THE JURIDIFICATION OF CAUSE ADVOCACY IN SOCIALIST ASIA: VIETNAM AS A CASE STUDY

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I. INTRODUCTION

In many post-colonial Asian societies law is the language of the state, and lawyers actively construct this language and police its boundaries.[1] Socialist Asia has a different legal history.[2] Engineers,

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1 *See generally* YVES DEZALAY & BRYANT G. GARTH, ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE 177–211 (John M. Conley & Lynn Mather eds., 2010).

rather than lawyers built the state. There were no lawyer revolutionaries like Gandhi to inspire future generations of cause advocates and no memory of courts protecting civil rights to guide them. Socialist revolutionaries not only expelled the colonial regime, but also colonial legalism. They discredited colonial notions such as private rights and independent courts to clear space for Leninist organizational structures that subordinated the legal system to the Communist Party.[3] This article argues that despite decades of legal reform, the socialist legacy continues to mediate the way cause advocates use the law in Socialist Asia.

Through a process of juridification—a shift toward governance through legal rules and legal institutions[4] —law is playing an increasingly prominent role in resolving socio-economic disputes throughout East Asia.[5] Research in socialist Asia suggests, however, that rights-based law (liberal legalism) is not the driving, or in some cases even a significant, force behind juridification.[6] To understand how lawyers and other cause advocates in Socialist Asia protect dissidents charged with undermining state or social orthodoxies, it is necessary to look beyond civil rights and formal legal institutions. This analytical frame needs to locate cause advocacy within a broader context of complaint and dissent.[7]

Attempts to understand cause advocacy in Socialist Asia invariably refer in some way to legal boundaries separating state and non-state power.[8] For example, much analysis focuses on shortcomings

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2 *See* RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 343–83 (2002) (discussing China); JOHN GILLESPIE, TRANSPLANTING COMMERCIAL LAW REFORM 54–62 (2006) (discussing Vietnam).

3 *See* PEERENBOOM, *supra* note 2, at 43–49; GILLESPIE, *supra* note 2, at 55–62, 74–80.

4 See Gunther Teubner, *Juridification: Concepts, Aspects, Limits, Solutions*, *in* JURIDIFICATION OF SOCIAL SPHERES 3, 3–5 (Gunther Teubner ed., 1987), for a discussion about juridification.

5 *See generally* PUBLIC INTEREST LITIGATION IN ASIA (Po Jen Yap & Holning Lau eds., 2011).

6 *See* Terence C. Halliday & Sida Liu, *Birth of a Liberal Movement? Looking Through a One-Way Mirror at Lawyers' Defence of Criminal Defendants in China*, *in* FIGHTING FOR POLITICAL FREEDOM 65, 65–108 (Terence C. Halliday et al. eds., 2007); Hualing Fu & Richard Cullen, Weiquan *(Rights Prosecution) Lawyering in an Authoritarian State: Building a Culture of Public-Interest Lawyering*, 59 CHINA J. 111, 111–28 (2008); Randall Peerenboom, *Searching for Political Liberalism in All the Wrong Places: The Legal Profession in China as the Leading Edge of Political Reform?* (La Trobe Univ. Sch. of Law, Working Paper No. 2008/7, 2008).

7 *See* Austin Sarat & Stuart Scheingold, *Bringing Cultural Analysis to the Study of Cause Lawyers: An Introduction*, *in* THE CULTURAL LIVES OF CAUSE LAWYERS 1, 1–24 (Austin Sarat & Stuart Scheingold eds., 2008).

8 *See, e.g.*, Sida Liu & Terence C. Halliday, *Political Liberalism and Political Embeddedness: Understanding Politics in the Work of Chinese Criminal Defense Lawyers*, 45 LAW & SOC'Y REV. 831, 831, 834, 850 (2011).

in the Asian legal system which prevents lawyers from asserting civil rights against the state. A difficulty with this conceptualization is that legal images of state, citizenship, and civil society do not necessarily correspond to the mental maps people construct around complaint and dissent. An alternative approach that avoids privileging legal imagery is to examine the sum of people's perceptions about the range of social action that is available in a particular time and place.[9] This approach emphasizes the social construction of protest without presupposing liberal legal (or other) types of complaint and dissent. It opens discussion to the ways that cause advocates innovate within, and are constrained by, the different regulatory modes that govern the "regulatory space" in which they operate.[10]

Narratives are useful in understanding how cause advocacy is understood in particular contexts. Communicative acts do not just passively reflect what people think about cause advocacy; they actively shape behavior—they have a regulatory function.[11] Narratives can work to extend the life of individual acts of resistance and can construct shared social understandings about the nature of disputes and the most appropriate regulatory response.[12] To gain a clearer understanding about the ways narratives shape cause advocacy, we need a theory that explores the patterning of social connections among individuals and groups. Systems theory is promising because it attempts to accommodate localized and dynamic understandings of regulatory narratives.

Systems theorists argue that societies comprise different regulatory subsystems that come together to steer behavior in particular regulatory spaces, such as cause advocacy. [13] For example, state agencies such as courts promote a different regulatory narrative for resolving land

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[9] *See generally* John Gaventa, *Levels, Spaces, and Forms of Power: Analysing Opportunities for Change*, *in* POWER IN WORLD POLITICS 204, 204–24 (Felix Berenskoetter & M. J. Williams eds., 2007); Kevin Hewison, *Political Space in Southeast Asia: 'Asian-style' and Other Democracies*, 6 DEMOCRATIZATION 224, 224–25 (1999).

[10] "Regulatory space" is an analytical construct whose boundaries are defined by the events or conduct being regulated. *See* Leigh Hancher & Michael Moran, *Organizing Regulatory Space*, *in* CAPITALISM, CULTURE AND ECONOMIC REGULATION 271, 277 (Leigh Hancher & Michael Moran eds., 1989).

[11] *See* Julia Black, *Regulatory Conversations*, 29 J.L. & SOC'Y 163, 174 (2002).

[12] *See generally* Patricia Ewick & Susan Silbey, *Narrating Social Structure: Stories of Resistance to Legal Authority*, 108 AM. J. SOC. 1328, 1328–72 (2003).

[13] See Niklas Luhmann, *Operational Closure and Structural Coupling: The Differentiation of the Legal System*, 13 CARDOZO L. REV. 1419, 1419–55 (1992), for a general overview about systems theory. *See generally* Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 11, 11–32 (1998).

disputes than farmers. As this article demonstrates, even in authoritarian states, government narratives cannot entirely displace competing regulatory narratives. Instead regulatory narratives interact and co-evolve with each other in complex ways.[14] The negotiations and discussions that promote co-evolution require the development of effective interpersonal networks that facilitate sustained and unmediated exchanges. Co-evolution also requires a common conceptual language that enables different regulatory narratives to communicate with each other.

Systems theory advances our analytical framework by emphasizing the importance of the forums in which cause advocacy takes place. It focuses attention on the ground rules governing whom is entitled to participate and what they are allowed to say. It also furnishes insights into why some narratives promoted by cause advocates get built into state policies and why others do not.

II. THE REGULATORY FRAMEWORK GOVERNING LAWYERS IN VIETNAM

Before turning to the narratives that regulate cause advocacy, it is instructive to set the scene by briefly exploring the legal and political context in Vietnam.

A. PARTY DISCOURSE ABOUT THE ROLE OF LAW

During the watershed Sixth Communist Party Congress in 1986, Truong Chinh, the party secretary, argued that the state should govern using laws rather than administrative edicts.[15] For the previous forty years, the party-state ruled primarily through a mixture of moral guidance and socialist legality (*phap che xa hoi chu nghia*)—a set of organizational principles imported from the Soviet Union.[16] During the Seventh Party Congress in 1991, the new party secretary, Do Muoi, introduced *nha nuoc phap quyen* (law-based state) into party discourse.

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[14] *See generally* LUHMANN ON LAW AND POLITICS (Michael King & Chris Thornhill eds., 2006).

[15] See John Gillespie, *Changing Concepts of Socialist Law in Vietnam*, *in* ASIAN SOCIALISM & LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE AND CHINESE REFORM 45, 53–54 (John Gillespie & Pip Nicholson eds., 2005), for a detailed account of legal reform in Vietnam. *See also* MARK SIDEL, LAW AND SOCIETY IN VIETNAM: THE TRANSITION FROM SOCIALISM IN COMPARATIVE PERSPECTIVE 1–18 (2010).

[16] See GILLESPIE *supra* note 2, at 54–60, 75–77 & 85–87, for a discussion about socialist law in Vietnam. *See also* Dinh Gia Trinh, *May Y Kien Dong Gop Ve Van De Bao Ve Phap Che* [*Some Opinion on the Protection of Legality*] 3 TAP SAN TU PHAP 20, 20–32 (1961).

In contrast to socialist legality, it advocated stable, authoritative, and compulsory law, equality before the law, and the use of law to constrain and supervise state enforcement and administration.[17]

In party discourse, *nha nuoc phap quyen* co-exists with, but has not displaced socialist legality.[18] The tensions generated by these incompatible doctrines continue to animate three core debates about the role of law in resolving socio-economic problems:

> How autonomous is law from party socio-economic policy?
>
> Should courts have discretionary powers to interpret the constitutionality of legislation?
>
> When should individual civil rights give way to the collective public good?[19]

A compromise has emerged within the party leadership that confines *nha nuoc phap quyen* doctrines to commercial transactions and civil relationships while socialist legality continues to govern civil and human rights.[20]

B. THE EMERGING ROLE OF PRIVATE LAWYERS

Before *doi moi* reforms gained momentum, lawyers were considered state officials and private legal practice was officially discouraged.[21] Defense lawyers were appointed in serious criminal trials, but lawyers otherwise played a marginal role in court and public life.[22] As the economy became more globally integrated, social demand for legal services increased the number of law firms and lawyers. By 2010, more than one thousand private law firms were established with 5,714

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17 *See* GILLESPIE, *supra* note 2, at 87–88.

18 *Id.* at 88–94.

19 *See* John Gillespie, *The Juridification of State Regulation in Vietnam*, *in* LEGAL REFORMS IN CHINA AND VIETNAM: A COMPARISON OF ASIAN COMMUNIST REGIMES 78, 81 (John Gillespie & Albert Chen eds., 2010).

20 Politburo Res. 48-NQ/TW (2005) applies liberal legalism to commercial but not to civil rights. *See* Interviews with forty lawyers, in Hanoi, Viet. (Mar., Apr., & Sept. 2010; Mar., Apr., Sept., & Oct. 2011; Apr. & Dec. 2012; Mar. & Nov. 2013), Nam Dinh, Viet. (Mar. & Apr. 2010), and Ho Chi Minh City & Can Tho, Viet. (Sept. 2010, Oct. 2011, Nov. 2013) [hereinafter Interviews with Lawyers].

21 *Id.*

22 Interview with Le Kim Que, President, Bar Ass'n of Hanoi, in Hanoi, Viet. (July 1998 & Sept. 1999). *See also* Bui Kim Chi, *Providing Legal Services in Vietnam: A Practitioner's Viewpoint*, *in* VIETNAM ASSESSMENT: CREATING A SOUND INVESTMENT CLIMATE 107, 107–14 (Suiwah Leung ed., 1996).

practicing and 2,771 probationary lawyers—a modest number for a country with over eighty-five million people.[23]

C. LEGAL EDUCATION

Compared to China, which has a relatively long tradition of teaching law,[24] legal education in Vietnam has a brief, discontinuous history.[25] The French operated a law college in Hanoi until the end of the colonial regime in 1954. After the American War (1965-1975), as it is known in Vietnam, legal education did not resume until 1979. By the end of 2008, Vietnam had more than twenty law schools producing approximately 14,000 law graduates annually.[26]

Legal theories and doctrines that provide the foundations of liberal legalism are not taught in the law schools.[27] Politburo Resolution No.08/NQ-TW 2002 spells out the party's approach to legal education. The key objective is to train graduates for government service. Law graduates are expected to have firm political views, high moral values, and professional attributes.[28] Equipping legal professionals with practical skills to provide legal services for clients is rarely mentioned as an objective. The Resolution confirms that liberal legalism is not on the minds of party leaders.

Universities dutifully follow the party line in teaching students. For more than a decade, law lecturers have used the textbook *Giao Trinh Ly Luan Nha Nuoc va Phap Luat* (Themes of State and Law) to explain the Vietnamese legal system.[29] Despite several revisions,[30] basic socialist concepts, such as the class-based nature of state and law and the notion

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[23] In comparison, there were 3,300 practicing lawyers in Singapore in 2006 in a country with 5 million residents. Interview with Tran Thi Quang Hong, Research Official, Inst. of Juridical Legal Research, Ministry of Justice, in Hanoi, Viet. (Mar. 2010).

[24] *See generally* Alison W. Conner, *China's Lawyers and Their Training: Enduring Influences and Disconnects*, *in* LEGAL REFORMS IN CHINA AND VIETNAM: A COMPARISON OF ASIAN COMMUNIST REGIMES 276, 276–77 (John Gillespie & Albert Chen eds., 2010).

[25] *See* Bui Thi Bich Lien, *Legal Education and the Legal Profession in Contemporary Vietnam: Tradition and Modification*, *in* LEGAL REFORMS IN CHINA AND VIETNAM: A COMPARISON OF ASIAN COMMUNIST REGIMES 299, 301 (John Gillespie & Albert Chen eds., 2010).

[26] *Id.*

[27] Interviews with Lawyers, *supra* note 20. *See also* Bui Thi Bich Lien, *supra* note 25, at 301.

[28] *See* Lien, *supra* note 25, at 301–04.

[29] GIAO TRINH LY LUAN NHA NUOC VA PHAP LUAT [TEXTBOOK ON THEMES OF STATE AND LAW] (Hanoi Law University ed. 2004) (Viet.); Interviews with Lawyers, *supra* note 20.

[30] *See* Lien, *supra* note 25.The first publication of this textbook was approved by the Ministry of Justice in 1989. It was then revised in 1992, 1994, 1996, 1998, and 2004. *See id.* at 316 n.26.

the law is an instrument of the party and state, remain unchanged.[31] Significantly for this discussion, the textbook does not treat the legal profession as a component of the legal system. Although law school curricula have changed to reflect private commercial and civil rights, they have not upgraded the role of lawyers as promoters and defenders of private legal rights.

D. BAR ASSOCIATIONS

Tight government controls over the formation of bar associations constrains the emergence of a unified and autonomous legal profession in Vietnam.[32] Although the Constitution 1992 and the Law on Lawyers 2006 provide for the establishment of national and provincial bar associations, in practice the government prevents these bodies from functioning as member-directed organizations. Organizations with the potential to mobilize resistance against the state have not been permitted to function independently from the party and state. [33] For example, attempts in 2008 by the Ho Chi Minh City Bar Association to distance itself from the Ministry of Justice came to an abrupt end when the Association's leadership was forced to resign in a party-orchestrated intervention.[34] Occasionally, bar associations stand up for their members against the government, but capitulation is the more typical response.[35]

E. STATE MANAGEMENT OF DEFENSE COUNSELS

A recent survey conducted by the United National Development Program (UNDP) implies that revisions to the Criminal Procedure Code 2003, which gave lawyers more opportunities to represent their clients,

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[31] *See id.* at 303–04. See generally Le Minh Tam, *Bo May Nha Nuoc Xa Hoi Chu Nghia* [*The Socialist State Apparatus*], *in* GIAO TRINH LY LUAN NHA NUOC VA PHAP LUAT [TEXTBOOK ON THEMES OF STATE AND LAW] 280–81 (Hanoi Law University ed. 2004) (Viet.), for an example of this instrumental approach to law.

[32] *See* Interviews with Lawyers, *supra* note 20.

[33] *Id. See generally* Carlyle A. Thayer, *Mono-Organizational Socialism and the State*, *in* VIETNAM'S RURAL TRANSFORMATION 39, 52 (Benedict J. Tria Kerkvliet & Doug J. Porter eds., 1995).

[34] *See* Interviews with Lawyers, *supra* note 20. *See also* Vi Tran, *Đoàn Luật Sư TP.HCM Đã Tạo Được Vị Thế* [*City Bar Association Has Created the Position*], PHÁPLUẬT (Dec. 15, 2008), http://phapluattp.vn/237170p0c1013/doan-luat-su-tphcm-da-tao-duoc-vi-the.htm.

[35] Interviews with Lawyers, *supra* note 20. *See also* Nghĩa Nhân, *Cơ Quan Điều Tra Không Nên Can Thiệp Hoạt Động Luật Sư* [*Agencies Should Not Interfere with the Investigation of Lawyers*], VNEXPRESS (May 20, 2003), http://vnexpress.net/gl/phap-luat/2003/05/3b9c7f76/.

have been undermined by state authorities.[36] Politburo Resolution No. 8 recognized the importance of involving lawyers in criminal trials and the revised Code enabled lawyers to raise legal arguments in court and examine witnesses and evidence.[37] Judges were also encouraged to allow lawyers to "protect the legitimate rights of concerned parties" and improve the "adversarial quality" of court proceedings. [38]In sum, legislative reforms appeared to give lawyers broad powers to use legal arguments to defend their clients.

Despite the reforms, the UNDP survey found that staff working for judicial agencies (*co quan tu phap*), such as judges, procurators, and police, denied lawyers adequate access to clients before trials in over seventy percent of cases.[39] In more than sixty percent of cases, judicial officials encouraged lawyers "to support their client spiritually, without a role to protect the client during the process of interrogation."[40] Bar associations control uncooperative lawyers by delaying approval to attend courts. The survey concluded that lawyers needed to cultivate *moi quan he tot* (good relationships) with judicial workers in order to effectively represent their clients.

Lawyers unsurprisingly view personal connections with power brokers in government agencies –such as judges, procurators, and police—rather than legal norms and procedures, as the most effective means of protecting their clients.[41] They do not behave like lawyers in non-socialist Asia, who act like double agents in protecting both clients and the law. Instead Vietnamese lawyers act like political agents because they leverage their relationships with state officials to protect clients. They soon realize that only modest achievements are possible with litigation and that legal activism without challenging the party-state can only carry public interest causes so far. Eventually, lawyers must decide whether to step outside the orthodox political space and use the courts as platforms for advocating civil rights.

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[36] *See* NGUYEN HUNG QUANG ET AL., UNITED NATION DEV. PROGRAM, REPORT ON THE RIGHT TO COUNSEL IN CRIMINAL LAW AND PRACTICE IN VIETNAM 35–45 (2010).

[37] Citizens have a constitutional right to legal representation in court that is stipulated in the Constitution. HIẾN PHÁP CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONSTITUTION] art. 132 (Viet.). *See* CRIMINAL PROCEDURE CODE, arts. 19, 43, 58 &132 (Viet.).

[38] *See* Law on Organization of the People's Courts, art. 9 (No. 33/2002/QH10) (Viet.).

[39] *See* QUANG ET AL., *supra* note 36, at 35–36, 45.

[40] *Id.* at 54–56.

[41] Interviews with Lawyers, *supra* note 20.

III. PUBLIC INTEREST LITIGATION IN VIETNAM

Given the tight state management of lawyers, it is surprising that public interest litigation occasionally surfaces in Vietnamese courts. Interviews reveal a complex range of reasons why lawyers take on social causes.[42] Although all the lawyers interviewed believed that the law should protect the poor and vulnerable, they expressed wildly different views about who are the poor and vulnerable and how to use courts to protect them.

A. CLASSIFYING CAUSE LAWYERS

It is possible to position cause lawyers along a continuum with those advocating *hoan thien* (improving) the legal system at one end and those promoting *cai cach* (reforming) the legal system at the other. *Hoan thien* implies small incremental and technical changes to the legal system while *cai cach* presents a more radical challenge, especially to socialist legality.[43] Naturally, there is considerable overlap between these approaches.

Hoan thien entails some form of engagement with state officials to make the existing system, including socialist legality, work more efficiently. In an economy dominated by state-owned and -controlled firms,[44] many prominent commercial lawyers owe their success to personal relationships with the party and state officials.[45] Not only are they reluctant to promote causes that might embarrass the party, they do not want to promote rights-based discourse that might disrupt lucrative personal networks by shedding light on the porous legal boundaries between state and society.[46] Lawyers from this group occasionally accept politically sensitive criminal cases, but are careful to base their

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[42] *Id.*

[43] This classification was synthesized from interviews with lawyers. Interviews with Lawyers, *supra* note 20. See Benedict J. Tria Kerkvliet, *Government Repression and Toleration in Contemporary Vietnam* 1–8 (City Univ. of H.K., Se. Asia Research Ctr., Working Paper No. 119, 2012), for a classification of dissidents in Vietnam.

[44] See Scott Cheshier & Jonathan Pincus, *Minsky au Vietnam: State Corporations, Financial Instability and Industrialisation*, *in* MINSKY, CRISIS AND DEVELOPMENT 188, 188–206 (Daniela Tavasci & Jan Toporowski eds., 2010), for a discussion about the economic control exercised by state owned firms.

[45] Interviews with Lawyers, *supra* note 20.

[46] *Id.* Sida Liu and Terrance Halliday also found an inverse relationship in China between support for state protected rights and the embeddedness of lawyers in the political system. *See* Halliday & Liu, *supra* note 6, at 83–86.

arguments on procedural issues that avoid challenging party narratives. In short, they advocate incremental improvements to procedural justice rather than state protection of civil rights—substantive justice.

Support for *cai cach* (reforms) comes primarily from foreign law firms and a handful of domestic law firms that work with international donors on law reform programs.[47] Foreign law firms want private legal rights to disrupt the state-supported relational networks that regulate domestic commerce,[48] but they are more interested in property rights than civil rights.

What unifies the domestic lawyers who promote *cai cach* reforms is a desire for the law and legal institutions to check party-state prerogative powers.[49] They push the boundaries of party-state narratives by arguing that *nha nuoc phap quyen* doctrines should entirely displace socialist legality. Although sceptical about the willingness of party leaders to move in this direction, some members of the group work with reform-minded state officials to secure a law-based state.

A much smaller subgroup of *cai cach* lawyers believe that the party-state has no intention of abandoning socialist legality and placing the party and state under legal rule.[50] For them, confrontation and protest are the only ways to highlight shortcomings in the legal system and pressure the party-state to protect civil rights.[51] It is estimated that there are fewer than twenty lawyers comprising this subgroup at any one time.[52]

B. LE CONG DINH: CASE STUDY

Le Cong Dinh exemplifies the confrontational cause lawyers. For a time, he was considered one of Vietnam's most successful commercial lawyers. Dinh rose to national prominence by defending

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[47] Interviews with Lawyers, *supra* note 20. Foreign law firms use the Vietnam Business Forum and country based chambers of commerce to promote commercial legal reform. *See* VIETNAM BUSINESS FORUM, http://www.vbf.org.vn/ (last visited Feb. 20, 2014). See John Gillespie, *Localizing Global Rules: Public Participation in Lawmaking in Vietnam*, 33 LAW & SOC. INQUIRY 673, 688–92 (2008), for a detailed analysis.

[48] See MARTIN GAINSBOROUGH, VIETNAM: RETHINKING THE STATE 25–49 (2010), for a discussion about these networks.

[49] *See* Interviews with Lawyers, *supra* note 20.

[50] *Id.*

[51] *Id.*

[52] Personal communication with Professor Ben Kerkvliet, Emeritus Professor, Austl. Nat'l Univ., in Honolulu, Haw. (June 2012). *See generally* Kerkvliet, *supra* note 43, app., tbl. 1.

Vietnamese catfish exporters in 2002 against anti-dumping actions brought by United States producers.[53] His commercial law firm represented prestigious foreign companies such as Yahoo!, Sun Wah International, Nestlé, and Toyota.[54]

Dinh fulfilled the state ideal that lawyers should work to build the economy and promote state socio-economic policies.[55] He cooperated closely with the Ministry of Justice in preparing an industry plan to develop a globally competitive legal profession in Vietnam and worked to protect Vietnamese commercial interests against foreign competitors.[56] Eventually, the government rewarded Dinh by appointing him as the Vice Chairman of the Ho Chi Minh City Bar Association.[57]

Dinh's commercial practice brought him into contact with foreign lawyers and academics, and through these connections he gradually developed an interest in civil rights and defending Vietnamese dissidents.[58] Most significantly, while he continued to think of himself as a patriot working for the national interest, he became convinced that a just society needed radical *cai cach* reforms. Without a local tradition of cause lawyering to guide him, Dinh looked first to France and then to the United States for inspiration.[59] A Fulbright scholarship to study at Tulane University completed the transformation in his thinking.

Most of Dinh's clients were charged with violating article 88 of the Criminal Code, which forbids "raising propaganda against the state."[60] The state branded his clients dissidents, not only for sponsoring fundamental constitutional change, but also for joining banned pro-democracy parties, such as Bloc 8406. None of his clients were accused

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[53] *See* Tien Hung, *'Thời của luật sư Việt'* [*The Time for Vietnamese Lawyers*] VIETBAO.VN (Oct. 10, 2005), http://vietbao.vn/Xa-hoi/Thoi-cua-luat-su-Viet/40102255/157/ (discussing Le Cong Dinh's leading role in defending Vietnamese cat fish exporters to the United States).

[54] *See Vietnam: Free Prominent Rights Lawyer Le Cong Dinh: Rights Defenders Face Ongoing Harassment and Arrest*, HUMAN RIGHTS WATCH (June 16, 2009), http://www.hrw.org/news/2009/06/23/vietnam-free-prominent-rights-lawyer-le-cong-dinh.

[55] *See* Interviews with Lawyers, *supra* note 20.

[56] Interviews with Le Cong Dinh, Lawyer, in Hanoi, Viet. (Feb. & June 2008). *See also* Interviews with Lawyers, *supra* note 20. *See generally* Le Cong Dinh, *Kinh tế - luật và soạn thảo luật* [*Economics, Laws and Drafting Laws*], TUOI TRE (May 27, 2006), http://tuoitre.vn/Chinh-tri-xa-hoi/Phap-luat/140092/Kinh-te—luat-va-soan-thao-luat.html.

[57] Interviews with Le Cong Dinh, *supra* note 56. *See also Vietnam: Free Prominent Rights Lawyer Le Cong Dinh: Rights Defenders Face Ongoing Harassment and Arrest*, *supra* note 54 (discussing Le Cong Dinh's position in the Ho Chi Minh City Bar Association).

[58] Interviews with Le Cong Dinh, *supra* note 56.

[59] *Id.*

[60] *Id.*

of using or advocating the use of violence against the state. Some clients attacked the government for allowing environmental damage, others for colluding with China over border disputes, and still others for corruptly benefiting from land dealings.[61] These issues are routinely discussed in the state-controlled media. According to Dinh, their real crime was advocating multi-party democracy and freedom of speech as the remedy to Vietnam's social and economic problems.[62]

Dinh defended his clients by arguing that article 69 of the Constitution 1992 protects free speech, as do international covenants signed by the Vietnamese government.[63] He maintained that the Constitution 1992 affords citizens "freedom of opinion and speech" to propose unorthodox and controversial views about the state.[64] This right was meaningless, he argued, if state agencies could use criminal sedition laws to arbitrarily suppress critical thought.[65] He emphasized the role legal rights play in defining boundaries between the state and society in commerce, land tenure, and family disputes. He also challenged judges to extend legal protection to civil rights. During a trial in 2007, Dinh informed the court: "Talking about democracy and human rights cannot be seen as anti-government unless the government itself is against democracy."[66]

Dinh knew that his arguments were entirely rhetorical and that, even if the courts were willing, they lacked the discretionary powers to assess the constitutionality of legislation and administrative action. He wrote that the courts functioned like "civil authority machine[s] rather than as adjudicative agenc[ies] which [have] a role to uphold one justice in a community with a plurality of interests."[67] He urged the courts to become more active in protecting constitutional rights; a process he thought might "blow a stream of vitality into the dry and motionless body of legislation . . . ."[68]

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[61] *Id.*

[62] *Id.*

[63] Interviews with three lawyers who attended trials run by Dinh, in Ho Chi Minh City, Viet. (May 2010 & Mar. 2011).

[64] Interviews with Le Cong Dinh, *supra* note 56.

[65] *Id.*

[66] *See Vietnam: Free Prominent Rights Lawyer Le Cong Dinh: Rights Defenders Face Ongoing Harassment and Arrest*, *supra* note 54.

[67] Le Cong Dinh, An Le Trong Vai Tro Giai Thich Luat [The Role of Precedent in Legal Interpretation], Seminar at the International Seminar on Legal Interpretation 3 (Feb. 21–22, 2008) (unpublished paper) (on file with author).

[68] *Id.*

Dinh relied on arguments developed by academic lawyers who for decades had called for *bao hien* (literally, constitutional protection).[69] *Bao hien* can mean anything from promoting the Constitution as the supreme legislative instrument to a Western liberal form of constitutionalism.[70] What unites the different threads of this discourse is a shared belief in the need for a constitutional court (or tribunal) with powers to bring the Constitution Vietnam 1992 into daily life.

Police charged Dinh on June 13, 2009 with the same sedition offense used to silence his clients.[71] They claimed that Dinh used court cases to "propagandize against the regime and distort Vietnam's Constitution and laws."[72] To identify the boundaries of permissible discourse, it is instructive to examine why the state moved to silence Dinh. Lawyers familiar with his case claim that his crime was not advocating constitutional change, but rather disloyalty to the party.[73] Most of what Dinh said about state protection of civil rights had already been published by the mainstream media and academic journals. In the lawyers' opinions, the authorities were offended because Dinh continued to challenge party orthodoxies after security police had warned him to stop.[74]

What complicates Dinh's case is the charge that he joined with banned foreign organizations in Thailand to overthrow the state. To the surprise of many who knew him well, Dinh admitted in a televised confession that he collaborated with "foreign agents."[75] He also confessed to acquiring subversive ideas about civil rights while studying

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[69] *See* Le Cam, *Cai Cach He Thong Toa An Trong Giai Doan Xay Dung Nha Nuoc Phap Quyen Viet Nam* [*Reform the Court System to Build Up a Law Based State in Vietnam*] 4 TAP CHI NGHIEN CUU LAP PHAP 21, 27 (2002); Nguyen Manh Cong, *Yeu Cau Cua Viec Xay Dung Nha Noc Phap Quyen Doi Voi Doi Moi To Chuc Va Hoat Dong Cua Cac Co Quan To Phap* [*How to Reform Judicial Authorities to Build Up a Law-Based-State*], 10 TAP CHI NGHIEN CUU LAP PHAP 38 (2002).

[70] Interviews with Lawyers, *supra* note 20.

[71] *See Vietnam: Free Prominent Rights Lawyer Le Cong Dinh: Rights Defenders Face Ongoing Harassment and Arrest*, *supra* note 54. *See also* V. Anh, *Bắt khẩn cấp luật sư Lê Công Định* [*Emergency Arrest of Lawyer Le Cong Dinh*], VIETNAMNET (June 13, 2009), http://vietnamnet.vn/xahoi/2009/06/852846/ (on file with author).

[72] V. Anh, *supra* note 71.

[73] Interviews with Lawyers, *supra* note 20. *See generally* Gia Minh, *Luật sư Trần Lâm nhận xét về đồng nghiệp Lê Công Định* [*Tran Lam commented on Le Cong Dinh*], RADIO FREE ASIA (June 17, 2009), http://www.rfa.org/vietnamese/in_depth/Senior-lawyer-tran-lam-talks-about-young-colleague-le-cong-dinh.-06172009121330.html.

[74] Interviews with Lawyers, *supra* note 20.

[75] *Id.*

in the United States.[76] This link between civil rights and foreigners resonates with the "peaceful evolution" (*dien bien hoa binh*) campaign mounted by conservative party cadres.[77] According to this narrative, foreigners—especially overseas Vietnamese living in America –use civil rights and democracy to discredit the party and engineer regime change in Vietnam. [78] Perhaps due to his public affirmation of loyalty to the party, Dinh was given a comparatively light sentence of five years imprisonment for a crime that carries a twenty year maximum sentence.[79]

The case of Cu Huy Ha Vu, a cause lawyer arrested in 2010, offers instructive comparisons with Dinh's case.[80] Like Dinh, he used the courts as a platform to publicize controversial social causes, such as environmental scandals and the state's opaque dealings with a Chinese bauxite miner. Unlike Dinh, the charges against Vu related solely to his activities as a cause lawyer. His arrest provoked spontaneous demonstrations in Hanoi and outrage on internet blog sites.[81] Vu remained unrepentant throughout the proceedings against him and received a higher sentence (seven years) than Dinh.[82]

One interpretation of these cases is that, with the exception of certain taboo subjects such as multi-party democracy, it is not so much the substantive content of, but rather the motivation behind public interest litigation that provokes state censure. As previously mentioned, academics and some media commentators routinely argue for state protection of the basic civil rights guaranteed in the Constitution 1992. What the party and state will not tolerate are public declarations of disloyalty that challenge their monopoly over political power. Abstract discourse about civil rights is tolerated and is even incorporated into state narratives, but unauthorised discussion that attempts to operationalize civil rights is politically unacceptable.

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[76] *Id.*

[77] *Id.*

[78] *See, e.g.*, Tran Minh Ton, *Party's View and Policy on Human Rights*, TAP CHI CONG SAN (Mar. 30, 2007), http://english.tapchicongsan.org.vn/Home/Commentary/2007/230/Partys-view-and-policy-on-human-rights.aspx; Tran Duy Huong, *The True Colours of So-Called "Organisations Struggle for Democracy and Human Rights" in Vietnam*, TAP CHI CONG SAN (July 6, 2007), http://english.tapchicongsan.org.vn/Home/ Commentary/2007/117/The-true-colours-of-socalled-Organisations-struggle-for-democracy-and-human-rights.aspx.

[79] Interviews with Lawyers, *supra* note 20.

[80] *See* Nguyên Thủy - Hồng Anh, *LS Trần Đình Triển: "Sai đâu xử đó, đúng luật mà làm..."* [*Lawyer Tran Dinh Trien: "Follow the Law in Making the Punishment Fit the Wrong..."*], BAUXITE VIET NAM (Nov. 14, 2010), http://www.boxitvn.net/bai/13354.

[81] *See* Human Rights Watch, Vietnam: The Party vs. Legal Activist Cu Huy Ha Vu (2011).

[82] *See* Interviews with Lawyers, *supra* note 20.

IV. THAI BINH LAND DISPUTE CASE STUDY

Growing numbers of retired state officials in Vietnam are championing social causes for the poor and others marginalized by the market economy.[83] Unlike public interest lawyers, they rarely frame disputes in liberal legal terms, such as defending civil rights and democracy. Nevertheless, their narratives directly challenge party-state orthodoxies.

With rapid urban and industrial expansion encroaching on farmland in Vietnam, the number of land disputes has dramatically increased.[84] In many cases, farmers complain that compensation paid for the compulsory acquisition of their land is insufficient to build new lives in the industrial economy.[85] Although, with appropriate incentives, some are prepared to leave the land, others want to remain on the land of their ancestors regardless of the compensation paid.[86] This case study examines how a retired state official negotiated a settlement where the law and cultural claims over the land collided.

Mr. Tuan (not his real name) retired from the Hanoi People's Committee to his home village in Thai Binh province. In contrast with the foreign-educated and cosmopolitan public interest lawyers, Mr. Tuan had not travelled outside Vietnam, was locally educated, only spoke Vietnamese, and knew little about Western legal or political ideas.[87] His world view was shaped by decades of working as a party cadre in a government department.

Farmers in Thai Binh province (in peri-urban Hanoi) complained that they received inadequate compensation for land compulsorily acquired by the state for an industrial park.[88] The Chinese investor (Neo-Neon) funding the development hired a Vietnamese construction firm

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[83] *Id.*

[84] There are no publicly available statistics giving the precise numbers and types of land disputes. From 2003 to 2007, the number of complaints concerning land increased approximately seventy percent, and grievances about the compulsory acquisition of land amounted to about seventy percent of all land complaints. *See* World Bank, Compulsory Land Acquisition and Voluntary Land Conversion in Vietnam 16 (2011).

[85] A World Bank report found that between 2001–2005 the number of complaints about inadequate land compensation increased from thirty to seventy percent of cases. *See id.*

[86] Interviews with Dang Hung Vo, former Vice Minister, Ministry of Natural Res. & Env't, in Hanoi, Viet. (Mar. 2013). *See generally* WORLD BANK, POLICY NOTE: IMPROVING LAND ACQUISITION AND VOLUNTARY LAND CONVERSION IN VIETNAM 40–42 (2009).

[87] Interviews with Mr. Tuan (not his correct name), in Đông Dương village, Thai Binh Province, Viet. (Mar. & Sept. 2011).

[88] *Id.*

(Techconvina) to build a factory complex on a forty hectare Gia Le Industrial Zone, Dong Hung District. According to the Land Law 2003, the investor was responsible for paying compensation to the Thai Binh Provincial People's Committee, which was then required to compensate the farmers.[89] Neo-Neon paid land clearance compensation based on the fifty year land use right it received from the provincial authorities. Instead of passing on the compensation, the People's Committee claimed that under the Land Law 2003 farmers were allotted twenty year land use rights and were only entitled to a pro-rata payment.[90]

Outraged by the paltry compensation offered, the farmers attacked the construction workers and set their machinery ablaze.[91] In desperation, the investor paid provincial authorities to protect the construction workers, but the farmers were undeterred and fought pitched battles with the police. At the height of the conflict, more than 500 police could not secure the worksite.[92]

To find a resolution, the farmers appointed Mr. Tuan to negotiate with the investor, the construction company, and provincial authorities.[93] It soon emerged that the parties involved held fundamentally different understandings about the nature of land use rights and what constituted adequate compensation. As we shall see, the provincial authorities relied on legal rights to promote the investor's interests whereas Mr. Tuan attempted to exclude the operation of the law and draw attention to the unfairness of compulsory land acquisition.

A. CONFLICTING PERCEPTIONS ABOUT LAND TENURE

Following the de-collectivization of farmland in the late 1980s, rice farmers around Vietnam reasserted traditional land claims that recalled pre-socialist land rights.[94] Bound up in these claims were

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[89] *See* Decree on Compensation, Support and Resettlement When Land is Recovered by the State, art. 43 (Decree No. 197/2004/ND-CP) (Viet.).

[90] *See* Đoàn Tất Thảo, *'KCN Gia Lễ: Vì sao trở thành "điểm nóng" về an ninh?'* [*IZ Ceremonies: Why are they becoming "hot spots" in terms of security?*] THAI BINH NEWS (Nov. 30, 2010), http://baothaibinh.net/chuyen-dong/phap-inh/570-kcn-gia-le-vi-sao-tro-thanh-diem-nong-ve-an-ninh.html.

[91] *See* Interviews with Mr. Tuan, *supra* note 87. *See generally* Đoàn Tất Thảo, *supra* note 90.

[92] *See* Interviews with Mr. Tuan, *supra* note 87.

[93] *Id.*

[94] *See* Benedict J. Tria Kerkvliet, *Agricultural Land in Vietnam: Markets Tempered by Family, Community and Socialist Practices*, 6 J. AGRARIAN CHANGE 285, 285–305 (2006).

assertions of moral and spiritual rights to ownership that went well beyond the tenure rights granted by state authorities.

In this case, the farmers based their claim for more compensation on assertions of long-term land occupation. They constantly repeated the proverb—"What my grandfather owned I own"—to add historical legitimacy to their claim for long-term tenure rights.[95] They also invoked spiritual connection to "place" to advance their claim.[96] The farmers did not want to move away from the tightly knit village networks that supported them or from the spiritual protection of their ancestors who were buried on the land.[97] Historically, northern Vietnamese villagers were isolated from the universalizing religious movements (Islam, Theravada Buddhism, and Christianity) that swept through Southeast Asia during the seventeenth century.[98] They remained enthralled to "place"-based religious cultures that tied regulatory traditions and cultural identities to the spirit or "sentiment of their home-village" (*tinh cam que huong*).[99]

What emerges from this case is a conflict between two fundamentally different conceptualizations of land regulation. The state system rests on an imported notion of exclusive property rights that was grafted onto state management principles borrowed from the former Soviet Union.[100] Conversely, the community system is based on small contingent commonalities between members of social networks and spiritual connections to "place," without a grand abstracted idea about rights to land.

To resolve this dispute, Mr. Tuan attempted to draw the developers and authorities into a discussion that stood outside formal state procedures and forums. It was important for him to engage not only with the provincial People's Committee, which had the authority to determine compensation, but also with the District People's Committee

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[95] Interviews with Mr. Tuan, *supra* note 87.

[96] *Id.*

[97] See Hy V. Luong, *State, Local Associations, and Alternate Civilities in Vietnam*, *in* CIVIL LIFE, GLOBALIZATION, AND POLITICAL CHANGE IN ASIA 123, 123–47 (Robert P. Weller ed., 2005), for a discussion about this connection to land and place.

[98] *See* 2 Anthony Reid, Southeast Asia in the Age of Commerce 1450–1680, 132–201 (1993).

[99] *See generally* Kate Jellema, *Returning Home: Ancestor Veneration and the Nationalism of Đổi Mới Vietnam*, *in* MODERNITY AND RE-ENCHANTMENT: RELIGION IN POST-REVOLUTIONARY VIETNAM 57, 73–78 (Philip Taylor ed., 2007).

[100] *See* Janet C. Sturgeon & Thomas Sikor, *Post-socialist Property in Asia and Europe: Variations on "Fuzziness"*, 2 CONSERVATION & SOC'Y 1, 1–17 (2004).

which was considered more sympathetic to the farmers' claims.[101] According to Mr. Tuan, provincial officials tend to align themselves with investors because economic development is the principle criterion used for promotion.[102]

Mr. Tuan acted like a cultural intermediary in synthesizing the highly figurative and contextual language used by the farmers into the legal bureaucratic language understood by the officials. He also needed to find common ground between the competing approaches to land access and compensation. The farmers personally identified with the land and rejected the commoditization of land rights in the Land Law 2003. For their part, the developers and officials were sceptical about the farmers' sentimental and spiritual claims and viewed property rights in instrumental terms as rights flowing from the law and state authorities.[103] From this perspective, the Land Law 2003 created exclusive rights that were impersonal and tradable commodities.

B. CREATING A DIALOGICAL SPACE

Mr. Tuan could not simply reassert the farmers' claims because they were not recognized by the law. Instead, he created a dialogical space outside the law where the parties could discuss their grievances. He first referred rhetorically to inheritance law, in an attempt to confer the farmers' claim to long-term occupation with legal authority. In the process, he glossed over provisions in the Land Law 2003 that nationalized land ownership and invested powers in state authorities to allocate land rights for limited durations. He then reconceptualised the Land Law 2003 by replacing its focus on substantive legal rights with an emphasis on outcomes.

At this point Mr. Tuan invited the disputants to resolve their differences using *thoa dang* (reasonable or proper validity)—a traditional Vietnamese decision-making technique that emphasizes distributive justice.[104] *Thoa dang* encourages disputants to treat law as just one of

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[101] There is a strong body of research showing that local level officials are prepared to negotiate legal responsibilities with citizens. *See* Kerkvliet, *supra* note 94, at 285–305; Luong, *supra* note 97, at 123–46.

[102] Interviews with Mr. Tuan, *supra* note 87.

[103] Interviews with Duong Nguyen Thanh, Dir. of Technovina, in Hanoi, Viet. (Mar. & Sept. 2011, Sept. 2012). Technovina is the construction firm that built the factory on the disputed land.

[104] This form of decision making was interwoven during the high socialist period (1945–1986) to form the doctrine (of reason and sentiment in applying the law) which is still used by courts to

many sources of authority and to balance competing claims against a broad range of considerations derived from "reality processes" (*qua trinh thuc tai*).[105] To further deflect attention away from legal rights, Mr. Tuan drew attention to the concept of *cong bang* (equality), which has historically been used to allocate farmland. For example, to maintain *cong bang*, farmers in Dong Hung District resisted state pressure to improve agricultural efficiency by allowing prosperous farmers to bid for fertile land.[106]

Mr. Tuan also argued that the compensation payments were insufficient to enable farmers to buy new farmland, and did not provide the skills needed to work in the factories built on their land.[107] To support this argument, he tapped into a rich party narrative that attributes rising social inequality to the marketization of property rights,[108] and reminded the officials that as party members they owed a duty to assist the poor. He encouraged the parties to apply the law flexibly and look for solutions from a wide range of economic and social principles.[109] Eventually, the provincial government and the investor agreed to increase the compensation and retrain the farmers for factory work.

Contrasting with public interest litigators such as Le Cong Dinh, Mr. Tuan did not turn to legal rights for solutions. On the contrary, he leveraged his influence as a retired state official to persuade other officials that a legalistic interpretation of the law overlooked important moral claims and produced unjust social outcomes. Like conservative party leaders, he regarded global narratives about individual civil rights as a threat to social stability and criticized public interest lawyers for unnecessarily provoking the state and generating hostility toward cause advocates. Although he supported some aspects of *nha nuoc phap quyen* reforms, especially equality before the law, he ultimately sided with socialist legality in treating law as an instrument for realizing party and

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resolve land use disputes. *See* John Gillespie, *Exploring the Limits of Judicialization of Urban Land Disputes in Vietnam*, 45 LAW & SOC'Y REV. 241, 241–75 (2011).

[105] *See* Interviews with Mr. Tuan, *supra* note 87.

[106] *Id.*

[107] *Id.*

[108] See Even Lin, *Phỏng vấn LS Trần Lâm, nguyên Thẩm phán Toà Án Nhân Dân Tối Cao* [*Interview with Chen LS, former Judge Supreme People's Court*], VIET STUDIES (Dec. 8–9, 2009), http://www.viet-studies.info/kinhte/TranLam_RFA_pv.htm, for a discussion about these ideas.

[109] See Nguyen Van Suu, Industrialization and Urbanization in Vietnam: How Appropriation of Agricultural Land Use Rights Transformed Farmers' Livelihoods in a Peri-Urban Hanoi Village (E. Asian Dev. Network, Working Paper No. 38, 2009), for a general discussion about these issues.

state socio-economic policy. He saw no advantage in rights-based laws because the land use rights protected by the law did not provide just outcomes for farmers. Socialist legality, on the other hand, blurred law and policy, giving him the dialogical space to argue the farmers' case. Securing lasting agreement and distributive justice was more important than consistently following the law and promoting substantive and procedural justice.

V. THE MEDIA AND CAUSE ADVOCACY

The media plays a multi-faceted role in promoting (and constraining) cause advocacy. By retelling stories about cause lawyers and cause bureaucrats, the media transforms individual acts of resistance into broadly circulating public narratives. At the same time, it sometimes behaves like a cause advocate in running campaigns that aim to resolve social problems.[110] A pressing question in socialist Asia is whether or not the media's close nexus with the party and state undermines its capacity to promote complaint and dissent.

The Press Law 1999 in Vietnam established a dual party-state control mechanism that encourages the media to report positive news that shows "good examples" and combats "negative social phenomena."[111] It requires reports to be not only true, but also to "conform with the interests of the state and the people."[112] According to party theorists, "[t]he truth is something which is in the interest of the country and the

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[110] See Interviews with Journalists from Phap Luat and Tuoi Tre, in Ho Chi Minh City, Viet. (Mar. & Sept. 2011, Apr. & Sept. 2012) [hereinafter Interviews with Journalists].

[111] Law Amending and Supplementing a Number of Articles of the Press Law, No. 12/1999/QH10, art. 6 (June 12, 1999) (Viet.), *available at* http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=918. *See* Politburo Conclusive Notice No. 41-TB/TW (2007) (Viet.) on the adoption of some measures to enhance the Party's leadership and management of the operation of the mass media. The implementation of the press law is discussed in BAO CAO: VỀ VIỆC TRẢ LỜI CHẤT VẤN CỦA BỘ TRƯỞNG BỘ THÔNG TIN VÀ TRUYỀN THÔNG TẠI KỲ HỌP THỨ 6, QUỐC HỘI KHÓA XII [REPORT: ANSWERS TO QUESTIONS ABOUT THE MINISTER OF INFORMATION AND COMMUNICATIONS SESSION 6, XII CONGRESS] (2009) (Viet.).

[112] *See* Law Amending and Supplementing a Number of Articles of the Press Law, *supra* note 111, art. 1; Decree No. 2, Sanctions for Administrative Violations in Journalism and Publishing, may close down media reporting by requiring journalists to disclose their sources. Decree No. 02/2011/ND-CP (2011). *See Vietnam: New Decree Punishes Press*, HUMAN RIGHTS WATCH (Feb. 23, 2011), http://www.hrw.org/news/2011/02 /23/vietnam-new-decree-punishes-press.

people. What runs counter to the interest of the country and the people is not the truth."[113]

Surprisingly, this Orwellian regulatory framework has not prevented a diversity of views about cause advocacy filling newspaper columns.[114] This plurality is attributed to the diverse views within the party-state. It results from both the difficulties in continuously monitoring more than 500 media outlets and the economic reality that editors have circulation on their minds and encourage reporters to compete for news stories.[115]

The mainstream media[116] publishes stories about law and social issues that will sell newspapers.[117] For example, of 261 articles devoted to legal issues in a three month period in 2011 in *Tuoi Tre* (Youth)—possibly the highest circulation newspaper in Vietnam – most concerned violent crime and general social issues.[118] Of these articles only fifteen percent related to state management of land disputes, the main cause of dissent in Vietnam.[119] Studies show, however, that even sensationalist reporting can reframe contentious issues by highlighting underlying social contradictions.[120]

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[113] *See* Ha Dang, *Improvement of the Party's Media Work in the Light of President Ho Chi Minh Thought*, TAP CHI CONG SAN, http://tapchicongsan.org.vn/data/tcc/Html_Data/So_40.html (last visited Feb. 20, 2014).

[114] *See* Interviews with Journalists, *supra* note 110. See Russell Hiang-Khng Heng, *Media Negotiating the State: In the Name of the Law in Anticipation*, 16 J. SOC. ISSUES SOUTHEAST ASIA 179, 213 (2001), for a general discussion about the media.

[115] *See* Interviews with Journalists, *supra* note 110.

[116] The newspapers with the widest circulation are Tuoi Tre HCMC (380,000 copies), Thanh Nien (260,000 copies); Sai Gon Giai Phong (120,000 copies), Saigon Economic Times (60,000 copies), HCMC Police Newspaper (400,000 copies), Nguoi Lao dong (~100,000 copies), and Phap Luat TP. HCM (70,000 copies). *See generally Báo chí Nam bộ góp phần thúc đẩy phát triển kinh tế - xã hội* [*Southern Newspapers Contribute to Promoting Socio-economic Development*], E-INFO (Nov. 11, 2010), http://e-info.vn/vn/index.php/permalink/ 32344.html.

[117] Interviews with Journalists, *supra* note 110.

[118] The survey of *Tuoi Tre* was conducted by electronic search of the on-line service for articles published between 13 January and 13 March 2011. The survey results are:

Serious Crime (homicide, rape, assault, kidnapping etc) 55%

Administrative abuses (corruption, abuse of power etc) 11%

Consumer protection 3%

Land disputes 4%

Environmental cases 4%

Other social issues (traffic violations, divorce, social welfare etc) 23%.

Interviews with Journalists, *supra* note 110.

[119] *Id.*

[120] *See* Mayer N. Zald, *Culture, Ideology, and Strategic Framing*, *in* COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS: POLITICAL OPPORTUNITIES, MOBILIZING STRUCTURES, AND CULTURAL FRAMINGS 261, 268–70 (Doug McAdam et al. eds., 1996).

A. MEDIA ADVOCACY

In some instances the media both reports cases and becomes a cause advocate. Consider the reporting about Vietinbank's attempt to construct a head office on school land during 2011. The historic Le Quy Don School in Ho Chi Minh City (HCMC) was established during the French colonial period and is considered a significant heritage site.[121] As the oldest school in Vietnam, it educated generations of the Southern elite. Media coverage of this controversy reflected a desire to satisfy intense public interest, but also to support the school, which was locked in an unequal contest with a powerful commercial adversary.[122]

Most newspaper accounts supported the school's claim over the land. Arguments favoring educational development and heritage preservation trumped arguments favoring economic development and private property rights.[123] Only one newspaper—*HCMC Phap Luat*—examined the case from a rigorous legal perspective.[124] Its reporters argued that, since the land use rights were issued before the government prohibited the commercialization of school land, the bank was lawfully entitled to build on the land.[125] Nevertheless, they qualified the bank's land use right with an overriding social responsibility to take public opinion into account, and not to destroy the heritage value of a historic site.

A few newspapers highlighted inconsistencies in the Ho Chi Minh City People's Committee handling of the case. [126] The People's

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[121] Interviews with Journalists, *supra* note 110.

[122] *Id.*

[123] *See* Nguyen Ngoc Dien, *Nền tảng pháp lý chưa vững* [*Legal Foundation Is Not Solid*], SGTT MEDIA (Apr. 13, 2011), http://sgtt.vn/Ban-doc/143138/Nen-tang-phap-ly-chua-vung.html; Quoc Viet, *Kiến nghị giữ đất cho Trường Lê Quý Đôn!* [*Keep the Land for Le Quy Don School!*], PHAP LUAT (Apr. 15, 2011), http://phapluattp.vn/20110415125018941p0c1019/kien-nghi-giu-dat-cho-truong-le-quy-don.htm.

[124] See Cam Tu, Vụ trường Lê Quý Đôn "thua" ngân hàng: Ngừng thi công, chờ ý kiến lãnh đạo thành phố [Le Quy Don School "Lost" to the Bank: Stop the Construction, to Wait the Opinion of City Leaders], PHAP LUAT (Apr. 11, 2011), http://phapluattp.vn/20110411012536197p0c1085/vu-truong-le-quy-don-thua-ngan-hang-ngung-thi-cong-cho-y-kien-lanh-dao-thanh-pho.htm.

[125] Interviews with Journalists, supra note 110.

[126] See, e.g., THE GRP., Chủ trương bị đảo ngược: trường học đã thua cao ốc! [The Policy is Reversed: The School Buildings Have Been Lost!], SGTT MEDIA (Apr. 1, 2011), http://www.sgtt.com.vn/Thoi-su/142554/Chu-truong-bi-dao-nguoc-truong-hoc-da-thua-cao-oc.html, http://www.sgtt.com.vn/Thoi-su/142554/Chu-truong-bi-dao-nguoc-truong-hoc-da-thua-cao-oc.html. A land compensation plan completed in October of 2010 allocated 40 billion VND, in which 20 billion VND was for land clearance, and the rest is for school expansion. See id.

Committee reversed a decision to buy out the bank's interest in the land and instead approved the bank's construction application.[127] As reporters pointed out, this about face contradicted the People's Committee's own master plan that prohibited commercial exploitation of school land.

One reporter went further than the others by intimating collusion between the People's Committee and the bank. Truc Nam Son, an outspoken reporter for *Sai Gon Tiep Thi* (Saigon Marketing Newspaper), blamed the market economy for this dispute. He wrote:

> If we observe, we can see almost every school in our country used to be built on a large and beautiful location, much better than other institutions. . . . Maybe, because of their privileged location, many schools have become a "golden land" in the eyes of investors who are seeking benefit. So the land of the school becomes "meat in front of the cat's eyes." Those cats who are benefit driven, lack business morality, responsibility for public development and concern for future generations . . . find every way to take by force land used for educational purposes.[128]

The article then went on to say that commercial appropriation of public land is "dressed up" as the "privatization of education," which only occurs because the state underinvests in public education.[129] What the reporter implied was that the bank could only behave as it did with collaboration from the People's Committee.

In this case study, we see newspapers pursuing their mission to promote social justice, even when this involves criticizing powerful state officials and wealthy business interests. However, the newspapers were careful not to challenge party and state power directly. They praised government policy that supported schools, but criticized individual decisions that abrogated this policy. Few reporters were prepared to question economic development, a core party objective, by accusing the bank of exploiting the cash-hungry education sector for its own enrichment.

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[127] Interviews with Journalists, supra note 110.

[128] Truc Nam Son, *Đất trường học: "mỡ trước miệng mèo"!* [*School Land "Fat Before the Mouths of Cats"!*], SGTT MEDIA (Apr. 7, 2011), http://www.sgtt.com.vn/Goc-nhin/142866/Dat-truong-hoc-%E2%80%9Cmo-truoc-mieng-meo%E2%80%9D.html.

[129] Id.

B. THE MEDIA AS CAUSE LAWYERS

In addition to promoting social causes, some newspapers – such as *Phap Luat*—work with lawyers to resolve social problems caused by people being socially disadvantaged. Although many articles in this vein inform citizens of their legal responsibilities, some also remind state officials about their obligations. The case of Nguyen Van Duc, a disabled war veteran living in the Binh Thanh District in Ho Chi Minh City, illustrates this point. After reunification in 1975, Mr. Duc lost his military discharge papers which he needed to claim a government pension. Ignoring his many requests for assistance, the local District People's Committee refused to investigate his case and for thirty years Mr. Duc lived in poverty.[130]

Eventually a friend of Mr. Duc contacted a reporter with *Phap Luat*, who wrote an article criticizing the district people's committee. After reading the story, Nguyen Chau – a former Chairman of the HCMC People's Committee—contacted the Ministry of Social Affairs in Hanoi. Officials soon found Mr. Duc's war records and granted him a backdated pension.[131]

In this case the journalist acted like a cause lawyer in identifying a social problem and lobbying state officials until it was rectified. However, the reporter did not fault state policy or the administrative system, but rather he attributed blame to human error by state officials.

In both cases discussed, the reporters concentrated on legal compliance and the instrumental role of law. They did not mention the political liberal notion that the law and legal agencies should protect civil rights against state officials. Instead they intimated that the resolution of social causes resides in the hands of benevolent officials, who occasionally need reminding about their official duties. This approach to cause advocacy corresponds to a long-standing party narrative that encourages officials to remain "in touch with the people" (*duong loi quan chung*).[132]

In summary, liberal legal ideas have made limited inroads into the narratives circulating in the media. Occasionally, newspaper articles discuss civil rights, but this ideal is generally (although not invariably) linked to the West and portrayed negatively. Law is still overwhelmingly

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[130] Interviews with Journalists, supra note 110.

[131] Id.

[132] *See generally* GILLESPIE, *supra* note 2, at 83–85.

depicted in instrumental terms as a tool for implementing party policy, but with increasing emphasis placed on the legal accountability of state officials.[133] Newspaper reports about veterans demanding their pensions, rural migrants claiming residential rights, and farmers claiming fair compensation put pressure on officials to become more legally responsive and responsible. In their reporting, journalists bring complaint and dissent within the legal frame.

VI. CONCEPTUALIZING CAUSE ADVOCACY IN VIETNAM

There is scant evidence in the case studies that liberal legalism plays a significant role in resolving socio-economic problems in Vietnam. Le Cong Dinh was jailed for arguing that courts should protect constitutional guarantees to civil rights. Mr. Tuan preferred the flexibility of socialist legality to the universal property rights promised by liberal legalism. Similarly, the media promotes an instrumental understanding of law and rarely canvasses the possibility that citizens might use civil rights as weapons against the state.

But does this mean that liberal legalism played no role in shaping cause advocacy in Vietnam? How are we to understand how competing narratives about cause advocacy influence the articulation and adoption of controversial and dissent viewpoints? As previously mentioned, systems theory advances our discussion by explaining how different regulatory narratives might learn from each other and eventually co-evolve toward shared regulatory position.

Applying this framework we can see that Le Cong Dinh brought imported ideas about civil rights into conversation with pre-existing ways of understanding law. The new ideas underwent a double transformation, a change on the legal side within the state regulatory system and on the social side within non-state subsystems. On the legal side, the new ideas lacked a common conceptual grammar (or epistemology) with the dominant narratives informing judicial workers (judges, procurators, and police) and were rejected or re-contextualized to comport with socialist legality. Without personal connections with the judges, Dinh could not explain his views in the sustained and unmediated exchanges needed to convey complex social and legal arguments. Making his task more difficult is that in the eyes of many state officials, civil rights are tainted by their association with foreign governments and

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[133] Interviews with Journalists, *supra* note 110.

NGOs that criticize Vietnam's human rights record.[134] The assertion of civil rights is accordingly seen by many state officials as confrontational and potentially hostile to party-state rule.

On the social side, Dinh's civil rights arguments were retold by the media and brought into limited public discourse. Some lawyers interviewed were inspired by Dinh's and Vu's push for state recognition of constitutionally guaranteed civil rights.[135] But others acknowledged the chilling effect the widely publicized arrest of Dinh and Vu had on the *cai cach* (reform) minded lawyers.[136] A small group of legal academics continue to argue that effective civil rights need legally enforceable standards that are derived not only from statutory texts, but also from judgements made by constitutional courts, constitutional customs, and even natural law (*luat tu nhien*) principles.[137] They claim that civil rights are only possible if party and state power is governed by unwritten legal conventions that the party and state are powerless to change.

Academic discussion about civil rights escapes official censure because it is considered too abstract and arcane to influence public discourse. On the other hand, the government suppresses discourse that might mobilize and encourage otherwise isolated social groups to confront the party. It is the cause lawyers' potential to galvanize public expectations about civil rights that has provoked hostility and repression from the state.

Lawyers interviewed were keenly aware that personal connections with court officials are vital to protect their clients. This system of official patronage encourages lawyers to embed themselves in the political system, and prevents the evolution of autonomous legal institutions that are capable of implementing liberal legalism.[138] Although some lawyers were personally sympathetic to civil rights discourse, most were mindful of the institutional environment in which they operate. They carefully structure their cases around technical procedural issues that do not challenge party-state policies, especially the instrumental role of law. Politics remains the language of the state, especially in the domain of civil rights, and most lawyers subordinate law to this narrative.

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[134] Interviews with Lawyers, *supra* note 20.

[135] *Id.*

[136] *Id.*

[137] *See* Cam, *supra* note 69, at 21, 27; Cong, *supra* note 69, at 35.

[138] Interviews with Lawyers, *supra* note 20.

To resolve the land dispute in Thai Binh, Mr. Tuan used his personal prestige to create a dialogical space that temporarily suspended the compulsory and universal application of state land laws. The dialogical space allowed state and non-state actors, the powerful and the poor, to come together in a forum that was relatively unmediated by party-state power hierarchies and epistemic taboos. It enabled Mr. Tuan to bring two epistemically unconnected narratives into conversation.

Mr. Tuan deliberately blurred organizational and legal boundaries to allow the officials to transcend procedures and substantive rights and consider the consequences of their decisions.[139] For him, legal liberalism had little to offer because bright-line legal distinctions favored the rule makers and not the farmers. Instead, he convinced the state officials to take a distributive rather than a substantive or procedural approach to justice. Discourse of this kind is not possible in courtrooms where judges are expected to apply the law, although relatively unmediated discourse sometimes occurs in pre-trial mediation sessions.[140]

A shortcoming with this type of dispute resolution is that the solutions are highly contextual and rarely spill-over into central and provincial level regulatory narratives. The state officials temporarily suspended the law to resolve this dispute, which proved intractable to conventional legal solutions, but they reserved the right to apply the law to similar cases in the future.[141] Officials in this case acted out of benevolence rather than a legal obligation to recognize the farmers' moral and spiritual claims to the land.

The dialogical interaction between the media, state, and other social subsystems is difficult to characterize neatly. Media outlets report a diverse range of views about cause advocacy. It rarely behaves like a monolithic entity, reflecting instead the diversity of views within the party-state about the role of law in resolving socio-economic problems. The media only comes together to steer the regulatory space when party authority is directly challenged by cause advocates such as Le Cong Dinh.

It is methodologically difficult to assess the extent to which the media shapes debates and changes state and societal approaches to cause advocacy. Studies show that press campaigns have persuaded employers

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[139] Interviews with Mr. Tuan, *supra* note 87.

[140] *See* Gillespie, *supra* note 104, at 241–75.

[141] Interviews with Duong Nguyen Thanh, *supra* note 103.

to comply with the Labor Law,[142] and have pressured companies to compensate the victims of environmental damage.[143] In these cases, the media argued for strict compliance with the law, and did not promote rights-based solutions. In contrast, other media outlets have supported cause advocates to open the law to moral and spiritual arguments.

Bloggers are more prepared than the official media to explore the boundaries of party-state narratives. The Osin blog, for example, linked the resolution of land disputes to party legitimacy thus holding Vietnam's leaders accountable for socio-economic problems.[144] However, journalists suggest that bloggers are no more inclined than the official media to invoke civil rights as a means of resolving problems.[145] In fact bloggers are generally sceptical about laws and official institutions and tend to find solutions in moral and sentimental narratives.[146]

To summarize, the case studies show that narratives do not have equal weight—some are more causally consequential than others in shaping solutions to socio-economic problems. Narratives are given different weight by the party-state agencies that control public debates. For example, party political narratives are more important than legal narratives, not only because they have coercive power, but also because they provide the meaning frames that the state uses to interpret laws and socio-economic problems. When cause advocates such as Le Cong Dinh and bloggers challenge party narratives, they provoke censure not only for contradicting official tropes, but more importantly for questioning the party-state's political hegemony over public discourse.

The party-state is not hermetically isolated from external and dissenting ideas. It has unquestionably co-evolved in response to public discourse. Each debate expands the boundaries of discourse to include previously taboo subjects. Nevertheless, certain core ideas about party leadership remain beyond the reach of external debate and block serious discussion about granting citizens legally enforceable rights against the state.

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[142] *See* Simon Clarke, *The Changing Character of Strikes in Vietnam*, 18 POST-COMMUNIST ECONS. 345, 345–61 (2006).

[143] *See* Cong Quang, *Nông dân Cần Giờ nhận tiền bồi thường của Vedan* [*Farmers Receive Compensation from Vedan*], DAN TRI (Jan. 25, 2011), http://dantri.com.vn/c20/s20-453487/nong-dan-can-gio-nhan-tien-boi-thuong-cua-vedan.htm.

[144] Interviews with Journalists, *supra* note 110.

[145] *Id.*

[146] *Id.*

VII. CONCLUSION

The case studies suggest that juridification in Vietnam is more complex and variegated than a simple transition from illiberal to liberal legalism. Lawyers cannot effectively use civil rights to protect dissidents from criminal charges; instead they must embed themselves into the political system and leverage personal connections with state officials on behalf of their clients. However, law is not a closed system and there is ample room for embedded lawyers to maneuver within the system if they wish. What remains unclear is whether they are content to rely on the benevolence of state officials to protect their clients or are prepared to risk losing their personal relationships to advocate for civil rights and procedural justice.

Cause advocates working outside the legal system, such as Mr. Tuan, also leverage political connections to protect dissidents. Rather than arguing for civil rights, which in the Thai Binh case worked against the interests of the farming community, he drew on a rich vein of socialist narratives that promoted legal flexibility and distributive justice. He brought land use rights into conversation with moral and spiritual claims, clearing epistemic and political objections to hybrid regulatory solutions. A difficulty with this kind of dialogical advocacy is that it rarely evolves beyond local contexts into universal and legally recognized civil rights.

The media narrates a widespread undercurrent of discontent. Media reports about cause advocacy range from civil rights in the court room to calls by conservative party cadres for a return to strict compliance with state legal directives. The existence of competing narratives raises the question: why do some narratives dominate discourse and become institutionalized?

Firstly, there is consensus within the party and state that the media should not report certain stories. For example, discourse advocating political democracy and legally enforceable rights to free speech and free assembly are actively suppressed. Also missing from official discourse are reports that draw attention to the many instances where the party-state subordinates law in the pursuit of socio-political objectives.

Secondly, a consensus has emerged within most media outlets that state officials should base their decisions on the law. As a consequence, numerous stories circulating in the official and "yellow" media attribute land disputes, substandard health and education services,

and even environmental calamities to corrupt officials. It is argued that these narratives promote procedural justice by holding local, but rarely central level, officials accountable to legal and moral standards. As Ben Liebman pointed out in the case of China, the central state promotes legal accountably because it lacks the capacity to monitor its local agents through Leninist organizational pathways.[147] Another possible reason for this consensus is that the party supports juridification where it shifts responsibility for intractable social problems, such as official corruption and land grabs, away from the party and toward the key state institutions responsible for enacting and implementing the law.

Cause advocacy in Vietnam is steering the resolution of socio-economic problems toward procedural and distributive outcomes more than the substantive justice associated with liberal legalism. Cause advocates promote juridification by holding state officials accountable to the law. Concurrently they also encourage state agencies to flexibly apply laws to accommodate regional, ethnic, cultural, and economic diversity. In a rapidly transforming society, dispute resolution that privileges contextual outcomes over uniform legal rights makes sense as a strategy for resolving intractable social problems.

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[147] *See* Benjamin L. Liebman, *China's Courts: Restricted Reform*, *in* CHINA'S LEGAL SYSTEM: NEW DEVELOPMENTS, NEW CHALLENGES 66, 66–67 (Donald C. Clarke ed., 2008).