The "New" Law and Development Movement in the Post–Cold War Era: A Vietnam Case Study

Carol V. Rose

This article explores the reemergence of the Law and Development Movement in the post–Cold War era, with special reference to the impact of foreign legal assistance programs on legal and political reforms in Vietnam. Relying on extensive interviews conducted in Vietnam, as well as traditional academic research, the article focuses on changes in Vietnam's legal culture in the first decade of political "renovation." It then describes foreign legal assistance to Vietnam. Finally, it applies the critiques that emerged from the law and development debate to present-day legal assistance efforts in Vietnam, in an effort to determine the validity of those critiques in the post–Cold War era of foreign legal assistance.

After a hiatus of nearly two decades, governments, international organizations, private foundations, and law firms once again are investing millions of dollars in international legal assistance projects around the world. This resurgent interest in foreign legal assistance has renewed debate over the role of law in promoting economic and political progress. It also has reignited discussions that began with the Law and Development Movement ("LDM") of the 1960s and 1970s, in which U.S. legal advisers

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working abroad were criticized for being ethnocentric, naive, and imperialistic.

A convergence of factors has led to the resurrection of the so-called rule of law project: the collapse of the former Soviet Union, the hegemony of "neo-liberal" market concepts of economic relations, the rise of multinational corporations and, to a lesser extent, the emergence of the international human rights movement (Trubek et al. 1994:409; Lawrence 1994:672; Miller 1996:1). Influence over the legal systems of developing countries is now viewed as an avenue for access to the markets and natural resources of the developing world (Trubek et al. 1994:475). Leaders in developing countries, meanwhile, often regard legal reform as a means by which they can attract private foreign capital, build their nation, and assert equal status in the international economic and political system.

Most present-day legal assistance projects are designed to assist developing countries cope with this seemingly inevitable process of global economic integration in the post–Cold War era. There is a thin line, however, between the role of law in helping a country cope with the reality of economic competition and law's role in closing off alternative roads to development and solidifying a country's position of inequality within the global marketplace. In the particular context of countries making the transition from Communist command economies to market-based capitalism, both providers and recipients of legal assistance face unique challenges in determining the most effective methods of legal exchange and transfer. Is it possible or desirable to borrow only statutory laws, texts, and regulations without also adopting an entire way of thinking about law and lawyering?

The Socialist Republic of Vietnam provides a useful case study of the tension created by the possibility that legal assistance can both promote economic and political change and exacerbate social and economic disparities.[1] Vietnam's experience with Western legal assistance illustrates the distinct issues of legal borrowing and reform raised when a recipient country shifts from a command economy to a market-based economic and legal system, without also changing its basic political framework.

[1] Primary research for this article was based on public records and about 40 interviews conducted with representatives of donor agencies implementing legal assistance projects Vietnam, as well as with Vietnamese lawyers, academics, and government officials in charge of overseeing donor agencies and foreign legal assistance. The interviews were conducted in Hanoi and Ho Chi Minh City in March 1994 and January 1996. Interviews generally were based on a set questionnaire, from which discussion flowed freely. All interviews were conducted in English, with the assistance, when needed, of a Vietnamese translator. Updated information on legal assistance projects was gathered through telephone interviews in late 1997.

Among document sources were translations provided by the U.S. government's Foreign Broadcast Information Service–East Asia (cited herein as FBIS-EAS).

In 1986, Vietnam adopted a policy of renovation (*doi moi*) in an effort to turn the country toward a market economy.[2] Legal reform has been a key component of this renovation policy, and the Vietnamese government has welcomed international legal cooperation, particularly in the areas of trade and investment law. Yet, Vietnam generally does not welcome foreign legal assistance in "human rights" or other areas of direct legal-political reform. Because Vietnam's legal system is expected to serve a dual function—promoting economic liberalization while maintaining the one-party political structure (Sidel 1993:221)—Vietnam's officials temper their enthusiasm for foreign legal assistance with concern that outside actors, particularly the United States, "still seek to overthrow the Vietnamese Communist Party and to 'free' Vietnam" (Sidel 1996).[3] Vietnam thus has attempted to dilute the political impact of international legal cooperation by limiting legal assistance to technical, market-oriented reforms and by fostering legal exchange with a diverse range of bilateral and multilateral donors.

This article explores the extent to which the critiques of the LDM still apply to foreign legal assistance efforts in the post–Cold War era.[4] It makes no attempt to create a grand theory of legal implantation or borrowing and, indeed, questions the validity of such unified theories. Instead, it examines how international legal assistance shapes, reflects, and interacts with local legal reform efforts in one country—Vietnam.

I. Vietnam's Eclectic Legal History

The character of legal reform is determined in part by a society's attitudes toward law and its roles (Steiner 1971:39). Knowledge of a country's preexisting legal system helps donors to better understand the cultural and historical lens through which recipients of legal assistance may filter legal exchange. Vietnam's

[2] A progressive freeing of Vietnam's centrally planned economy began as early as 1979. The official renovation policy, however, generally is traced to the 6th Conference, 8th Plenum of the Communist Party of Vietnam (VCP), 10–17 June 1986, at which time the state retained a dominant planning role but deregulated prices and the state-owned industrial sector. The subsequent 9th VCP Congress further limited the state's role to that of overall economic planner and owner of key industries, leaving the rest of the economy for mixed state/private ownership (Gillespie 1994:n.1).

[3] These fears were no doubt magnified when President Clinton, announcing his decision to normalize relations with the Vietnam in July 1995, expressed his hope that normalization "will advance the cause of freedom in Vietnam just as it did in Eastern Europe and the former Soviet Union" (Sidel 1996).

[4] This article uses the phrase "Law and Development Movement" or "LDM" to refer to the U.S.-based movement of the 1960s and 1970s and the subsequent critique of methods of direct and indirect legal transfers (Merryman 1977). LDM should not be confused with the more recent, international debate over the international legal right to development, also sometimes referred to as "law and development." For more information on the right to development under international law, see Carty 1992a; Chowdhury & de Waart 1992; Rich 1983.

legal system, for example, reflects the country's historical experience with foreign intervention. Vestiges of Chinese, French, Communist and, to a lesser extent, U.S. law, overlay Vietnam's own ancient tradition of law (Van Ta Tai 1993; Gillespie 1994:327).[5] Any discussion of the impact of external legal assistance on internal reforms in Vietnam, therefore, must begin with a discussion, albeit brief, of the country's legal history and culture.

A. Vietnam's Legal System Prior to *Doi Moi*

Vietnam, like most of East Asia, has been heavily influenced by Chinese cultural and legal traditions (Woodside 1988; Van Ta Tai & Nguyen Ngoc Huy 1987).[6] Vietnam inherited the Chinese Imperial Code, with its Confucian tenets of hierarchy, authority, and harmony (Gillespie 1994:327), during the Lê (1428–1788) and Nguyen dynasties (1802–1845).

The influence of Confucianism in the present-day Vietnamese legal system and culture is evident in the discussion by some Vietnamese scholars of a "rule of moral" (righteous rulers), rather than the "rule of law" (Hoang Phuoc Hiep et al. 1996:42; Nham Nguyen 1997). There is a tendency in Vietnam, as in China until recently, to rely on "morality, custom, kinship or politics, rather than formal legality" (Alford 1995:22). The Chinese Imperial Code also infused Vietnam's legal system with a strong penal orientation, as well as a penchant for complex and detailed codification, often making law inaccessible to the ordinary citizen (Van Ta Tai 1988:41).

Vietnam's neo-Confucian system, with its emphasis on the authority of the state, did not blend well with the individual rights-based legal system introduced by the French during the colonial period[7] (about 1862 to 1954). The French imposed a parallel legal system on Vietnam, in which a civil law system governed French citizens and other Europeans, while the Nguyen code and customary practice governed the Vietnamese (Gillespie 1994:330). Nonetheless, Vietnamese bureaucrats, judicial officers, lawyers, and a small merchant class acquired a knowledge of French law (Gillespie 1994:330).[8]

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[5] Vietnamese family law, for example, reflects this synthesis of traditional Vietnamese and foreign law. Children are required to care for their parents in old age, reflecting Confucian law, while marriage is set forth as a partnership of equals, reflecting socialist law. Much of the family code also is drawn from the French civil code.

[6] This was particularly true because Vietnam was ruled by China for nearly ten centuries (first century B.C. to A.D. 10th century), followed by another nine centuries of political and cultural domination.

[7] The first French missionaries arrived in Vietnam in 1533, and the missionary effort actively continued throughout the 16th and 17th centuries.

[8] A French-style criminal code was imposed on the French colony of Cochin China (southern Vietnam) in 1912 and similar criminal codes were promulgated for the two French protectorates of Tonkin (northern Vietnam) and Annam (central Vietnam) in

The French also trained a great many Vietnamese lawyers in the French language and legal system at the French-sponsored Indochina Law School in Hanoi between 1920 and 1950 (Sidel 1994:166). Many of these lawyers remained in Vietnam after reunification, and today there is a small contingent of senior lawyers and scholars well versed in the French legal system and culture. Vestiges of the French legal system also persist in Vietnam. The formal hierarchy of statutory laws in Vietnam, for example, mirrors that used in the French legal hierarchy, as does Vietnam's reliance on a civil code.[9]

After declaring independence from the French, North Vietnam adopted a highly centralized legal system, in accordance with a Soviet-style command economy. Land was nationalized and redistributed, and both land and industry were brought under state and collective ownership (Gillespie 1994:330). The Ministry of Justice was dismantled in 1961, executive bodies of government were controlled by the Communist Party and, in general, rule remained by executive decree rather than by legislation.[10] In South Vietnam, the French legal system was supplemented when American legal advisers arrived beginning in the early 1960s. U.S. influence was most evident in the adoption of a constitutional framework consisting of a presidential system and separation of powers between the executive, legislative, and judicial branches in South Vietnam. U.S. influence also was extended through legal education, both by U.S. teachers working in Vietnam and by Vietnamese students who traveled to the United States to study law. Although many U.S.-trained lawyers left Vietnam in 1975, a handful remained behind after reunification.

Following the U.S.-Vietnam war and subsequent reunification of the country, the Vietnamese government extended the state-planned economy and Soviet-style legal system throughout the country.[11] The Vietnam Communist Party (VCP) embraced an

1918 and 1933, respectively (Van Ta Tai 1993:5). In addition, the French promulgated the 1883 Abbreviated Civil Code for Cochin China, which included provisions for such things as personal status and family relationships. The French colonial courts, however, still applied traditional Vietnamese Lê and Nguyen Codes in certain substantive areas, such as inheritance, matrimonial estates and contracts. In Annam and Tonkin, the traditional Nguyen Code remained in place until the promulgation of the Civil Code for Tonkin in 1931 and the Civil Code for Annam in 1936–39.

9 The hierarchy of laws in the Vietnamese and French systems are *hiên phóp* (constitution), *luót* (*lois* or laws), *phóp lênh* (*décret-lois* or decree laws), *nghi dinh* (décrets or decrees) and *thông tû* (*circulaires* or circulars). The five codes were civil, civil procedure, criminal, criminal procedure, and commercial.

10 Of the 1,747 legal documents promulgated between 1945 and 1954, only one was an actual law. The only formal law passed during that time was the 1953 Land Reform Law. The rest were "sub-law documents," including 621 presidential orders, 656 government decrees and 413 ministry circulars. Between 1955 and 1986, Vietnam issued a total of 7,167 legal documents, of which only 61 were law documents or ordinances—the rest were "sub-law" documents, such as executive orders or ministerial instructions (Hoang The Lien 1994:34).

11 Soviet influence over the Vietnamese legal system was evident in the existence of a labor code rather than the French-style commercial code, as well as in the emphasis in

antilegalist attitude, in which the "Marxist view that those who insist upon the rule of law are guilty of 'legal fetishism'" was reinforced by traditional "anti-colonial Confucian-influenced" antipathy toward legalism more generally (Gillespie 1994:332). There was little legislative innovation during these years, and the Communist Party and government continued to rule by decree rather than by legislation:[12]

> Everything was prearranged by the State, while personal interests had to entirely submit to the interests of the State and the collective. Thus, there was only one option left for social relations: to obey the administrative orders issued from above and at all levels. In such a situation even a semblance of legality became superfluous or just a formality. (Hoang The Lien 1994:35).

In contrast to the traditional Western notion of rights, in which individuals are allowed to act in any way not actually prohibited by law, the postwar Vietnamese conception of rights assumed that "any activity, particularly commercial activity, is unlawful unless expressly authorized by law" (Gillespie 1994:333). The Vietnamese people were taught the three tenets of socialist governance: The people are the owners, the Party is the leader, the Government is the manager. Legal interpretation was not based on precedent but instead was grounded in the "guiding principles" set forth by the state and was "supposed to be more or less mechanically implemented" (Hoang Phuoc Hiep et al. 1996:51).

The administrative dominance of the VCP in the two decades preceding *doi moi* coincided with waning interest in law and legal studies. Law school enrollment in Vietnam remained low, at around 200–500 students per year. Although hundreds of Vietnamese lawyers were trained in the Soviet Union or Eastern Europe between 1975 and 1986, their training focused primarily

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Vietnam's criminal code and criminal procedure codes on protecting the integrity of the socialist state and punishing political acts against the regime. Similarities between the 1985 Vietnamese Criminal Code and the 1989 Criminal Procedure Code and their Soviet counterparts, include (1) emphasis on punishing severely many political crimes and acts against the socialist state; (2) articles calling for the protection of the socialist order and defense of the socialist regime; and (3) reform and reeducation through labor as a form of punishment. In addition, the most recent versions of the Vietnamese criminal codes share with their Russian counterparts statements ensuring the inviolability of persons subject to arrest, protection of life, health, property, honor and dignity, the right to counsel, and the presumption of innocence (Van Ta Tai 1993:7–8).

[12] In theory, Vietnam has a hierarchy of legal acts: (1) Constitution; (2) laws, which are adopted by the National Assembly; (2) decrees of the Standing Committee (sometimes known as decree laws), which are quasi-legislative and issued by the Standing Committee of the National Assembly, and decrees of the Government, which are issued by the Prime Minister; (3) sub-legislative actions including, decisions, directives, and circulars, issued by ministers in government and high government agencies to implement laws and ordinances. Local People's Committees also issue Orders and Instructions at the local level.

on socialist ideology. The Ministry of Justice remained defunct from 1961 until 1981.

B. Vietnam's Legal Culture and System since *Doi Moi*

In 1986, the Sixth Communist Party Congress announced that Vietnam would virtually abandon the centralized command economy in favor of a market-based system that encouraged foreign investment. Five years later, the Seventh Communist Party Congress expanded *doi moi* to encompass legal reform. The Central Committee of the Communist Party called on the National Legislature to amend the 1980 Constitution and to "improve the skills of lawmakers in promulgating and organizing the implementation of law." Prime Minister Vo Van Kiet announced, "there must be a complete change from bureaucratic management to running the nation by law" (Hoang Phuoc Hiep et al. 1996:77 n.232). Vietnam's most dramatic legal reform was the adoption in 1992 of a revised Constitution, which called for the state to "promote a multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation" (Vietnamese Constitution art. 15). The fundamental shift in the 1992 Constitution was legal recognition of private ownership of property and recognition of the private sector economy.[13] In addition, the 1992 Constitution was the first of Vietnam's four constitutions since 1945 to include a special clause stating that "human rights in the political, civic, economic, cultural and social fields are respected" (Vietnamese Constitution art. 50).

Despite these reforms, Vietnam's legal system is expected to promote economic liberalization while also preserving a socialist, one-party state apparatus.[14] Thus, while the Constitution states that "[a]ll Party organizations operate within the framework of the Constitution and the Law," the VCP still sets the basic direction for development six times a year, and every government institution, including the National Assembly, must fit its work into this framework. Vietnamese officials interviewed generally saw no contradiction between the notion of a "rule of law" and the con-

[13] Technically, private property ownership does not extend to real property, such as land. Instead, individuals are given "land-use" rights, which can be sold, mortgaged or inherited. The 1992 Constitution sets forth three types of ownership: (1) all-people ownership of land, forests, mountains, waters, and state-owned enterprises; (2) collective ownership, such as cooperatives; and (3) private ownership of the means of production (Hoang The Lien 1995:29). The 1993 Land Law sets forth five types of rights to real property: use rights, transfer rights, exchange rights, collateral rights, and inheritance.

[14] This dualism is evident in the process of the constitutional reform itself. When Vietnam adopted a series of laws in 1991 promoting foreign investment, for example, rather than declare these laws unconstitutional, which they were under the 1980 Constitution, the government amended the Constitution in 1992 to bring it into harmony with the law. This flexibility in the interpretation and implementation of law reflects the government's willingness to adopt legal reforms in order to promote political and economic stability.

tinued supremacy of the VCP.[15] As one powerful Vietnamese government official observed: "The law in Vietnam is one expression of the Communist Party that has been codified."

The apparent tension between Vietnam's decision to abandon a command economy and its retention of a one-party political structure is eased somewhat by a recognition that the VCP has been a leading force in the reform process itself.[16] Debates occur over the speed with which Vietnam's reforms are implemented, for example, and some party branches are more liberal than others.[17] Nonetheless, political dissent outside the VCP is rarely tolerated (Human Rights Watch 1995b; Amnesty International 1993).[18]

Although it meets only twice a year, for about three weeks, the 395-member National Assembly has become increasingly vocal and influential under *doi moi*, enhancing the possibility that it will vie with the VCP for political power (Schwarz 1995b). Vietnam has passed hundreds of new laws and ordinances—running up to 20,000 pages in the last decade—and government officials speak of plans to adopt 20 to 30 new laws annually from now

[15] Under the 1992 Constitution, the Party remains the sole political party, the "force leading the State and society" and the "vanguard of the working class, the faithful representative of the rights and interests of the working class, the working people, and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought" (art. 4).

[16] The *doi moi* policy itself emanated from reformers within the Communist Party. In the 1980s, one Communist Party official from the northern district of Vinh Phuc decided, in the face of widespread poverty and starvation in his province, to allow local farmers to keep surplus produce after paying a government quota. When the official's actions were criticized, the Central Committee of the Communist Party sent a team to investigate. They discovered that local farmers supported local Communist Party leaders and that the district had become significantly richer as a result of the incentive system. When the investigative team reported these findings to the Central Committee, the Party as a whole decided to replicate this incentive system nationwide—leading to Vietnam's agricultural reforms in the early 1980s.

[17] The Ho Chi Minh City branch of the VCP, for example, has been much more liberal in its interpretation of Vietnam's commercial law than has the more cautious North (Gillespie 1994:358-59).

[18] Vietnam's human rights record has improved under *doi moi*, particularly the easing of travel restrictions and greater freedom to observe religious worship. Nonetheless, the government continues to respond harshly to political dissent, and maintains control over basic the basic functions of religious organizations, such as the ordination of clergy and approval of sermons (Human Rights Watch/Asia 1995a, 1995b; Amnesty International 1993). Vietnam has hosted delegations from Australia, Sweden, and the United States to discuss human rights issues in recent years, but many Vietnamese government officials decry use of human rights issues as a "capitalist ploy to undermine the government." A 1 July 1995 editorial in the Army paper *Quan Doi Nhan Dan*, for example, concludes: "The capitalist camp regards democracy and human rights as the most important part of its struggle to cause internal instability, poor economic strength, social unrest, and political crisis to transform socialist states into capitalist countries" (Human Rights Watch 1995c:3). In a 13 January 1994 interview, Deputy Foreign Ministry Le Mai stated: "It is clear that over the past 40 years, [the U.S.] has confronted us on human rights and now they want a dialogue on the issue. Will they prepare to repay their human rights debts for the Vietnamese people? Or will they, after failing to defeat us in their human rights confrontations, now change their tricks by resorting to a human rights dialogue to subjugate us?" (FBIS-EAS-94-020, 31 Jan. 1994).

until the year 2000.[19] The passage of the 834-article Civil Code in October 1995, covering almost every aspect of Vietnamese life, further illustrates the beginning of a shift from rule by party decree to rule by law.

The National Assembly also has passed a number of laws for enhancing popular participation in legislative drafting and social welfare more generally (Hoang The Lien 1994:34). In the course of writing the 1995 Civil Code, for example, the government published various drafts for public comment and the National Assembly collected more than 20,000 responses from the provinces.[20] Although it is difficult to judge how much of this "participation" was real and how much was propaganda, the process appeared to have some validity insofar as many of the "citizen" comments focused on formerly sensitive political issues, such as civil rights, freedom of religion, and the freedom to run a business.

More generally, respect for the law and legal institutions by both government officials and the public has been enhanced under *doi moi*. The Ministry of Justice, which was defunct until 1981, has gained increasing influence and stature, moving to fourth place within the formal hierarchy of line ministries within the government (Sidel 1994:171 n.18). In addition, law school enrollment has increased more than tenfold in the last decade. More than 29,000 applicants now compete for 2,000 available law school slots, compared with around 500 applicants just a decade ago. Nonetheless, legal education in Vietnam remains tethered to abstract socialist political principles, under which law is considered to be a purely political tool to shape the people and to build a new society.[21]

[19] New laws adopted in recent years include a Criminal Code (1986), a Criminal Procedure Code (1989), a Law of Trade Unions (1989), a Press Law (1989), Taxes on Natural Resources, High Income and Housing (1990), Law on Religion (1991), Laws of National Assembly Organization and Elections (1992), Foreign Investment Law (passed in 1987, revised in 1991 and 1992), Bankruptcy Law (1994), and an Environmental Protection Law (1994). An Economic Court was established in December 1993 and began operation in July 1994, replacing the previous state arbitration system. A new 834-article Civil Code was adopted in 1995, and a new Commercial Code is now being drafted. Government officials express interest in creating a Securities and Exchange Commission and in developing the banking and financial sector and, therefore, in drafting relevant laws.

[20] The tradition of participatory drafting dates back to Ho Chi Minh in Vietnam and is heavily influenced by Maoist China (Li 1978).

[21] The basic curriculum taught in Vietnamese law schools, for example, includes "Law and State," which focuses on critiques of feudalism, as well as courses on Marxism/Leninism, political science, and history. Formal legal subjects, such as constitutional law, administrative law, civil procedure, and criminal procedure are not introduced until halfway through the second year of studies.

C. Challenges Facing Vietnam's Legal Reform Efforts

Vietnam's historical willingness to synthesize a diverse range of legal approaches and shape them to the country's needs at a given time has strengthened the country's efforts to maintain independence and pursue its own path to development. At the same time, the absorption of diverse legal traditions creates challenges to Vietnam's legal reform efforts, including the lack of a unified legal framework, increased bureaucratization, and generational divisions among senior, mid-career, and young Vietnamese lawyers, who were trained, respectively, in the French, socialist, and mixed socialist/Western traditions. Understanding these potential roadblocks to reform is a prerequisite to meaningful legal exchange with Vietnam.

The adoption of overlapping laws fosters an uncertain climate for foreign investors and Vietnamese citizens alike. This so-called bureaucratic layering arises when multiple, often conflicting, laws apply to a given activity because various government bodies are authorized to issue laws, ordinances, decrees, circulars, or instructions.[22] Bureaucratic layering exacerbates the arbitrary application of law, increases transaction costs for investors, and, in some instances, fosters corruption, since each "layer" creates a locus of potential corruption by those in charge of implementing the relevant law or decree (Grant 1995:13). Bureaucratic infighting also affects foreign legal assistance projects as various ministries vie for donor monies. This, in turn, leads to duplication of assistance efforts and a reluctance to coordinate assistance projects, further undermining attempts to develop a coherent national strategy for legal assistance and reform.[23]

Inconsistencies in the application of law also arise because of more local jurisdictional bodies that also promulgate or enforce laws and regulations.[24] Local People's Councils, which operate by resolution, often promulgate regulations that provide varying in-

[22] Although the Standing Committee of the National Assembly is authorized to resolve such conflicts, in practice, questions of legal interpretation often are resolved by relevant line ministries and the Office of the Government case by case.

[23] The four core line ministries responsible for foreign international donor agencies are the Ministry of Planning and Investment, the Ministry of Foreign Affairs, the Ministry of Finance, and the Office of the Government. However, the Ministry of Justice and other line agencies are authorized to make proposals for foreign assistance projects within their ministries.

[24] This system has been described by some Vietnamese officials as one of "double subordination," in which:

> the local administrative agency is subject to the "horizontal" subordination of the People's Committee at the same level and the "vertical" subordination to the relevant ministry (or the agency of ministerial rank) in professional matters. Local administration seems to be a decentralized system but the principle of double subordination reintroduces a certain kind of centralization. . . . However, this does not mean that the Government has hierarchical power over the organs on a lower level. The power of the Government over the lower levels is "indirect." (Hoang Phuoc Hiep et al. 1996:71)

terpretations of national laws.[25] Local People's Committees, meanwhile, wield influence over the application of law through their ability to determine the salaries, office space, and other material benefits extended to local Justice Department officials.[26]

The lack of predictability and uniformity in Vietnam's laws is further magnified by the absence of a mechanism for the effective dissemination of laws.[27] Vietnam's "law inflation" makes it difficult for judges, lawyers, business people, and citizens to know what laws, decrees, or instructions have been promulgated or how they will be enforced.[28] This problem is exacerbated because case judgments form no binding precedent.

Training of Vietnam's lawyers and judges is perhaps the most expensive, long-term, and important task facing legal reformers. Sidel (1993) notes that the country's law schools and institutes must "train thousands of undergraduates to staff government offices, courts, prosecutors' offices, law firms, and companies throughout Vietnam; initiate training of graduate students as a core for the future of the legal education and research sector; and train and retrain thousands of in-service government officials throughout the country" (p. 225).[29] Although law school enrollment in Vietnam has increased tenfold in the last decade, the

[25] A local People's Council's members are elected for five years by universal suffrage, as are deputies of the National Assembly at the central level. The People's Council elects and directs the operation of the local executive branch, called the People's Committee.

[26] The chairman and vice chairman of the People's Committee are the most powerful persons in the local government. Subordinate to the committee are all local government departments except for those under the direct control of a central ministry (e.g., the police, the tax authorities, and the people's procuracy).

[27] The Ministries of Justice and of Information and Culture are jointly responsible for dissemination of general educational information to the public about the legal system. This is often done by relying on mass media (newspapers, radio, television) or by the use of loudspeakers during rush hours (Hoang Phuoc Hiep et al. 1996:33; see also Roland Hjerppe, "Dissemination of and Access to Legal Information in Vietnam," 1995, p. 12 [unpublished paper on file with the author]). School-based classes in citizenship also have been introduced in an effort to teach students their rights and obligations as citizens. The absence of proper legal libraries and the inability to collect and store legal information also hinders efforts to provide systematic dissemination of legal information.

[28] Once legislation is enacted, it is published in the official *Gazette,* under the auspices of the Office of the Government. Current circulation of the *Gazette* is 3,000 copies, far below the estimated 20,000–30,000 required to ensure proper dissemination of laws among government agencies (information from Lena Blomquist, Bodil Ulate-Segura, & Roland Hjerppe, "Summary: Legal Information in Vietnam," 1995, p. 1 [unpublished paper on file with the author]). Although the problem appears to be resource constraints rather than lack of access to information, the result is that dissemination of laws at the local level remains inadequate.

A related information deficit is evident in the absence of published judicial opinions. Vietnam does not rely on precedent as a binding source of law, so the opinions of the Supreme Court or lower courts are generally not made available in print. The general absence of published court decisions hinders efforts to achieve uniform interpretations of the law by the lower courts, further undermining the predictability of the legal system.

[29] According to Sidel (1993, 1994), the key legal training institutions in Vietnam are:

Hanoi Law University and its Branch College in Ho Chi Minh City, which is run by the Ministry of Justice

problem of inadequate and irrelevant legal training continues to stymie Vietnam's legal reform efforts.[30] As one U.S.-trained Vietnamese lawyer explained: "The Hanoi Law University produces legal philosophers, rather than practitioners. The legal philosophers are now in power. But the reality is that we have a market economy that will require legal practitioners."

Magnifying this already daunting task is the tension between generations of lawyers in Vietnam. A handful of senior lawyers, mostly from the South, were trained in either the French or the U.S. legal tradition between 1940 and 1975. Attempts by many of these lawyers to work for greater respect for the rule of law and increased political freedoms created animosity between them and the Vietnamese Labour (Communist) Party in the 1950s and thereafter (Sidel 1994:168). Nonetheless, their technical skills and training are again in demand since *doi moi*. A second group of lawyers are mid-career lawyers, mostly from the North, trained in the Soviet Union or East Germany. This Soviet-influenced group includes officials who control the key institutions in the government and legal hierarchy, as well as a younger generation of emerging leaders. Since *doi moi*, a third group of lawyers has emerged: law graduates trained at law schools in Vietnam, as well as a few young scholars now studying at foreign law schools. Sidel describes this group, along with the younger generation of Soviet-trained lawyers, as "restless, intellectually and politically sophisticated . . . [and] eager to consider new models for Vietnam's legal, political and economic development" (p. 168).

In addition to training lawyers, Vietnam faces the task of training judges, particularly since many of the sitting judges have lifetime appointments.[31] Prior to 1991, judges were elected by

Hanoi University Faculty of Law, which is run by the Ministry of Education and Training

The Institute of State and Law in Hanoi, which focuses on research and graduate training and is a branch of the ministry-level National Center for the Social Sciences

The Institute of Legal Research, which serves the Ministry of Justice

Ho Chi Minh City University faculty of law, operated by a group of attorneys who were trained at the pre-1975 Saigon University Law School. The university is administered by the Ministry of Education and Training.

[30] William G. Magennis, the Chief Representative in Vietnam for the law firm Phillips Fox, reported on an informal survey of the amount of time in undergraduate law program required for various subjects. For statistics on this survey, see the Appendix.

[31] Vietnam has a three-tier judicial system, consisting of the district courts, the provincial courts, and the Supreme People's Court. District courts are the courts of first instance in most cases. Provincial courts act as appeals courts from the district level. However, the provincial court is the court of first instance in civil cases where the damage award is above a specified monetary amount (set by law) and in criminal cases involving sentences of more than five years. The Supreme Court hears appeals from either of the lower courts.

The National Assembly and the State Council have authority to establish special tribunals that are separate from the normal court system, including military tribunals. At the grassroots level "appropriate popular organizations" can be set up to deal with minor offenses and disputes. 1992 Constitution, art. 127.

the People's Councils, based on recommendations from the Community Party or mass organizations (such as the Fatherland Front). A law degree was not a prerequisite for election, and many of the judges elected from 1960 to 1985 did not have formal legal training. Although the 1992 Constitution reformed the judicial selection process, only 10% of the judges at the provincial and district levels have full-time legal training, while around one-quarter of the judges at those levels have no legal training at all.[32] The task of retraining sitting judges has been assigned to the Supreme People's Court and the Hanoi Law University, both of which suffer from shortages of money, material, and manpower.

II. International Legal Assistance Efforts in Vietnam

In contrast to Vietnam's colonial experience, in which Chinese, French, or U.S. systems were forcibly imposed on the country, Vietnam's current "open door" policy toward foreign legal assistance reflects a desire by the Vietnamese government to promote foreign investment and to integrate Vietnam into both the regional and global economy, as well as to promote political stability at home. Pragmatic eclecticism has been the hallmark of Vietnam's approach to international legal cooperation, as it has been in other aspects of legal reform. The Vietnamese government thus has promoted foreign legal exchange with both civil law and common law countries, as well as with neighboring Asian countries. Said one Vietnamese official: "We want to learn and to follow the advantages of all the other systems. . . so [that] we can avoid the disadvantages of other legal systems and select the experiences that are most suitable to Vietnamese society."

Then-Prime Minister Vo Van Kiet, in a speech to the 1993 National Juridical Conference in Hanoi, summarized the rationale behind Vietnam's "open door" policy toward legal assistance:

> We lack many laws. In the economic field, which is a priority in legislation, a legal framework still has to be worked out. With the open door policy, we are able to contact various legal systems of the countries which have a higher level of development in many aspects. . . we need to study what is suitable for our country to establish step by step a reliable framework for domestic and foreign investment, to ensure effectiveness of state management, and protect freedom and democratic rights of

[32] Judges now are appointed by the president on the basis of criteria set forth by a 1993 Decree of the Standing Committee, which requires judges to have a university law degree and legal experience—three years' experience for district judges and five to seven years' experience for provincial judges. Judges on the Supreme Court are chosen by the National Assembly and approved by the president. Local judges must report to the People's Councils at the corresponding local level, however, and salaries and other material benefits of local judges are controlled by local People's Committees (Hoang Phuoc Hiep et al. 1996:66).

> our citizens. (United Nations Development Programme 1994:2)

Vietnam's experience with foreign legal assistance began with an exclusive focus on economic law, particularly legislative drafting. Since then, however, legal assistance projects have expanded in both size and scope to include dissemination of legal information, training of lawyers and judges, and institutional capacity building. The subject areas involving foreign donors have expanded to include administrative law, the civil code, labor law, environmental law, property law, and family law. Most recently, Vietnam has invited foreign donors to provide assistance in drafting of a new criminal code and a criminal procedure code, as well as in potentially sensitive political areas such as constitutional law and human rights. Vietnam's growing receptivity to legal cooperation in areas other than purely economic reform coincides with a recognition on the part of Vietnam's leaders that strengthening legal institutions—and not merely drafting of economic law instruments—is a necessary component of a legal reform agenda, and one that is particularly amenable to foreign assistance.

At the same time, Vietnam has attempted to restrict the potential cultural and political influence of foreign legal advisers by cultivating relationships with a diverse range of donors. According to one Vietnamese lawyer: "Vietnam never follows exactly one foreign legal model, but instead tries to pick among many. This comes from Vietnam's history of struggle and protest against foreign invaders. Vietnam has a long history of creating its own state and legal framework, so it does not like to adopt a single foreign model."

The first formal postwar legal assistance project in Vietnam was a $1.75 million project established by Sweden at the end of 1991, focusing primarily on economic law issues and legislative drafting.[33] By 1996, foreign donors had spent or pledged more than $13 million for legal assistance programs and the scope of projects had expanded to include administrative reform, constitutional law, criminal law, and human rights.[34] Donors include multilateral institutions, governments, private foundations, and law firms.

Although each donor brings unique approaches to legal assistance, there are commonalities as well. Foremost on nearly

[33] This project also included assistance in drafting of a law on economic courts, a system for registering enterprises, teaching in legal English and seminars on economic law, developing a model for an administrative court system, assistance in legislative drafting, the creation of a Legal Information Center and study tours for Ministry of Justice officials abroad (United Nations Development Programme 1994:Annex 3-37).

[34] This is a rough estimate of money spent on projects already undertaken, underway or about to begin. However, it may severely understate the amount of money pledged for legal assistance in Vietnam because many donors were reluctant to reveal the amount of money they were spending or had pledged for such assistance.

every donor's agenda is a stated desire to promote a free market economy and foreign investment in Vietnam. In most cases, the donors frame this goal in terms of supporting the Vietnamese government's free market policy. Many foreign legal advisers thus speak of the Vietnamese government as their "client," noting that their role as legal advisers is to serve, rather than set the agenda for, the client. This line of reasoning often includes suggestions that by providing legal assistance, foreign lawyers can help Vietnam defend itself from potentially unscrupulous foreign investors while still obtaining lucrative investment contracts.

A second common theme, particularly among donor officials representing foreign government projects, is that legal assistance might enhance the political influence of the donors' own government and thus pave the way for increased market share for their country's businesses in Vietnam. Although most donor officials acknowledge, when directly asked, that self-interest plays an important role in legal assistance projects, few volunteer this as a key reason for promoting legal assistance in Vietnam.

A third common goal among donors, as well as foreign lawyers with private law firms, is an emphasis on promoting new notions of professionalism among Vietnamese lawyers. In general, donors express dismay, even scorn, at the nontechnical, ideological training of the Soviet-trained Vietnamese lawyers. There seems to be a consensus among foreign lawyers, as well as some Vietnamese elites, that Vietnam needs lawyers with Western-style legal technical training to function in a regional and global economic environment. Implicit in most legal assistance programs is the notion that Vietnam must revise its fundamental notion of what it means to be a lawyer.

Finally, many foreign legal advisers speak of the importance of avoiding sensitive political issues arising from legal reform, such as individual rights, "governance" issues, or human rights. Reluctance to articulate a political agenda in the area of legal reform may reflect donors' desire to find the least controversial way to enter the field of assistance in Vietnam. Thus, while many express a belief that economic liberalization inevitably will spark political change, donor officials generally seem more reluctant than their Vietnamese counterparts to openly discuss the potential political spillover effects of foreign legal assistance.

A. Foreign Legal Assistance Projects in Vietnam

The major multilateral donors involved in legal assistance in Vietnam include the United Nations Development Programme (UNDP), the World Bank, and the Asian Development Bank (ADB). The key bilateral donors are Denmark, Sweden, Canada, France, Japan, and Australia. The United States, which lifted its trade embargo on Vietnam only in 1994, is a latecomer to the

legal assistance arena in Vietnam and thus remains a marginal actor. Nonetheless, it exercises an inordinate degree of influence by virtue of its superpower status and its unique history with Vietnam and by financing multilateral legal assistance projects. Private donors, notably the Ford Foundation, and some U.S. universities, also have gotten involved on the periphery of Vietnam's legal reform process. Finally, foreign private law firms have played a unique and crucial role in Vietnam's legal reform process.

1. Multilateral Actors: UNDP, the World Bank, and the Asian Development Bank

UNDP. The United Nations Development Programme (UNDP) is the dominant multilateral donor working on legal reform in Vietnam. Its early projects focused on legislative drafting in the substantive areas of mineral law, petroleum legislation, aviation law, oil and gas law, state-owned enterprise law, labor law, and land law. UNDP's $1.5 million program for "Strengthening Legal Capacity in Vietnam" had the stated goal of helping the Ministry of Justice and the Law Committee of the National Assembly to "establish a legal framework" to promote the "priority areas of marketbased economic activity and civil governance within the context of sustainable development" (United Nations Development Programme 1994). Between 1993 and 1996, the UNDP, in conjunction with the World Bank, also worked with the Ministry of Planning and Investment on a $535,000 program to prepare laws related to bankruptcy, domestic investment promotion, and state enterprise (Fischer 1997:101).

UNDP also is involved in implementing a $3.1 million, three-year project—two-thirds of which is financed by the Government of Denmark—to strengthen the capacity of the Office of the National Assembly "in its role of strengthening the rule of law and guiding the transition to a more market-oriented economy" (United Nations Development Programme 1997). UNDP also is implementing a $3.1 million project to strengthen the Vietnamese court system and judiciary through training judges and related court personnel; and a $3.1 million project to strengthen its public prosecutor system (Fischer 1997:102–3). The Danish government also provides two-thirds of the financing on these projects.

UNDP's position as a multilateral organization, as well as its overall antipoverty mandate and avoidance of sensitive issues, such as human rights, has enabled the UNDP to work in areas where bilateral donors are not welcome, notably legal reform of institutions over which the Office of the Government (Prime Minister) wants to retain control. As one Vietnamese official noted: "The government has to seek neutral organizations that

are not politically-oriented [to work in sensitive areas]. Although some bilateral donors, such as Sweden or Canada, don't seem to have a political agenda, it seems safest to start with neutral multilateral organizations."

The UNDP's antipoverty and economic development agenda has led it on a path to law reform that begins with reform of public institutions and administrative reform. It generally limits the substantive scope of law projects to the development of a free market economy, although more recently, UNDP officials announced that its programs increasingly will focus on "governance."[35]

The UNDP does not advocate or recommend legislation in particular substantive areas, but instead provides Vietnam "with a fund of knowledge relating to laws in the developed legal systems of the world economics powers—e.g., the United States, the United Kingdom, France, Germany, The European Community, Australia, Japan, ASEAN countries, etc." (United Nations Development Programme 1994:12).

While this consciously "impartial and neutral" stance distinguishes the legal assistance projects of the multilateral donors from those of some bilateral government programs, the multilateral agencies share with other donors an avoidance of potentially sensitive political issues, such as human rights. As one UNDP official stated: "The Vietnamese don't welcome concepts imposed on them from the outside, particularly when imposed for ulterior motives. And if human rights [concerns] are blamed on Communist Party rule then you've lost it; the issue is dead. They want to run their own ship."

At the tactical level, the UNDP focuses on training and professionalization as a way of promoting new approaches in Vietnam. The goal is to ensure that "a wide group of law-oriented officials and educations will [be] retrained so that they can be effective advisers to government and private agencies and law students in a market-oriented economy." This focus on redefining the role of lawyers for the purpose of helping Vietnam integrate in the world economy is common to virtually all donor agencies.

The World Bank. Although the World Bank has no "rule of law" projects, as such, its analysts have written that the transition from a command economy to a market economy "requires corresponding changes in the legal framework for economic activity" (Lichtenstein 1994:1). As a result, the Bank has helped to provide financing, either under credit agreement or grants for hiring lawyers and consultants, to either evaluate or recommend proposed legislation. Specific areas in which the Bank has provided advice to Vietnam include property ownership, governance processes, commercial law, competition law, financial laws, for-

[35] Release from Inter Press Service, 1997.

eign investment and environmental protection law, banking and company laws, and dispute resolution. Bank consultants also have assisted Vietnamese ministries and agencies in legislative drafting for national water policy and legislation, national procurement legislation, land use rights, bankruptcy law, and domestic promotion investment law.

Other law-related World Bank programs in Vietnam include a $198,000 project to assist the Ministry of Water Resources to draft a water law; a $326,000 project to assist the Ministry of Planning and Investment to develop a national policy and legislation on involuntary resettlement (Fischer 1997:103–4); and a proposed $100 million project, half of which will be financed by the World Bank, to modernize Vietnam's Ministry of Finance (Financial Times 1997). The International Finance Corporation, a member of the World Bank Group, has also been assisting Vietnam in the drafting of legal documents related to the establishment and regulation of a securities market (Asia Pulse 1997a).

The Asian Development Bank (ADB). The ADB's objectives in the law and development field are to promote legal reforms "to create a policy, legal and regulatory environment which is supportive of economic growth . . . which will attract private investors and commercial lenders and [encourage] governments to privatize state-owned enterprises." Although the ADB also lists environmental protection and promoting the status of women as two other objectives, its programs in Vietnam focus almost exclusively on economic law and legal capacity building.

ADB law and development projects now underway (Fischer 1997:93 et seq.) include a $600,000 project to strengthen the audit capacity of the State Auditor-General's Office; $1.9 million to assist the Ministry of Transport to draft legislation providing standards for traffic safety; $600,000 to assist Vietnam's National Environment Agency to draft a legal framework for hazardous waste management; and a $600,000 project to assist the Ministry of Planning and Investment to "encourage stronger private sector development and improve the efficiency of State enterprises."

Proposed ADB legal projects in Vietnam include a $1 million proposal to help the Ministry of Justice provide continuing legal education to Vietnamese lawyers, specifically to "provide Vietnamese lawyers with practical legal skills and knowledge necessary for lawyers operating in a market economy" (Fischer 1997:96); and a $500,000 project to assist the Ministry of Justice to create a secured transactions registration system.

2. *Bilateral Actors*

Bilateral donors and their staffs and consultants face unique tensions in their legal assistance work in Vietnam. While many share with the multilateral donors and private law firms a general

view that their client is Vietnam, these government officials must also remain responsive to the political and economic demands of their home governments. Although some governments clearly approach foreign assistance to legal reform in more overtly ideological terms than others, the officials interviewed generally echo the theme that the agenda for their legal assistance efforts is set by the Vietnamese government and, as a result, most legal assistance projects focus on economic law issues. In addition, officials from bilateral donor agencies stress the need for training a professional cadre of Vietnamese lawyers to ease Vietnam's transition to a market economy.

Denmark. Denmark recently has become the largest bilateral donor in the field of legal assistance to Vietnam, pledging over $6 million over three years to finance three rule of law projects, primarily in conjunction with the UNDP projects described above. Specifically, Denmark has committed $2 million to each of three projects: strengthening the legal capacity of the national assembly, of the judiciary, and of the office of the public prosecutor. These programs mark the first time that the Vietnamese National Assembly, the judiciary, or the public prosecutor's office have received external assistance on a comprehensive scale.

The National Assembly program is focused on "strengthening the rule of law and guiding the transition to a market economy" (UNDP Press Release, 11 Nov. 1996). The stated goal of the program is to increase the skills and capacity of the professional staff at the National Assembly office through training in foreign and comparative law, legislation, and legal drafting and research. In addition, the program will provide English-language training, books, and materials. The judiciary program will focus on the drafting of a new civil procedure code and on training judges and related court personnel. The public prosecutor program will focus on training public prosecutors as well as drafting a new criminal procedure code.

All three projects will also assist Vietnam to strengthen its legal information and dissemination systems by providing computers and internet access, linking the provinces with urban areas, as well as improving data management and English-language training.

Denmark also is financing a number of administrative reform projects, specifically a $2.3 million project to provide administrative support in Dak Lak Province. The Royal Danish Embassy in Hanoi also is considering support for a small project aimed at providing free legal aid to low-income earners.[36]

[36] Information on the Danish legal assistance programs was provided by the Royal Danish Embassy, Hanoi.

Sweden. Sweden is notable among the bilateral donors for the long-term commitment it has made to Vietnam, including in the area of legal reform. Sweden was first invited to participate in Vietnam's legal reform efforts in 1991. Since then, it has spent or committed more than $3 million advising Vietnam in areas such as legislative drafting, legal education and legal information systems.[37] At present, Sweden is involved in a $1.3 million project to assist the Ministry of Justice in strengthening the rule of law through study tours and seminars, English-language training, and advice on administrative matters, as well as a $2.5 million project with the Ministry of Justice to support legal training at the University of Law in Hanoi, Ho Chi Minh City, and other legal training institutes (Fischer 1997:99–100).

Sweden's long-term financial commitment to Vietnam, its general approach of neutrality in international affairs, its support for Vietnam during the war, and its penchant for "quiet diplomacy" have enabled Sweden to move into legal reform areas normally closed off to foreign donors. As one Swedish Embassy official noted: "We tend to see the issue [of legal assistance] as one of trust. Vietnam acknowledges that we have kept the relationship with them for a long time, which allows us to go into areas that are sensitive." In recent years, Vietnam has invited Sweden to provide consulting in potentially sensitive legal areas, including human rights, family law, and criminal law.

In addition to humanitarian concerns, Swedish legal assistance programs in Vietnam also are driven by commercial interests—as are virtually those of all the bilateral donors. Swedish government officials acknowledge Sweden's interest in creating an "enabling environment" for private businesses in Vietnam, particularly in the areas where Swedish companies are interested in working, such as hydropower and telecommunications.

Canada. Canada has spent or pledged more than $3.7 million on Vietnamese legal assistance projects, including those undertaken since 1993 or currently scheduled. Most of Canada's legal

[37] Between 1991 and 1995, Sweden provided assistance in drafting a law on economic courts; establishing a system for registering enterprises; developing a model for an administrative court system; enhancing the legislative drafting process; general support to Hanoi University of Law in English and Economic Law, including scholarships for law teachers to be retrained abroad; establishing a legal information center with a computerized legal database; organization of seminars in Vietnam on various subjects of economic law; and study tours abroad for Ministry of Justice officials. From 1995 to 1997, Sweden has pledged $1.75 million for legal education (not including judicial training) and development of legal information systems, as well as support for drafting and/or enhancement of laws regarding competition, arbitration, and amendments to the company law; enhancement of civil procedure and criminal procedure codes; enhancement of marriage and family law; enhancing human rights issues and making amendments to the law on citizenship; training in teaching of economic law and legal English and strengthening management capacity of the Ministry of Justice (Embassy of Sweden, Response Form Summarizing Donor Support to Legal Reform Related Activities, 26 Sept. 1995; Fischer 1997:99–100).

assistance projects in Vietnam have focused on legislative drafting, economic and administrative law reform, sustainable economic development, and fishing, maritime, and petroleum law (Fischer 1997:98–99).[38] In 1994, however, the Canadian Embassy, along with the University of British Columbia, began a project with the Vietnamese Institute for State and Law in the area of constitutional rights and the rule of law, including human rights.

Canada's legal assistance work in Vietnam, like Sweden's, is remarkable for its relatively generous donations, its early focus on economic law, and its later entry into the more sensitive areas of civil and human rights law. In part, this may be due to Canada's low-profile, often neutral stance in global politics, and the Canadian government's willingness to pour substantial sums of money into legal assistance programs. Nonetheless, Canada's focus on maritime, fishing, and petroleum legislation suggests that it also includes governmental self-interest, as well as expertise, in determining substantive areas of law in which to advise Vietnamese legislators. An additional motivating factor may be support for Canadian academic institutions, which want to become involved in Vietnam and thus benefit from Canada's foreign legal assistance projects.

France. France's historical influence in Vietnam's legal system has enabled it to work with senior Vietnamese lawyers trained under the French colonial regime and to build on what one official called the "ruins of its influence." French legal assistance programs are unique in that they involve some of the highest-ranking French and Vietnamese legal scholars, reflecting the high priority that both countries put on legal cooperation.[39]

Although French officials are reluctant to reveal financial figures regarding their foreign legal assistance, they are reported to have assisted Vietnam in legislative drafting for the 1995 Civil Code and the forthcoming Commercial Code. In 1993, the

[38] Current Canadian legal initiatives in Vietnam include a $430,000 joint UNDP-CIDA project to help the Office of the Government to draft a regulatory and procedural framework for implementing the petroleum law; a $400,000 program to assist the Vietnamese Oil and Gas General Department to draft regulations related to oceans and coastal cooperation relating to the petroleum legislation; a $30,000 program to develop a property rights regime for fisheries; and a $120,000 million project to assist the Ministries of Justice and Transportation to draft regulations to prevent marine pollution and to train lawyers and judges in connection therewith (Fischer 1997:98).

[39] The French Maison du Droit, for example, was opened in 1993 by then-President François Mitterand. Other French and Vietnamese luminaries involved in the Maison du Droit include the chief executive of the Paris Bar, the President of the French Commercial Court, the president of the Supreme Council of French Notaries, as well as the Rector of the Hanoi Law Faculty and officials from the Vietnamese and French foreign affairs ministries. According to the director of the Maison du Droit, the "president of the Vietnamese Civil Court" also is on the board. Such a position, which existed during French colonial rule, has not existed in Vietnam since the mid-1950s. This might be a possible reference to the Chief Judge of the Civil Tribunal of the Vietnamese Supreme People's Court.

French and Vietnamese jointly established a Maison du Droit (House of Law) on the campus of the Hanoi Law University. The objectives of the Maison du Droit are to provide for a legal library, office space, and conference rooms; make the laws of France and Vietnam available to all jurists; centralize information concerning legal cooperation between France and Vietnam; organize conferences on themes of common agreement; foster intellectual exchanges; and promote legal research and cooperation. According to the French director of this program, the French do not intend to export their legal system, nor do they discuss human rights issues with their Vietnamese counterparts. By emphasizing almost exclusively French-language sources and documents and providing information about the French legal system, the French, arguably, have limited the scope of their work to a relatively small percentage of young Vietnamese lawyers and law students interested in learning French, as compared with the large number now studying English.[40]

Japan. Japan is the largest donor of general international development assistance to Vietnam, with commitments in 1998 of over $750 million and also is Vietnam's leading trade partner, with more than $3 billion in trade annually (Xinhua 1997). Most of this aid is in the form of loans, however, notably for power and transportation projects. Although exact budgets are difficult to obtain, anecdotal evidence suggests that Japanese assistance to Vietnam is expanding into the legal arena.[41] Japan's International Cooperation Agency (JICA), the Ministry of Justice, and the International Civil and Commercial Law Center Foundation (ICCLC) have offered training courses to the Vietnamese Ministry of Justice since 1994 directed toward the establishment of a "basic infrastructure in the fields of civil and commercial law" (Fischer 1997:99). Japan also advised Vietnam in the drafting of the 1995 Civil Code.

The Japanese Government also has financed a $958,000 World Bank project on "Preparation for Structural Adjustment Credit II," which is designed to provide "legal advisory services" related to reform of Vietnam's state enterprise system and a review and amendment of Vietnam's banking regulations (Fischer 1997:104). A few Japanese lawyers also sponsor private rule of law seminars; for example, a forum on Japanese-Vietnamese comparative law was held at the Hanoi Law University in 1996. A number of Vietnamese officials also cited Japan's policy of restricting for-

[40] Many Vietnamese officials interviewed mentioned Singapore as a particularly attractive model of economic and political development. Singapore's Prime Minister Lee Kwan Yu first visited Vietnam under the auspices of a UNDP exchange program and has since made repeated visits.

[41] Vietnam's then-Prime Minister, Vo Van Kiet, announced in early 1997 that Vietnam was eager to cooperate with Japan in sharing of know-how about the legal system (Xinhua English Newswire 1997).

eign lawyers as a source of inspiration for Vietnam's recent decision to impose similar restrictions on lawyers in Vietnam. In addition, many officials interviewed noted that Japan and other Asian countries will become increasingly important models for Vietnam because of Vietnam's entry into ASEAN (Association of South East Asian Nations) and the regional economy more generally.

Australia. The Australian government spends around $2 million annually on legal assistance in Vietnam, focused primarily on working with the Vietnamese Ministry of Justice to promote English-language training, study tours, and in-country legal seminars. In substantive terms, Australian legal assistance has included a joint project with UNDP to help Vietnam draft mining laws, as well as assisting the Ministry of Construction to draft a construction code. These two areas—mining and construction—are sectors where Australian businesses have both experience and self-interest in the Vietnamese market, suggesting a strong link between commercial policies and legal development projects.

A far more ambitious project to spend $50 million on legal education scheduled to start in mid-1996 was subsequently abandoned. A variety of factors contributed to the collapse of this potentially significant assistance project, including bureaucratic delays and infighting between various Vietnamese ministries. As one AusAID official noted: "Vietnam will need massive foreign assistance get over the hump [of legal reform], but there is no will, as of yet, to use it."[42]

United States. The lifting of the U.S. trade embargo in February 1994 and subsequent normalization of ties between the United States and Vietnam has sparked renewed interest in both private U.S. investment and U.S. government aid efforts, including interest in legal assistance (Walsh 1995). Nonetheless, U.S. legal assistance efforts in Vietnam remain embryonic.

The U.S. Embassy in Vietnam was reopened in February 1995, and the United States Information Service (USIS) began its work in Hanoi in September of that year. The USIS is "funded to promote mutual understanding through information and exchange programs in support of U.S. foreign policy." The agency supports programs "intended to raise understanding in Vietnam of the U.S. legal system and its foundations, as well as market-oriented economics, U.S. concepts of good government, and aspects of U.S. policy."[43] USIS programs include:

[42] "Australia's Development Cooperation Program with Vietnam," 1995 [unpublished AusAID circular, on file with the author].

[43] Information of USIS "rule of law" exchange programs in Vietnam was provided by Elizabeth Kauffman, Country Affairs Officer, Burma, Thailand, Laos, Cambodia and Vietnam, USIS; and William Bach, USIS director in Hanoi.

Fulbright Academic Exchange Program, with a $2.7 million annual budget to provide scholarships for Vietnamese educators, managers, and professionals to pursue graduate studies in the United States, including, but not limited to, legal studies;

Business Fellows Program, a $350,000 project to which Vietnamese managers and policymakers were provided with economic, trade policy, and commercial law seminars;

Speaker and Specialist Program, a one-week seminar in commercial law in June 1996 and a one-week seminar in intellectual property rights law in October 1997 for Vietnamese legislative drafters and specialists. Also has included programs on U.S. tax law and legal training;

International Visitors Program: an ongoing program that brings Vietnamese executive and legislative officials to the United States for four-week study tours, including but not limited to legal training;

Support for six Vietnamese lawyers to participate in a conference sponsored by the International Law Foundation in Hawaii.

Citizens Exchange Program: USIS has solicited proposals from U.S. nongovernmental organizations to conduct exchanges focusing on the rule of law in 1998;

College and University Affiliation Program: USIS plans to sponsor a $119,000 program for the University of San Francisco to conduct exchanges of faculty and materials with the Hanoi National University School of Law over a three-year period.

Despite these exchange programs, the USIS does not formally fund "legal assistance" as such. "We have to begin with things that the Vietnamese government wants, such as administrative reform and reform of banking laws," said the USIS representative in Vietnam. "Only eventually will we move down the road to issues such as due process, transparency and access to legal aid."

Another key U.S. player in the rule of law arena is the National Endowment for Democracy ("NED"), a congressionally funded nonprofit institution established in 1983 with a mandate to "support the development of democratic institutions around the world." It has given nearly $1 million since 1990 to projects aimed at Vietnam that NED describes under the loose rubric of "rule of law." The majority of these grants have gone to the Institute for Democracy in Vietnam and the Association of Vietnamese Overseas, both organizations of Vietnamese exiles based in the United States and France, respectively. Other NED grants have been awarded to the Center for International Private Enterprise, which states that its mission is to "strengthen democracy around the globe through the promotion of private enterprise, market-oriented reform, and legal, regulatory and business institutions."

Another NED grantee working in Vietnam is the International Republican Institute ("IRI"), another congressionally created nonprofit institution, which has a mandates to "strengthen the evolution of political parties and the democratic institutions that advocate self-determination, individual rights, the rule of law and free-market economic systems." The IRI hosted the first delegation of representatives from the Vietnamese National Assembly to the U.S. Congress in February 1996 and is working with the Vietnamese National Assembly on legislative coordination and drafting, particularly in the areas of banking, taxation, and budgeting. Nearly half of IRI's approximately $80,000 annual budget comes from major U.S. corporations that invest in Vietnam, including Mobil, Caterpillar, Hughes Aircraft, United Airlines, Ford Motor Corporation, and Chrysler. "U.S. corporations see this type of rule of law project as an investment in the legal infrastructure," said the regional program director for IRI in Asia. "The Vietnamese see it as part of their bilateral relations with the United States—a way to reach out to the U.S. Congress in the context of debates over normalization and MFN status."

Another congressionally financed institution is the Asia Foundation, which began work in the legal assistance area in Vietnam in 1991, financing study tours for Ministry of Justice officials. In 1992, it supported a law and society conference with the Vietnamese Institute of State and Law. Since 1994, however, the foundation has shifted its efforts to assisting the Vietnamese National Assembly to improve legislative functions, including budgeting, policy analysis, and writing. The focus now is on general policy issues, rather than technical assistance, and on activities that promote economic reform and private sector development. Programs thus focus on issues such as banking and monetary policy, avoiding more sensitive political issues such as human rights and civil society. The Foundation's budget for Vietnam, which peaked at nearly $400,000 annually in fiscal year 1995, was reduced to $150,000 in fiscal year 1996, as a result of U.S. congressional budget cuts.

The Fulbright Economics Teaching Program in Vietnam was established in 1994, and although not directly law-related, the program is directed at developing "a core of managers capable of working in a fast growing market economy" by teaching them public administration and applied economics. The program is funded by the U.S. Congress and governed by a committee consisting of members from the Vietnamese Ministry of Education and Training, the Ministry of Foreign Affairs, the Committee on Science and Education, and the Ho Chi Minh City People's Committee, as well as the American Council of Learned Societies and the Harvard Institute for International Development.

To the extent that these organizations—USIS and its grantees, the NED and its grantees, the Asia Foundation and the Ful-

bright Program—are congressionally funded and, therefore, perceived to be politicized, they may be viewed with varying degrees of suspicion by the Communist Party and security forces in Vietnam.

Efforts to expand U.S.-Vietnamese legal cooperation are hindered by the remnants of distrust that linger as a result of the U.S.-Vietnam war and subsequent economic embargo, as well as by the ideological rhetoric of U.S. policymakers in Washington, DC. Secretary of State Madeline Albright, in her meeting with Vietnamese officials in 1997, for example, chastised Vietnam for the slow pace of its reform, particularly in the legal arena, and also for its human rights record and lack of political openness, stating: "Economic and political openness are two sides of the same coin. Ultimately, you cannot have one without the other. Both are required for development and both depend on creation of a viable civil society and respect for the rule of law" (Asia Pulse 1997b).

The ideological bent of U.S. assistance efforts in Vietnam is determined, in part, by the Jackson-Vanik Amendment to the 1974 Trade Act, which links Most Favored Nation (MFN) trade status to human rights (Chu 1997:454). Among the factors that the U.S. government considers in judging Vietnam's human rights record is its continued adherence to a one-party political system (U.S. Department of State 1997).

The political aftermath of the U.S. war in Vietnam also continues to shape U.S. assistance in Vietnam. In 1996, for example, Secretary of State Warren Christopher, in the first trip to Vietnam by a U.S. Secretary of State in more than 20 years, spoke of the primacy of the POW/MIA issue for the United States, followed by U.S. security interests, human rights and the rule of law, and the need for economic reform in Vietnam.

Even more disturbing, from the Vietnamese perspective, are suggestions that by lifting the economic embargo and reengaging with Vietnam "today, the United States has a chance to 'win' in Vietnam" (Lippman 1992). The Vietnamese are aware, and wary, of attempts to link the "rule of law" to changes in Vietnam's political structure. As one Vietnamese commentator recently noted:

> [A]s we build a rule-of-law state and achieve the management of society by law, we must warily struggle against the imperialists' and reactionaries' arguments on the relationship between the ruling party and the rule-of-law state, for that demand that we separate the state from the party leadership . . . and carry out the overthrow of our regime within the framework of the "peaceful evolution" scheme combined with armed uprising and overthrow. (Nham Nguyen 1997)

3. Private Foundations, Universities, and NGOs

In contrast to its leading role in the Law and Development Movement of the 1960s, the Ford Foundation has not been directly involved in financing legal assistance projects in Vietnam. Instead, its Vietnam programs focus primarily on the social consequences of economic reform, international relations, and social sciences and culture. Ford has supported some work to familiarize Vietnamese government officials and academics with developments in human rights theory and practice since 1975, including support for fellowships in the United States, France, and Switzerland for researchers and diplomats to study human rights concepts, law, and instruments; translation and provision of material regarding human rights to key research and government institutions; and attendance by key human rights researchers at the 1993 Vienna World Conference on Human Rights. In addition, the Ford Foundation has supported Vietnamese comparative research on political systems and political reform.

The Centre for Asian Legal Studies at the University of British Columbia (UBC) has been involved in legal work in Vietnam since 1989, focusing primarily on projects related to petroleum legislation, coastal zone management, fisheries management, and sea use law. Most of these projects are financed by the Canadian International Development Agency.

The State University of New York at Buffalo, similarly, has established a Vietnamese Executive Program, which brings U.S. and Vietnamese business leaders together in both the United States and Vietnam in an effort to promote trade.

The U.S.-Vietnam Trade Council, a nonprofit bilateral trade association of about 60 major U.S. corporations, since 1995 has organized programs for Vietnamese policymakers in issues of bilateral trade, commerce, and negotiation within the World Trade Organization. The Trade Council, in conjunction with Duke University and the Vietnamese Ministries of Trade and Foreign Affairs, in an approximately $250,000-a-year program sends in academic and private sector experts on particular topics, worked out with Vietnamese counterparts, and brings Vietnamese mid-level and senior level officials and professionals to the United States for training.

4. The Special Role of Private Law Firms

There are at least 30 foreign law firms operating in Vietnam, mainly from Europe, Hong Kong, Australia, and the United States. Most advise foreign clients on investment in the country, but a few also have assisted the Vietnamese government by reviewing drafts of proposed legislation. Many of these firms also have hired young Vietnamese lawyers, particularly those trained in Australia, Europe, and the United States. In so doing, private

foreign law firms have played an important role in training a cadre of Western-style technical lawyers among the younger generation. Although many foreign lawyers have little or no expertise in the Vietnamese legal system, many consider themselves to be the bearers of what one called the "real" standards of legal professionalism—perpetuating the notion that legal competency is the equivalent of foreign competency. One U.S. lawyer working in Vietnam, for example, stated:

> The big foreign investment contracts require the big-money investors to put in up to $2 billion. It takes eight to twelve years to know how to put those contracts together. Our role should be to reproduce lawyers threefold so that there are three to five Vietnamese lawyers to take my place. This would enable the world's leading corporations to have faith in them and in Vietnam.

In 1995 and early 1996, Vietnam imposed new restrictions on the ability of foreign law firms to operate in Vietnam. In November 1995, the Ministry of Justice issued a circular requiring foreign law firms to apply for operating licenses for each branch and to hire lawyers with at least five years' experience. They are not allowed to employ Vietnamese lawyers, although they can hire Vietnamese "law trainees" for up to three years, as long as the trainees do not advise clients on Vietnamese law. In addition, the circular limited foreign law firms to giving legal advice on international law, referring questions concerning Vietnamese law to local law firms (who cannot hire foreign lawyers).

In March 1996, a proposal by the Vietnamese Finance Ministry was made public, suggesting that Vietnam would soon impose a punitive tax on foreign law firms, requiring them to pay a tax equal to 20% of receipts in addition to the normal 4% service industry turnover tax. According to one news report, the tax proposal said that the profit tax rate was "for the purpose of not encouraging foreign organizations' operation in this field" (Chalmers 1996).

III. Are We Doing It Wrong All Over Again? Legal Assistance in Vietnam in Light of the Law and Development Critique

Although both the foreign donors and the Vietnamese officials interviewed tend to agree on the market-oriented goals of legal reform, there is little consensus—either between donors and their Vietnamese counterparts or among the Vietnamese themselves—regarding the pace of reform or how far it should be allowed to spill over into the political arena. Moreover, conceptions of the legal profession and of what it means to be a lawyer vary across the generations of Vietnamese lawyers, as well as among the legal advisers from various countries.

In the absence of a unified vision of law and the legal profession, to what extent do international legal assistance efforts exacerbate the problems that Vietnam faces in the legal arena? Moreover, given the tensions that exist within the Vietnamese legal profession and society at large, what options do foreign lawyers have to develop new approaches to their work given the constraints under which they must operate if they wish to remain in Vietnam? These questions resonate with those raised by the LDM of the 1960s and 1970s, when U.S. legal scholars and activists attempted to promote legal reform as a method of fostering economic and political "modernization" in developing countries. The movement, which nearly collapsed in a spasm of self-criticism in the mid-1970s, sparked a heated debate among legal academics and practitioners at the time. Although legal assistance in the post–Cold War era poses a new and distinct set of challenges, the critiques that emerged from the LDM debate provide a useful starting point for a discussion of the impact of legal assistance in Vietnam and elsewhere.

A. LDM: Theory and Critique

Confidence over the United States's expanding role in the world after World War II, as well as the collapse of colonialism and the rise of newly independent states in the late 1950s and early 1960s, launched what soon became known as the "development decade" (Gardner 1980:6). Marked by the idea of "transnational activism," this era proved fertile ground for U.S. law scholars and activists eager to share their legal knowledge with developing countries. Early U.S. efforts at international legal assistance were motivated by what one scholar has described as a "glorified self-image" of American lawyers and "idealized image of American legal culture" (ibid., p. 4). Proponents of LDM espoused the belief that the transfer of legal knowledge would enable developing countries to achieve economic and political progress.[44]

The intellectual origins of LDM reflected a uniquely U.S. orientation toward legal scholarship:

> Rather than asking himself what he could learn (about law, about development, about some other aspect of either, about the relationship between them) from the study of some aspect

[44] Justice William O. Douglas, for example, suggested that American lawyers had a unique role to play in the development of the Third World:

> These newly developing nations need our help—not only our money and machines and food, but also the great capital of knowledge accumulated by our professors. . . . Refrigerators and radios can be easily exported—but not the democratic system. Ideas of liberty and freedom travel fast and far and are contagious. Yet their adaptation to particular societies requires trained people, disciplined people, dedicated people. It requires lawyers.

Douglas 1962, quoted in Trubek & Galanter 1974:1067 n.16.

> of law in one or more developing societies, the lawyer was mostly interested in bringing about development—in engineering social progress through law reform. (Merryman 1977:475)

David Trubek, an early participant and later critic of LDM, described the "core conception" of the LDM as a misguided reading of Max Weber's work, in which development was equated with a "gradual evolution in the direction of the advanced, industrial nations of the West" and "modern law" was equated with the "legal structures and cultures of the West":

> Legal development assistance was originally justified as a rational and effective method to protect individual freedom, expand citizen participation in decisionmaking, enhance social equality and increase the capacity of all citizens rationally to control events and shape social life. (Trubek & Galanter 1974:1064)

Gardner (1980:4) outlined a four-part framework that the early practitioners in the movement sought to carry to developing countries: (1) methodological, specifically, exporting the American case law and Socratic method of teaching law; (2) educational, as U.S. legal scholars attempted to replicate the U.S. legal education system in other countries; (3) the model of the lawyer as a professional or social engineer; and (4) jurisprudential, which Gardner describes as an "anti-formal, 'rule skeptical' and 'instrumental' vision of law drawn largely from American realism."

Despite variances in the descriptions of the particular ideological underpinnings of LDM, the legal assistance projects that arose from LDM consistently reflected American conceptions of law and lawyers. This ethnocentric, often parochial, approach to legal assistance fostered a critique of LDM that culminated in its collapse.

Attacks on the LDM movement were launched primarily by scholars from within the movement who voiced concern that the movement was doing more harm than good in many countries. The growing chorus of self-criticism resulted in what the hallmark attack on the movement described as a crisis of "self-estrangement" in law and development studies:

> The reformers needed a model of the relationship between law and society that would show the developers how law was potent in development. They needed a normative image of the role of law in society that would resonate with the "rule of law" rhetoric widely accepted in the foreign policy establishment and the philanthropic community. . . . The beauty of the liberal legalist model of law in development was that it did all of these things. It explained how law could be an effective instrument of social change, thus satisfying the administrator's demands for project cost effectiveness. It showed that law would foster the basic developmental values, thus cloaking the project in the humanistic rhetoric of United States foreign policy. And it subtly suggested

> that any move towards the legal institutions of the United States would be a move towards development, thus telling potential skeptics in the Third World that legal development assistance would further their goals. (Trubek & Galanter 1974:1987–88)

Critics of LDM also published case studies showing that, rather than leading to economic and political modernization, the transfer of U.S. legal methods and knowledge often reinforced and legitimized existing authoritarian power structures (Gardner 1980:218). Some critics traced this phenomenon to preexisting social, economic, and political structures within developing countries, many of which were characterized by class cleavages and authoritarian or totalitarian political regimes (Trubek & Galanter 1974:1080).[45] Critics charged that the model of the American lawyer as a self-regulating professional and social engineer reinforced the image of lawyers as technocrats implementing state law, "purblind . . . to the issues of legitimacy, ethics and values" (Gardner 1980:5). Rather than training a cadre of lawyers steeped in the normative vision of individual rights who could act as potential sources of opposition to state policy, critics charged, the U.S. model of "rule skepticism" and "legal realism" were "too often embraced as an alternative to rule of law jurisprudence and as a conceptual vehicle which would allow the unfettered exercise of policy, and of power" (ibid., p. 11).

Critics also charged that the early LDM strengthened the central power of authoritarian states by emphasizing court-centered formal legal systems while ignoring customary law and informal methods of conflict resolution (Trubek & Galanter 1974:1078–79). The resulting bias against traditional, decentralized methods of dispute settlement shifted power to the state from individuals and indigenous communities.

Others attacked the assumption that developing countries were merely "behind" in their development, needing only tools of modernization to "catch up." This critique paralleled the rise of the so-called Dependency Theory of development, which suggested that developing countries were kept poor and marginalized (and developed countries remained rich) as a result of structural forces inherent in the world political economy (Frank 1967; Ruccio & Simon 1989). A few critics of LDM borrowed from Dependency Theory, arguing that the "relationship between law and economic development might be quite different in peripheral societies than it has been in the core. . . . [W]e cannot necessarily assume that the same social processes that gave rise to for-

[45] Trubek, for example, noted that Weber's analysis that European law was conducive to capitalism had been misinterpreted by the Law and Development Movement. He noted, instead: "To the extent . . . that economic development in the Third World is not based on free markets Weber's work cannot support any inference that modern law as defined by the [Movement's] core conception will cause or contribute to economic development . . . [or] will enhance the efficacy of the regime" (Trubek 1972:53–54).

mally rational law in the West were, or will be, repeated in other parts of the world" (Greenberg 1980:98).

LDM critics also chided U.S. lawyers for their lack of scholarship and their failure to better understand the cultures in which they were working. American legal assistance often was characterized as "inept, culturally unaware, and sociologically uninformed. [I]t was also ethnocentric, perceiving and assisting the Third World in its own self-image" (Gardner 1980:9). Merryman (1977:479) attacked LDM as a "parochial expression of the American legal style":

> The peculiar characteristics of that style cut it off from the data and literature in analogous fields, from the mainstream work in the humanities and social sciences and from its potential audiences in much of the Third World. The difficulty of communicating with the Third World was compounded in a variety of subtle and fundamental ways by the fact that their societies have legal traditions and operating legal orders that vary widely from ours. Of all the development fields, law is the one that is most limited and confined by the fact that law is nation—or society—specific.

What was worse, critics noted, well-intentioned but ill-trained U.S. lawyers who participated in LDM had less to lose by this failed experiment than the vulnerable groups and individuals in recipient countries who suffered the harmful effects of misguided U.S. efforts:

> If the program is implemented and is a disaster it is those in the developing nation who feel the impact. To the American scholar, at home, the sounds are muffled, the consequences attenuated, the impact softened by geographic, political and cultural distance. The foreign expert thus has less at stake than those in developing nations. He is gambling with someone else's money. (Ibid., p. 480)

The danger that U.S. lawyers were doing more harm than good led critics to conclude that LDM should discontinue its activities until such time as a workable theory of legal assistance was developed: "at least for Americans, Third World law and development *action* is premature. Until we have tested, reliable theory (i.e. tested and reliable vis-a-vis the target society), we will be more responsible and productive if we limit ourselves to Third World law and development *inquiry*" (ibid.).

Not all scholars agreed that LDM was a failure—or that a perfect theory was a prerequisite to action (Burg 1977:492). In a reply to the critics of LDM, for example, Seidman (1978) argued for a more pragmatic approach to legal assistance. Specifically, he proposed an empirical problem-solving paradigm, with four stages: "The selection of the troubled situation; its explanation; the proposal of a solution; and its implementation." Seidman distinguished his paradigm from liberal legalism by suggesting that

the problem-solving approach "does not distinguish between the tasks of developing general theory, and proposing 'instrumental' solutions. We generate theory in the course of solving problems" (p. 22).

In the midst of these methodological debates, legal scholars shied away from involvement in the controversy and student interest dropped off, while the theoretical evolution of the LDM came to a virtual standstill.[46] The departure of U.S. academics, however, left the international legal assistance field wide open for other actors: "state agencies, multinational corporations and international economic institutions, controlled by Western state interests through the system of weighted voting [continued] to insist upon a type of legal regulation of north-south relations reminiscent of colonial experience" (Carty 1992a:xiv).

B. The Resurgence of Law and Development in the Post–Cold War Era

The collapse of communism in the former Soviet bloc and the subsequent shift toward globalization of the world economy led to a new way of thinking about the role of law in society. In the early 1990s, even the most vociferous critics of the LDM once again began advocating a link between legal reform and economic and social progress (Trubek 1996). This renewed interest in law and development has been fueled primarily by a perception that developing countries no longer have alternatives to the adoption of a "democratic market model of state, economy and society" (ibid., p. 4).[47] Trubek links the rise of the "new" law and development movement ("NLDM") to other factors as well: (1) the emergence of human rights discourse in both the foreign policy and domestic political discourses in many countries, particularly the United States; (2) globalization, defined as the combination of political pressure for human rights and the need to reform legal systems to make them capable of functioning in a globalized market; and finally, (3) the "Washington consensus" which "privileges markets as allocative institutions, favors privatization, and promotes closer linkages to the global economy. . . .

[46] Even Seidman (1978) noted that the "legal liberalism" approach was misguided, noting only that he and other LDM practitioners had adopted different approaches. Nonetheless, he agreed that "[w]ithout a theory, the search for knowledge becomes aimless" (p. 49).

[47] So-called democracy initiatives were also an important ingredient in the U.S. government's anticommunist strategy in the 1980s, as the Reagan administration sought to engage the Soviet Union in a "war of ideas" in the Third World. In a 1982 speech to the British Parliament, for example, President Reagan committed the United States to engage in "democratic development," calling for the United States to "foster the infrastructure of democracy—the system of a free press, unions, political parties, universities—which allows a people to choose their own way, to develop their own culture, to reconcile their differences through peaceful means." U.S. Department of State 1982, cited in Latham & Watkins, "Democratic Initiatives: Implications for Human Rights," 1991, p. 4 [unpublished memorandum on file with the author].

Thus legal reform becomes important to make the domestic economy work once state control is reduced, and also make it attractive for foreign investors" (pp. 5–6).

In Vietnam in the 1990s, the NLDM stems from interest on the part of both donors and the Vietnamese government in promoting foreign investment and a market economy. Although many donor agency officials, and some Vietnamese, privately put forth a belief that economic reform inevitably will lead to political reform, legal assistance projects in Vietnam tend to mask potentially political goals in terms such as "governance," "strengthening institutions," or "encouraging participation." Some foreign governments—notably the United States—put rhetorical emphasis on human rights. Nonetheless, the substantive and methodological approaches of donor agencies suggest that political change, while possibly welcomed, is a secondary factor in decisions regarding the provision of foreign legal assistance to Vietnam (Miller 1996:1).

C. What Is New in the "New" Law and Development Movement

Vietnam's recent experience with international legal assistance helps illustrate some of the differences between the LDM of the 1960s and NLDM of the 1990s. For one, the United States is not the dominant player in the legal assistance arena in Vietnam, as it was in Latin America and Africa during the 1960s. Instead, donors representing distinct political and legal systems compete for influence over the Vietnamese government.[48] This competition has created an environment in which the recipient country has increased political leverage over the foreign assistance agenda. Vietnam often rejects offers to provide legal assistance in sensitive political areas and has kept most bilateral legal assistance limited to economic law. Many donor officials warn, for example, that attempts to link legal assistance to political reform would result in them being asked to leave Vietnam, with a resulting loss of influence.

A related characteristic of the NLDM is the increasing skepticism among recipient governments about the utility of Western models of legal development. Although the post–Cold War era seems to offer only one developmental alternative for poor countries—market capitalism—it is less certain that a globalized market economy will lead inevitably to a global liberal democratic political consensus. In Asia, in particular, many newly industrializing countries have embraced economic liberalization while at-

[48] The relative paucity of U.S. aid to Vietnam compared with other bilateral donors, as well as the U.S. refusal to pay its dues to relevant U.N. agencies, has diminished U.S. dominance in the foreign assistance arena from where it was during the height of the Law and Development Movement. In Vietnam, for example, the Swedes, the Canadians, the French, and the Japanese probably have greater influence than the U.S. on legal reform.

tempting to maintain political systems that are highly centralized and authoritarian. Many Vietnamese government officials and scholars express more interest in studying legal systems in Asia, particularly China, Singapore, Taiwan, and South Korea, than in adopting legal reforms based on Western models. As the dean of the Faculty of Law at the University of Ho Chi Minh City noted: "The Asian mentality and customs differ from those in the West. Relations with western democracies are very sensitive. This is a problem that all Asian countries face, so now we need to study Asian law more than western law." Vietnam's historical experiences of colonialism, in particular, the wars for independence against France and the United States, have made Vietnam particularly nationalistic and sensitive toward Western legal advisers. One top-ranking Vietnamese official, for example, insisted that Vietnam accepts no foreign legal *assistance* but that Vietnam, instead, engaged in legal *exchange* with foreign lawyers. This sentiment is widespread, as noted by Hoang The Lien (1995:107): "The greatest achievement that the Vietnamese revolution has brought to the people is that Vietnamese people have changed from being slaves to being masters of the country."[49]

Despite this nationalistic sentiment, many Vietnamese elites who might be in a position to question the motives of foreign legal advisers are the ones who stand to benefit the most from foreign assistance projects. As a result, elites often choose projects that seem to go along with a Western ideological agendas, at least on the surface, in order to obtain foreign monies for their ministries and, in some cases, personal perquisites, such as the opportunity for international travel.

Another defining characteristic of the NLDM is that the Western legal advisers, even from the same countries, often have conflicting agendas. Whereas the LDM was made up primarily, although not exclusively, of legal academics, the NLDM includes advisers from academia, national governments, international organizations, and private law firms, each representing different clients. As Munger (1993:115) notes:

> [T]he distinction between lawyers for different types of clients is so complete that lawyers have little cohesion as a profession. If the power of the profession is controlled by clients, and not grounded independently in the status of lawyers as professionals, then the legal profession, and to a great extent the legal order, is structured by the interests of clients. Therefore, lawyers as a profession are not likely to have an autonomous or coherent effect on the social order.

[49] A July 1997 article by former General Secretary Nguyen Van Linh has attracted extensive commentary in Vietnam and abroad for its outspoken criticism of Vietnam's relations with capitalist countries, notably the United States. The main point of Linh's article is that international relations between large and small nations of the world should be more equitable. FBIS-EAS-97-212, 31 July 1997.

This diversity is magnified by the split between legal academics espousing different theories of law. Where most academics involved in the LDM adhered to legal realism's instrumental vision of law and the related assumption that legal rights count, the NLDM is taking place in the midst of fierce jurisprudential debates within the U.S. legal academy, particularly among advocates of Law and Economics theory, proponents of Critical Legal Studies, and the related schools of Critical Race Studies and Feminist legal theory. Whether and how these primarily U.S.-based theoretical debates will inform the work of legal advisers in Vietnam and elsewhere, however, remains to be seen.

D. Why the LDM Critique Still Holds

The world has changed dramatically since the LDM of the 1960s: Donors are more diverse and, therefore, less influential, while recipients have more power to set their own agendas for legal reform. Nonetheless, many of the criticisms of the LDM apply with equal force to legal assistance in the post–Cold War era.

1. Ethnocentrism and Backlash

A major critique of the LDM was its ethnocentric assumption that the Western model of lawyers and legal professionalism could function effectively in virtually all cultural contexts. Although most present-day foreign legal advisers in Vietnam express sensitivity to the cultural differences between themselves and their Vietnamese counterparts, it is perhaps inevitable that Western legal advisers, knowing no other model, attempt to train Vietnamese lawyers in their own image.

Vietnam's unique historical cultural and political experiences are reflected in the profound differences between Vietnamese and so-called Western conceptions of individual rights, private property, and contract law (Gillespie 1994:370). This gulf extends to basic assumptions about the nature of law itself. Whereas Vietnamese lawyers are educated to see law as inherently ideological, many Western lawyers—particularly those in private practice—are trained to view law as instrumental and functional. There is little discussion among foreign legal advisers or Western-trained Vietnamese over the desirability of attempting to train Vietnamese lawyers as Western-style technocrats. It is assumed that Vietnam will need such lawyers if it is to integrate into the global marketplace.

The absence of shared visions about the role of law has fueled resentment by older Vietnamese lawyers against both Western lawyers and younger Western-trained Vietnamese lawyers. Recently enacted restrictions on foreign law firms in Vietnam, particularly a prohibition on the hiring of Vietnamese lawyers to work at foreign law firms, illustrate the potential backlash

against foreigner lawyers. To some extent, these restrictions are a form of trade unionism among Vietnam's older lawyers, many of whom were trained in the Soviet Union and many have been unable to capitalize on business opportunities offered by increased foreign investment.[50]

But another reason for the restrictions appears to be concern among Vietnam's Soviet-trained senior and middle-ranking lawyers that Western lawyers are a corrupting influence on Vietnam's younger generation of lawyers. Regulations against foreign law firms thus may be a form of cultural hostility to foreigners who hire the brightest young law graduates and then operate in ways that suggest that Vietnamese-trained lawyers are inadequate. A recent verbal exchange between Western and Vietnamese lawyers, reported in *Far Eastern Economic Review* soon after the regulations were announced, illustrates the tension between senior Vietnamese lawyers and their Western counterparts. An unnamed Australian lawyer reportedly said: "I can count on both hands the number of Vietnamese lawyers in Hanoi who speak English and can produce a legal document in a way foreign investors want to see them" (Schwarz 1995a:34). In the same article, Luu Van Dat, a vice-president of the Vietnam Lawyers Association and adviser on the new circular, was quoted as saying that foreign lawyers "don't understand Vietnamese law," adding, "Who dares to advise on what they don't understand?"

[50] The Vietnam Lawyers Association is a social-political organization and member of the Fatherland Front. The VLA's main functions are to participate in legal dissemination and education, to "strengthen the sense of socialist law amongst citizens," to supervise the implementation of law, to supply members with legal knowledge, to protect the legitimate interests of its members and to "encourage Vietnamese lawyers living overseas to contribute to the development of the country" (Hoang Phuoc Hiep et al. 1996:13). Membership is based on citizenship, agreement with the VLA's charter, and approval by the Standing Board of the Provincial Executive Committee of the association. The situation in Vietnam is similar to that found in China, until recently, insofar as "lawyers were to be state legal workers whose obligation to protect socialism and the . . . state took priority over duties to their individual clients" (Alford 1995:28).

It is difficult for Vietnamese lawyers to gain admission to the local bar, since they must have a Bachelor's degree in law, have a sponsoring organization, and have completed a two-year apprenticeship. The process of obtaining sponsorship from the VLA can be quite difficult and, according to some Vietnamese lawyers, is highly political. The Ordinance on Organization of Bar Associations, promulgated in 1987, authorizes the establishment of a bar association in every province. The establishment of an official bar association requires a license from the Ministry of Justice, and approval by People's Committees. The bar association does not answer to the Ministry of Justice, however, but instead is supervised by provincial level by the Fatherland Front (of which the association must be a member), as well as the provincial People's Councils and People's Committee (Hoang Phuoc Hiep et al. 1996:14). Bar associations report monthly to the Ministry of Justice and the People's Committee about the activities and clientele of their member lawyers. To appear in court as a counsellor, a lawyer needs to be a member of the bar association.

The VLA and local bar associations reportedly were active in promoting regulations limiting the influence of private foreign lawyers. Ngo Ba Thanh, a vice-president of the VLA, for example, reportedly said that local law firms "need protection from foreign lawyers" (Schwarz 1995a:34).

The danger of a backlash against foreign legal advisers is not limited to the foreign law firms. Bilateral and multilateral legal assistance projects also encounter resistance to change on the part of Vietnamese government officials. Said one Vietnamese lawyer:

> Foreigners who are active, bringing in lots of new ideals and making suggestions without understanding the Vietnamese mentality, end up reinforcing the existing legal structure. Those of us on the inside understand the Vietnamese mentality, so we can suggest changes because we are trusted. But charity is not understood by the Communist Party. The more foreigners promote themselves as philanthropists, the more the government will mistrust and mistreat them.

2. Essentialization

Another aspect of ethnocentrism is the danger that Western legal advisers will essentialize the Vietnamese—imposing a "reified identity on some alien set of people"—while at the same time providing their Vietnamese counterparts with essentialistic renderings of so-called Western law and lawyers (Carrier 1992:197–99).

The tendency to oversimplify the role of law and lawyers is evident among both Western legal advisers and their Vietnamese counterparts. One Vietnamese lawyer, for example, stated: "Vietnamese lawyers see law not as a technique or applied science, but a political tool." In contrast, a Western lawyer, who echoed the views of many foreign legal advisers in Vietnam, described the job of the lawyer as that of "prostitutes hired for a purpose." Both these statements, while true in part, ignore the complex role of law and lawyers in most countries and the interrelationship between changes in the legal system and forms of governance. For example, generalizations about the ideological focus of Vietnamese lawyers may ignore the profound divisions between generations of Vietnamese lawyers. Conversely, generalizations about "Western" law and lawyers often ignore such basic distinctions as the differences between common law and civil law approaches or the more nuanced differences between public and private lawyers. Essentialist renderings of "Western" law also ignore the jurisprudential debates that inform U.S. legal scholarship.

Essentializing also tends to magnify cultural gaps that, in reality, may be only differences in degree. A U.S. lawyer in Vietnam, for example, summed up the difference between Vietnamese and "Western" approaches to negotiating a contract:

> [Western lawyers] like to define risks and know the parameters of a deal so that when some eventuality occurs we can put a price tag on it. This approach fixes the relationship of the parties in time. The Vietnamese approach is different. They view

> relationships as evolving. Therefore, a relationship should not be fixed in time when the two sides don't know one another well and one side is stronger than the other. They believe that a relationship will evolve based on general principles alone, with conflicts being resolved based on the parties' positions at any given time. Thus, when an issue comes up in an agreement, they view it as still negotiable. To the Vietnamese, good relationships matter more than the details of an agreement. And, after all, this approach has worked for them for over a century.

While this description may accurately describe the typical Vietnamese approach to contract negotiations, it assumes that Western business people rely on legal technicalities rather than relationships when negotiating a contract. Yet, as Stewart Macaulay discovered in his 1963 study of contractual business relations, U.S. business people often pay little attention to legal rules when they engage in ongoing business relationships (p. 55). In both Vietnam and the West, therefore, law's role in business negotiations may be less important than the desire to preserve ongoing business relationships.

3. Reinforcing Authoritarian Legal Structures

Another LDM critique was that legal transfer reinforces authoritarian structures in recipient nations by transferring Western notions of legal instrumentalism in the absence of Western notions of individual rights. The danger of this is evident in the description, by one Western adviser to the Vietnamese government, of his role:

> Foreign legal advisors should serve as sounding boards or intermediaries, explaining the expectations of the international business community to a country and, vice versa, telling the business community what can be done in a country. Many foreign legal advisors want to do too much. We are just scriveners trying to do limited things for the boss, and that boss is the government. An advisor must consider even an authoritarian regime to be his client.

In general, legal reform in Vietnam has had a liberalizing impact on Vietnamese society. The National Assembly and Ministry of Justice have strengthened their political clout vis-à-vis the Communist Party and other government offices (Schwarz 1995b). Citizens' participation in the legislative process has sparked increased demands for civil rights, including greater religious freedom, private property ownership, and "justice." The rapid growth of voluntary organizations in Vietnam since 1990 further indicates the easing of restrictions and subsequent growth of civil society in the past decade, particularly as compared with the 1954–75 period of heavy restrictions (Sidel 1995; Beaulieu 1994).

Despite this progress, concerns persist that efforts to create a more coherent and court-centered legal system could strengthen the central power of the state and undermine local or private initiatives. Attempts by some Vietnamese officials to establish a firmer legal basis for voluntary organizations, for example, has sparked fears that a more coherent legal framework would serve to restrict rather than encourage these organizations. As Mark Sidel has noted:

> Rather than retarding the development of initiatives and groups (other than dissident or oppositional political groups, which the state will not tolerate), this plethora of overlapping, confusing, often contradictory laws, decisions, circulars, and regulations has created space for a least dozens and perhaps hundreds of groups to claim at least quasi-legal status. In this sense, regulatory confusion has been an advantage for the development of the sector.[51]

As laws proliferate and the legal system becomes increasingly complex, citizen power and participation in the legislative drafting process also could diminish. Likewise, efforts by foreign advisers and their Vietnamese counterparts to create a uniform legal system is likely to weaken the political power of local officials and could undermine traditional nonlitigious means of conflict resolution.

The danger of propping up authoritarianism is compounded because donor officials rarely talk to local, ordinary Vietnamese. Instead, the legal assistance agenda is set by a small group of Vietnamese "elite" who have a stake in fostering foreign investment and economic integration. Because these elites are the beneficiaries of foreign assistance projects, through opportunities for foreign travel and business contacts, they have a stake in fostering investment and economic integration, as well as in promoting Western notions of law and lawyering, rather than preserving traditional Vietnamese methods of social interaction or conflict resolution.

Finally, it is useful to examine how legal reforms might help to legitimize the dominant role of the VCP. Some foreign governments—notably the United States—criticize the persistence of the one-party political framework. Similarly, U.S.-based human rights groups question those who "justify repression in the name of stability," adding that "official intolerance might also provoke yet further criticism and resentment of the government and ultimately sap Vietnam's ability to meet the new problems further economic development will bring" (Human Rights Watch 1995b:1).

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[51] These remarks were made as part of a presentation entitled "Toward Civil Society? The Emergence of Voluntary Organizations in Vietnam and the Role of Law in Their Regulation, 1964–1996," presented at a workshop at Harvard Law School on 20 March 1996 [tape on file with the author].

Not all Vietnamese reformers accept the view that a one-party state is inherently problematic, and have called instead for reform within the VCP, rather than for the overthrow of the one-party system. Phan Dinh Dieu (1994), an outspoken Vietnamese scholar, for example, makes this point:

> [I]f we look upon the whole of society as a unified system, then generally speaking the State does not only "dominate" society, but also increasingly fulfills many service functions for society, as if to create a structure and a favorable environment for the activities of society's members. . . . In this sense, antagonistic relations between State and civil society will be replaced by relations of collaboration; the democratic State will be the State "of the people, by the people, and for the people." Of course, the current situation in Vietnam has not yet reached this level, though I do not think that this aim is an illusion.

In the future, legal consolidation could have mixed effects on the speed with which Vietnam liberalizes politically, as well as shaping the exact form of future political alignments. Foreign legal assistance projects could play a role in this process by maintaining a dialogue between the Vietnamese and foreign governments, as well as by providing Vietnamese officials with information and training in a wide range of political and legal systems.

4. "Neo-Liberal" Market Hegemony: The Problem of Imperialism

Another criticism of the LDM was its assumption that underdeveloped countries were merely "behind" in a linear modernization process, thereby ignoring structural inequities within the global marketplace. This notion of "behind" infects the work of donors and advisers in Vietnam today, as well as the attitudes of many Vietnamese elite with whom they work.

Some Western lawyers interviewed seemed to assume that if Vietnam is to compete in the regional or global economic environment, it must train lawyers as technocrats. "If the Vietnamese legal system doesn't value skills in such areas as secured interests and documentation acceptable to lenders," said one U.S. lawyer, "then Vietnam won't get access to world capital markets." Similar sentiments were expressed by young, Western-trained Vietnamese lawyers. "The curriculum at the Vietnamese law schools focuses too much on academic trends and not enough on practice," said a Vietnamese graduate of a prestigious U.S. law school. "The Vietnamese law schools must rewrite all of the textbooks to reflect a practice orientation."

As Macaulay and others have pointed out, the law, as such, does not create the coercive power of society; capitalism does (Munger 1993). Most foreign legal projects, therefore, are premised, perhaps correctly, on the notion that Vietnamese lawyers and society will embrace market capitalism. Such programs, moreover, profess to help Vietnam to protect itself from the va-

garies of the international capitalist system, by adopting laws that ensure protection of Vietnamese workers, the environment, and the domestic economy in general. That this may already be happening is evident from recent labor strikes in foreign-owned firms, which has sparked discussion in Vietnam over the need to develop laws that protect Vietnamese workers, even as they promote foreign investment (Stewart 1997). In at least one highly publicized criminal case, a Taiwanese manager received a six-month jail term for abusing Vietnamese workers.[52]

At the same time, foreign legal advisers, serving their elite Vietnamese "clients," are helping Vietnam to pursue a development strategy akin to other countries in the region, in which a handful of rich elites and a growing middle class benefit from the adoption of market capitalism, while the vast majority remains poor (Economist 1996:29–30). Arguably, growing economic inequality leads to unequal access to justice since formal legal systems often favor the rich and powerful.

This distorting aspect of legal reform is magnified by young Vietnamese lawyers who embrace Western instrumental and clientist notions of legal practice without also adopting basic tenets of professional responsibility. Vietnam's situation is akin to that of China, where the transformation of local law firms from institutional to enterprise units (*danwei*) coincided with a rise in the number of lawyers bribing officials and judges, regulatory officials extracting payments in excess of those legally authorized, and judicial malfeasance (Alford 1995:33). In Vietnam, the proliferation of laws and the growth in foreign investment has perpetuated an impression that law is a potential route to riches. According to the dean of the Law Faculty at the University of Ho Chi Minh City: "Too many of our students are studying law not in order to obey it, but to learn how to circumvent it. This problem is becoming increasingly dangerous as more and more people want to study law."

Vietnamese leaders acknowledge that the shift to a free market will exacerbate the gap between rich and poor. Indeed, Do Muoi, the former Vietnamese Communist Party leader, has listed the wealth gap as his greatest concern under *doi moi* (Economist 1996:29–30). Another Vietnamese government official suggested that it is the role of law to ensure that economic prosperity does not undermine social equality:

> When we started reform based on a market economy, some people said we were mixing water with fire. At first we hesitated. But then we realized that a market economy is not the same thing as capitalism, but is just a means to reap prosperity. Whether we adopt socialism or capitalism depends on our social structure, not the market. Thus, we can follow market so-

[52] "Taiwanese Manager Receives Jail Term in Vietnam for Abusing Workers, 28 June 1997, Deutsche Presse-Agentur.

cialism in order to enrich society and then redistribute that wealth. This requires that we adopt a market mechanism with a socialist policy. To do so, we must make laws that balance this dual goal of being both rich and equal.

IV. Conclusions

Global economic integration and the rise of transnational legal actors means that international legal cooperation will continue well into the next century. Vietnam, with its rich history of pragmatic eclecticism and its determination to reform, promises to be one of the most dynamic testing grounds for the NLDM. Nonetheless, scholars in the NLDM soon may reach a crossroads of "self-estrangement," as did the scholars of the LDM of two decades ago.

To be sure, the practice of international legal exchange has changed dramatically in recent years: Competition between donor countries and agencies for influence over the legal exchange programs, coupled with increasing skepticism on the part of recipient governments, for example, may blunt some neocolonial aspects of foreign legal assistance. Arguably, practitioners of the NLDM exercise greater sensitivity than their LDM predecessors regarding "appropriate" or "participatory" development in the legal arena.

The crisis of confidence for many practitioners of legal assistance, however, will arise not from "[a]wareness, or lack of awareness, [but from] the fundamental contradiction and coopting power of liberal legalism" (Sarat & Silbey 1988:119). Given the problems inherent in legal transfer, the question for scholars and academics involved in the NLDM will be not merely *how* to conduct legal exchange but, indeed, *whether* to do so. For many scholars of the LDM, the answer was resoundingly negative. The LDM ultimately collapsed under the weight of a critique in which law was viewed, first, as inherently good and, ultimately, as destructive to a recipient nation. As scholars backed away from the LDM, the actual practice of legal exchange and foreign legal assistance often was left to technocrats who were less bothered by the messy complexities and imperialist implications of their work.

Scholars in the post–Cold War era, therefore, may ask whether the still-valid criticisms raised by the LDM are fatal to the NLDM or, instead, should—or can—inform the debate over foreign legal assistance.

Practitioners in the NLDM have the advantage, compared with their LDM predecessors, of recent jurisprudential debates in the U.S. legal academy, where law is no longer viewed as monolithic. They also benefit from interdisciplinary approaches that combine traditional legal scholarship with research in sociology,

anthropology, area studies, and other fields. Moreover, foreign legal advisers now have the benefit of cooperating with and learning from an increasingly diverse set of donors, each with differing agendas and approaches. Finally, the increased leverage and sophistication of actors within recipient countries means that the NLDM has a chance to be a movement of two-way legal exchange rather than one-way legal transfer.

On the other hand, NLDM scholars still face the danger that by directing their analyses and theories to policymakers, they co-opt and undermine the quality of their scholarship. Too often, the policy audience will "use social science to legitimate, not merely to direct, policy choices. Reason is turned into a justification for, rather than guide to, action" (Sarat & Silbey 1988:103). Furthermore, "It is our contention that the alliance between sociolegal scholarship and policy elites of the liberal state is sufficiently strong and subtle that research apparently critical of aspects of American legal institutions works, paradoxically, to reinforce fundamental assumptions of liberal legalism" (p. 113).

The pressures to abandon foreign legal assistance as inherently problematic, versus the desire to develop theories and practices of "appropriate" legal reform, will be as great for legal scholars working in Vietnam as anywhere. Legal reforms that aim solely to promote a free market economy, regardless of the consequences, are likely to exacerbate the gap between rich and poor. Law is a key arbiter of who wins and who loses in the process of shifting from a command to a market economy. It would be tragic if a country that sacrificed millions of lives in order to set its own path to development were to abandon that dream because there are no clear alternatives to liberal market hegemony in the post–Cold War era.

On the other hand, if Vietnam's leaders decide, ultimately, that they have no choice but to embrace a traditional market-capitalist development perspective, a cadre of well-trained critical thinkers in the legal field may better prepare Vietnam to deal with the potential political and economic fallout of such a development path. Legal assistance also may help Vietnam defend itself in the international market system, protecting the population against labor exploitation, uncontrolled resource extraction, or unnecessary pollution.

Scholars of the NLDM, increasingly, will be forced to confront these fundamental moral and ethical questions about the role of law, of scholarship, and of lawyers in the international legal system. This soul searching, however, should not be limited to the cloisters of the academy. Regardless of the future of the legal *transfer* and the NDLM, scholars in the United States and elsewhere would benefit from increased international scholarly *exchange* with their counterparts in Vietnam and elsewhere. After all, Vietnam and other post-socialist countries may yet develop

alternatives both to communism and to liberal legalism. By evolving their own theories and practices of economic and legal development, scholars from these countries will have much to offer both the developing and the developed world in the post–Cold War era.

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Appendix
Course Units Required for Undergraduate Law Degree in Vietnam

Of the 3,075 units (45-minute classes) required for a four-year undergraduate law degree in Vietnam, William G. Magennis, the Chief Representative in Vietnam for the law firm Phillips Fox, reports the following distribution:

	Units Required for Undergraduate Law Degree		Units Required for Undergraduate Law Degree
Political philosophical issues	990	Ownership law	75
English language	375	Torts	75
Criminal law	345	Comparative law	70
Public & private international law	210	Labor law	60
Administrative law	150	Land law	60
Civil procedure	130	Environmental law	60
Constitutional law	75	Tax and banking	60
Contracts	75	Bankruptcy law	60
Family law	75	Drafting	30

SOURCE: William G. Magennis, Lecture at Harvard Law School, 2 May 1994.