforced this policy of market-based tendering.

According to the senior managers, although their firms outwardly comply with the tendering rules, in practice they use business networks called construction “groups” (*thau con*) to regulate access to state tenders. Construction groups are typically comprised of senior officials from the provincial party and government, the senior managers,

¹⁰⁵ See Stephen Appold & Nguyen Quy Thanh, Social Embedding as a Solution to a Control Problem? Evidence from Vietnamese Small Business, (unpublished paper, 2004), available at <http://www.unc.edu/~appolds/research/progress/AppoldThanhVietnam.pdf>.

¹⁰⁶ See Jean-Pierre Cling, *supra* note 102, at 74–86. In comparison, Schneider estimates that the size of the U.S. informal sector was 8.8 per cent in 1996. See Friedrich Schneider, *Size and Measurement of the Informal Economy in 110 Countries Around the World*, 29 (July, 2002) available at http://rru.worldbank.org/Documents/PapersLinks/informal_economy.pdf.

¹⁰⁷ The interviews with eight directors of construction firms were conducted between March 2004 and April 2010.

¹⁰⁸ See Circular No. 2 on the Management of Construction Projects, 29 January 1993; later replaced by Decree 88-1999-ND-CP of the Government, dated 1 September 1999 and then Law 61-2005-QH11 on Tendering 2006.

as well as directors of private construction companies. Group members are bound together with interlocking ownership, management, and profit-and-loss-sharing arrangements. Like other cadre capitalist business networks in Vietnam, the web of relational and familial connections that binds members of the groups is so dense, and the exchanges between public and private realms so frequent, that it is often impossible to distinguish public and private ownership and control.

Construction groups divide themselves into different coalitions called “green and red armies” (*quan xanh, quan do*) to bid for tenders. It is agreed beforehand which army will win. To stabilize the groups, the winning army pays about 10 per cent of the profits to the losing army. On the surface, this story resembles bid rigging in the construction industry the world over. What makes this study relevant are the normative and cognitive assumptions that animate the groups’ responses to the tendering laws.

The senior managers spent 10 to 20 years – their formative years – working in the government or in SOEs. The socialist regulatory traditions they absorbed during this period – especially “state economic management” (*quan ly kinh te nha nuoc*) – still conditions their outlook. Imported from the Soviet Union in the 1960s, state economic management gave state officials broad discretionary powers to regulate the economy through administrative measures.¹⁰⁹ As the command system dissolved, the senior managers, like many other senior party cadres,¹¹⁰ began to use state capital to improve their own positions and promote the economic interests of the firms that employed them.

All the senior managers were party members and some held senior party positions. They socialized and discussed business activities with party and government officials not only at official engagements but also at sporting clubs and golf ranges. Their families also socialized at weddings, funerals, *Tet* (New Year) celebrations, and many other social occasions. Further strengthening the political and business relationships, most senior managers were related in some way to the directors of the private construction companies in the construction groups.

¹⁰⁹ See Pham Thanh Vinh, *Tinh Chat Phap Lenh Trong Ke Hoach 5 Nam Lan Thu Nhat (1961–1965) (Legal Nature of the First Five Year Plan- 1961–1965)*, in NGHIEN CUU NHA NUOC VA PHAP QUYEN, (STUDIES ABOUT STATE AND LEGALITY), 120 (1964).

¹¹⁰ See Martin Rama, *Making Difficult Choices: Vietnam in Transition, based on conversations with H.E. Võ Văn Kiệt with Professor Đặng Phong and Đoàn Hồng Quang*, International Bank for Reconstruction and Development/The World Bank Commission on Growth and Development, Washington DC: Working Paper no.40, 17-21 (2008).

2. INTERPRETIVE NARRATIVES

The senior managers developed elaborate narratives to explain their collusive and anti-competitive behavior. First they questioned the legitimacy of the state's tendering laws, depicting them as foreign impositions designed to appease international donor agencies.¹¹¹ They also argued that tendering rules disrupted long-standing relational practices that delivered high-quality outcomes. Competitive tendering could not guarantee construction standards, they explained, because firms outside the construction groups were inexperienced and poorly trained. Compounding the problem, state regulators were incapable of effectively enforcing building codes.

Rather than rejecting the tendering rules outright, the senior managers sought to resignify them. The rules were given a contingent status. The imported procedural framework remained, but its normative objective of creating a competitive tendering regime was displaced by the relational networks ordering the construction groups.

Second, the senior managers identified closely with the party and state. They were careful to portray themselves as model law-abiding citizens and to contrast themselves with the hyper-competitive and opportunistic private firms operating outside the construction groups. They indignantly rejected my suggestion that their collusive behavior violated tendering laws, by pointing out that the Ministry of Construction had not prosecuted any state firms for this offense in over five years.¹¹² Above all else they thought of themselves in nationalistic terms as modernizers, developing national infrastructure and preserving state capital – activities that are glorified in party policies.

After numerous follow-up interviews, another explanation for their haughty dismissal of the tendering law began to emerge. The senior managers displayed a sense of entitlement to state property. Privatization blurred distinctions between state and private property¹¹³ and enabled party and state elites, such as the senior managers, to act out their sense

¹¹¹ There is some truth to this accusation because international donors, especially the World Bank and JICA, applied considerable pressure on the government to secure the passage of the Law on Construction, 2008 and Decree 58/2008/ND-CP, guiding the implementation of the Law.

¹¹² A recent survey backs this claim by showing that the Ministry of Construction has not prosecuted any anti-corruption cases from 2007–2009. See: Vietnam Development Report, 2010. *Modern Institutions*, Joint Donor Report to the Vietnam Consultative Group Meeting, December 3–4 2009, 102, available at <http://vietnambusiness.asia/wp-content/documents/Reports/VietnamDevelopmentReport2010.pdf>.

¹¹³ See Beresford & Dang Phong, *supra* note 93, at 152–153.

of entitlement. But privatization did not create this attitude. To find out what did, it is necessary to look at the emergence of the “New Class” during the command economy.

Scott Cheshier describes the evolution of the “New Class” in Vietnam.¹¹⁴ Members of the New Class came from the higher levels of the party and bureaucracy who were responsible for administering state-owned or collectively owned property. Although the law stated that socialist property belonged to the people and was managed by the state, members of the New Class instinctively felt that it was their property. They benefited in myriad ways from their control over socialist property, such as living in superior housing and enjoying preferential access to travel, food, and other consumer items.

Initially members of this class vigorously opposed economic reforms that might have diminished their access to state property. Resistance soon evaporated, however, when they realized that privatization did not necessarily reduce their access to state property.¹¹⁵ Members soon found opportunities to “hollow out” the assets of state firms by allowing private entities to use state assets, thus transferring lucrative state contracts to private firms, or looting state assets outright. As Bui Tin, a quintessential New Class insider observed, “what we have now is communists . . . running after their own advantage. They and their families have become Red Capitalists.”¹¹⁶

As members of the New Class, the senior construction managers closely identified with, and owed their allegiance to, a small community that included senior provincial party and state officials. They treated the new tendering and competition laws with the same ambivalence once reserved for socialist property laws. The overriding impression conveyed by the senior managers was that state construction tenders were theirs for the taking.

This case study shows that the senior managers shared a collective identity based on their affiliation with the New Class. They

¹¹⁴ See Scott Cheshier, ‘The New Class in Vietnam’, (University of London, 2010) (unpublished PhD thesis). A similar phenomenon has been observed in the former East European socialist states. See: LAWRENCE KING & IVÁN SZELÉNYI, THEORIES OF THE NEW CLASS: INTELLECTUALS AND POWER, (2004).

¹¹⁵ For a discussion about the confusion surrounding who owns state property, see Phạm Duy Nghĩa *Chín Phu Nen Tu Do Vai Tong Quan Voi Tai San Cong* (The government should abandon the role of managing public assets) TUANVIET.NET (9 September 2010), available at <http://tuanvietnam.net/2010-09-08-chinh-phu-nen-tu-bo-vai-tong-quan-voi-tai-san-cong>.

¹¹⁶ BUI TIN FOLLOWING HO CHI MINH: MEMOIRS OF A NORTH VIETNAMESE COLONEL, 185-186 (1995).

constructed narratives that legitimized their status and privileges, and fixed the boundaries of class membership. As members of an elite community they felt entitled to state property and treated imported BPMs such as market-based tendering laws as oppositional narratives that contradicted their core identity. Drawing material and normative support from the New Class, the construction groups developed coherent, self-monitoring and self-enforcing networks that perform functionally equivalent roles to many BPRs.

The next case studies explore how members of business networks that operate outside the protective web of cadre capitalism interpret BPRs.

B. FOOTWEAR MANUFACTURING CASE STUDY

1. BACKGROUND PROFILE

During 1996 a foreign investor channeled capital, equipment, and expertise into a Vietnamese corporation. To circumvent the strict licensing and taxation provisions in the Foreign Investment Law, he employed ten Vietnamese nationals in senior managerial positions, though in practice he owned and managed the company. The firm grew rapidly, manufacturing footwear for transnational corporations. It now operates four factories in northern Vietnam that together employ over 6,000 staff. Most of its products are sold under international brand names into the US and Japanese markets.

Initially the foreign investor ran the firm along conventional Vietnamese familial lines. He acted as the father and benefactor, the Vietnamese managers were his lieutenants, and the employees were treated as members of a rather large family. At the end of each week, the investor and managers gathered together to drink, socialize, and exchange information. Through discussion, solutions to problems were formulated and lines of control were negotiated and renegotiated. The investor and his managers then used relational connections to order the loosely connected and relatively autonomous work groups within the firm.

2. INTERPRETIVE NARRATIVES

The investor functioned as the central node in the network, formulating and repeating narratives that stressed a common history of

working together against ruthless and unconscionable market competitors. The storylines emphasized the need for self-sacrifice, such as wage restraint in tough economic times, and attributed the firm's success to "good heart" (*tam*), compassion (*thong cam*), and sentiment between the managers and staff.

During 2001 Nike, a major customer, insisted that the firm should not only adopt minimum labor standards but also implement a logistics management regime that tracked every stage of manufacturing. The corporate governance rules embedded in this regime required the firm to develop internal management guidelines that clearly identified positions and responsibilities; they closely resembled BPMs promoted by the OECD and International Organization for Standardization (ISO 9000:200). Managers and staff were given detailed job descriptions and internal review processes were grounded on output-oriented standards. Nike regularly inspected the firm to ensure compliance with the regime.

At first, the senior managers were concerned that the logistics regime, with its codified hierarchies and objective performance standards, might ferment distrust and undermine the firm's sentimental foundations. They were convinced that family sentiments, as much as profit, bound the firm together. Codified rules stipulating precise rights and duties were considered unnecessary because the staff trusted each other to follow common values.

During interviews the senior managers admitted that without the investor's encouragement and tutelage, they would have treated the logistics regime as a mere formality (*hinh thuc*) and would not have fundamentally changed their organizational practices. The investor explained the purpose of the new regime in a conceptual language that the managers understood. For example, he pointed out deficiencies in the existing organizational system that generated overlap and unnecessary competition and rivalry, and he showed how the imported rules could create more precise job descriptions and lines of accountability. He acted like a cultural intermediary by translating foreign ideas into familiar idioms and a domestic regulatory context.¹¹⁷

As the new regime began to take hold, the managers saw profit arising from workplace specializations, clear hierarchical lines of

¹¹⁷ Lauren Benton used the term "cultural intermediaries" to describe the residents of European colonies who used their knowledge to adjust European laws to suit local cultural precepts and practices. See: Lauren Benton, LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY, 1400-1900, 3-9 (2002).

authority, and more precise monitoring of manufacturing processes. They also realized that the new regime eroded longstanding personal hierarchies and generated friction between staff. They recalled that singing competitions, joint vacations and dinners with the staff made them feel sentimentally connected and responsible for staff welfare. Although they did not make a conscious decision to replace sentiment with rules, their reliance on rule-based order undermined the collective sense of purpose and solidarity in the workplace.

Reflecting on eight years of reform, the managers concluded that their identity within the firm had slowly changed from “father” of a corporate family to professional manager. The BPMs gave them a new set of values which changed the way they conceptualized their roles within the firm. As the relational connections with staff eroded, the managers increasingly acted out the part of modern, cosmopolitan professionals. Over time they began to associate with other professional managers in tennis clubs and golf ranges, send their children to international schools, vacation overseas, and generally assume the lifestyle of the expatriate business community. To reinforce this identity shift, they distanced themselves from the “backward” working practices and unfashionable traditional lifestyle associated with domestic Vietnamese firms. Their new identity not only shaped who they were, it also influenced what they should do.

This identity shift was not complete. The managers blurred the organizational rules to favor family members. For example, performance standards were subtly adjusted to ensure that family members progressed rapidly through the firm, even though the rules were rigorously enforced for everyone else. Trust and solidarity among close family members subordinated objective rules and hierarchies. The managers maintained parallel reporting systems; one based on hierarchical rules and job descriptions and the other on personal networks. Which system prevailed depended on the type of relationship between the manager and staff member.

What this study shows is that the managers oscillated between multiple identities. The foreign investor introduced the managers to the world of cosmopolitan business professionals. As global professionals, the managers not only gained access to the knowledge required to understand the new corporate governance system, they also assumed an identity that distanced them from other staff members. The managers did not entirely discard their identity as relational managers. It suited them to flexibly draw on a rich set of resources to deal with, and buffer

themselves from both the corporate governance rules and personalistic demands.

C. SUNGLASSES TRADERS CASE STUDY

1. BACKGROUND PROFILE

When the Vietnamese economy opened to international trade after 1986, residents of Lich Dong village in northern Vietnam began manufacturing and trading in sunglasses.¹¹⁸ Over the last 25 years their business networks have rapidly expanded to most urban centers in Vietnam. Villagers estimate that 80 per cent of sunglasses sold in Vietnam today originate from or are sold by Lich Dong villagers.

Six village clans control the manufacture and trade of sunglasses. Clan ties are continually reinforced through events such as weddings, funerals, and other social occasions. Each year during January, sunglasses traders from all over Vietnam converge on the village to celebrate *Tet Lenh* and renew family bonds, exchange market information, and cement the familial connections that bind the distribution networks.

2. INTERPRETIVE NARRATIVES

Clan heads act like nodes in a network in formulating and promoting foundational narratives. Their storylines legitimize village traditions by stressing their ancient historical origins. Traders are portrayed as *quan tu*, literally meaning gentlemen, but in practice denoting honourable and trustworthy people. Along with other neo-Confucian ideas, this term was imported from China centuries ago to describe morally superior, self-perfected mandarins. The clan heads conjured up this historical association to invest contemporary trading practices with moral legitimacy, ignoring the fact that Confucian gentleman scorned commerce. The narratives also stripped many village traditions of their original meaning and reconfigured them for contemporary trading conditions. For example, the initial purpose of the *Tet Lenh* celebration – to spiritually renew the village – was transmogrified into commercial renewal for the trading networks.

¹¹⁸ See Ho Khanh Thien, *Sieu Thi Kinh Lang (Glasses Supermarket Village)* NDCSA (Dec. 21 2007) available at <http://www.ndcsa.com/oopnuke.asp?module=news&do=t&id=1966>.

Traders are proud of their connections to their home-village and repeat storylines that emphasize their village ancestry. They want others to know that they still remember their historical roots and follow the spirit or “sentiment of their home-village” (*tin* *cam que huong*). Over successive interviews it became clear that traders regard village traditions not merely as commercially appropriate modes of regulation, but as the ultimate source of ethical authority.

Traders were adamant that family and village came first and insisted there was no distinction between the mutual assistance (*tuong tro lan nhau*) given to members of trading networks and the sentiment binding their clan relationships. There was more to the connection with the home-village (*que huong*) than clan bonds. Traders fastidiously attended to ancestor worship and village deities and other rituals that remained mysterious or spiritual.¹¹⁹ They invoked the semi-mystical notion of *Dai Doan Ket* that literally translates as “great unity”, but means a shared spiritual destiny, to explain their attachment to the village. This feeling of belonging to a greater spiritual entity animated reverential feelings that seemed to forge a sense of solidarity and shared purpose—a collective identity.

This insistence on spirituality appears inconsistent with the traders’ involvement in smuggling and counterfeiting operations.¹²⁰ After first denying any involvement in illegal activities, traders later admitted that they use smuggled components and appropriate international designs and brand names. By way of justification, they emphasized the *uy tin* (moral legitimacy)¹²¹ of village regulatory traditions, which they clearly considered semi-divine, as well as instrumentally effective.

In contrast, the traders were cynical about the state inspectors who were responsible for enforcing anti-smuggling, industrial design, and trademark laws. Many traders spent the high-socialist period earning a precarious living in the underground economy and remained at the periphery of the state-backed economy. This experience, reinforced by

¹¹⁹ This phenomenon has been observed in the general literature. See: VUONG TRAN QUOC, VAN HOA VIET NAM, TIM TOI VA SUY NGAM (VIETNAMESE CULTURE, FINDINGS AND THINKING), (2003); LE NGOC TRA, ed., VAN HOA VIET NAM: DAC TRUNG VA CACH TIEP CAN (VIETNAMESE CULTURE: SPECIALTY AND APPROACH), 49–50 (2003).

¹²⁰ For evidence that the village is involved in smuggling, see the website of the Chi Cuc Quan Ly Truong (Market Management Authority), *Sống chung với hàng giả* (Living with Counterfeit Goods) (Dec. 11 2005) <http://www.qlt-hanoi.gov.vn/modules.php?name=News&file=article&sid=59>.

¹²¹ For a discussion about the historical origins of *uy tin*, see Stephen Young, *Unpopular Socialism in United Vietnam*, 22 (2) ORBIS, 227, 228 (1977).

demands for bribes by state officials, excited a deep skepticism about state authority claims. The traders' negative opinion of the state spilled over to influence their interpretation of BPRs, such as intellectual property rights.¹²²

The traders selectively responded to state laws. They dismissed state criminal laws that prohibited smuggling as vehicles for state corruption, but their interpretation of BPRs such as industrial designs and trademarks was more complex. Like the construction managers, the traders sought to discredit the BPRs by associating them with foreign interests and stressing their irrelevance to village regulatory traditions. The IP laws were introduced to protect foreign investors, they claimed, and unreasonably prevented domestic companies from using foreign know-how and designs to compete.

Rather than rejecting IP laws outright, the traders sought to resignify them. They appropriated the glamour and status associated with international industrial designs and trademarks, while rejecting the normative idea that IP laws extend legal protection to property rights. Some successful city-based traders now advertise their products with trademark logos without formally registering these devices. While rejecting the notion of state-backed property rights, the traders use unregistered trademark logos not just for advertising, but also to assert an entitlement over products. The operational meaning of IP laws was influenced by what the traders thought they could achieve. Rights protection seemed expensive with few compensating benefits, whereas the unregistered trademark conferred international glamour and modernity, an image that gave their products a competitive advantage in a fashion conscious market.

What stands out in this study is the strength and cohesiveness of the village identity and the regulatory capacity of the village trading networks. Even traders who had lived for decades in cities defined themselves by reference to village regulatory traditions. Regulations emanating from within the village were accepted without question while those from the outside were assessed according to their congruence with village traditions.

¹²² To comply with TRIPS, Vietnam enacted the Intellectual Property Law 50 in 2005 and Decree 103 ND-CP detailing and implementing IP Law 50 in 2006.

VII. THE SOCIAL CONSTRUCTION OF BPRS

A. PRAGMATIC LEGITIMACY

The case studies show that the different aspects of legitimacy – pragmatic, normative, and cognitive – do not operate in isolation from each other, but rather collectively steer regulatory responses to particular BPRs. A key finding is that the cost–benefit calculations underpinning pragmatic legitimacy were conceptualized by network members within a broader normative and cognitive framework. Pragmatic legitimacy is “socially embedded”.¹²³

The competitive markets promised by tendering laws, for example, offered few tangible benefits for the construction managers, who looked to cadre capitalist networks for profit and status. The footwear managers, on the contrary, attributed profit increases to the imported logistics management regime. But this conceptualization of pragmatic legitimacy would not have been possible without the associated cognitive shift to professional business managers.

The sunglasses traders considered state protection for intellectual property expensive, time consuming, and of little benefit. It was easy for them to quantify the registration fees and bribes involved in dealing with state officials. In comparison, transactions brokered through familial relationships were considered low cost and high benefit, because no cost was attached to maintaining the family ties that cemented these networks. Traders conferred pragmatic legitimacy on international trade marks, but considered state protected property rights fundamentally incompatible with village norms and practices.

B. NORMATIVE LEGITIMACY

Perceptions of normative legitimacy played a central role in shaping how the construction managers and sunglasses traders responded to BPRs. Both groups were convinced of the moral superiority of their networks – a view that was reinforced by their networks’ profitability. For example, the construction managers emphasized the moral perfection

¹²³ This finding concurs with a long established economic literature about “socially” embedded economic behavior. See generally Mark Granovetter, *The Impact of Social Structure on Economic Outcomes*, 19 (1) J. ECO. PERSPECTIVES, 33–50 (2005).

of the New Class, while the sunglasses traders treated village regulatory traditions as spiritual guidelines that transcended secular laws.

Compliance with the tendering laws seemed to present a dilemma for the construction managers, because as members of the New Class they were supposed to scrupulously obey state laws. But they did not see any contradiction. They identified closely with provincial officials who supported laws that promoted “state economic management” – a regime that gave them broad discretionary controls over the market. But they did not identify as closely with central level authorities who supported the BPRs that promoted market-competition and disrupted cadre capitalist networks. In contrast, the sunglasses traders did not identify with any state authorities and consequently felt no compulsion to follow any state laws, which were considered tainted by their association with a venal and predatory state.

Unlike the other businesses, the footwear manufacturers responded positively to BPMs. They adopted the logistics management regime and supported BPRs that aimed to make tax collection fairer, protect property rights, and introduce a credible dispute resolution system.¹²⁴ For them, BPRs offered an orderly and predicable alternative to party and village relational networks.

C. COGNITIVE LEGITIMACY

Cognitive legitimacy plays a dual role in orienting attitudes toward BTMs. The case studies show that it has a semantic function in determining whether recipients are likely to understand and learn from BTMs. The footwear managers were more likely than the sunglasses traders, for example, to comprehend how BPMs are understood in global legal discourse.

In addition, cognition influenced perceptions about pragmatic and normative legitimacy. It is possible for recipients, such as the construction managers, to read and understand laws based on BPMs and yet still consider them inefficient, immoral, or irrelevant.

It is the ongoing personal relationships among network members that generated shared cognitive approaches to BPRs. Members of the network are not just trading information with each other, but they are

¹²⁴ For a more detailed explanation, see John Gillespie, *Concepts of Law in Vietnam: Transforming Statist Socialism*, in, *ASIAN DISCOURSES OF RULE OF LAW*, 146–182 (Randall Peerenboom ed. 2006).

synchronising with each other psychologically. Because they live significant parts of their lives together, members influence each other to act for collective interests. Although members sometimes pursue their own economic objectives, in general they work toward common goals and repeat “creation myths” that stress common objectives.

The creation myths distilled and simplified the complex ideas circulating within the networks by clustering knowledge and making economic problems seem coherent and amenable to particular modes of regulation. The construction managers, for example, emphasized their entitlement to state property and discredited BPRs promoting market access for private sector competitors. They believed that the regulatory system reached its zenith with the socialist state and its utopian vision for society. This regulatory ideal differs markedly from liberal notions of legal modernization promoted by BPMs, because the ultimate purpose is not law’s victory but rather party supremacy and the subordination of law to policy.

The sunglasses traders rejected both a socialist and a liberal regulatory role for law. Their “creation myths” stressed the need for familial connections and village solidarity to protect the group from a venal state. Only the footwear managers developed narratives that expanded their understandings beyond their existing set of knowledge. Their dominant narrative changed from emphasizing the importance of managing relational connections to one that stressed the nexus between legal hierarchies and property rights, competitiveness and profitability. This transformation involved a cognitive shift from relational to legal regulation. In each case what seemed to matter was not so much attitudes to specific BPMs, but rather the legitimacy of particular modes of regulation, more particularly cadre capitalist networks, personalistic village networks and law-based regulation.

D. UNDERSTANDING THE ROLE OF COLLECTIVE IDENTITY IN SHAPING REGULATORY PREFERENCES

Another significant finding is that closely knit networks gave members meaning and purpose – a sense of identity – that strongly ordered responses to BPRs. One factor stood out in determining the strength of the network identities; it was the boundary narratives that members used to differentiate themselves from outsiders. Construction managers, for example, demonized private competitors as free market opportunists trying to prise open state tendering regimes. They

complained that private sector competitors were predominantly motivated by self-interest and would not voluntarily sacrifice profit to realize party socio-economic objectives such as building an internationally competitive construction industry and maintaining stable employment. These assertions of moral perfection were not only used to legitimize their status and entitlements, but also the boundaries that excluded private competitors. From this co vantage point, the managers thought that laws promoting competitive markets challenged their political, economic and political powers, but equally, undermined their identity as members of the New Class.

Like the construction managers, the sunglasses traders maintained strong boundary narratives. Yet unlike the construction managers, they defined their identity in terms of kinship and a spiritual connection to the home-village. They did not identify with state authorities and consequently viewed most state laws as a challenge to their identity.

The footwear managers, on the other hand, were less convinced that their network was cohesive and morally superior. They did not express the same level of antagonism to state regulators and competitors, and their narratives were less preoccupied with strengthening group boundaries and identities. Their comparatively weak boundary narratives enabled them to experiment with a new professional identity that seemed to offer access to a more desirable and profitable cosmopolitan world. This new identity smoothed interaction with other cosmopolitan professionals and opened the managers' cognitive horizons to the benefits of corporate governance and the orderly legal world promised by BPMs. Even so, without the tutelage and encouragement from the foreign investor who dominated this network, it is unlikely that they would have made this identity shift. Even with his assistance this shift was incomplete. The managers continued to draw flexibly on their identity as relational managers to muster the resources to deal with familial demands for preferential treatment.

To summarize, what seemed to distinguish strong and weak collective identities were the boundary narratives that established who was in and who was out of the network. The class boundaries defining the construction managers and the familial boundaries circumscribing the sunglasses traders were more rigid and determinative than the rather loose socio-economic boundaries encircling the footwear managers. The boundary narratives were not a description of fact, but rather a way of constructing what was legitimate and illegitimate. In this way strong

boundary narratives clearly defined the differences between regulatory orders and bound those identifying with the “in” group to follow a prescribed set of norms and rules such as BPRs.

E. MANAGING REGULATORY CHANGE WITH MULTIPLE IDENTITIES

So far I have focused on how boundary narratives influence the interpretation of BPRs. This section takes the argument further by using collective identity as a framing concept to examine how network members use multiple-layered identities when responding to BPRs.

Two theoretical models are used to explain how collective identities shape responses to external forces such as BPRs. Anthony Giddens¹²⁵ popularized the notion that multiple identities develop in response to regulatory complexity. In his view, the social complexity generated by modernity has compelled people to step outside traditional identities and experiment with new concepts of the self. This complexity model connects with system theory, which also explains epistemic changes within social sub-groups as responses to complex regulatory environments.¹²⁶ More importantly for this discussion, the complexity model also offers reasons for the convergence of regulatory systems brought about by globalization.

The second model rests on the insight that complexity generates intergroup competition for resources which strains intragroup relations.¹²⁷ Rather than stimulating a search for new identities, according to this competition model, complexity might have the opposite effect and spark defensive reactions that strengthen collective identification.¹²⁸ It suggests reasons why globalization produces both regulatory convergence and divergence. The case studies considered in this article support both models.

As members of the New Class, the construction managers enjoyed access to political power and economic networks that shielded

¹²⁵ See ANTHONY GIDDENS, *MODERNITY AND SELF-IDENTITY: SELF AND SOCIETY IN THE LATE MODERN AGE*, (1991). Also, see: KENNETH GERGEN, *THE SATURATED SELF: DILEMMAS OF IDENTITY IN CONTEMPORARY LIFE* (1991).

¹²⁶ See Anne Friederike Muller, *Social Anthropology and Niklas Luhmann's Concept of Society*, in LUHMANN ON LAW AND POLITICS: CRITICAL APPRAISALS AND APPLICATIONS, 174–175 (Michael King & Chris Thornhill eds., 2006).

¹²⁷ See Dina Okamoto, *Toward a Theory of Panethnicity: Explaining Asian American Collective Action*, 68 AM. SOCIO'L REV., 811–42 (2003); Dina Okamoto, *Institutional Panethnicity: Boundary Formation in Asian-American Organizing*, 85 (1) SOCIAL FORCES, 1–25 (2006).

¹²⁸ See Dina Okamoto, *supra* note 127, at 811–42.

them from the market competition unleashed by BPRs. But of equal importance, membership also provided the normative and epistemic resources to organize a coherent, self-monitoring and enforcing regulatory network. Since the construction groups performed functionally equivalent regulatory roles to BPRs, the construction managers had few pragmatic reasons to search for new identities to deal with the complexities generated by globalization.¹²⁹

But there was more to membership of the New Class than economic gain. The managers wanted to be members of a valuable group and to know that they were of value to the group. Membership conveyed high social status and a sense of worth that overshadowed the economic gains.

The footwear managers, on the other hand, were exposed to the full force of global competition without the protection of the New Class. They were torn between two contradictory ways of ordering the world. As relational managers they lacked the cognitive resources to understand and implement the imported logistics management system. In the process of acquiring this knowledge, they gradually assumed the identity of cosmopolitan professionals, and moved into a globalized world that assumes law and legal hierarchies provide the ultimate regulatory solutions. As Jacques Lucan observed, members of social groups look for consistency and unity in the social space in which they live; they become dissatisfied and question their identity when they perceive conflict between their social constructions and daily lives.¹³⁰ Once the construction managers entered the global trading world they needed a new identity to minimize conflict with the cosmopolitan ideals and practices circulating in transnational business networks. Becoming global professionals not only furnished knowledge about BPMs, it also allowed the managers to engage more fruitfully with other cosmopolitan traders. They responded to regulatory complexity by expanding their mental spaces and developing a new identity.

¹²⁹ For how long the party and state can shield the New Class from international and domestic competition remains a hotly debated issue in socialist Asia. Recent data from Vietnam suggests that some cadre capitalist regulatory networks have reaped the efficiency gains associated with partial privatization without fundamentally disrupting party and state control. *See* Perkins & Vu Tahn Tu Anh, *supra* note 95, 17-18. *Also see* Eric Ramsetter & Phan Minh Ngoc, *Changes in Ownership and Producer Concentration after the Implementation of Vietnam's Enterprise Law*, (Working Paper Kitakyushu International Centre for the Study of East Asian Development, 2007).

¹³⁰ *See* RENATA SALECL, *CHOICE*, 21-32 (2010).

But this is only part of the story. The managers did not entirely abandon their identity as relational managers. They needed to retain this guise to deal with relational networks and maintain their position in Vietnamese society. They oscillated between the relational and cosmopolitan identities to deal with the different regulatory environments in which they lived.

The sunglasses traders were also exposed to international competition, but rather than experimenting with new collective identities to deal with complexity and competition, they drew upon a self-referential village identity for strength. In addition to cementing profitable business networks, the village identity also furnished the norms and cognitive assumptions the traders used to reject and resignify BPRs. In particular, village spirituality, an important component of village identity, provided comfort and meaning in a stressful and complex trading environment—a phenomenon that is increasingly common in Vietnam.¹³¹ This response by the traders to regulatory complexity is consistent with the competition model.

The sunglasses traders' strong collective identity came at the cost of regulatory inflexibility. Traders had few opportunities to pick and choose between internal and external (to the village) norms and practices. This raises the question whether the children of the sunglasses traders who live in urban centers will retain strong links to the home-village. Interviews suggest that the children are drifting away from their village identity as they try to integrate into a more complex urban world.¹³² Further research is required to determine whether the new identities are sympathetic to the legal order promised by BPRs.

The analytical models used in this section furnish insights into the complex and fragmented responses to BPRs that are observed in developing countries such as Vietnam. They show that economic actors with strong collective identities and access to state power and resources, such as cadre capitalists, can deal with the complexities generated by BPRs. From this privileged position it is possible to engage in international transactions without adopting new identities. One possible

¹³¹ See PHILIP TAYLOR, MODERNITY AND RE-ENCHANTMENT: RELIGION IN POST-REVOLUTIONARY VIETNAM, 22-28 (2007); Kerstin Endres, *Modernities: Mediumship and Ritual Performativity in Late Socialist Vietnam*, in MODERNITY AND RE-ENCHANTMENT, 201-205 (Philip Taylor ed. 2007).

¹³² During interviews, some sunglasses traders complained that their children were drifting away from the personal relationships that sustain the village identity.

exception is when cadre capitalists decide to globalize their operations by establishing branches in foreign countries.¹³³

It is more difficult to generalize about the numerous and more diverse medium-sized domestic firms operating outside the New Class. Nevertheless, the footwear study (and the computer manufacturing case study developed by the author)¹³⁴ suggests that in some globally exposed industries, traditional business methods struggle to deal with competitive pressures. Managers of these firms need to understand BPMs and engage with international traders. During this process they acquire a new cosmopolitan identity, without entirely discarding their identity as relational managers. Further research is required to ascertain to what extent this shift is possible without the intercession of cultural intermediaries to translate foreign precepts and practices into a cognizable localized format.¹³⁵ Research elsewhere in Asia intimates that imported knowledge does not readily spill over from foreign investors to domestic firms without cultural intermediaries to explain the new ideas and facilitate a shift in cognitive understanding.¹³⁶

The sunglasses case study demonstrates the potential for small scale traders to construct a parallel regulatory system to state law and BPRs.¹³⁷ Their village identity provided an all-embracing and plausible worldview that provided an alternative to regulation by BPRs and a more cosmopolitan outward looking identity.

¹³³ What little research exists on this point suggests the cadre capitalists can transfer their business networks and retain their collective identities in countries that do not vigorously enforce commercial and criminal laws. See ADRIAN HEARN & JOSE LUIS LEON MANRIGUEZ EDS., *CHINA ENGAGES LATIN AMERICA: TRACING THE TRAJECTORY* (forthcoming).

¹³⁴ See John Gillespie *Re-Signifying Global Scripts in Networks of Meaning in LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSES OF LEGAL TRANSFERS* (John Gillespie and Pip Nicholson eds., forthcoming).

¹³⁵ My fieldwork also studied a Vietnamese computer manufacturing group that was exposed to global competition. Without a cultural intermediary, the managers of this group nonetheless made a similar, if less pronounced, identity shift to the footwear managers. See description of fieldwork, *supra* note 14.

¹³⁶ Researchers in other disciplines have observed the importance of personal connections to the transfer of knowledge between foreign investors and domestic firms in developing Asia. See Frederic C. Deyo & Richard F. Doner, *Dynamic Flexibility and Sectoral Governance in the Thai Auto Industry: The Enclave Problem*, in *ECONOMIC GOVERNANCE AND THE CHALLENGE OF FLEXIBILITY IN EAST ASIA*, 107-136 (Frederic C. Deyo, Richard F. Doner & Eric Hershberg, eds. 2001).

¹³⁷ My field work studied two other networks of small businesses, (i.e. cooper wire and battery traders) who also responded to BPMs by retreating into self-referential traditional identities. See description of fieldwork, *supra* note 14.

These findings suggest the need to rethink some long standing developmental tropes. Global regulatory complexity does not invariably compel firms to outgrow relational connections and embrace the abstract order promised by BPRs. Alternative identities, at least in the medium term, provide access to the economic and cognitive resources required to resignify or entirely ignore BPRs.

VIII. CONCLUSION

In this article I suggest reasons why regulatory sub systems in socialist transforming Asia are not uniformly converging with BPMs. Research findings demonstrate the need to decenter the analysis of legal globalization to take into account the myriad interpretive groups, state, non-state and hybrid, which collectively steer the local adaption of BPMs. But more importantly, they suggest the need to look beyond cost-benefit analysis in evaluating local responses to BPMs. Expectations of material benefit are contextualized and strategized within broader normative, cognitive and identity frameworks.

The legitimacy framework proposed in this article offers a nuanced way to understand the fragmented domestic responses to BPMs. Differences in the distribution of knowledge and power between central elites and business networks have given rise to multiple epistemic communities, each with their own understandings about the nature of regulatory problems and the most appropriate responses to BPMs.

Collective identity extends the analytical framework by showing how boundary narratives, which define who is “inside” or “outside” a group, shape legitimacy expectations. There are two aspects to this phenomenon. One, the legitimacy of BPMs is determined by the relationship of regulatory authorities to identity groups. The construction managers, for example, identified more strongly with provincial state officials who opposed market-based BPRs than with the central level authorities who supported such reforms. Conversely, the sunglasses traders did not feel any compulsion to follow BPRs because they were antagonistic toward both central and provincial authorities.

Two, members of tightly knit collective identities, such as the sunglasses traders, have little effective choice about following regulatory regimes, not only because the price of non-compliance with village regulatory traditions is unacceptably high, but also because competing regulatory systems (such as BPRs) challenge deeply entrenched spiritual understandings of who they are and what they should be doing. A more

loosely structured collective identity, such as the footwear managers, generates less emotional attachment and allows members the flexibility to explore new modes of regulation.

The research findings also provide answers to the important ancillary question: how do layered identities influence responses to BPMs? Consider the footwear managers. At the same time they acted out the role of cosmopolitan professionals, they remain tied to their relational identity which enabled interaction with family and friends. The managers drew from these multi-layered identities a wide repertoire of responses to the different problems arising from the relational and cosmopolitan worlds. Rather than suggesting the emergence of a cosmopolitan utopia where traders gravitate toward a globalized regulatory world, the findings show that the managers could not escape the emotional and economic ties to the domestic relational world.

One consequence of multi-layered identities is that BPMs take on different sets of meanings in different interpretive contexts. When recipients move between identities, they generate new interpretations that do not entirely capture the intended meaning of BPMs, but rather paraphrase this meaning. Recipients cannot entirely escape the cognitive assumptions ordering their initial identities. Rather than forming fixed responses, recipients constantly reconcile the meaning of BPMs as they oscillate between different interpretive contexts.

The findings further show that the interpretation of BPMs is constructed in the context of structural inequalities of power. Those with access to political and economic power have more say in steering interpretations of BPMs to suit their interests. Especially in socialist Asia, those on the periphery of state power have few opportunities to influence state interpretations and must either negotiate market conditions with state regulators or retreat into defensive collective identities.

Looking forward it is worth reflecting on what factors might build standardized interpretations of BPMs that reflect local regulatory practices while overcoming market pathologies such as anticompetitive and discriminatory practices. Solutions to these problems are rarely found within domestic regulatory practices and governments are compelled to consult external experiences such as BPMs. But as this article has shown there are limits to the effectiveness of law reforms based on BPMs. Attempts by governments in socialist transforming Asia to create cohesive and standardized laws that are informed by BPMs lack meta-level concepts of law, state, market or even culture that can act as

social unifiers that universalize legal meanings.¹³⁸ Broadly based appeals to performance legitimacy and nationalism do not seem to perform this task.

Findings in this article point to integration taking place on the level of social interaction and dialogical engagement between members of different regulatory sub-groups. An emergent property of these dialogical exchanges is convergence toward standardised interpretations of legal and regulatory meaning. Left to social praxis, this process is likely to take many decades. International development agencies can play a useful role in encouraging dialogical exchanges among key business groups that might promote standardized interpretations of laws. But they need to temper their expectations about transferring BPMs into this region with the knowledge that globalization and endogenous factors are likely to continue generating multiple identities that interpret laws from myriad perspectives.

¹³⁸ For a discussion about these issues in relation to China see Anne Marie Brady *Mass Persuasion as a Means of Legitimizing and China's Popular Authoritarianism* 53 (3) AM. BEHAVIOURAL SCIENTIST 434 (2009); Randall Peerenboom, *supra* note 31, at 29-50. For a discussion about Vietnam see John Gillespie, *Concept of Law in Vietnam: Transforming Statist Socialism in ASIAN DISCOURSES OF RULE OF LAW* 154-155 (Randall Peerenboom ed., 2004).