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Development in Vietnam**

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STATE OWNED ENTERPRISES, LAW AND A DECADE OF MARKET-ORIENTED SOCIALIST DEVELOPMENT IN VIETNAM¹

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THE BACKGROUND: STATE OWNED ENTERPRISES IN CLASSIC AND REFORMED SOCIALIST THINKING, AND THE VIETNAMESE CASE

This paper will broadly consider three issues in the context of State Owned Enterprises (SOEs) in Vietnam. The first issue is whether and how socialism shapes law and law-related institutions; second, the balance between external and internal factors to explaining legal change; third, does 'socialist' doctrine inhibit legal change? I begin by considering how one can approach the question of 'socialism'.

For obvious reasons, the meaning of the 'Socialist' in 'Socialist Republic of Vietnam' is not often discussed in academic fora. I think this is a pity, for, as Tony Benn remarked when interviewed shortly after the fall of the Soviet Union, this 'is the best thing to have happened to socialism in ages'. Granted that the emerging labour regime in Vietnam appears relatively favourable to workers (Chan and Norlund, 1999), at least compared with China, and granted that Vietnam's focus upon the state sector positions her in a highly unorthodox position in terms of standard policy prescriptions, I welcome the chance to explore. In the longer term, we need to address the 'Vietnam paradox', of the surprisingly positive developmental role played by that part of the economy labelled as 'state'. This was clear in the 1990s, when GDP data showed a rising share produced by the state sector, accompanied by rapid growth and macroeconomic stability, an outcome almost unthinkable in other developing countries, though visible historically elsewhere, such as post-world war II France. But in this paper I want simply to look at law, the 1990s and SOEs.²

Beresford and Fforde (1997) provides one introduction to possible definition of the changing notions of Vietnamese socialism. It argues that the basic ideas of socialism permit a division into necessary and unnecessary elements, and that

¹ This is a revised version of a paper prepared for the Conference on *Law and Governance: Socialist Transforming Vietnam*, Asian Law Centre and the School of Law, Deakin University, at the Melbourne Law School, 12-13 June 2003. A revised version of this paper will appear in P. Nicholson and J. Gillespie (eds.), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (Canberra: Asia Pacific Press) in late 2004.

² In other ongoing work I am examining the nature of SOEs in terms of 'real property', and also the longer term history of SOEs, going back to before 1975.

the crucial partial reforms of the early 1980s saw a shift away from the latter but not the former. The first and most fundamental set, related to the traditional *definition* of socialism, comprised three principles: public ownership of the means of production, central planning and distribution according to labour. The second set were of secondary importance and were in essence *operational* principles. They included: central monopoly of foreign trade, state monopoly of the domestic circulation of goods, cooperative production in agriculture and handicraft industry, planning of industrial production, state control of finance and credit, state determination of virtually all prices (including wages) and planned allocation of labour. It will be clear that this distinction permits a co-existence of central planning (suitably defined) and public ownership of the means of production with market-based domestic circulation of goods and market-based determination of industrial production. This distinction is, in essence, to argue that the Law of Value is not antipathetic to socialism, so long as the definitional (rather than the operational) elements of socialism are maintained.³ This is, of course, the same position as that taken by Stalin in his 'The Economic Problems of Socialism in the USSR', and much addressed by important Left intellectuals such as Bettelheim.⁴ It would seem quite obvious that the basic issue here is that the progressive aspects of capitalism, perhaps expressed in terms of the operation of the Law of Value, had to be contained within and by the power of the socialist regime.

It is clear that this intellectual distinction is consistent in many ways with what happened during the 1980s and 1990s, and opens the way to a working definition of the difference between 'classic' and 'reformed' socialism in Vietnam. I argue that (as we put it in Beresford and Fforde, 1997) at root the difference can be found in the distinction made above: whilst reform socialism abandoned the 'operational' aspects, it retained from 'classic' socialism the traditional defining elements of public ownership of the means of production, central planning and distribution according to labour, necessarily, however, losing the old content of 'central planning' but replacing it with a pervasive utilization of state authority to regulate the internal workings of the state economy. This can

³ The 'Law of Value' is a term used by Marx, and more importantly by Stalin, to refer to the economic and social effects of the exchange of commodities, that is, or production for the market – for profit. Stalin's 'Economic Problems of Socialism in the USSR' surprised many at the time (the early 1950s) by arguing that the Law of Value operated within the Soviet economy, specifically in areas such as trade with the peasantry on their private plots. That such an obscure terminology should mean this, can be understood by reference to Marx's theory of surplus value, whereby separation of workers from the means of production allowed capitalists to pay them less than the value of their work, with value understood here in terms of the embodied labour in commodities, rather than market price. The point in the discussion here is that profit-oriented exchange was doctrinally accepted within Stalinist thinking, which may come as a surprise to some readers.

⁴ It was of course Stalin, in the famous U-turn in the Bolshevik position on collectivisation that saw the retention of private plots accepted and output from them disposable on markets, that laid down what was, in the future, to be a defining difference between Stalinist and neo-Stalinist thinking on the one hand, and the 'pure' position of Maoism, on the other, reflected in the extinction of differences between 'state' and 'economic' structures in the People's Communes, a position never accepted by the VCP.

be seen, if one likes, as not amounting to very much of a change, especially if we recall the basic political thrust of these ideas, which is to subordinate the progressive elements of a development of the forces of production to a political power that is based upon various structures, including those associated with the SOEs.

It follows, then, that I will need to make the argument that little has essentially changed during the 1990s, a period when the State sector increased its share of total economic output, and, in the 'Vietnam paradox', it was sufficiently well-regulated for this not to be accompanied by macro economic instability. I will base this argument upon the following:

- Comparison of the writings in the quality Vietnamese press that addressed SOEs and state business in the two periods 1992 and 2002.
- An examination of the legislation in force during these two periods that related to SOEs.
- A discussion of the contexts, and so a characterisation of how the SOE issue was conceived and how law and state activities sought with intention to address this.

Before going into these matters, though, it is worth saying something about other values and concepts related to these issues, which are not entirely the property of the VCP.

Development thinking and the Vietnamese case

Discussions of the role of the state in development have a long history, derived from attempts both to create development and to cope with the consequences of rapid change. Attempts to influence the flow of events often come down to discussions about the suitable role of the state, with opinions often polarised between viewing the state as part of the problem, associated with the dominant Washington Consensus of the 1980s and 1990s, and views that treat the state as the most appropriate source of solutions.

There are fundamental issues to be made with both tendencies, at root to do with the evidential basis for them. A good starting point for reflection, for example, is the literature on the empirics of the relationships between policy settings and economic performance, where there are quite respectable authorities who argue that there are almost no robust examples of such relationships.⁵ It is hardly exceptional to point out that views of the correct role

⁵ The interested reader could examine Levine and Zervos (1993), which looks at the evidence from cross-country regression work, reporting almost no robust relationships between economic policy settings and economic performance and supplement it with Kenny and Williams (2001) who discuss the significance of the assumptions of ontological and epistemological universality inherent in the use of terms such as 'law' and 'development' in many contexts. See also Brock and Durlauf (2000) for further and later work than Levine and Zervos; Rodriguez and Rodrik

of the state in development not only vary, but orthodox opinion has shifted from a generally pessimistic view of markets after World War 2 and up to the late 1970s, through a generally optimistic position, to what is now a somewhat confused situation, according to some.⁶ Certainly, the increasing interest in the conditions leading to 'market failure', and growing belief that they are likely to be extremely common, has supported far greater interest in institutions amongst students of development, especially economists.⁷ Crucially, however, throughout much of the literature we find a combination of great certainty with questionable empirical evidence, accompanied by profound revisions to established positions over time. It is possible that what is going on here is what has been described, by Cowen and Shenton (1996) in their *Doctrines of Development*, as a resolution of the inherent nonsense of robust belief in a predictable future through a 'logical sleight of hand' that *defines* correct development as what authority says it is.

Although I am no expert, a quick examination of the literature on 'law and development' would seem to show similar characteristics to those of the general development literature. Thus Pistor and Wellons (1998: 34), posit three 'core theories' in 'the current thinking about law and socioeconomic development in their tendency to converge both with each other and between economies and cultures.' Evolutionary theory they trace to Weber and Durkheim, linking the emergence of capitalism to actors such as law: here, 'theory [predicts] that law develops over time and in interaction with changes in the socio-economic environment' (Pistor and Wellons, 1998: 34). Cultural theory is said to be a defining feature of theories that view cultural factors as the major determinants for legal systems: law is essentially local in its character. Finally, utilitarian theorists reportedly see law as 'an instrument to be used to promote economic development' (Pistor and Wellons, 1998: 35). Their own position is that 'law made an important contribution to Asia's economic development and was most effective when it was congruent with economic policies' (Pistor and Wellons, 1998: 1). Clearly, this assumes that economic policies were knowably 'correct', here situated in knowable cause-effect relations with economic performance, and that 'law' can be treated as a similar 'independent variable' to economic policy. Arguably, this simply reflects the 'statism' that is so common in thinking about development and change: the view that 'policy' can be construed as a category 'external' to, and so a cause that operates upon, 'society'.⁸ A survey of recent articles shows that this position is common, as it must be given the

(1999) for an examination of the evidential basis for blanket policies that advocate trade liberalisation; and Prasad *et al.* (2003) for an example of a clear reversal in established orthodoxy, in this case arguing that capital market liberalisation is *not* necessarily associated with good economic performance.

⁶ For a neat argument about the current state of affairs, see Lindauer and Pritchett (2002).

⁷ See North (1995) for what I read as an open and non-doctrinaire approach. Greenwald and Stiglitz (1986) was a major push to exploration of these issues within economics. If market failure is pervasive then there are strong a priori arguments for an active state.

⁸ Cowen and Shenton (1996) discuss issues to do with the historical origins of this view, in the longer term, and Almond (1988) for a shorter-term look at how and perhaps why mainstream political science, having largely abandoned state: society metaphors, re-adopted them.

general view of development as something that can be caused through correct state actions, construed as 'policies'.⁹

From this perspective, as hinted at by Almond 1986, the use of state power in the Soviet Union to accelerate change through the methods that emerged under Stalin, and thus called 'Stalinism', can be seen as simply an extreme example of 'statism', amplified in north Vietnam before 1975 by wartime social mobilisation and the particular certainties of Marxist social science. In my own opinion, it is quite unwise to take a dogmatic position for or against the importance of particular 'causes' of change; indeed, given the dominant view that 'policy matters', it is often hard to isolate from much academic output empirics that permit a reasonable guess at the question 'OK, but how much?', which involves at least the possibility that policies do not matter at all.

This paper takes seriously the possibility that 'law' tends to reflect underlying socio-economic processes and states. Such a 'policy pessimism' is contentious, assuming as it does that legal change has little active role to play in important change processes. It is not easy to situate within the simple typology presented by Pistor *et al.* (see above), but derives from a sense that formal law need not be important to economic life: markets can function efficiently enough, and accumulation processes can be robust enough, without identifiable and certain legal formality.¹⁰ In this sense the relationship between 'law' and outcome is likely to be complicated if not remote.

Woodside, in his *Community and Revolution* (1976), is a rare example of scholarship that attempts to link more specific Vietnamese concerns to these wider sets of views. He argued that the combination of Vietnamese cultural and philosophical concerns with the particular historical circumstances, of the destruction of community and invalidation of ideas caused by the French conquest, 'suited' the 'proletarian mandarins' of the Communist movement. The argument could be taken further, to the view that a suitable economic system would be one that brought accumulating capital (beyond the peasant household) under 'public' regulation through the state economy, with its relationship with the farming economy mediated through exchange, perhaps market-based, perhaps through a plan, but not something that was 'spontaneous'. 'Law', then, would be associated with this project.

⁹ For example, Pistor *et al.* (2003: 89) remarks that the 'importance of law and economic development has been long acknowledged', but then appears to argue in a more 'evolutionary' vein, that, based upon the evidence from transitional economies, simple transplanting of law does not cause the desired effects; rather, what is sought are the conditions for the creation of endogenous processes of legal evolution suited to rapid economic growth, a more subtle cause-effect logic. Berkowitz *et al.* (2003) argue similarly, for the importance of successful localization. Botero *et al.* (2003) reflect modern scepticism about the arguments between the implications of simple economic theory and the links between policy and performance, and can be read as suggesting that any particular causal links posited are not likely to be robust.

¹⁰ See McMillan and Woodruff (1999a, 1999b) for studies of how such order can be based upon things like trust, with empirical reference to Vietnam, and so economic success be attained *without* apparent formal legal support.

It follows that it would be unwise to view Vietnamese 'socialism' as being driven ideologically by imported texts; rather, there is much in local conditions and circumstances to drive change and adaptation. Yet, we can see that defining the state and the state sector, and, more importantly for this paper, the sources of its order, is central not only to Vietnamese concerns, but to those of many others.

THE SITUATION IN THE EARLY 1990S

In the early 1990s Vietnam was recovering from the major shocks associated with the emergence of an economy that no longer had as one major activity the use of the apparatus of central planning to allocate Soviet bloc assistance to the state sector. Through the 1980s, SOEs had become increasingly market-focussed (see de Vylder and Fforde, 1996).¹¹

After the loss of Chinese and most Western assistance in the late 1970s, per capita assistance from the Soviet bloc had risen to per capita levels of around US\$20, which is relatively high. The complicated economic events of 1988-90 had seen SOEs cut loose from these supports, and major job losses threatened social stability at a time when a 'Yeltsin' solution to the political problems of a 'reformist' CP posed major obstacles.¹² The sacking of Tran Xuan Bach appeared to mark the end of these trends. Examination of the detailed policy record, however, shows no clear shift away from the legislation and decrees of the late 1980s; rather, people found that SOEs could and did find ways of generating cash flow and earnings that allowed them to survive, and this could be placed under a heading of 'state-led rationalisation'.¹³ Parallel to this, the balance of payments was brought under control, tendencies for inflation to return after the successful anti-inflationary measures of 1989 curbed, and a tax base recreated that could secure resources for the government from what was now in many ways an 'unplanned' economy. But the economy was only 'unplanned' in the sense that the planning methods of the classic neo-Stalinist

¹¹ Micro level data shows this uneven process clearly. For example, the 10-10 Hanoi textile mill had (according to *Trong Quyen* 8 November 1992) stopped being subject to any central planning in 1985 (i.e. before the announcement of 'doi moi' at the 1986 VIth Party Congress) and had been the first SOE in the city to be allocated capital upon which a return had to be made (as part of the shift to state businesses), in 1990. For a contrary example, of rather slow adaptation to the market, see for example *Vu Phong Tao* (17 September 1992) on the Viet-Tiep local factory, which had only really started to diversify in 1992.

¹² By a Yeltsin solution I mean one where somebody from within the apparatus presents to the population for proper election, thus perhaps (and in Yeltsin's case with success) acquiring enough political legitimacy to crash the system when and if circumstances permit. Perhaps the Vietnamese conservatives saw this coming. Or perhaps Tran Xuan Bach's activities were simply a stalking horse, to flush out possible adherents to such a strategy.

¹³ See Johnson (1982) for the importance of 'rationalisation' within the economic development support activities of MITI in Japan.

system no longer existed.¹⁴ Through a range of mechanisms the government continued to influence the pattern of economy growth, which, by the middle of the decade, was increasingly seen as regime-threatening in its stress upon the urban areas and SOEs.

However, compared with what was to come, and compared for example with China, the economic situation was one where SOEs had mainly to compete with each other and with imports. There was only a very negligible private sector, and almost no FDI to speak of. 'Rationalisation' forced upon SOEs was therefore coming from imports and the effects of the major economic changes accompanying the reforms and the loss of the large Soviet bloc aid program; the 'Law of Value', therefore, had largely to see market forces play themselves out *within* the state sector, giving, as Beresford (1997) has pointed out, the state a particularly subtle role in mediating between interests. Interestingly, signs of a collapse of monetary and fiscal order marked by the impotency of central government in its relations with local authorities (a clear problem in China), seem to have been lacking; ad hoc decisions to delay tax payments, ease loan conditions and so forth, all with national systemic potential, tended to be mediated through the national state structures.

Law and policy towards SOEs needs to be seen in this light. It can be argued that the context, requiring a political and fiscal tightening, required strong attempts to bring SOEs under greater state control – a 'conservative' push in terms of the liberalising trends of the 1980s.

Law and policy towards SOEs

A search of the Official Gazette for laws and decrees relating to SOEs for the period shows rather little novel activity in the early years of the decade. The most interesting pointer is towards greater regulation of market-oriented activities, and a reduction of SOE property rights compared with the state.

¹⁴ Whilst the basic ideas of central planning emerged during the Soviet Five Year Plans of the late 1920s and 1930s, there is enough *prima facie* reason for supposing the possibility of local adaptation of these in other countries for the term 'neo-Stalinist' to be useful. For example, whilst Stalin simultaneously held the top positions in the Party, State and Security structures in USSR, thus permitting a certain pattern of 'mediation' (to apply such a term to his appalling practices), once Ho Chi Minh had lost influence power at the top in Vietnam tended to be shared between competing groups, leading to characteristic problems for a country used to a monarchy, using a system that was effectively monarchical/dictatorial in character (Stalinism), but had a number of competing offices. A wide range of books explain the peculiarities of central planning, where most goods and services were sold, but in quantities and at prices set by the plan, so that the meaning of 'sell' is quite different from that in market economies. Typically, in such economies planners ensured that prices were set at levels where SOEs enjoyed large profits, which were then used to finance large levels of investment. For a while, thanks to the high levels of investment, growth was very fast, but then slowed as constraints such as primary inputs and the low efficiency of the system started to bite. For a fascinating account of the collapse of this system in the USSR see Ellman and Kontorovich (1998), which collects writings by insiders after the event.

The thrust of legislation was still coming from the reforms of the late 1980s, specifically 217-HDBT, which was a strong attack on the central planning system, and other guiding documents that, it is clear (see Table 1) were to do with four areas. First, *regulation* - matters such as No. 13 (business accounting) and No. 26 (on the role of the Chief Accountant), also No. 144 (financial management – also No. 408. Second, addressing *particular issues of the moment*, specifically dealing with shed labour (No. 2); and the continuing program of equitisation. Third, matters to do with *profit shares and the nature of the property relations* between the state and the SOE (No. 93 on depreciation and No. 316 on ‘capital allocation’, as well as decree No. 27 on Enterprise Unions). Fourth, matters to do with the *creation and dissolution* of SOEs (No. 315), especially the program of re-establishment of SOEs (No. 388).

Table 1: Legislation and decrees relating directly to SOEs immediately prior to 1992 (chronological order)

Quyết định số 217-HDBT ban hành các chính sách đổi mới kế hoạch hóa và hạch toán kinh doanh xã hội chủ nghĩa đối với các xí nghiệp quốc doanh [Resolution # 217-HDBT promulgating policies for the reform of planning and socialist accounting for SOEs]; Authority: HDBT; Date:14/11/87; Source: CB 10/12/87

Chi thị số 13-CT về việc triển khai thực hiện Quyết định số 217-HDBT ngày 14/11/87 ban hành các chính sách đổi mới kế hoạch hóa và hạch toán kinh doanh xã hội chủ nghĩa đối với các xí nghiệp quốc doanh [Order # 13-CT on implementation of Resolution # 217-HDBT 14/11/87 ...]; Authority: HDBT; Date: 7/1/88; Source: CB 31/1/88

Quyết định số 98-HDBT về việc ban hành ban Quy định về quyền làm chủ của tập thể lao động tại xí nghiệp quốc doanh [Decision # 98-HDBT on the promulgation of Regulations on the rights to collective mastery of the collective of labour in SOEs]; Authority: HDBT; Date: 2/6/88; Source: CB 30/6/88

Nghị định số 26-HDBT ban hành Điều lệ kế toán trưởng xí nghiệp quốc doanh - Điều lệ kế toán trưởng xí nghiệp quốc doanh [Decision # 26-HDBT promulgating the Statute on the Chief Accountant of an SOE – The Statute ...]; Authority: HDBT; Date:18/3/89; Source: CB 31/3/89

Nghị định số 27-HDBT ban hành Điều lệ Liên hiệp xí nghiệp quốc doanh - Điều lệ Liên hiệp xí nghiệp quốc doanh [Decision # 27-HDBT promulgating the Statute on Enterprise Associations – the Statute ...; Authority: HDBT; Date: 22/3/89; Source: CB 15/4/89

Quyết định số 93-HDBT về việc sửa đổi chế độ nộp khấu hao cơ bản của các đơn vị xí nghiệp kinh tế quốc doanh (Resolution # 93 of the Council of Ministers on revising the system of depreciation contributions of State economic enterprises); Authority: HDBT; Date:24/7/89; Source: CB 15/8/89

Quyết định của Hội đồng Bộ trưởng số 144-HDBT về chấn chỉnh quản lý tài chính xí nghiệp quốc doanh (Resolution # 144 of the Council of Ministers on improving the financial management of State Enterprises); Authority: HDBT; Date:10/5/90; Source: CB 15/5/90

Quyết định của Hội đồng Bộ trưởng số 143-HDBT về việc tổng kết thực hiện Quyết định số 217-HDBT ngày 14/11/87, các nghị định 50-HDBT ngày 22/3/88 và 98-HDBT ngày 2/6/88 và làm thủ tục tiếp tục đổi mới quản lý xí nghiệp quốc doanh (Resolution of the Council of Ministers # 143 on summarising the results of implementing Decision # 217 14/11/87, as well as Decisions # 50 22/3/88 and 98 2/6/88 and on experimental continuation of State enterprise management reform); Authority: HDBT; Date:10/5/90; Source: CB 31/5/90

Quyết định của Hội đồng Bộ trưởng số 315-HDBT về chấn chỉnh và tổ chức lại sản xuất và kinh doanh trong khu vực kinh tế quốc doanh. - Quyết định một số điểm cơ bản về thủ tục giải thể xí nghiệp quốc doanh bị thua lỗ nghiêm trọng (Resolution of the Council of Ministers # 315 on improving and reorganising production and business in the State sector. Regulations on some basic points regarding the dissolution of State enterprises suffering serious losses; Authority: HDBT; Date: 1/9/90; Source: CB 15/10/90

Chỉ thị của Chủ tịch Hội đồng Bộ trưởng số 316-CT về việc thí điểm trao quyền sử dụng và trách nhiệm bảo toàn vốn sản xuất kinh doanh cho đơn vị cơ sở quốc doanh. Quyết định tạm thời về những nguyên tắc và nội dung trao quyền sử dụng trách nhiệm bảo toàn và phát triển vốn cho các xí nghiệp quốc doanh (Order # 316 of the Pres the Council of Ministers on experimentation with allocating the rights and responsibility to use capital to State production units. Temporary regulations thereon.); Authority: HDBT; Date: 1/9/90; Source: CB 31/10/90

Chỉ thị của Chủ tịch Hội đồng Bộ trưởng số 408-CT về việc tiếp tục chấn chỉnh công tác tài vụ kế toán và hạch toán kinh tế của các xí nghiệp quốc doanh; (Order # 408 of the Pres of the Council of Ministers on continuation of the strengthening of financial work in accounting and economic accounting in State enterprises); Authority: HDBT; Date: 20/11/90; Source: CB 31/12/90

Thông tư liên bộ 2-TT/LB hướng dẫn việc giải quyết chính sách đối với lao động khi giải thể xí nghiệp quốc doanh (Inter-ministerial circular letter # 2 guiding implementation of the labour policy on dissolution of state enterprises); Authority: Lao động thương binh và xã hội [Ministry of Labour ...]; Date: 05/03/91; Source: CB 30/04/91

Note: I have not followed standard Vietnamese official terminology in translating the various terms for different types of decrees.

Abbreviations: CB – Công Báo – the Official Gazette; HDNT – Hội đồng Bộ Trưởng – the Council of Ministers

The process of negotiation and renegotiation of matters to do with state property – profit sharing (though often not called by that name), and relations between SOEs and the state (importantly No. 217, but also the decree on Enterprise Unions) show a continuity of focus that went back to the start of the 1980s and, as we will see, on into the 2000s. As is usual, to the uninitiated much of this can appear arcane, but an apparently dry decree on depreciation needs to be understood beside the reality that depreciation payments were, in essence, part of what value the SOE could retain from its commercial activities. And this was negotiable, regulated through these documents and decisions (a tendency that would also continue into the 2000s). Here, though, there are already the beginnings of an apparent *reversal* in direction, so that whereas law of the late 1980s had reduced the power of formal state property rights over SOEs, in the very early 1990s (very probably influenced by the context – see above), this was reversed. In summary, the preamble to No. 93 makes the point that earlier decrees – No. 217 and No. 50 – had stipulated that 100 percent of 'basic depreciation' (a category from the formal accounting system) was to be left to the enterprise - only for a small number of large projects was some to be given to the State budget. No. 93, however, bearing in mind the State's need for revenue to carry out key investments, stipulated that: (i) new projects must pay 70 percent of basic depreciation to the State for the first three years, the remainder goes to 'own-capital' for use in the enterprise's own investments; (ii) for existing base units, depreciation on assets paid for out of State budgetary

funds will be left to the units at an average rate of 50 percent for all branches – the rest will be paid to the State budget. The Ministry of Finance will fix concretely the percentage retention for each enterprise in accordance with demand and requirements for replacement of the enterprise's assets; and (iii) the decision came into effect on 1 July 1989.

This survey suggests that the details of SOE rationalization, to cope with the problems of the moment and secure greater competitiveness, were not expressed in decrees at a level worthy of being published in the Official Gazette. Rather, decisions were taken on an ad hoc basis, and reported and disseminated through media such as the press, as is shown in the discussion of the next section.

Local views of SOEs and their problems

As in the next section, this discussion rests simply upon a reading of articles related to SOEs in the quality Vietnamese press. A search of my databases for 1992 and early 1993 turned up over 100 articles relating to SOEs. Perhaps the most telling one was a *Tin ngan* (Short News, No. 4, 1993: 9) of KTVN, simply entitled – SOEs 'Holding to their key role but still loss-making'. This reported, as is frequent with such articles, the results of a piece of research and a survey. This showed that SOEs held two-thirds of economic assets and received 90 percent of invested capital. That competition at this stage was mainly coming from imports and other SOEs is relatively clear (e.g. Vu, 22 January 1992).

These public discussions focus to a great extent upon the problems of particular SOEs. This was an approach going back many years, for example to the early 1980s, before *doi moi*, when the official press carried many articles discussing the pros and cons of early steps to the commercialisation of SOEs. There is less concern, especially compared with the perceptions a decade later, with the details of systemic change; rather, the 'market economy' – the 'new system' – was largely taken as given.¹⁵ The concern of many articles was to show how SOEs had, through positive exploitation of the market mechanism, done well in terms of survival, maintenance of employment, payments to the state, and increased economic activity. These micro experiences show much about how Law fitted into the local meaning of state commerce.

Regulation

This topic was not widely discussed. It is clear from the texts that widespread illegality was happening (see, for example, the discussion of kickbacks in the construction industry in Nguyen and Trong, 1992). Law itself was not an active element in regulating the important changes of the moment. This is not so surprising, as central to them was the push to secure 'return on capital' as the

¹⁵ For example, in discussions of the Hai Phong refrigerator works (Trong, 1992a 1992b); the garments industry (Phan, 1992).

central gauge of enterprise performance, in a situation where the formal structure of SOEs did not permit this core element of the Law of Value to be clearly realised. The shift to *state business* status, with the importance of treating SOEs as sites for the use of capital, did, however, mark this clearly. Thus, for example, Pham Bang Ngan (1993):

the most specific characteristics of commercial performance for a business is the budgetary contribution target. High contributions, on the basis of high turnover, and high and rational employee incomes ... are the most accurate way of establishing the commercial results of a business from the point of view of state management.

Particular issues of the moment

The over-riding issue of the moment, which comes through very strongly from these articles, was to ensure that so far as possible SOEs survived, and were capable of competing, holding markets and retaining employees, under the often very difficult economic conditions. Pro-SOE positions saw their 'social' duties as often weakening their competitive position. Thus, for example, Dam Minh Thuy (1992) argued that four factors tended to push up their costs:

- Preserving and developing state investments
- High depreciation payments (see above)
- Positive real interest rates at the banks
- The cost of electricity (this had recently been raised by the government)

However, this article, respecting realities and the need to reduce inflationary pressures, ended up calling for import controls.

Profit shares and the nature of property relations

As we have seen, law was pushing for a further redefinition of the relationships between SOEs and the state, and towards a formation of state interests that was more to do with return on capital and investments. An important element of this was the treatment of SOE's 'own' capital (*von tu co*). For example, the success story of the Hung Yen garments export factory (Tran Ta Uyen, 1993) referred to the financing of new investments of 4 billion dong as being made up of 3 billion from the SOE's 'own capital'.

This, interestingly, coincided with a wide range of quite accepted, but apparently extra-legal, arrangements that effectively involved joint ventures. On the surface, these were usually reported in terms of deals done with the SOE's workers. One example is 'Share groups'. These were essentially groups of workers who gave high fixed interest loans to their SOE (Hoang Lan, 1993). There is no mention in the article of any legal matter.

Creation and dissolution of SOEs

There were extensive reports of the re-establishment of SOEs as 'State businesses' (i.e. from *Xi nghiep quoc doanh*, to *Doanh nghiep nha nuoc*), in accordance with decision No. 388 (20 November 1991). However, this was not a topic that generated much detailed discussion, suggesting, as is probably the case, that the shift was largely nominal. To quote Trong Nghia (14 December 1992) 'this is just the first step, the problem is how, through categorising SOEs and reorganising production the city and the Ministries can rapidly concentrate capital in stable and progressive enterprises that are short of capital'. The effects of No. 388 could include dissolution of SOEs (Trong Nghia, 1992c) and were clearly part of the ongoing process of rationalisation.

An interesting aspect of these references, which provides continuity through to the discussions a decade later, was the use of local terminology to refer to various forms of business cooperation. This was treated quite separately from the formal legal aspects of the creation and dissolution of SOEs (suggesting that law was derivative rather than proactive in relation to the direction of commercial change). Two cases in particular were:

- The distinction between *lien ket* and *lien doanh* (Trong Nghia 5 November 1992); the former referred to cooperation that contained a technical basis, and was covered by the notion of 'contract'; the latter was understood to involve a pooling of capital. That the distinction was locally significant points simply to the characteristics of the capital market at the time.
- That of 'share groups' – see above.

One can conclude that the market in institutions was rather free – people could try out various arrangements extra-legally to see what could be done with them.

Another example of this institutional variety was that of an early example of privatisation, that of the HCM City refrigerator factory (Tran 31 October 1993). This was reportedly the second SOE to be privatised in the City. There were very few details of how this had been done. By the late 1990s its shares were being actively traded.

Ideological issues

The articles in the Party Organ *Nhan dan* largely present stories about how individual SOEs had coped with what was called the 'shift to a market economy'. Consistent with the overall ideological acceptance of a push to a market economy, we see greater stress upon acceptance of the role of return on capital, though subject to 'social' and political issues: the Law of Value was to operate only subject to the political power of the socialist regime.

Conclusions

Examination of the legislation and the articles from the quality Vietnamese press seems to lead to the conclusion that there is no significant difference between the position taken by Stalin and that of the VCP at this time. Whilst the Law of Value is to be allowed to operate, and in Vietnam in the early 1990s this is clearly to a far greater extent than in early 1950s Soviet Russia, law and other elements of state activities are part of a conscious attempt to subject it to the priorities of the socialist regime. Further, the apparent willingness to permit extra-legal activities that clearly could have a strong effect upon state control suggests that law was not perhaps the most important part of how the VCP governed SOEs, through various channels.

The argument here goes beyond the one, common in Vietnam studies, that it was the local market and players that were central to the dynamic of SOE change. Rather, viewed in terms of the overall political dynamic, and bearing in mind Beresford's (1997) stress on the importance of the state as a *mediator* between interests, for the overall political goals of regime survival and order in relationships between higher and local levels, SOEs appear to have maintained an important political function. Their existence, and the possibility of mediating interest group conflicts through such levers as the Mass Organisations and Party organisations within them, the allocation of state credits, deliberations over access to fdi, to participation in development plans, export marketing exercises, and so on, all offered precisely what Beresford seems to be referring to. And, since this political project seems to have been successful, it follows, granted the widespread illegality, that law was not an important element of the 'techniques of rule'. Another way of putting this could be that if one focuses upon the 'rule' in 'rule by law', then law was not very important to this, at least as far as SOEs were concerned. Little real effort was put into dealing with the widespread illegality, and this reflected political realities and priorities.

THE SITUATION IN THE EARLY 2000s

In the early 2000s, the Vietnamese economy was, compared with the early 1990s, also showing somewhat unexpected signs of resilience and rapid growth after a period of shocks and difficulties. In this case the shocks were associated with the Asian Financial Crisis and the steep reductions in inward FDI of the closing years of the decade. However, the confidence of major aid donors was again high, marked by very large loan arrangements agreed with the World Bank. One major trend was the apparent rapid emergence of a corporate private sector, and very fast growth of labour-intensive exports, often coming from foreign-invested factories. The 'Law of Value' could therefore operate through a far more complex field of commercial competition, where the private and foreign sectors both eased systemic issues by their contributions to exports and employment, whilst also offering sources of market-driven rationalisation that were *not* sited in the state sector.

It is important to realise also that after a decade of rapid growth the Vietnamese population, especially that associated with SOEs, was far richer, both in terms of assets and real incomes. It can be argued that the mid and late 1990s saw a build up in savings amongst the emerging middle classes that, combined with experience gained in business, amounted to a strong force pushing for the emergence of more strictly private forms of business than that which was entrenched in SOEs; in other words, for property-rights that could more easily be transferred, inherited and merged with others in various forms of joint venture.

It is important to stress how important the state sector was to the rapid growth of the 1990s, and how much support it had been obtaining from the state. Even by the early 2000s, 85 percent of subsidised credits were going to SOEs (Bac Hai, 15 May 2002).

A final point is that it is useful not to assume that change processes regarding SOEs, as in other cases, are best seen in terms of a metaphor of policy and policy implementability. I have argued elsewhere (Fforde, 2002) that the apparently random pattern of SOE equitisation¹⁶ and reform, when viewed as a policy-driven process, could as easily reflect a development where the key element of equitisation is the de facto and (now) de jure recapitalisation of an existing joint venture (rather than a Weberian bureaucratic entity). Further, that since the apparent net flow of capital at equitisation is *inwards* (Fforde, 2002), a more persuasive metaphor may well be the need for equitisation to compete with other opportunities for increasingly important and mobile capital.

Law and policy towards SOEs

The most significant element of policy towards SOEs in this later period was marked strongly at the 3rd plenum of the Party Central Committee, which stressed the need to accelerate equitisation of SOEs. But this, of course, was simply a variation in the earlier theme of rationalisation and regulation of the nature of property relations.

If we review the laws and decrees in the Official Gazette for the approximate 18 months from mid 2000 to the end of 2002, they show a range of concerns that is very similar to those a decade earlier (see Table 2). There are, however, rather more of them than before. The overall impression is one of far greater sophistication and textured awareness of the nature of the state sector: a 'fine tuning' of various elements already present a decade previously. Thus, a rather large number deal with the particular event of equitisation of individual SOEs.

¹⁶ Occasional confusion continues about the significance of this term. Literally translated as 'equitisation', it seems as often to be used to refer to the re-establishment of an SOE as an equity company, with some ownership rights expressed through that form, as it refers to an avowed process of privatisation.

Table 2: Legislation and decrees relating directly to SOEs, second half of 2001 and 2002 (chronological order)

- Quyết định số 153/2001/QĐ-TTg ngày 9/10/2001 phê duyệt doanh nghiệp Nhà nước hàng đặc biệt [Decision # 153/2001/9/10/2001 approving specialised commodity SOE(s)]; Authority: TTg; Date: 9/10/2001; Source: CB 15/11/2001 Tr.2786
- Quyết định số 172/2001/QĐ-TTg ngày 5/11/2001 về việc xử lý gian lận, khoản nợ, xóa nợ thuế và các khoản phải nộp ngân sách nhà nước đối với những doanh nghiệp, cơ sở sản xuất kinh doanh có kho khan do nguyên nhân khách quan [Decision # 172/2001/5/11/2001 on dealing with extension of debts, isolation of debts and elimination of debts owed to the state budget for businesses and production and business 'bases' resulting from objectively caused difficulties]; Authority: TTg; Date: 5/11/2001; Source: CB 15/12/2001 Tr.3081
- Quyết định số 182/2001/QĐ-TTg ngày 20/11/2001 về việc sửa đổi, bổ sung Quy chế công khai tài chính đối với ngân sách nhà nước các cấp, các đơn vị du toán ngân sách, các doanh nghiệp nhà nước và các quy cơ nguồn thu từ các khoản đóng góp của nhân dân bán hàng kém theo Quyết định số 225/1998/QĐ-TTg ngày 20/11/1998 của Thủ tướng Chính phủ [Resolution # 182/2001 on revising and supplementing on the Financial Openness Regulations regarding state capital at all levels, for budgetary estimate units, SOEs and funds derived from popular donations promulgated in accordance with Decision # ; Authority: TTg; Date: 20/11/2001; Source: CB 31/12/2001 Tr.3199
- Quyết định số 1489/2001/QĐ-TTg ngày 21/11/2001 về việc thành lập tổ công tác triển khai thực hiện chuyển đổi doanh nghiệp nhà nước, doanh nghiệp của tổ chức chính trị, tổ chức chính trị - xã hội thành công ty trách nhiệm hữu hạn một thành viên [Resolution # 1489/2001/QĐ-TTg 21/11/2001 on establishing the working group for implementation expansion of the shift of SOEs and businesses or political organisations and socio-political organisations to single-member limited liability companies]; Authority: TTg; Date: 21/11/2001; Source: CB 31/12/2001 Tr.3210
- Chỉ thị số 27/2001/CT-TTg ngày 22/11/2001 về việc triển khai thực hiện chuyển đổi doanh nghiệp Nhà nước, doanh nghiệp của các tổ chức chính trị, tổ chức chính trị - xã hội thành công ty trách nhiệm hữu hạn một thành viên [Order # 27/2001/CT-TTg 22/11/2001 on disseminating implementation of the re-establishment of SOEs and businesses of political and socio-political organisations as single owner limited liability companies]; Authority: TTg; Date: 22/11/2001; Source: CB 31/12/2001 Tr.3212
- Thông tư liên tịch số 89/2001/TTLT-BTC-BCA ngày 8/11/2001 hướng dẫn việc nộp, sử dụng và quyết toán tiền thuế đối với các doanh nghiệp nhà nước hoạt động công ích thuộc Bộ Công an [Circular Letter # 89/2001/BTC-BCA 8/11/2001 guiding the contribution, use and acquittal of funds derived from taxes paid by public utility SOEs of the Policy Ministry]; Authority: Bộ Tài chính, Bộ Công an; Date: 8/11/2001; Source: CB 31/12/2001 Tr.3220
- Thông tư số 94/2001/TT-BTC ngày 22/11/2001 hướng dẫn bổ sung quy định tại Thông tư số 121/2000/TT-BTC ngày 29/12/2000 của Bộ Tài chính hướng dẫn thực hiện đấu thầu mua sắm đồ dùng, vật tư, trang thiết bị, phương tiện làm việc đối với các cơ quan Nhà nước, lực lượng vũ trang, đơn vị và doanh nghiệp nhà nước sử dụng nguồn ngân sách Nhà nước [Circular Letter # 94/2001/TT-BTC 22/11/2001 providing supplementary guidance to implementation of tendering for procurement of goods, equipment, and work tools for State Organs, armed forces, mass organisation and SOEs that use state budgetary funds] Authority: Bộ Tài chính; Date: 22/11/2001; Source: CB 22/1/2002 Tr.189
- Quyết định số 1627/2001/QĐ-TTg ngày 27/12/2001 về việc chuyển đổi doanh nghiệp Nhà nước công ty xuất nhập khẩu hàng tiêu thụ công nghiệp TP HCM thành công ty cổ phần [Resolution # 1627/2001/QĐ-TTg 27/12/2001 on changing the HCM City consumer Goods State Import-Export Company into a share company]; Authority: TTg; Date: 27/12/2001; Source: CB 31/1/2002 Tr.226

- Quyết định số 53 QĐ TTg ngày 11/1/2002 về việc chuyển doanh nghiệp Nhà nước Công ty xuất nhập khẩu thủy sản thành công ty cổ phần [Resolution # 53 QĐ TTg 11/1/2001 on changing the State Seafood Product Import-Export Company into a share company; Authority: TTg; Date: 11/1/2002; Source: CB 8/3/2002 Tr.588
- Quyết định số 55 2002 QĐ TTg ngày 14/1/2002 về việc chuyển doanh nghiệp nhà nước công ty kinh doanh xuất nhập khẩu thủy sản Minh Hải thành công ty cổ phần [Resolution # 55 2002 QĐ TTg 14/1/2001 on changing the Minh Hai Seafood State Import-Export Company into a share company]; Authority: TTg; Date: 14/1/2002; Source: CB 8/3/2002 Tr.599
- Quyết định số 110 QĐ TTg ngày 4/2/2002 về việc chuyển doanh nghiệp Nhà nước công ty Nổi Hoi VN thành công ty cổ phần [Resolution # 110 QĐ TTg 4/2/2001 on changing the Noi Hoi Vietnam State Company into a share company]; Authority: TTg; Date: 4/2/2002; Source: CB 22/3/2002 Tr.696
- Quyết định số 111 QĐ TTg ngày 4/2/2002 về việc chuyển doanh nghiệp Nhà nước công ty xây dựng thuốc TCTy cao su VN thành công ty cổ phần [Resolution # 111 QĐ TTg 4/2/2001 on changing the State Construction Company of the Vietnam General Rubber Company into a share company]; Authority: TTg; Date: 4/2/2002; Source: CB 22/3/2002 Tr.697
- Chỉ thị số 04 2002 CT TTg ngày 8/2/2002 về việc tiếp tục sắp xếp, đổi mới, phát triển và nâng cao hiệu quả doanh nghiệp Nhà nước [Order # 04 2002 CT TTg 8/2/2001 on continuing the reorganization, reform, development and performance enhancing of SOEs]; Authority: TTg; Date: 8/2/2002; Source: CB 5/4/2002 Tr.816
- Quyết định số 178 QĐ TTg ngày 28/2/2002 về việc chuyển doanh nghiệp nhà nước Công ty phát triển đầu tư công nghệ (FPT) thành công ty cổ phần [Resolution # 178 QĐ TTg 28/2/2002 on changing the State Technology Development Company into a share company; Authority: TTg; Date: 28/2/2002; Source: CB 10/4/2002 Tr.848
- Thông tư số 03 2002 TT BLĐTBXH ngày 9/1/2002 hướng dẫn thực hiện Nghị định số 28 CP ngày 28/3/1997 về Nghị định số 03 2001 ND CP ngày 11/1/2001 của Chính phủ về đổi mới quản lý tiền lương và thu nhập trong doanh nghiệp xây dựng Nhà nước [Circular Letter # 03 2002 TT BLĐTBXH 9/1/2002 guiding implementation of Decision # 28 CP 28/3/1997 on Decision # 03 2001 ND CP 11/1/2001 of the Government on reform of the management of wages and incomes in State construction companies]; Authority: Bộ LĐTBXH; Date: 9/1/2001; Source: CB 15/4/2002 Tr.920
- Thông tư số 04 2002 TT BLĐTBXH ngày 9/1/2002 hướng dẫn thực hiện quản lý tiền lương và thu nhập đối với doanh nghiệp Nhà nước hoạt động công ích [Circular Letter 04 2002 TT BLĐTBXH 9/1/2002 guiding implementation of the management of wages and incomes for State public utility companies]; Authority: Bộ LĐTBXH; Date: 9/1/2001; Source: CB 15/4/2002 Tr.924
- Quyết định số 213 QĐ TTg ngày 25/3/2002 về việc chuyển doanh nghiệp Nhà nước Công ty giống cây trồng miền Nam thành công ty cổ phần [Resolution # 213 QĐ TTg 25/3/2002 on changing the southern seedling State Company into a share company]; Authority: TTg; Date: 25/3/2002; Source: CB 15/5/2002 Tr.1346
- Thông tư số 22 2002 TT BTC ngày 21/3/2002 hướng dẫn xử lý tài chính và hạch toán đối với doanh nghiệp Nhà nước có góp vốn thành lập doanh nghiệp liên doanh theo Luật Đầu tư nước ngoài tại VN khi doanh nghiệp liên doanh chấm dứt hoạt động [Circular Letter # 22 2002 TT BTC 21/3/2002 guiding financial and accounting issues for SOEs with capital contributions to joint ventures set up under the Foreign Investment Law that have ceased operations]; Authority: Bộ Tài chính; Date: 21/3/2002; Source: CB 15/5/2002 Tr.1353
- Nghị định số 41 2002 ND CP ngày 11/4/2002 về chính sách đối với lao động dôi dư do sắp xếp lại doanh nghiệp Nhà nước [Decree # 41 2002 11/4/2002 on policies regarding labour made surplus as a result of rationalization of SOEs]; Authority: Chính phủ; Date: 11/4/2002; Source: CB 25/5/2002 Tr.1478
- Thông tư số 26 2002 TT BTC ngày 22/3/2002 hướng dẫn xử lý tài chính khi chuyển đổi doanh nghiệp nhà nước, doanh nghiệp của tổ chức chính trị, tổ chức chính trị - xã hội thành công ty trách nhiệm hữu hạn một thành viên [Circular Letter # 26 2002 TT BTC

- 22/3/2002 guiding financial issues when re-establishing an SOE of a political organisation or a socio-political organisation as a single member Limited Liability Company]; Authority: Bo Tai chinh; Date: 22/3/2002; Source: CB 25/5/2002 Tr.1513
- Nghi dinh so 49 2002 ND CP ngay 24/4/2002 sua doi, bo sung mot so dieu cua Nghi dinh so 103 1999 ND CP ngay 10/9/1999 cua Chinh phu ve giao, ban, khoan kinh doanh, cho thue doanh nghiep Nha nuoc [Decree # 49 2002 ND CP 24/2/2002 changing and supplementing a number of clauses of Decree # 103 CP 10/9/1999 of the Government on allocating, selling, business contracting and renting out SOEs]; Authority: Chinh phu; Date: 24/4/2002; Source: CB 5/6/2002 Tr.1627
- Quyét dinh so 58 2002 QD TTg ngay 26/4/2002 ve ban hanh tieu chi, danh muc phan loai doanh nghiep Nha nuoc va TCTy nha nuoc [Decree # 58 2002 QD TTg 26/4/2002 on the promulgation of indicators and lists for the classification of SOEs and State General Companies]; Authority: TTg; Date: 26/4/2002; Source: CB 5/6/2002 Tr.1660
- Thong tu so 30 2002 TT BTC ngay 27/3/2002 huong dan tam thoi su dung khoan tien su dung von nha nuoc tai doanh nghiep [Circular Letter # 30 2002 TT BTC 27/3/2002 provisionally guiding the use of funds derived from state capital at businesses]; Authority: Bo Tai chinh; Date: 27/3/2002; Source: CB 10/6/2002 Tr.1709
- Thong tu so 32 2002 TT BTC ngay 10/4/2002 huong dan thuc hien Quyét dinh so 172 2001 QD TTg ngay 5/11/2001 cua Thu tuong Chinh phu ve xu ly hoan no, khoan no, xoa no thue va cac khoan phai nop ngan sach nha nuoc doi voi nhung doanh nghiep co so san xuất kinh doanh co kho khan do nguyen nhan khach quan [circular Letter # 32 2002 TT BTC 10/4/2002 guiding implementation of Resolution # 172 2001 WD TTg 5/11/2001 of the Prime Minister on resolving the extension of debts, the isolation of debts and the writing-off of debts of tax and other state budgetary contributions for those businesses and production-business units suffering difficulties with objective causes]; Authority: Bo Tai chinh; Date:10/4/2002; Source: CB 15/6/2002 Tr.1785
- Thong tu so 22 2002 TT BTCCBCP ngay 23/4/2002 huong dan viec xu ly can bo, cong chuc, can bo trong doanh nghiep nha nuoc vi pham cap phat, su dung van bang, chung chi khong hop phap [Circular Letter # 22 2002 TT BTCCBCP 23/4/2002 guiding the resolution of issues regarding cadres, public servants and cadres within SOEs who violate regulations on the issue and use of documents and invoices]; Authority: Ban TCCBCP; Date: 23/4/2002; Source: CB 15/6/2002 Tr.1800
- Nghi dinh so 64 2002 ND CP ngay 19/6/2002 ve viec chuyen doanh nghiep Nha nuoc thanh cong ty co phan [Decree # 64 2002 ND 19/6/2002 on the shifting of SOEs into share company form]; Authority: Chinh phu; Date: 19/6/2002; Source: CB 20/7/2002 Tr.2213
- Thong tu so 11 2002 TT BLDTBXH ngay 12/6/2002 huong dan thuc hien mot so dieu cua Nghi dinh so 41 2002 ND CP ngay 11/4/2002 cua Chinh phu ve chinh sach doi voi lao dong doi du do sap xep lai doanh nghiep Nha nuoc [Circular Letter # 11 2002 TT BLDTBXH 12/6/2002 guiding implementation of a number of clauses in Decree # 41 2002 ND CP 11/4/2002 of the Government on policies regarding labour made surplus due to the rationalization of SOEs]; Authority: Bo LDTBXH; Date: 12/6/2002; Source: CB 25/7/2002 Tr.2307
- Nghi dinh so 69 2002 ND CP ngay 12/7/2002 ve quan ly va xu ly no ton dong doi voi doanh nghiep nha nuoc [Decree # 69 2002 ND CP 12/7/2002 on the management and resolution of idle debts of SOEs]; Authority: Chinh phu; Date: 12/7/2002; Source: CB 15/8/2002 Tr.2547
- Quyét dinh so 85 2002 QD BTC ngay 1/7/2002 ban hanh quy che quan ly va su dung quy ho tro lao dong doi du do sap xep lai doanh nghiep nha nuoc [Resolution # 85 2002 QD BTC 1/7/2002 promulgating the regulations on the management and use of the fund for assisting labour made surplus as a result of SOE rationalization]; Authority: Bo Tai chinh; Date: 1/7/2002; Source: CB 15/8/2002 Tr.2603
- Thong tu so 66 2002 TT BTC ngay 6/8/2002 huong dan trinh tu, thu tuc xu ly tai chinh khi giai the doanh nghiep Nha nuoc [Circular Letter # 66 2002 TT BTC 6/8/2002 guiding the sequence and procedure for dissolving SOEs]; Authority: Bo Tai chinh; Date: 6/8/2002; Source: CB 15/9/2002 Tr.2995

- Thong tu so 76 2002 TT BTC ngay 9/9/2002 huong dan nhung van de ve tai chinh khi chuyen doanh nghiep nha nuoc thanh cong ty co phan [Circular Letter # 76 2002 TT BTC 9/9/2002 guiding a number of financial issues when an SOE is changed into a share company]; Authority: Bo Tai chinh; Date: 9/9/2002; Source: CB 15/10/2002 Tr.3388
- Quyét dinh so 895 QD TTg ngay 4/10/2002 ve viec phe duyét Phuong an tong the sap xep, doi moi doanh nghiep nha nuoc thuoc TCTy luong thuc mien Bac giai doan 2002 – 2005 Resolution # 895 QD TTg 4/10/2002 approving the General Project for the rationalization and reform of SOEs belonging to the Northern General Staples Company during 2002-2005]; Authority: TTg; Date: 4/10/2002; Source: CB 5/11/2002 Tr.3625
- Thong tu so 75 2002 TT BTC ngay 9/9/2002 huong dan thuc hien phuong an tai chinh co cau, sap xep lai doanh nghiep nha nuoc va ngan hang thuong mai 2001 – 2003 [Circular Letter # 75 2002 TT BTC 9/9/2002 guiding implementation of the financial project for the restructuring and reorganization of SOEs and commercial banks for the period 2001-2003]; Authority: Bo Tai chinh; Date: 9/9/2002; Source: CB 5/11/2002 Tr.3637
- Thong tu so 79 2002 TT BTC ngay 12/9/2002 huong dan xac dinh gia tri doanh nghiep khi chuyen doanh nghiep nha nuoc thanh cong ty co phan [Circular Letter # 79 2002 TT BTC 12/9/2002 guiding the valuation of SOEs when they are changed into share companies]; Authority: Bo Tai chinh; Date: 12/9/2002; Source: CB 5/11/2002 Tr.3644
- Thong tu so 80 2002 TT BTC ngay 12/9/2002 huong dan bao lanh phat hanh dau gia ban co phan ra ben ngoai cua cac doanh nghiep nha nuoc thuc hien co phan hoa [Circular Letter # 80 2002 TT BTC 12/9/2002 guiding the guaranteeing of issues of shares at auction outside the company when an SOE is equitised]; Authority: Bo Tai chinh; Date: 12/9/2002; Source: CB 5/11/2002 Tr.3652
- Thong tu so 85 2002 TT BTC ngay 26/9/2002 huong dan thuc hien Nghi dinh so 69 2002 ND CP ngay 12/7/2002 cua Chinh phu ve quan ly va xu ly no ton dong doi voi doanh nghiep nha nuoc [Circular Letter # 85 2002 TT BTC 26/9/2002 guiding implementation of Decree # 69 2002 ND CP 12/7/2002 of the Government on managing and dealing with idle debts of SOEs]; Authority: Bo Tai chinh; Date: 26/9/2002; Source: CB 5/11/2002 Tr.3660
- Quyét dinh so 1015 2002 QD NHNN ngay 19/9/2002 ve viec ban giao ho so dang ky khoan vay nuoc ngoai cua doanh nghiep [Resolution # 1015 2002 QD NHNN 19/9/2002 on the hanging over of the file registering foreign debts of an enterprise]; Authority: Ngan hang nha nuoc; Date: 19/9/2002; Source: CB 5/11/2002 Tr.3686
- Thong tu so 05 2002 TT NHNN ngay 27/9/2002 huong dan viec cho vay von doi voi nguoi san xuat, doanh nghiep ky ket hop dong tieu thu nong san hang hoa theo Quyét dinh so 80 2002 QD TTg ngay 24/6/2002 cua Thu tuong Chinh phu [Circular Letter # 05 2002 TT NHNN 27/9/2002 guiding lending to producers and businesses when they sign agricultural product procurement contracts in accordance with Resolution # 80 2002 244/6/2002 of the Prime Minister]; Authority: Ngan hang nha nuoc; Date: 27/9/2002; Source: CB 5/11/2002 Tr.3686
- Thong tu so 94 2002 TT BTC ngay 21/10/2002 huong dan xac dinh chi tieu von nha nuoc va thu nop ngan sach de phan loai doanh nghiep theo Quyét dinh so 58 2002 QD TTg ngay 26/4/2002 cua Thu tuong Chinh phu [Circular Letter # 94 2002 TT BTC 21/10/2002 guiding establishment of indicators of state capital and budgetary contributions for the classification of SOEs in accordance with Resolution # 58 2002 26/4/2002 of the Prime Minister]; Authority: Bo Tai chinh; Date: 21/10/2002; Source: CB 20/11/2002 Tr.3860
- Quyét dinh so 1101 2002 QD BNC ngay 22/10/2002 ve viec to chuc lai cong ty xay lap 3, doanh nghiep thanh vien hach toan doc lap cua TCTy xay dung cong nghiep VN thanh cong ty me nha nuoc truc thuoc Bo Cong nghiep thi diem hoat dong theo mo hinh Cong ty me - cong ty con [Resolution # 1101 2002 QD BNC 22/10/2002 on the reorganization of Construction and Assembly Company 3, independent accounting businesses belonging to the Vietnam General Construction Company into a state 'mother' company directly of the Ministry of Industry acting experimentally as 'Mother' Company and 'Child' Company] ; Authority: Bo Cong nghiep; Date: 22/10/2002; Source: CB 25/11/2002 Tr.3916

- Thong tu so 15 2002 TT BLDTBXH ngay 23/10/2002 huong dan ve chinh sach doi voi nguoi lao dong khi chuyen doanh nghiep Nha nuoc thanh cong ty co phan theo Nghi dinh so 64 2002 ND CP ngay 19/6/2002 [Circular Letter # 15 2002 TT BLDTBXH 23/10/2002 guiding policies regarding workers when changing an SOE to a share company in accordance with Decree # 64 2002 ND CP 19/6/2002]; Authority: Bo LDTBXH; Date: 23/10/2002; Source: CB 25/11/2002 Tr.3919
- Quyết định số 151 2002 QĐ TTg ngày 7/11/2002 về việc phê duyệt phương án tổng thể sắp xếp, đổi mới doanh nghiệp nhà nước trực thuộc tỉnh Vinh Long giai đoạn 2002 – 2005 [Resolution # 151 2002 QĐ TTg 7/11/2002 on approving the project for the general reorganization and reform of SOEs belonging to Vinh Long province for the period 2002-2005]; Authority: TTg; Date: 7/11/2002; Source: CB 30/11/2002 Tr.3992
- Quyết định số 152 2002 QĐ TTg ngày 7/11/2002 về việc phê duyệt phương án tổng thể sắp xếp, đổi mới doanh nghiệp nhà nước trực thuộc Bộ Thương mại giai đoạn 2002 – 2005 [Resolution # 152 2002 QĐ TTg 7/11/2002 on approving the project for the general reorganization and reform of SOEs belonging to the Ministry of Trade for the period 2002-2005]; Authority: TTg; Date: 7/11/2002; Source: CB 30/11/2002 Tr.3994
- Quyết định số 11 QĐ TTg ngày 2/1/2003 phê duyệt phương án tổng thể sắp xếp đổi mới doanh nghiệp Nhà nước trực thuộc Ủy ban nhân dân tỉnh Phú Yên giai đoạn 2002 – 2005 [Resolution # 11 QĐ TTg 2/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Phú Yên province people's committee for the period 2002-2005]; Authority: TTg; Date: 2/1/2003; Source: CB 5/2/2003 Tr.372
- Quyết định số 12 QĐ TTg ngày 2/1/2003 phê duyệt phương án tổng thể sắp xếp đổi mới doanh nghiệp Nhà nước trực thuộc Ủy ban nhân dân tỉnh Tuyên Quang giai đoạn 2002 – 2005 [Resolution # 12 QĐ TTg 2/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Tuyên Quang province people's committee for the period 2002-2005]; Authority: TTg; Date: 2/1/2003; Source: CB 5/2/2003 Tr.373
- Quyết định số 13 QĐ TTg ngày 2/1/2003 phê duyệt phương án tổng thể sắp xếp đổi mới doanh nghiệp Nhà nước trực thuộc Ủy ban nhân dân tỉnh Thái Nguyên giai đoạn 2002 – 2005 [Resolution # 13 QĐ TTg 2/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Thái Nguyên province people's committee for the period 2002-2005]; Authority: TTg; Date: 2/1/2003; Source: CB 5/2/2003 Tr.375
- Quyết định số 39 QĐ TTg ngày 8/1/2003 về việc phê duyệt Phương án tổng thể sắp xếp, đổi mới doanh nghiệp Nhà nước trực thuộc tỉnh Vinh Phúc đến năm 2005 [Resolution # 39 QĐ TTg 8/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Vinh Phúc province people's committee for the period 2002-2005]; Authority: TTg; Date: 8/1/2003; Source: CB 10/2/2003 Tr.440
- Quyết định số 60 QĐ TTg ngày 13/1/2003 về việc phê duyệt phương án tổng thể sắp xếp, đổi mới doanh nghiệp Nhà nước tỉnh Cần Thơ giai đoạn 2002- 2005 [Resolution # 60 QĐ TTg 13/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Cần Thơ province for the period 2002-2005]; Authority: TTg; Date: 13/1/2003; Source: CB 15/2/2003 Tr.527
- Quyết định số 64 QĐ TTg ngày 14/1/2003 về việc phê duyệt đề án tổng thể sắp xếp, đổi mới doanh nghiệp Nhà nước thuộc Ủy ban nhân dân tỉnh Thừa Thiên - Huế đến năm 2005 [Resolution # 64 QĐ TTg 14/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Thừa Thiên - Huế province people's committee for the period to 2005]; Authority: TTg; Date: 14/1/2003; Source: CB 20/2/2003 Tr.596
- Chỉ thị số 01 2003 CT TTg ngày 16/1/2003 tiếp tục đẩy mạnh sắp xếp, đổi mới phát triển và nâng cao hiệu quả doanh nghiệp Nhà nước [Order # 01 2003 CT TTg 16/1/2003 on continuing the strengthening of the reorganization, reform and improving the performance of SOEs]; Authority: TTg; Date: 16/1/2003; Source: CB 20/2/2003 Tr.599
- Quyết định số 14 QĐ TTg ngày 20/1/2003 phê duyệt phương án tổng thể sắp xếp, đổi mới doanh nghiệp Nhà nước trực thuộc TCTy thuộc là VN giai đoạn 2003 – 2005 [Resolution

14 QD TTg 20/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to the General Tobacco Company of Vietnam for the period 2003-2005]; Authority: TTg; Date: 20/1/2003; Source: CB 20/2/2003 Tr.609

Quyết định số 109 QĐ TTg ngày 24/1/2003 về việc phê duyệt phương án tổng thể sắp xếp đối với doanh nghiệp Nhà nước trực thuộc Ủy ban nhân dân tỉnh Hưng Yên giai đoạn 2002 – 2005 [Resolution # 109 QĐ TTg 24/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Hai Yen province people's committee for the period 2002-2005]; Authority: TTg; Date: 24/1/2003; Source: CB 25/2/2003 Tr.667

Quyết định số 115 QĐ TTg ngày 27/1/2003 về việc phê duyệt Phương án tổng thể sắp xếp, đối với doanh nghiệp Nhà nước trực thuộc UBND tỉnh Cà Mau giai đoạn 2002 – 2005 [Resolution # 115 QĐ TTg 27/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Cà Mau province for the period 2002-2005]; Authority: TTg; Date: 27/1/2003; Source: CB 28/2/2003 Tr.726

Quyết định số 125 QĐ TTg ngày 28/1/2003 về việc phê duyệt đề án tổng thể sắp xếp, đổi mới TCTY nhà nước và doanh nghiệp Nhà nước thuộc Bộ Công nghiệp giai đoạn 2003 – 2005 [Resolution # 125 QĐ TTg 28/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to the Ministry of Industry for the period 2002-2005]; Authority: TTg; Date: 28/1/2003; Source: CB 28/2/2003 Tr.730

Quyết định số 132 QĐ TTg ngày 30/1/2003 về việc phê duyệt phương án tổng thể sắp xếp, đối với doanh nghiệp Nhà nước trực thuộc UBND tỉnh Hà Tây giai đoạn 2002 – 2005 [Resolution # 132 QĐ TTg 30/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Hà Tây province people's committee for the period 2002-2005]; Authority: TTg; Date: 30/1/2003; Source: CB 28/2/2003 Tr.750

Quyết định số 133 QĐ TTg ngày 30/1/2003 về việc phê duyệt phương án tổng thể sắp xếp, đối với doanh nghiệp Nhà nước trực thuộc UBND tỉnh Sóc Trăng giai đoạn 2003 – 2005 [Resolution # 133 QĐ TTg 30/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Sóc Trăng province people's committee for the period 2002-2005]; Authority: TTg; Date: 30/1/2003; Source: CB 28/2/2003 Tr.754

Quyết định số 134 QĐ TTg ngày 30/1/2003 về việc phê duyệt phương án tổng thể sắp xếp, đối với doanh nghiệp Nhà nước trực thuộc UBND tỉnh Bắc Giang giai đoạn 2003 – 2005 [Resolution # 134 QĐ TTg 31/1/2003 on approving the project for the general reorganization and reform of SOEs belonging to Bắc Giang province people's committee for the period 2002-2005]; Authority: TTg; Date: 30/1/2003; Source: CB 28/2/2003 Tr.755

Abbreviations: as for Table 1, and also TTg – Thủ tướng – Prime Minister; Tr. – Page;

Note: I have not followed standard Vietnamese official terminology in translating the various terms for different types of decrees; nor have I checked whether my translations of the names of companies and general companies are those used by them when trading.

Local views of SOEs and their problems

The literature of the early 2000s is far richer and more detailed. Whereas the early 1990s offers a picture of individual SOEs, a decade later 'SOEs' are treated far more as a set of general issues. This in part reflects the particular context: whilst in the early 1990s the situation was one where the major changes of 1989-90 were being digested, in the early 2000s there was much discussion of the 'SOE problem' and the advantages and disadvantages of 'SOE reform', including the central issue of why a central feature of it, 'equitisation', was happening at the speed observed – for many, too slowly and clearly below the targets set in legislation.

One can note, though, that the 'formal reform' aspects of what was happening were reflected in detailed regulation of the various 'forms' of SOE: typologies were set by state decision rather than by the market. Thus, in one example amongst many, Doan Kim (2002) refers to decree No. 58 as defining the following 'types' of SOE:

- 100 percent state capital
- The rest – 'transmogrified' (*da dang hoa*);¹⁷ equitised; dissolved; bankrupted. According to another source (PV, 3 May 2002) these other types were in fact clearly defined in 'law':
 - Type 1 – state holding of 100 percent; state holdings of 20 billion dong or above.
 - Type 2 – state holding of over 50 percent; state holding of under 50 percent but state control maintained through special legal decisions; SOEs with less than 5 billion dong in assets, which could not be equitised and which would be more directly handed over to other agents (see below).
 - Type 3 - SOEs not of Type 1, suffering long-term losses, which would be dissolved.

Doan Kim argues that the basic reason for the slow pace of SOE reform is that Ministries and localities are afraid of 'losing' them. Le Dang Doanh argues that equitisation is essentially the transfer of the business to a new investor (*sic* – *nha dau tu*, not 'owner' – *chu*) to increase the efficiency of the business (Le Dang Doanh in Bac Hai, 27 September 2002).

Regulation

By this stage the 'new regulations' section of the leading newspaper, the Vietnam Economic Times, was producing regular and high quality glosses of new decrees, on topics such as the treatment of financial aspects of SOE dissolution (e.g. No. 66 in TBKTVN, 30 August 2002: 2).

Particular issues of the moment

The dominant issue of the moment was the effort to improve competitive performance nationally, of which rationalisation of SOEs was a central part, where rationalisation was focussed upon property relations understood,

¹⁷ The term 'da dang hoa' could be literally translated as 'diversification of form', but has richer semantic use. Perhaps a simple way of appreciating it is in terms of capitalization: it refers to the existence of various forms of capital that could come together in an SOE, with the idea that as the range of forms increased, so the level of capitalization became richer, or more accurately more diversified. For me, this term clearly shows the inadequacy of the term 'privatisation', since it is the variation of different forms of capital that is central, not to extent to which they are 'state' or 'private'. Yet, there is also the sense that increasing diversification often could entail a de-statisation.

essentially, as a further extension of the Law of Value through equitisation and the accelerated divestment of smaller SOEs (which – see below – were *not* treated as subject to equitisation, but rather to simpler and more radical (in terms of the Law of Value) measures.

As part of this we see legal decisions to manage and deal with the old problem of the unpaid debts of many SOEs (No. 69). In a way quite familiar from the early 1990s, if not far earlier, this decree stated (to gloss PV, 15 July 2002) that ‘the SOE must itself deal with the problem, acting with the debtor to share burdens and solve the issue...’.

Profit shares and the nature of property relations

There are a wide range of stories that discuss the natural implications of the shift to equity companies, such as the granting of permission for businesses to sell shares to foreign investors (Chan Hung, 2002), which is discussed in the context of a draft decree from the Ministry of Finance. This was earlier said to be required to occur through a financial intermediary. Priority was to be given to sales ‘within’ the SOE, including sales to poor workers.

There was also much discussion of how SOEs were to be valued, with officials such as Tran van Ta (a Deputy Minister of Finance) arguing that market valuation was needed (Quy Hao, 13 September 2002).

Showing the process-nature of change, and the role of law in underpinning state projects, we see ideas floated that would have removed the power of line Ministries over SOEs (called ‘abolishing the ‘lead management role’) and vesting delegated state power in the hands of the Ministry of Finance as holder of the state’s shares (Quy Hao, 31 July 2002).

Perhaps the clearest reflection of the nature of property relations can be seen in the reported differences between two decisions on equitisation - No. 44 (1998) and No. 64 (2002). These were reported (Kim Dan – Bac Hai, 21 June 2002) as:

- It was no longer obligatory to use all the workers in the SOE at equitisation, only as many as possible.
- Earlier, a corporate entity could buy a maximum of 10-20 percent of the shares (*sic*), and an individual 5-10 percent; now there were no limits.
- SOE management staff, from deputy section heads upwards, were no longer limited in the numbers of shares sold at ‘favourable prices’. All employees could buy, and allocation would be based upon period in state employment (*sic* – not specifically at the SOE) prior to equitisation.
- It was now compulsory to sell shares outside the SOE at equitisation, to a minimum of 30 percent. Priority should be given to producers and suppliers of agricultural, forestry and marine products inputs to the SOE, and all sales had to go through financial intermediaries.

- The establishing shareholders had to have at least 20 percent of the equity.
- The form of shares would be based upon the Ministry of Finance's model, but did not have to follow it exactly.
- A variety of measures could be used to value the SOE being equitised.
- Land use rights could only be part of the deal for SOEs involved in housing and infrastructure. All others would still have to rent their land from the state.
- Employees would get a maximum of 10 shares per year of employment at the favourable price (defined as 30 percent below the general price of 100,000 dong per share).
- The value of the SOE would be set by the Minister or the Chairman of the relevant People's Committee.
- The Prime Minister would no longer directly approve all equitisations, but only the general plan of each Ministry and locality.

We can see from this the way in which the VCP had gradually shifted its position on SOEs, and even at this relatively mature stage in the process was still using a range of powers to involve itself in the issue of who would have formal ownership of these businesses. We can note that the underlying power and position of the party and mass organisations within these bodies, which remain strong, was not discussed.

Another area which offered great scope for confusion was the position of the General Companies. A General Company is a formal legal form, essentially a sort of holding company. Their history is complex, but dates back well into the 1970s and a flirtation with the apparent success of the East German 'combinaten' in easing the problems of central planning. Here, planning of SOEs had been reformed by shifting them into large holding companies, which were then planned by central government: thus the number of units planners had to deal with were reduced, and the holding companies, often with vertical and horizontal integration (inputs suppliers and groups of inputs suppliers were brought within the one holding company, hopefully reducing transactions and coordination costs).

In Vietnam, these *Lien hiep* also grouped SOEs, initially taking into their management officials from the line Ministries. Far later however, in the early 1990s, these were reformed through their transformation into 'General Companies', for reasons that are not well understood. These existed at central and local level, and also as 'Groups' (*Tap Doan*, rather than the *Tong Cong Ty* I am translating as 'General Company').

Central to the discussion here of the role of law, and its continued irrationalities, is that the question of the power of General Companies over their constituent SOEs once the latter had been equitised appears to have been left open. Thus

whilst the share holders would appoint, in some arguments, the management board of such an SOE, the General Company would appoint the General Manager.¹⁸ Here legislation to shift to a 'Mother Company – Child Company' model emerged (Minh An, 13 March 2002). Again, though, there were 'experiments' with four models (BH, 27 February 2002). An Order of early 2002 apparently stated that an equitised SOE would remain a member of any General Company it had belonged to (DT, 20 February 2002).

In a further extension of the experiments with legal forms seen in the early 1990s, we see General Companies shifting to a situation where they have 'no state supplied capital' (Minh An, 3 April 2002). This apparently meant that they would shift to basing their activities upon collateralised bank loans (90 percent) and likely 'own-capital'. This was reported as being widely viewed as a rational model.

Another example of this flexibility of form was the emergence of 'single member Limited Companies' – that is, equitised SOEs with 100 percent state ownership. This was addressed in a circular letter of the Ministry of Planning and Investment (MG, 2 February 2002).

Creation and dissolution of SOEs

The legislation clearly has much to do with the re-establishment of SOEs, as a decade earlier. Apart from details already mentioned, the treatment of small SOEs is very interesting.

Decree No. 49 follows on a series of decrees going back to the 1980s on relatively simple methods for handing small SOEs over to other agents, through 'allocation, sale, business contracting (*khoan kinh doanh*) or renting (*thue*). According to Hoanh Anh (3 April 2002), many of these were loss-making, but the possibilities for sales were there if conditions were eased further.

Ideological issues

It is important to note how the legislation required a 'typology' of SOEs, and how this reflected a range of interests, above all the need to balance limited economic goals with the need to maintain capacity to deal with likely adverse political consequences. There was considerable political 'push' to secure the economic goals, with the combination of legislation to accelerate equitisation with overt VCP commitment to it as well as sweeteners to possible new investors.

¹⁸ The original legislation on the new-style General Companies was extremely opaque on their rights and powers. On the situation in the early 2000s, see for example Bac Hai (2002).

Conclusions

The sources reveal a different but essentially similar treatment of relations between SOEs and the state as a decade previously. In 1992 SOEs were commercialised entities participating in a range of joint ventures and seeking to meet a variety of goals suited to the position in which they were placed by the party and state: a priority role in securing the general goals of national development and the specific political goals of securing the regime. At the time, conceptions were very much focussed upon the need for individual SOEs to survive the greatly increased pressures caused by the loss of Soviet aid and the need to tighten state support so as to maintain the macroeconomic stability that had only recently been re-established. Law played a role in regulating and ordering SOEs, but was ignored by both SOEs and the party-state when viewed appropriate, and circumstances suited.

By 2002, Law was still essentially part of the treatment by a ruling Communist Party of the progressive opportunities offered to them (as to Stalin) by an expanded role of the Law of Value. It was not something that governed and determined the activities of either SOEs or the party-state, for, as we have seen, confusion in important areas remained, and the Law was ignored by both sides when viewed appropriate. What is quite different about the early 2000s, however, is the presence of a dynamic private domestic sector and the foreign invested sector. We can note the relative absence from the literature of reference to this, but we also need to note the considerable resources devoted to maintaining the state sector. In fact, the intense focus of legislation upon regulating the state sector can be interpreted as reflecting a pressing need to secure its position against these trends for the later years of the decade. The equitisation process itself, legally expressed, preserved considerable opportunity for hemming in the operation of the Law of Value in many ways, consistent with the continuing socialist direction as discussed above. We can point to the residual powers to control SOEs when the state's share was below 50 percent, the commitment to use of the General Companies as a channel of influence, not at all clearly defined, and the ongoing negotiated relationship between the managers and workers in SOEs and the wider world of the state and party, still mediated by the party's local organisations and the mass organisations, whose attention could be increased and diminished as required. Law was not politically important to this; other forces existed to support and order the emergence of markets.

CONCLUSIONS: LAW AND THE NATURE OF MARKET-ORIENTED DEVELOPMENT IN VIETNAM

This paper supports the hypothesis that there was no fundamental change in the basic structures of state: SOE relations during the decade from around 1992. The decade did not start with a SOE sector that was a-legal in the sense that pure Stalinism could be said to ignore the need to regulate 'outside' activities, of which those aimed at the market, and in a Marxian sense accepting of the Law of Value, appear the most likely candidate. Rather, SOEs immediately after the

crisis of 1989-91 were legally viewed as objects of regulation rather than control, or, rather, both, but certainly not subject to a definitive plan. As Beresford has stressed, planners had grown long accustomed to negotiating with SOEs, and from this it was not a long step to treating their commercial activities as such, relatively autonomous from the state's wider goals – the plan - and driven as much by profit as other goals. Neither did the decade end with a clear program of 'privatisation'; rather, SOEs, even the equitised ones, continued to operate in an environment where rationalisation and regulation went hand in hand, and where their activities were clearly subject to the wider political and social intentions of government and party.

If, then, we trace Vietnamese socialism back to Stalin's great surprise of the early 1950s, when he re-admitted economics to formal discussion, and the Law of Value to an acceptable 'existence' within what Brezhnev was later to call 'existing socialism', then clearly so long as the VCP and its government continue to hold to their definitions of the defining elements of socialism as "public ownership of the means of production, central planning and distribution according to labour", and consider that the relations they have with the economy provide the political and developmental results that central planning promised and failed to deliver, then they have much room for manoeuvre. Central to this is the 'public' nature of the various business forms pertaining. If it has well been said that 'in Vietnam, the private is not entirely private and the public not entirely public',¹⁹ then clearly much will turn, not on the private nature of SOEs, but the public nature of private companies.

If we now return to the three unifying questions, some hesitant answers can be attempted. Does, and if so how, socialism shape law and law-related institutions?

It is clear from the discussion above that you need to know quite a lot about 'socialism' in order to understand the dynamics of SOEs, their political position, and so forth. However, it is the *real*, rather than doctrinal, aspects of socialism that are important: the politics of Vietnam's 'conservative' transition were deeply influenced by its recent past, in neo-Stalinism and its local reality. Socialism, then, shapes law and law-related institutions through its influence over the local dynamic, and so in contingent ways: for example, it turned out that illegality in matters to do with SOEs was not inconsistent with local political priorities during the 1990s.

What is the balance between external and internal factors in explaining legal change? Since it appears that formal legal change was largely irrelevant, this question may appear moot. However, the forces that maintained illegality were clearly domestic in origin.

Finally, does 'socialist' doctrine inhibit legal change? The answer to this goes beyond the scope of the paper. This is because the central position of SOEs in

¹⁹ Dao Xuan Sam, personal communication – '*Tu khong han la tu, cong khong han la cong*'.

the 1990s accompanied the relative absence from the scene of more private forms, which in fact started to emerge fast in the late 1990s. Evidence referred to in the footnotes (the work by McMillan and Woodruff) argues that formal legal institutions were not necessary to the development of good inter-firm relations: in this case, the market did not need the state. But whether and to what extent the failure of private firms to emerge in the 1990s was due to 'socialist' doctrine is not something that can be answered easily. What the argument does suggest, however, is that the state (and party) could effectively mediate between social groups *without* use of legality per se, and that it was, perhaps, this political success rather than doctrine that was central. After all, great effort, reported above in terms of the decrees and other legal documents, did go into developing the outward forms of law.

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