

Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam

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Each year, the Vietnamese government vigorously rejects criticism by foreign governments and human rights agencies about violations of religious freedom in Vietnam. The Vietnamese government's rhetoric evidences a fundamentally different understanding of religious freedom from that of the international community. This Article draws on empirical research to show that the Vietnamese government uses politically constructed narratives called the Đại Đoàn Kết (Great Unity) to determine which kinds of religious worship conform to Vietnamese culture and traditions. Đại Đoàn Kết narratives define a common culture, spiritual destiny, and national identity—they define what it means to be Vietnamese. The universal principles of human rights invoked by foreign critics are relegated to the periphery of this imagined identity.

This Article argues that the forces of modernization and globalization in Vietnam are changing the Vietnamese government's inward-looking, relativistic views about human rights into cosmopolitan, universal perspectives. As Vietnam modernizes and becomes more globally integrated, party leaders are compelled to expand their loyalties beyond the ethnic Kinh majority and accept a multiethnic state with diverse forms of religious worship. In grappling with cross-cultural problems generated by modernity, party leaders are incrementally assuming a cosmopolitan outlook that treats all humans as belonging to a single community based on shared social responsibilities and moralities. The Article further explores whether cosmopolitanism is a precursor to universal, legally protected rights to religious freedom in Vietnam. This investigation has implications for China and other East Asian countries, such as Burma and North Korea, where the state actively manages religious worship.

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INTRODUCTION

Each year brings a new round of accusations about human rights abuses in Vietnam.¹ During the latest round, the U.S. Department of State accused the Vietnamese government of a lengthy catalogue of violations but singled out freedom of religion for particular concern.² Adding to the condemnation, the U.S. Commission on International Religious Freedom (“USCIRF”) concluded in its own scathing report that “the government of Vietnam continues to control all religious communities, restrict and penalize independent religious practice severely, and repress individuals and groups viewed as challenging its authority.”³ To convey their concern, the USCIRF recommended in March 2012 that the U.S. House of Representatives reinstate Vietnam on the watch list of Countries of Particular Concern for violating religious freedoms.⁴ On August 1, 2013 the U.S. House of Representatives passed the Vietnam Human Rights Act, which prohibited non-humanitarian aid to Vietnam unless the President determines that the Vietnamese government has guaranteed minimum human rights standards, including religious freedom.⁵ Vietnam now joins China and sixteen other countries accused of failing to recognize universal rights to religious worship.⁶

Each year, the Vietnamese Ministry of Foreign Affairs challenges the veracity of foreign human rights criticism and protests interference into Vietnamese domestic affairs.⁷ Officials insist that the Universal Declaration

1. Section 102(b) of the International Religious Freedom Act (“IRFA”) of 1998 requires the U.S. Department of State to prepare an annual human rights country report. *See generally Vietnam*, 2012 U.S. DEP’T ST. COUNTRY REP. ON HUM. RTS. PRAC., available at <http://www.state.gov/documents/organization/204463.pdf>, archived at <http://perma.cc/N6BG-G68F>; *Vietnam*, 2011 U.S. DEP’T ST. COUNTRY REP. ON HUM. RTS. PRAC., available at <http://www.state.gov/documents/organization/186531.pdf>, archived at <http://perma.cc/S7RR-JMWP>; *Vietnam*, 2010 U.S. DEP’T ST. COUNTRY REP. ON HUM. RTS. PRAC., available at <http://www.state.gov/documents/organization/160484.pdf>, archived at <http://www.perma.cc/BCM4-BLVV>. Human Rights Watch also releases annual reports at the beginning of each year. *See, e.g.*, HUMAN RIGHTS WATCH, WORLD REPORT 2013: EVENTS OF 2012 382, available at <http://www.hrw.org/world-report/2013/country-chapters/vietnam>, archived at <http://perma.cc/6D66-SG9W>.

2. *Introduction*, 2012 U.S. DEP’T ST. COUNTRY REP. ON HUM. RTS. PRAC., at 12, available at <http://www.state.gov/documents/organization/204294.pdf>, archived at <http://perma.cc/ZR5U-XB8S>.

3. 2012 U.S. COMM’N ON INT’L RELIGIOUS FREEDOM ANN. REP. 11, available at [http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf), archived at <http://perma.cc/CME2-6PNM> [hereinafter 2012 USCIRF REP.].

4. The U.S. Department of State named Vietnam a Country of Particular Concern (“CPC”) in 2004 and 2005 but removed Vietnam from the CPC designation from 2006 until 2012. *Id.* at 260. The U.S. Secretary of State has powers under IRFA to designate countries of particular concern for “systematic, ongoing, egregious violations of religious freedom.” International Religious Freedom Act of 1998 § 3, 22 U.S.C. § 6402 (2012).

5. Vietnam Human Rights Act of 2013, H.R. Res. 1897, 113th Cong. § 3 (as passed by House, Aug. 1, 2013).

6. *See generally* 2012 USCIRF REP., *supra* note 3.

7. *See, e.g.*, *Remarks by Foreign Ministry Spokesman Luong Thanh Nghi on the Passage of Viet Nam Human Rights Act 2013*, VIET. MINISTRY FOREIGN AFFAIRS (Aug. 3, 2013), <http://www.mofa.gov.vn/en>

of Human Rights (“UDHR”) and its progeny should “harmoniously combine” with domestic political, cultural, and religious traditions.⁸ They claim that “no country has the right to impose any political, economic, or cultural model on others.”⁹ Underlying these ritualistic responses is a sense of outrage that foreigners should judge Vietnam so egregiously.¹⁰

This debate takes place against the background of vigorous disagreement about religious freedom in the United Nations.¹¹ Hearings on the 2012 Annual Report of the U.N. Special Rapporteur on freedom of religion or belief revealed fault lines among member states over issues such as religious conversion, including the right to change religion and to proselytize about changing or leaving a religion.¹² States with official religions were especially opposed to permitting citizens to leave state-sponsored belief systems.¹³ At the other end of the spectrum, many western countries, including the United States, argued that “freedom of religion or belief includes the right to reject all religions and protects the rights of atheists.”¹⁴ Western human rights advocates also criticized the use of blasphemy laws to stifle religious discussion and practices.¹⁵

Differences in the rhetoric deployed by the United States and Vietnam reveal fundamentally different understandings of religious freedom. The U.S. State Department invokes universal human rights and compliance with

/tt_baochi/pbnfn/ns130805202859, archived at <http://www.perma.cc/0mEA6knjFw8>; see also Bộ Ngoại giao Việt Nam, *Báo cáo Tự do Tôn giáo quốc tế của Bộ Ngoại giao Hoa Kỳ đưa ra những đánh giá không khách quan về Việt Nam* [Report on International Religious Freedom U.S. State Department to Make Objective Assessments of Vietnam], TẠP CHÍ CỘNG SẢN (Nov. 18, 2011), http://www.tapchicongsan.org.vn/Home/Thoi_su_chinh_tri/2010/10939/Bao-cao-Tu-do-Ton-giao-quoc-te-cua-Bo-Ngoai-giao.aspx, archived at <http://www.perma.cc/0Xhfd4ZadmQ>; Nguyễn Đức Thắng, *Phải chăng ở Việt Nam hiện nay không có tự do tín ngưỡng, tôn giáo?* [Does Vietnam Now Have No Freedom of Belief and Religion?], TẠP CHÍ CỘNG SẢN (Aug. 16, 2013), [http://www.tapchicongsan.org.vn/Home/Binh-luan/2013/23090/Phai-chang-o-Viet-Nam-hien-nay-khong-co-tu-do-tin.aspx](http://www.tapchicongsan.org.vn/Home/Binh-luan/2013/23090/Phai-chang-o-Viet-Nam-hien-nay-khong-co-tu-do-tin-nguong-ton-giao.aspx), archived at <http://www.perma.cc/06i4gJd9qmD>; *Vietnam Opposes U.S. Statement on Cu Huy Ha Vu's Conviction*, THANH NIÊN (Apr. 8, 2011, 8:20 AM), <http://www.thanhniennews.com/2010/pages/20110409144608.aspx>, archived at <http://www.perma.cc/0i13oTBGn6r>.

8. *Vietnam's Viewpoints and Policies on Human Rights*, VIET. MINISTRY OF FOREIGN AFFAIRS (July 2007), http://www.mofa.gov.vn/en/ctc_quocte/ptklk/nr040819162124/ns070731133659/view#bstmJ2ObW8If, archived at <http://www.perma.cc/0NEEwcBUANi>.

9. *Id.*

10. Interviews by author with ten Hanoi-based lawyers, in Hanoi, Viet. (Mar.–Sept. 2012, Mar.–Apr. 2013) [hereinafter Interviews with Lawyers] (anonymous lawyers who have advised citizens and organizations involved in human rights cases in Vietnam); see also *Vietnam Rejects U.S. Human Rights Report*, TUOITRENEWS (Apr. 22, 2013, 4:20 PM), <http://tuoitrenews.vn/politics/8965/vietnam-rejects-us-human-rights-report>, archived at <http://www.perma.cc/0U1Hg24cX4a>.

11. See Matt Cherry, U.N. *Debates Freedom of Religion or Belief*, INT’L ETHICAL & HUMANIST UNION (Oct. 31, 2012, 8:09 PM), <http://iheu.org/story/un-debates-freedom-religion-or-belief>, archived at <http://www.perma.cc/0rCta3DXGk3>.

12. *Id.*

13. *Id.*

14. *Id.*

15. See *Human Rights First Welcomes New U.N. Text on Religious Intolerance*, HUMAN RIGHTS FIRST (Nov. 28, 2012), <http://www.humanrightsfirst.org/2012/11/28/human-rights-first-welcomes-new-u-n-text-on-religious-intolerance>, archived at <http://www.perma.cc/0pM8xhkgZb9>.

international treaty obligations, especially the UDHR.¹⁶ Underlying this position is the neo-Kantian ideal that justice springs from reason, which can impose universal and unconditional moral obligations.¹⁷ According to Kant's moral cosmopolitanism, "all rational beings, irrespective of their race, should be regarded as ends in themselves and as lawgiving members of 'the universal kingdom of ends.'" ¹⁸ It follows that human rights transcend national cultures because they are universal principles shared by civilized people around the world.¹⁹

In contrast to the Kantian tradition, the Vietnamese government's understanding of *nhân quyền* (human rights) resembles Frederick von Savigny's concept of *volksgeist* (cultural or spiritual character).²⁰ For decades, Vietnamese leaders have embedded human rights in a semi-mystical, political, and moral discourse about national sovereignty and identity called the *Đại Đoàn Kết* ("DDK") (Great Unity).²¹ Like von Savigny's *volksgeist*, DDK narratives aim to inculcate the belief that Vietnamese people are bound together by a common culture and spiritual destiny—by a national identity.²² Certain Vietnamese cultural institutions such as ancestral links to the mythical Lac Hong kings, Red River Delta village traditions, freedom from foreign domination, and ancestor worship form the core of DDK

16. See, e.g., *Introduction*, JULY–DEC. 2010 U.S. DEP'T ST. INT'L RELIGIOUS FREEDOM REP., at 1, available at <http://www.state.gov/documents/organization/172436.pdf>, archived at <http://www.perma.cc/4P97-UMJ3>.

17. Drafters of the UDHR were influenced by the Enlightenment ideal that human rights are located in human beings simply by virtue of their own humanity. Immanuel Kant contributed to this ideal by promoting a world order based on the ideal of independent rights-respecting nation states, a system that foreshadowed the emergence of the U.N. human rights regime. See Peter Danchin, *Who Is the "Human" in Human Rights? The Claims of Culture and Religion*, 24 MD. J. INT'L L. 99, 112 n.30 (2009); Jenny S. Martinez, *Towards an International Judicial System*, 56 STAN. L. REV. 429, 462–63 (2003); Fernando Tesón, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53, 55 (1992). Several prominent contemporary philosophers continue the Kantian tradition that locates universal rights in reason or reflective, rational discourse. See, e.g., JURGEN HABERMAS, JUSTIFICATION AND APPLICATION: REMARKS ON DISCOURSE ETHICS 94–96 (Ciaran P. Cronin trans., 1993). Other contemporary philosophers who take a consequentialist approach to human rights promote some aspects of the Kantian tradition. See, e.g., John Rawls, *The Law of Peoples*, in ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 41, 60–62 (Stephen Shute & Susan Hurley eds., 1993); Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHIL. & PUB. AFF. 315, 321–22 (2004).

18. Georg Cavallar, *Cosmopolitanisms in Kant's Philosophy*, 5 ETHICS & GLOBAL POL. 95, 98 (2012).

19. *Id.* at 95–100.

20. Frederick von Savigny used *volksgeist* to invoke an essential German character that infused social relationships such as laws. See generally Mathias Reimann, *Nineteenth Century German Legal Science*, 31 B.C. L. REV. 837 (1990).

21. Interviews with Lawyers, *supra* note 10; see also *Ho Chi Minh Thought on Great National Unity and Religions*, VOICE OF VIET. ONLINE (May 27, 2006, 2:00 PM), <http://english.vov.vn/Opinion/Ho-Chi-Minh-Thought-on-great-national-unity-and-religions/34666.vov>, archived at <http://www.perma.cc/0Wdqq9VL2Lq>.

22. See *Ho Chi Minh Thought on Great National Unity and Religions*, *supra* note 21; see also Kate Jellema, *Returning Home: Ancestor Veneration and the Nationalism of Doi Moi Vietnam*, in MODERNITY AND RE-ENCHANTMENT: RELIGION IN POST-REVOLUTIONARY VIETNAM 57, 65–73 (Philip Taylor ed., 2007) [hereinafter MODERNITY AND RE-ENCHANTMENT]; Le Truyen, *Ho Chi Minh's Thought on Unity*, NHAN DAN (2003), reprinted in 108 VIET. L. & LEGAL F. 10, 10–11 (2003).

narratives.²³ This imagined identity defines what it means to be Vietnamese.

The Vietnamese government first used DDK rhetoric to galvanize national solidarity against external enemies during the wars of resistance. More recently, the state has enlisted DDK narratives to define Vietnamese religious values through the veneration of some religious practices and the exclusion of others.²⁴ For example, the state accepts that six “patriotic” religions (Buddhism, Catholicism, Protestantism, Islam, Cao Đài, and Hòa Hảo Buddhism) accord with Vietnamese traditions.²⁵ Yet, despite deep historical roots in Vietnamese culture, authorities place spirit mediums and other superstitious practices outside the DDK.²⁶

Furthermore, just as von Savigny invoked the notion of *volksgeist* to oppose the centralization and universalization of legal codes in nineteenth-century Germany, Vietnamese authorities use the DDK to reject foreign imposition of universal human rights. Vietnamese officials depict foreign critics’ universal notions of human rights as un-Vietnamese—that is, as ideas originating from outside the DDK.²⁷

At first glance, this debate about human rights violations in Vietnam resembles yet another clash between universalism and relativism.²⁸ U.S. agencies draw implicitly on the neo-Kantian ideal that all individuals possess the rights of dignity and equality by virtue of being human.²⁹ Because culture plays a secondary role in determining the validity of moral rights,

23. See Oscar Salemink, *Appropriating Culture: The Politics of Intangible Cultural Heritage in Vietnam, in STATE, SOCIETY, AND THE MARKET IN CONTEMPORARY VIETNAM* 158, 160–63 (Hue-Tam Ho Tai & Mark Sidel eds., 2012). For a discussion about the content of the DDK, see Jacob Ramsay, *Miracles and Myths: Vietnam Seen Through Its Catholic History, in MODERNITY AND RE-ENCHANTMENT*, *supra* note 22, at 371, 371–98; *Speech by Party General Secretary Lê Khả Phiêu at Conference of Management Officials of Literature, Art, and Press Agencies in Hanoi on 8 October*, NHAN DAN, Oct. 9, 1998, at 1, translated in *Party Leader Addresses Cultural Officials*, F.B.I.S. E. ASIA DAILY REP., Pub. No. FBIS-EAS-98-289, Oct. 16, 1998 (discussing national solidarity and the promotion of fine national traditions) (on file with author); Le Truyen, *supra* note 22, at 10; see also *Mười năm triển khai thực hiện Nghị quyết Trung ương 5 (khóa VIII) về xây dựng và phát triển nền văn hóa Việt Nam tiên tiến, đậm đà bản sắc dân tộc [Ten Years Implementing Resolution No. 5 of the Central Committee of the Communist Party on Building Progressive Culture, Imbued with National Identity]*, No. 03/NQ-T, July 16, 1998, available at <http://www.tapchicongsan.org.vn/Home/Tieu-diem/2008/2164/Muoi-nam-trien-khai-thuc-hien-Nghi-quyet-Trung-uong-5-khoa.aspx>, archived at <http://perma.cc/R575-SG2L>.

24. See sources cited *supra* note 23; see also Jellema, *supra* note 22, at 70–73.

25. See HUMAN RIGHTS WATCH, ON THE MARGINS: RIGHTS ABUSES OF ETHNIC KHMER IN VIETNAM’S MEKONG DELTA 49 n.143 (2009), available at <http://www.hrw.org/sites/default/files/reports/vietnam0109web.pdf>, archived at <http://www.perma.cc/8MNX-SJC7> [hereinafter ON THE MARGINS].

26. Interviews with Lawyers, *supra* note 10; see also *infra* Part II.E.3.

27. Interviews with Lawyers, *supra* note 10; see also Nguyễn Duy Quý, “Democracy and Human Rights” an Obsolete Label, TAP CHÍ CÔNG SAN (May 29, 2007, 2:15 PM), <http://english.tapchicongsan.org.vn/Home/Commentary/2007/205/Democracy-and-human-rights-an-obsolete-label.aspx>, archived at <http://www.perma.cc/0GcmjuC1zvU>.

28. For an overview of the vast literature on this topic, see Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400, 400–19 (1984).

29. See, e.g., John F. Kerry, *Secretary’s Preface*, COUNTRY REP. ON HUM. RTS. PRAC., at 1 (2012), available at <http://www.state.gov/documents/organization/204292.pdf>, archived at <http://www.perma.cc/F2SW-89CV>.

human rights can decouple from their social moorings and diffuse across geopolitical borders. To counter foreign criticism, Vietnamese officials assert that different traditions and cultures have different but equally valid conceptions of human rights.³⁰ The assumption underlying this claim is that local culture determines the validity of moral rights and rules. Universal human rights should therefore not interfere with national sovereignty or displace domestic understandings of human rights.

Human rights scholars have devoted much effort to reconciling universalism and relativism.³¹ This Article takes a different approach: it aims to demonstrate that modernization and globalization play a decisive role in changing the Vietnamese government's inward-looking, relativist views of human rights into cosmopolitan, universal perspectives. The argument proceeds as follows: Vietnamese officials have historically equated human rights with loyalty to the DDK. This is an extreme form of relativism according to which human rights are confined to a politically constructed view of what it means to be Vietnamese. As Vietnam modernizes and becomes more globally integrated, party leaders increasingly grapple with cross-cultural problems. This compels them to expand their loyalties beyond the ethnic Kinh majority³² and accept diverse forms of religious worship. In the process, party leaders are incrementally assuming a cosmopolitan outlook that sees all humans as belonging to a single community.³³

This transition to cosmopolitanism is not unique to countries that experienced the European Enlightenment;³⁴ rather, it is a developmental response to modernity and globalization. Drawing on empirical research,

30. See Nguyễn Duc Thang, *Nature of the Theory "Human Rights" Rank Above State Sovereignty*, TẠP CHÍ CÔNG SAN (Sept. 27, 2007, 4:18 PM), <http://english.tapchicongsan.org.vn/Home/Theory-and-Reality/2007/200/Nature-of-the-theory-human-rights-rank-above-state-sovereignty.aspx>, archived at <http://www.perma.cc/03FmAsfLbyj>; Nguyễn Duy Quý, *supra* note 27.

31. See generally ALISON DUNDES RENTELN, *INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM* (1990); Donnelly, *supra* note 28; Douglas Lee Donoho, *Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards*, 27 STAN. J. INT'L L. 345, 345–91 (1990); Yash Ghai, *Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims*, 21 CARDOZO L. REV. 1095, 1095–140 (2000); Michel Rosenfeld, *Can Human Rights Bridge the Gap Between Universalism and Cultural Relativism? A Pluralist Assessment Based on the Rights of Minorities*, 30 COLUM. HUM. RTS. L. REV. 249, 249–84 (1999).

32. The Kinh people are the Vietnamese-speaking ethnic majority who predominantly inhabit the lowlands and comprise approximately 85% of the population. See *Vietnam*, CIA WORLD FACTBOOK (2012), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/vm.html>, archived at <http://www.perma.cc/RE4T-5CHC>.

33. Patrick Glenn defines cosmopolitan thought as resisting “closure or reification of human groups, or concepts of groups.” Patrick Glenn, *Cosmopolitan Legal Orders*, in *THEORISING THE GLOBAL LEGAL ORDER* 25, 33 (Andrew Halpin & Volker Roeben eds., 2009).

34. The Vietnamese government argues that universal human rights should “harmoniously combine” with “specific historical, political, economic and social conditions as well as cultural and religious values, beliefs and customs of each country.” VIET. MINISTRY OF FOREIGN AFFAIRS, *ACHIEVEMENTS IN PROTECTING AND PROMOTING HUMAN RIGHTS IN VIETNAM* ch. I, available at <http://www.radicalparty.org/en/content/book-achievements-protecting-and-promoting-human-rights-vietnam-ministry-foreign-affairs>, archived at <http://www.perma.cc/84K2-TMVP>.

this Article investigates whether cosmopolitanism necessarily foreshadows a shift to legally enforceable religious rights. This inquiry has implications for China and other East Asian states that share Vietnam's relativistic approach to human rights.

The Article is structured as follows: Part I synthesizes from communitarian philosophy and modernization theory a framework for conceptualizing the transition from relativistic to cosmopolitan approaches to human rights. Part II traces the development of the regulation of religious freedom in Vietnam from precolonial to contemporary micromanagement of religious worship. Part III investigates the potential for the state to expand its loyalties and recognize legally enforceable rights to religious worship. The Article concludes that, although movement in this direction is constrained under the current political climate, Vietnamese political leadership is nevertheless expanding DDK narratives incrementally to include a variety of religious expression.

I. TRANSITIONING FROM THICK TO THIN UNDERSTANDINGS OF HUMAN RIGHTS

Vietnamese officials reject universal notions of human rights and instead locate human rights in the DDK, a political and cultural narrative that defines what it means to be Vietnamese. Yet, globalization may compel the Vietnamese government to abandon its inward-looking, relativistic views about human rights in favor of more cosmopolitan, universal perspectives. Communitarian philosopher Michael Walzer describes the shift from particular to universal understandings of morality such as human rights as a change from thick to thin perspectives.³⁵ Thick conceptions of human rights are constructed from the detailed and concrete stories that governments and citizens tell about themselves and other social groups.³⁶ As this Article demonstrates, the DDK constitutes a thick conception of human rights because it is comprised of multiple narratives constructed by party and state commentators that define Vietnamese identity. It contrasts with thin depictions of human rights, which distill norms and precepts found in thick descriptions into succinct universal principles.³⁷

Clifford Geertz first used thick and thin descriptions to describe his own interpretive method of anthropology.³⁸ A thick description of human

35. See MICHAEL WALZER, *THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD* 10–26 (1994).

36. *Id.* at 9–11.

37. For a discussion about converting thick principles into thin legal texts, see Boaventura De Sousa Santos, *Law: A Map of Misreading, Toward a Postmodern Conception of Law*, 14 J.L. & SOC'Y 279, 282–86 (1987).

38. CLIFFORD GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES: SELECTED ESSAYS* 3, 4–30 (1973).

behavior explained not just human behavior, but also the surrounding context, making the behavior meaningful to others. Walzer also used the terms to explain that values are relative to meaning. He argued that there is a thin, universal morality within every thick, particular morality.³⁹ Likewise, Melissa Orlie explains that thin and thick are “two different but interrelated forms of moral argument—a way of talking among ourselves, here at home, about the thickness of our own history and culture . . . and a way of talking to people abroad, across different cultures, about the thinner life we have in common.”⁴⁰ Walzer understood debates about relativism and universalism as arguments about the meaning and legitimacy of different moral understandings in cities as diverse as “Prague and Paris, or Beijing and New York.”⁴¹

In discussing Walzer’s thick description of morality, Richard Rorty asserts that “one’s moral identity is determined by the group or groups with which one identifies, the group or groups to which one cannot be disloyal and still like oneself.”⁴² Recent social science research corroborates Rorty’s theory by showing that collective identities act as cognitive frameworks through which morality is interpreted and constructed.⁴³ This research indicates that when “people take on the same identity, experience the same reality, and observe one another’s parallel emotions and collateral behaviors, a sense of common destiny and empathic connection arises.”⁴⁴ In other words, moral frameworks arise out of social identities constructed by particular communities.

For Walzer, morality does not start thin and thicken with age; instead, “morality is thick from the beginning, culturally integrated, fully resonant, and it reveals itself thinly only on special occasions, when moral language is turned to special purposes.”⁴⁵ Walzer had in mind a television clip of protesters marching in the streets of Prague with signs proclaiming “truth” and “justice.”⁴⁶ He argued that the thin representations of “truth” and “justice” on the signs were capable of conveying fuller, “thicker” meanings

39. See WALZER, *supra* note 35, at xi.

40. *Id.*

41. Melissa A. Orlie, *Beyond Identity and Difference*, 27 POL. THEORY 140, 143 (1999).

42. Richard Rorty, *Justice as a Larger Loyalty*, 4 ETHICAL PERSP. (2) 139, 141 (1997). Alasdair MacIntyre makes a similar point in defining humans as “storytelling beings” that are bound up with membership and belonging to social groups. ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY*, 204–06 (2d ed. 1984).

43. For a discussion about the connection between discourse and collective identity, see Nikki R. Slocum-Bradley, *Identity Construction in Europe: A Discursive Approach*, 10 IDENTITY 50, 52–58 (2010); Timothy J. Owens et al., *Three Faces of Identity*, 36 ANN. REV. SOC. 477, 477–85 (2010). Socio-legal scholars have developed a similar concept. See, e.g., Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323, 323–61 (2005).

44. Owens et al., *supra* note 43, at 490; see also Marilyn B. Brewer & Wendi Gardner, *Who Is This “We”? Levels of Collective Identity and Self Representations*, 71 J. PERS. & SOC. PSYCHOL. 83, 83–92 (1996).

45. WALZER, *supra* note 35, at 4.

46. *Id.* at 1–3.

to observers in other countries.⁴⁷ Orlie has further observed that “on such occasions, moral argument reaches beyond the local context and travels abroad.”⁴⁸

Walzer’s work suggests that thin, universal meanings are found in codified laws, conventions, and regulations. Randall Peerenboom made a similar point in arguing that “conceptions of law can be divided into two general types, thin and thick.”⁴⁹ According to this categorization, a “thin rule of law” stresses the “formal and instrumental” aspects of law, whereas a “thick rule of law” incorporates aspects of political morality and forms of governance such as liberal democratic institutions.⁵⁰ Rights discourse in the western tradition sought to convince political regimes to recognize thick moral claims as thin, legally protected civil rights.⁵¹ Or, as Rorty put it, “abstract principles are designed to trump parochial loyalties into thinking that the principles are somehow prior to the loyalties—that the thin is somehow prior to the thick.”⁵² This suggests that the transition from thick to thin representations of human rights is not unique to western culture; rather, it is a developmental response to particular political and economic conditions.

The transition from thick to thin concepts of morality is a central theme in modernization theory. Karl Polanyi attributed this transition to changes in political economy—especially from preindustrial to industrial and postindustrial societies.⁵³ He observed over half a century ago that laws designed to privilege universal freedoms and protect property rights often lacked social and economic relevance in developing societies where markets had not yet disembedded from noneconomic forces such as relational transactions, village spirituality, and traditional identities.⁵⁴

Modernization theorists claim that globalization is decoupling

47. *Id.* at 1–3.

48. Orlie, *supra* note 41, at 142.

49. Randall Peerenboom, *Varieties of Rule of Law: An Introduction and Provisional Conclusion*, in *ASIAN DISCOURSES OF RULE OF LAW: THEORIES AND IMPLEMENTATION OF RULE OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S.* 1, 2 (Randall Peerenboom ed., 2004) [hereinafter *ASIAN DISCOURSES OF RULE OF LAW*].

50. *Id.* at 2–5.

51. See MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 1–46 (1991) (discussing how rights are developed through social discourse); John O. Haley, *The Evolution of Law: Political Foundations of Private Law in Medieval Europe and Japan*, in *LAW AND LONG-TERM ECONOMIC CHANGE: A EUROASIAN PERSPECTIVE* 19, 19–45 (Debin Ma & Jan Luiten van Zanden eds., 2011) (arguing that legally protected rights evolved out of social relationships).

52. Richard Rorty, *Justice as a Larger Loyalty*, in *JUSTICE AND DEMOCRACY: CROSS-CULTURAL PERSPECTIVE* 9, 13 (Ronald Bontekoe & Marietta Stepaniants eds., 1997).

53. See GARETH DALE, *KARL POLANYI: THE LIMITS OF THE MARKET* 45–86 (2010); KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIMES* 61 (2d ed. 2001) (arguing that capitalism changed the relationship between individuals and the means of production, decoupling people from thick relational transactions and orienting them toward thin moral and legal orders).

54. See sources cited *supra* note 53.

developing societies from their thick social moorings.⁵⁵ Anthony Giddens popularized the notion that the social complexity generated by rapidly diffusing global ideas, practices, and people has compelled local actors to step outside traditional or thick knowledge systems and experiment with new, thin ways of understanding the world.⁵⁶ As Rorty explains, because most people know more about their families and local communities than about the nation or about humanity as a whole, they are in a better position to decide moral questions such as human rights for people that can be described thickly.⁵⁷ However, “as groups get larger, law has to replace custom, and abstract principles have to replace *phronesis* (practical wisdom).”⁵⁸ Globalization prompts a shift

in our sense of who counts as “us,” of what sort of people need to be consulted in the course of deliberation. The idea is to see moral progress as a result of extending the bounds of our imagination rather than as a result of stricter obedience to a context-independent imperative.⁵⁹

The shift from thick to thin conceptions of human rights corresponds to an enlargement in the size and number of groups to whom regulators owe their loyalty.⁶⁰

Modernization theory posits that such shifts in loyalties result from social complexity.⁶¹ A social system is considered complex “when there are strong interactions among its elements, so that current events heavily influence the probabilities of many kinds of later events.”⁶² The “complexity differential” (the difference in the complexity between social groups, such as government agencies and their environment) stimulates

55. See NIKLAS LUHMANN, OBSERVATIONS ON MODERNITY 85 (Timothy Lenoir & Hans Ulrich Gumbrecht eds., William Whobrey trans., 1998); Paul H. Brietzke, *Humans and Rights: Colonialism, Commerce and Globalisation*, 17 FLA. J. INT'L L. 633, 638 (2005).

56. KENNETH J. GERGEN, THE SATURATED SELF: DILEMMAS OF IDENTITY IN CONTEMPORARY LIFE 48–80 (1991) (discussing the influence of social saturation on developing identity); ANTHONY GIDDENS, MODERNITY AND SELF-IDENTITY: SELF AND SOCIETY IN THE LATE MODERN AGE 32–36, 74–84, 184–88 (1991). Sonia Roccas and Marilyn Brewer argue that people respond to the social complexity generated by multiple social identities by adopting global outlooks that harmonize their identities. See Sonia Roccas & Marilyn B. Brewer, *Social Identity Complexity*, 6 PERSONALITY & SOC. PSYCHOL. REV. 88, 88–106 (2002).

57. Rorty, *supra* note 52, at 12.

58. *Id.*

59. Richard Rorty, *Response to Habermas*, in RORTY AND HIS CRITICS 56, 64 n.8 (Robert B. Brandom ed., 2000).

60. See Rorty, *supra* note 52, at 2.

61. See generally GERGEN, *supra* note 56; GIDDENS, *supra* note 56; Berd R. Hornung, *The Theoretical Context and Foundations of Luhmann's Legal and Political Sociology*, in LUHMANN ON LAW AND POLITICS: CRITICAL APPRAISALS AND APPLICATIONS 187, 192–94 (Michael King & Chris Thornhill eds., 2006).

62. ROBERT AXELROD & MICHAEL D. COHEN, HARNESING COMPLEXITY: ORGANIZATIONAL IMPLICATIONS OF A SCIENTIFIC FRONTIER 7 (1999). From this definition it follows that a core aspect of complexity is the density of the interactions within a regulatory system. See JOHN S. DRYZEK, DISCURSIVE DEMOCRACY: POLITICS, POLICY, AND POLITICAL SCIENCE 57–68 (1990).

changes in group loyalties.⁶³ For Giddens, social complexity generated by globalization and rapid economic change compels both the state and citizens to step outside preexisting identities and change their thinking about which groups matter most and which groups matter least.⁶⁴

The emergence of complex identities and new cultural loyalties creates a problem for thick regulation. As Sissela Bok writes: “Moral values, if they are to stand even a chance of broad observance across cultural boundaries, must be few in number and limited in scope. They must represent the simplest, most commonplace forms of mutual support, respect, and forbearance necessary for group survival.”⁶⁵ This suggests that Vietnamese party leaders might find that the new and reemerging religious identities unleashed by modernization are increasingly resistant to control by thick regulation based on the DDK. Social complexity may compel them to develop thin regulatory principles that apply to a diverse range of religious beliefs and practices.

This Article demonstrates that party leaders in Vietnam have responded to social complexity by expanding the DDK to reflect a multiethnic, globally integrated nation with diverse forms of religious worship. What remains less clear is whether social complexity is stimulating a deeper transformation. Are party leaders embracing a moral cosmopolitanism where all humans belong to a single community based on human rights? Before considering this core question, the following discussion presents and analyzes state regulation of religious worship in Vietnam.

II. STATE REGULATION OF RELIGIOUS WORSHIP

The regulation of religious freedom in Vietnam has evolved from precolonial substantive control to contemporary micromanagement of religious worship. Although religious worship has been privatized in the sense that citizens are now free to worship so long as they do not interfere with others, this nascent thin understanding of religious worship has not yet been codified as legally enforceable rights.

A. Precolonial Religious Regulation

For centuries, Vietnamese culture has been receptive to a multitude of religious influences. *Tam giáo đồng nguyên* (the reduction of religions into the

63. See Anne Friederike Muller, *Some Observations on Social Anthropology and Niklas Luhmann's Concept of Society*, in LUHMANN ON LAW AND POLITICS: CRITICAL APPRAISALS AND APPLICATIONS, *supra* note 61, at 165, 174–75.

64. See GERGEN, *supra* note 56, at 48–68; GIDDENS, *supra* note 56, at 32–36, 74–84, 184–88; Roccas & Brewer, *supra* note 56; see also DRYZEK, *supra* note 62, at 57–68 (noting that in some circumstances thick regulation is an effective response to social complexity).

65. SISSELA BOK, COMMON VALUES 53 (2005).

same source), syncretically blended Confucianism, Buddhism, and Taoism with local Vietnamese spirit cults.⁶⁶ At the same time, the precolonial Vietnamese state governed religious expression through thick modes of regulation. After the Lê Dynasty (1428–1788), emperors governed through a combination of moral example and imperial law.⁶⁷ Moral rule emphasized compliance with neo-Confucian values, whereas the written law contained prescriptive rules.⁶⁸ For example, imperial law permitted public assembly for authorized purposes such as social occasions, including weddings and funerals, but licensed associations conducting religious ceremonies.⁶⁹ Unlicensed gatherings were severely punished.⁷⁰ Although the Vietnamese state initially welcomed the introduction of Catholicism by Jesuit missionaries during the sixteenth century as a new source of religious inspiration,⁷¹ Vietnamese rulers began vigorously suppressing the religion as French colonial aspirations became more apparent.⁷²

B. French Colonial Rule (1862–1954)

French colonial regulation could hardly have differed more from the precolonial imperial rule. It proclaimed “the natural, inalienable, and sacred rights of man” to religious freedom, public expression, and civil rights.⁷³ This thin description of morality sharply contrasted with the thick, precolonial preoccupation with rule through moral example.⁷⁴

During the nineteenth and twentieth centuries, Vietnamese people in the Mekong Delta absorbed Khmer deities into their religious life.⁷⁵ The late colonial period saw a rapid increase in Vietnamese writings exploring ways to reconcile Enlightenment thought with a new Vietnamese identity.⁷⁶ Kant was appealing to Vietnamese neo-Confucianists because he presented life as a quest for the ultimate good, a view that accorded with neo-Confucian aspirations for human perfection.⁷⁷ However, Kant’s philosophy

66. See DAVID MARR, VIETNAMESE ANTI-COLONIALISM 20 (1971); O.W. Walters, *Assertions of Cultural Well-being in Vietnam: Part I*, 10 J. SOUTHEAST ASIAN STUD. 435, 442–43 (1979).

67. See JOHN GILLESPIE, TRANSPLANTING COMMERCIAL LAW REFORM: DEVELOPING A ‘RULE OF LAW’ IN VIETNAM 43–49 (2006).

68. See *id.*

69. See TA VAN TAI, THE VIETNAMESE TRADITION OF HUMAN RIGHTS 180–85 (1988).

70. See *id.*

71. See Ramsay, *supra* note 23, at 371–98.

72. See TA VAN TAI, *supra* note 69, at 149.

73. JOHN HALL STEWART, A DOCUMENTARY SURVEY OF THE FRENCH REVOLUTION 113 (1951).

74. See GILLESPIE, *supra* note 67, at 43–49 (discussing the pre-colonial legal system); Nola Cooke, *The Composition of the Nineteenth-Century Political Elite of Pre-Colonial Nguyen Vietnam (1802–1883)*, 29 MOD. ASIAN STUD. 741 (1995).

75. See PHILIP TAYLOR, GODDESS ON THE RISE: PILGRIMAGE AND POPULAR RELIGION IN VIETNAM 2–10 (2004); Philip Taylor, *The Ethnicity of Efficacy: Vietnamese Goddess Worship and the Encoding of Popular Histories*, 3 ASIAN ETHNICITY 85, 87–88 (2002).

76. See NEIL JAMIESON, UNDERSTANDING VIETNAM 102 (1993).

77. See DAVID MARR, VIETNAMESE TRADITION ON TRIAL, 1920–1945 120–21 (1981).

differed from neo-Confucian thought in its notion of “humaneness.” In neo-Confucian thought, *ren* (humaneness, or the essence of being human) arose from conceptions of historical conditions, interpersonal relationships, and custom—thick conceptions.⁷⁸ This contrasted with Kant’s belief that humaneness arose from thin conceptions of pure reason, which transcended thick descriptions and formed thin, universal notions of morality.

Leaders of the nascent Communist Party dismissed such discourse as hypocritical middleclass sentimentality.⁷⁹ Instead of engaging with imported French ideas, they highlighted the many examples in which colonial law’s harsh implementation contradicted its lofty ideals.⁸⁰ By questioning the impartiality of colonial legalism, revolutionaries portrayed the imported French legal system as alien and imposed, serving foreign rather than indigenous interests.⁸¹

C. *Revolutionary Governance (1954–1986)*

Revolutionary leaders during the high socialist period believed in the power of secularism to transform and modernize Vietnamese society. They criticized organized religions for lacking ethical relevance, inspiring fatalism, and supporting feudal elites; and they looked to Marxism-Leninism for ethical renewal.⁸² In place of religion, they promoted a “new-democracy culture” based on Soviet secularism.⁸³ This thick ethical framework was supposed to act as a unifying force that would link the working classes in different countries and dissolve national, cultural, and religious barriers.⁸⁴

Guarantees of the right to *tự do tôn giáo* (religious worship) outlined in the 1946, 1959, and 1980 constitutions⁸⁵ were in practice subordinated to

78. See HERBERT FINGARETTE, *CONFUCIUS: THE SECULAR AS SACRED* 37–56 (1972).

79. See MARR, *supra* note 77, at 156–59.

80. See, e.g., TRẦN TỬ BÌNH, *THE RED EARTH: A VIETNAMESE MEMOIR OF LIFE ON A COLONIAL RUBBER PLANTATION* 42 (David G. Marr ed., John Spragens trans., 1985).

81. See 2 HỒ CHÍ MINH, *SELECTED WORKS* 92–102 (1961).

82. See Trường Chinh, *SELECTED WRITINGS* 251–52 (1994).

83. Party writings initially drew heavily from Soviet writings about a *văn hóa mới* (new culture), and by the 1960s this had changed to *văn hóa quần chúng* (mass culture) and later still the term *văn hoá xã hội chủ nghĩa* (socialist culture) came into use. Interviews with Nguyễn Như Phát, Dir., Inst. of State & Law, in Hanoi, Viet. (Aug. 2010); see generally Trường Chinh, *supra* note 82, at 250–56. For a discussion about national identity, see Le Thi, *The Molding of the New, Socialist Man and Scientific Method of Thinking*, 4 F.B.I.S. JPRS REP. E. ASIA VIET. 34 (Apr. 1987), available at <http://www.dtic.mil/dtic/tr/fulltext/u2/a336780.pdf>, archived at <http://perma.cc/G62H-UWVK>.

84. See Trường Chinh, *supra* note 82, at 264–66.

85. HIẾN PHÁP CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIET.] Dec. 18, 1980, art. 68; HIẾN PHÁP VIỆT NAM DÂN CHỦ CỘNG HÒA [CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF VIET.] Dec. 31, 1959, art. 26; HIẾN PHÁP VIỆT NAM DÂN CHỦ CỘNG HÒA [CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF VIET.] Nov. 9, 1946, art. 10; see also *The State of Vietnam Consistently Guarantees and Respects the Right to Freedom of Belief and Religion*, VIET. GOV’T COMM. FOR RELIGIOUS AFFAIRS (citing Order of the Government of the Democratic Republic of Vietnam Regarding Religion, No. 234/SL, June 14, 1955), <http://religion.vn/Plus.aspx/en/>

national *hòa hợp dân tộc* (harmony) and independence.⁸⁶ For example, Hồ Chí Minh syllogistically argued that colonization was an abuse of human rights and, because the independent revolutionary government opposed colonization, the Democratic Republic of Vietnam under its leadership was the ultimate fulfillment of human rights.⁸⁷ Enacting this highly politicized view of human rights, Circular No. 60 TTG of 1964 stated that freedom of belief is closely associated with patriotism and respect for people's democracy,⁸⁸ thereby embedding religious freedom in a thick political narrative developed by the party to underpin its power monopoly.⁸⁹

During the anticolonial struggle, party leaders moderated their ideological opposition to religion in order to gain support from religious leaders.⁹⁰ Despite these concessions, the state brought the public expression of religious worship in Northern Vietnam to a virtual standstill.⁹¹ For example, Catholic churches were abandoned in villages throughout the North, religious observance was severely restricted, Catholics were banned from holding government positions, and 500,000 northern Catholics migrated to the South.⁹²

Party leaders promoted DDK narratives to galvanize public support against foreign enemies and to counter regionalism. Hồ Chí Minh wrote that “in the world, there is nothing more powerful than the aggregate strength of our people,” and “*Đại Đoàn Kết* is the winning power.”⁹³ For decades, the Party Ideology Commission selectively drew from *văn hoá dân tộc* (national culture) and essentialized Kinh traditions—the norms and precepts that constituted the DDK⁹⁴—until the DDK became synonymous with loyalty to the party. Accordingly, party leaders' rhetoric subtly altered

News/71/0/1010/0/4644/The_State_of_Vietnam_Consistently_Guarantees_and_Respects_its_Citizens_Right_to_Freedom_of_Belief_and, archived at <http://perma.cc/RN5D-6T2E>.

86. VO VAN AI, HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA 95–97 (Michael Jacobsen & Ole Bruun eds., 2000).

87. See Phạm Bình Minh, *Thành tựu to lớn trong việc thực hiện đường lối của Đảng về bảo đảm và phát triển quyền con người* [Great Achievements in Implementing the Party's Guidelines on Securing and Developing Human Rights], TẠP CHÍ CÔNG SẢN (July 30, 2009), <http://www.tapchicongsan.org.vn/Home/Tieu-diem/2009/2837/Thanh-tuu-to-lon-trong-viec-thuc-hien-duong-loi-cua-Dang.aspx>, archived at <http://www.perma.cc/0UUq6u97Qb3>.

88. Circular No. 60/TTG Amending and Supplementing Circular No. 593-12 dated May 10, 1957 on the Implementation of Religious Policies, June 11, 1964.

89. See Interviews with Lawyers, *supra* note 10.

90. See PIERRO GHEDDO, THE CROSS AND THE BO-TREE: CATHOLICS AND BUDDHISTS IN VIETNAM 25–27 (Charles Underbill Quinn trans., 1970).

91. See Interviews with Lawyers, *supra* note 10; see generally Ramsay, *supra* note 23, at 383–84; OLGA DROR, CULT, CULTURE, AND AUTHORITY: PRINCESS LIÊU HẠNH IN VIETNAMESE HISTORY (2007) (discussing state suppression of the “princess cult” in Northern Vietnam during the high socialist period from 1954–1986).

92. See Ramsay, *supra* note 23, at 383–85, 387–90; Interviews with Lawyers, *supra* note 10.

93. *Hồ Chí Minh Thought on Great National Unity and Religions*, *supra* note 21.

94. Interviews with Cao Duc Thai, Dir., Human Rights Dep't, Hồ Chí Minh Pol. Acad., in Hanoi, Viet. (Mar., Apr. 2004).

the meaning of *nhân quyền* (human rights).⁹⁵ Under the communist leadership, humaneness retained the traditional neo-Confucian meaning of honesty and kindness, but also assumed new connotations, especially patriotism, solidarity with comrades, and love of the party.⁹⁶

In tandem with this change, Vietnamese jurists began importing *pháp chế xã hội chủ nghĩa* (socialist legality) from the Soviet Union in the 1960s.⁹⁷ Although this doctrine emphasized strict legal conformity, it also gave party and state authorities prerogative powers to substitute policy for law.⁹⁸ Law became a framework for announcing state policies and coordinating state agencies instead of an instrument for defining or protecting private rights.⁹⁹ For example, the Constitutions of 1959¹⁰⁰ and 1980¹⁰¹ contained provisions that proclaimed freedom of religious belief, but courts and other state agencies were not permitted to review the constitutionality of state legislation or administrative action.¹⁰² Vietnamese jurists decided not to import the notion of citizens' rights, which had evolved in the Soviet Union following Stalin's terror, to provide basic protections for civil rights.¹⁰³ Instead, Vietnamese policy makers refashioned the Soviet citizens' rights doctrine into a general moral duty for cadres to stay *đường lối quần chúng* (in touch with the people).¹⁰⁴

After reunification with the South in 1975, a small group of National Assembly deputies argued that by qualifying civil rights with provisions such as "according to law" and "in conformity with the interests of socialism and the people," the 1960 Constitution "gave with one hand and took with another."¹⁰⁵ Party leaders nevertheless resisted calls for clearer statements of human rights when drafting the 1980 Constitution, arguing that provisions allowing for derogations were necessary to prevent

95. Interviews with Nguyễn Thục Bao, Former Legal Adviser, Ministry of Agric., in Hanoi, Viet. (Sept. 2000); Interviews with Ngô Văn Thau, Former Professor, Judicial Training Sch., in Hanoi, Viet. (Mar. 2001, June 2003) (two retired officials who were actively involved in state administration during the 1950s and 1960s).

96. See sources cited *supra* note 95.

97. See George Ginsburgs, *The Genesis of the People's Procuracy in the Democratic Republic of Vietnam*, 5 REV. SOCIALIST L. 187, 192–96 (1979); GILLESPIE, *supra* note 67, at 60–62.

98. See STEWART, *supra* note 73, at 78–90.

99. See *id.*

100. HIẾN PHÁP VIỆT NAM DÂN CHỦ CỘNG HÒA [CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF VIET.] Dec. 31, 1959, art. 26.

101. HIẾN PHÁP CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIET.] Dec. 18, 1980, art. 68.

102. See MARK SIDEL, THE CONSTITUTION OF VIETNAM: A CONTEXTUAL ANALYSIS 184–88 (2009); Interviews with Lawyers, *supra* note 10.

103. See Đinh Gia Trinh, *Mấy Ý kiến Đóng góp về Vấn đề Bảo vệ Pháp chế* [Some Opinions on the Protection of Legality], 3 TẬP SAN TƯ PHÁP 20, 20–32 (1961).

104. Interviews with Nguyễn Như Phát, *supra* note 83; see also John Gillespie, *The Changing Concepts of Socialist Law in Vietnam*, in ASIAN SOCIALISM AND LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE AND CHINESE REFORM 45, 52 (John Gillespie & Pip Nicholson eds., 2005).

105. Interview with Ngã ba Thành, Chair, Law Comm., Viet. Nat'l Assembly, in Hanoi, Viet. (Apr., Mar. 1993).

“enemies and bad elements” from using civil rights to harm socialism.¹⁰⁶

Despite ongoing resistance to constitutionally guaranteed rights, the state acceded on September 24, 1982 to the International Covenant on Civil and Political Rights (“ICCPR”), which extends protection to religious freedom.¹⁰⁷ Accounts differ in explaining this apparent contradiction. Some Vietnamese lawyers claim that, after decades of isolation during the wars of resistance (1946–1975), the state sought international legitimacy by acceding to the Covenant.¹⁰⁸ Other sources argue that accession reflected a desire to normalize and legalize state practices following the war years, when legal processes were given a low priority.¹⁰⁹

D. Post-Đổi Mới Regulation of Religious Freedom

Official attitudes toward religion softened after reunification in 1975 to avoid antagonizing southern religious groups.¹¹⁰ The state has responded to a resurgence of religious worship in Vietnam by incrementally relaxing controls over private worship, while retaining state management powers over religious organizations. The state has expanded DDK narratives to encompass religious practices that were until recently considered unpatriotic and socially harmful. Nevertheless, this inclusiveness has not translated into the creation of thin descriptions of religious freedom that might support legally protected civil rights.

1. Moving Toward a Law-Based State

During the Sixth Party Congress in 1986, Secretary Trường Chinh argued that “management of the country should be performed through laws rather than moral concepts.”¹¹¹ He promoted *Đổi Mới*, an economic

106. Trường Chinh, Chairman, SRV Nat'l Assembly, Opening Speech, Seventh Nat'l Assembly Session, in Hanoi, Viet. (Dec. 12, 1991), in VIET. NEWS AGENCY, Dec. 12, 1980, reprinted in *Reportage on Seventh National Assembly Continues*, F.B.I.S. ASIA & PACIFIC DAILY REP., Pub. No. FBIS-APA-80-242, Dec. 15, 1980, at K2, available at infoweb.newsbank.com.

107. See International Covenant on Civil and Political Rights art. 18, entered into force Mar. 23, 1973, 99 U.N.T.S. 171 (acceded to Sept. 24, 1982). Vietnam did not ratify the 1984 or the 1989 Second Optional Protocol to the ICCPR. *Ratification of International Human Rights Treaties—Vietnam*, UNIV. OF MINN. HUMAN RIGHTS LIBRARY, <http://www1.umn.edu/humanrts/research/ratification-vietnam.html>, archived at <http://www.perma.cc/0PAHz7wcYBX>. Vietnam has also acceded to the International Convention on Economic, Social and Cultural Rights (in 1982), and the International Convention on the Elimination of All Forms of Racial Discrimination (in 1982). *Id.* It has ratified the Convention on Discrimination Against Women (in 1982) and the Convention on the Rights of the Child (in 1990). *Id.* Vietnam has not yet ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *Id.*

108. Interviews with Lawyers, *supra* note 10.

109. See Interviews with Cao Duc Thai, *supra* note 94.

110. See David Marr, *Church and State in Vietnam*, 74 INDOCHINA ISSUES 4, 4 (1987).

111. See Trường Chinh, Address to the Sixth National Party Congress (Dec. 15, 1986), reported in Carlyle Thayer, *Renovation and Vietnamese Society: The Changing Role of Government and Administration*, in *Đổi Mới: VIETNAM'S RENOVATION, POLICY, AND PERFORMANCE* 21, 26 (1991); John Gillespie, *Concept of*

renovation policy to encourage private markets to counter stagnation caused by the command economy.¹¹² However, it was not until the Seventh Party Congress in 1991 that a consensus emerged that law should become the primary mechanism of governance.¹¹³ The new policy of *nhà nước pháp quyền* (law-based state) prescribed stable, authoritative, and compulsory law, as well as equality before the law and the use of law to constrain and supervise state officials.¹¹⁴

Rather than displacing socialist legality, the law-based state policy coexisted in an uneasy alliance with socialist legal thinking.¹¹⁵ This tension is evident in the continued use by party and state authorities of *quản lý nhà nước* (state management) techniques to regulate religious worship. This organizational principle was imported from the Soviet Union to unify political and state leadership over society.¹¹⁶ It enabled party and state officials to regulate fields such as religious worship through policies, plans, and discretionary regulation.¹¹⁷ Facilitating but never constraining state power through law, the party and state enjoyed extensive prerogative powers to substitute policy for law.¹¹⁸

2. *Enacting a Legislative Framework for Religious Worship*

Following *Đổi Mới* reforms, the party-state began enacting a formal legislative framework to regulate religious worship. In 1990, Politburo Resolution No. 24 on Strengthening Religious Affairs in the New Situation codified official policy, which had incrementally relaxed restrictions over organized religions since reunification of the country in 1975.¹¹⁹ Rather than proscribing religious activity, the Resolution opted for state management. It

Law in Vietnam: Transforming Statist Socialism, in ASIAN DISCOURSES OF RULE OF LAW, *supra* note 49, at 142, 146–82.

112. Gillespie, *supra* note 111, at 146.

113. Gillespie, *supra* note 104, at 60 (citing Đỗ Mười, Gen. Sec'y, Cent. Comm. of the Communist Party of Viet., Seventh Party Congress (1991), in *ĐỒ MƯỜI, SỬA ĐỔI HIẾN PHÁP XÂY DỰNG NHA NUOC PHAP QUYEN VIET NAM DAY MANH SU NGHIEP DOI MOI* [AMENDING THE CONSTITUTION, ESTABLISHING A LAW-BASED STATE, AND PROMOTING ĐỔI MỚI ACHIEVEMENTS] (1992)).

114. Interviews with Nguyễn Như Phát, *supra* note 83; GILLESPIE, *supra* note 67, at 88; *see also* Gillespie, *supra* note 104, at 51–52.

115. *See* Interviews with Nguyễn Như Phát, *supra* note 83.

116. *Id.*; *see also* Gillespie, *supra* note 104, at 56–57; Nguyễn Niễn, *Several Legal Problems in the Leadership and Management of Industry Under the Conditions of the Present Improvement of Economic Management in Our Country*, 14 LUAT HOC 33 (1976), translated in *Weaknesses and Needs of Economic Law Discussed*, J.P.R.S. TRANSLATIONS ON VIET., Pub. No. 1847, JPRS-67995, Sept. 30, 1976, at 34, available at infoweb.newsbank.com.

117. Interviews with Nguyễn Như Phát, *supra* note 83; *see also* Gillespie, *supra* note 104, at 56–57; Nguyễn Niễn, *supra* note 116.

118. *See* sources cited *supra* note 117.

119. Interviews with Cao Duc Thai, *supra* note 94; *see generally* Le Quang Vinh, *Facts About Religious Freedom in Vietnam*, TẠP CHÍ CỘNG SẢN (June 2003), http://tapchicongsan.org.vn/data/tcc/Html_Data/So_38.html, archived at <http://www.perma.cc/0Rip36aBZwq> (providing an overview about the development of religious freedoms in Vietnam).

confirmed:

[T]hose religious sects and organizations which find deep attachment to the nation in their religious practices, which have their guiding principles, purposes and charters compatible with state laws, have appropriate organizational apparatus to ensure both the religious and non-religious activities shall be allowed by the state to operate.¹²⁰

Resolution No. 24 marked a significant break from previous policies by acknowledging the valuable contribution religions make to Vietnamese spiritual life, provided that religious organizations comply with the law.¹²¹ Party commentators affirmed that “the main criterion for appraising religions . . . is love for the Fatherland, for the Fatherland is the community including all other communities, even religious ones.”¹²²

Religious worship flourished after Resolution No. 24.¹²³ Commentators have observed the proliferation of spirit altars, crowded Buddhist pagodas, and new goddess and spirit cults, as well as overflowing Catholic masses.¹²⁴ The U.S. State Department estimates that more than 50% of the population in 2011 was nominally Buddhist, with 7% practicing Roman Catholicism and an estimated 1%–2% following various Protestant denominations.¹²⁵ This represents a substantial increase since the 1999 census, in which 10% identified with Buddhism and 7% with Christianity in general.¹²⁶

This resurgence in religiosity disturbed some party leaders.¹²⁷ They claimed that dissidents¹²⁸ were using religious organizations as a rallying point to express wide-ranging grievances against the party and state. They pointed to a campaign by “hostile” foreign groups to excite *điên biến hòa bình* (peaceful evolution), and the use of human rights and democracy to

120. Party Cent. Comm., *Resolution on Religious Work, Seventh Plenum, 2003*, 9 VIET. L. & LEGAL F. 19, 19 (2003) (citing Politburo Res. No. 24-NQ/TW on Strengthening Religious Affairs in the New Situation, Oct. 16, 1990).

121. *See id.*

122. Đặng Nghiê m V an, *On the Problem of Religion*, 2 VIET. SOC. SCI. 48, 54 (2001).

123. *See* Bui Duc Luan, *Right to Belief and Religious Freedom in Vietnam Guaranteed by Law*, 10 VIET. L. & LEGAL F. 4, 4–5 (2004).

124. *See, e.g.*, Philip Taylor, *Modernity and Re-Enchantment in Post-Revolutionary Vietnam*, in MODERNITY AND RE-ENCHANTMENT, *supra* note 22, at 1, 1–2.

125. *See Vietnam*, 2011 U.S. DEP’T ST. INT’L RELIGIOUS FREEDOM REP., available at <http://www.state.gov/documents/organization/192889.pdf>, archived at <http://perma.cc/WCE6-WSU4>.

126. 1999 GEN. STATISTICS OFF. OF VIETNAM POPULATION AND HOUSING CENSUS VIETNAM, available at http://www.gso.gov.vn/default_en.aspx?tabid=476&cidmid=4&ItemID=1841, archived at <http://www.perma.cc/0taoqqRE2Bz>.

127. Interviews with Cao Duc Thai, *supra* note 94.

128. *See* Benedict J. Tria Kerkvliet, *Government Repression and Toleration in Contemporary Vietnam* 5–8 (Southeast Asia Research Ctr., Working Paper Series No. 119, 2012) (describing classification of dissidents in Vietnam).

discredit the party and engineer regime change in Vietnam.¹²⁹ Such concerns remain: the Deputy Prime Minister Nguyễn Xuân Phúc recently called for action to counter “enemy forces” that use religion to “destroy our nation.”¹³⁰

The state responded to the religious revival by issuing a new Ordinance on Beliefs and Religions in 2004.¹³¹ Most commentators agree that the Ordinance was intended to increase state management powers over religious organizations to prevent religion from becoming a rallying point for anti-government forces.¹³² The Ordinance was not intended to restrict private religious worship.¹³³ Rather, it established the ground rules for state management of religious worship:

- Citizens have a right to follow religious beliefs.¹³⁴
- Religious organizations require annual licenses to teach, conduct rituals and services, and represent their followers.¹³⁵
- State authorities can veto the appointment of high-ranking religious officials.¹³⁶
- Fundraising and charitable work conducted by religious organizations require state approval.¹³⁷
- The Ministry of Education must approve both the students and curricula taught at religious training centers.¹³⁸
- Contact between religious organizations and foreign students

129. See, e.g., Tran Minh Ton, *Party's View and Policy on Human Rights*, TAP CHÍ CỘNG SẢN (Mar. 30, 2007), <http://english.tapchicongsan.org.vn/Home/Commentary/2007/230/Partys-view-and-policy-on-human-rights.aspx>, archived at <http://www.perma.cc/0jLG4Qxzwe3>; Tran Duy Huong, *The True Colours of So-Called "Organisations Struggle for Democracy and Human Rights" in Vietnam*, TAP CHÍ CỘNG SẢN (July 6, 2007), <http://english.tapchicongsan.org.vn/Home/Commentary/2007/117/The-true-colours-of-so-called-Organisations-struggle-for-democracy-and-human-rights.aspx>, archived at <http://www.perma.cc/0PyzhcPZDqn>. For an overview of Vietnamese government approaches to “peaceful evolution,” see Ban Chấp hành Trung ương, Ban Tuyên Giáo, *Đề Cương Tuyên Truyền - Chỉ thị số 34-CT/TW của Ban Bí thư về Tăng cường cuộc đấu tranh chống âm mưu, hoạt động “Diễn biến hoà bình” trên lĩnh vực tư tưởng, văn hoá* [Propaganda Declaration - Directive No. 34-CT/TW by the Secretariat of the Communist Party of Vietnam Central Committee on Enhancing the Fight Against “Peaceful Evolution” Plots and Activities in the Field of Ideology and Culture], June 25, 2009, available at <http://www.viet-studies.info/kinhte/DeCuongTuyenTruyen.pdf>, archived at <http://perma.cc/38JP-CKDD>.

130. 2012 USCIRF REP., *supra* note 3, at 262.

131. Interviews with Cao Duc Thai, *supra* note 94; see also Ordinance No. 21/2004/PL-UBTVQH11 on Beliefs and Religions, June 18, 2004 [hereinafter Ordinance No. 21].

132. Interviews with Cao Duc Thai, *supra* note 94.

133. *Id.*

134. See Decree No. 92/2012/ND-CP on Detailed Regulations and Enforcement Measures to Implement Ordinance on Belief and Religion, Nov. 8, 2012, art. 2, translation available at http://reachingvietnam.com/wp-content/uploads/2013/03/ND92_EnglishTranslation.pdf, archived at <http://www.perma.cc/9SG7-6P3M>.

135. *Id.* arts. 5–7.

136. *Id.* arts. 7, 19–20.

137. *Id.* art. 7.

138. *Id.* arts. 14–15.

requires state approval.¹³⁹

Religious activities that do not support the DDK or that encourage *mê tín dị đoan* (superstition) and “wasteful” rituals are prohibited.¹⁴⁰ Although it recognizes rights to religious worship, the Ordinance established an administrative framework giving state officials powers to manage religious organizations.

E. State-Managed Religions

The government uses the Ordinance to manage the formation and operation of religious organizations. The Ordinance gives state officials broad powers to ensure that religions follow the DDK and to prevent activists from politically mobilizing religion against the state.¹⁴¹ The drafters did not attempt to codify thin principles of religious freedom that citizens could mobilize to circumscribe state administrative powers. The Ordinance gives the Department of Religion and other state agencies, such as the police, extensive prerogative powers to determine whether religious activities are patriotic and adhere to the DDK. The Department of Religion regulates all forms of organized religion¹⁴² and currently recognizes six religions (Buddhism, Catholicism, Protestantism, Islam, Cao Đài, and Hòa Hảo Buddhism), as well as twenty-nine licensed “religious organizations.”¹⁴³

1. State-Managed Buddhism

The Vietnamese state has managed the practice of Buddhism through the creation of a state-backed Buddhist Church that promotes the party’s agenda. At the same time, it has worked to ban independent Buddhist churches. The party established the *Giáo hội Phật giáo Việt Nam* (Viet Nam Buddhist Church (“VBC”)) in 1981 to officially represent Vietnam’s Buddhist population.¹⁴⁴ As a member of the Fatherland Front, a party-controlled mass organization, the VBC receives state subsidies and cooperates closely with party and state agencies.¹⁴⁵ Its official program is to

139. *Id.* art. 16.

140. See Party Cent. Comm., *supra* note 120, at 19–21.

141. Interviews with Cao Duc Thai, *supra* note 94; Ordinance No. 21, *supra* note 131. The Party Central Committee in 2003 reconfirmed that “religious activities and religious work must aim to enhance the unity of people of various religious sects within the national unity bloc [DDK].” Party Cent. Comm., *supra* note 120, at 19.

142. Interviews with Cao Duc Thai, *supra* note 94; Ordinance No. 21, *supra* note 131.

143. ON THE MARGINS, *supra* note 25.

144. See Giáo hội Phật giáo Việt Nam, *Hiến chương Giáo hội Phật giáo Việt Nam (sửa đổi lần thứ V)* [Charter of the Viet Nam Buddhist Church (Fifth Amendment)], GIÁO HỘI PHẬT GIÁO VIỆT NAM (June 17, 2013), at Forward, ch. II, <http://giaohoi-phatgiaovietnam.vn/s6/d111/Hien-chuong-GHPGVN-sua-doi-lan-thu-V.html>, archived at <http://www.perma.cc/0LmMsaxtFyK>; Interviews with Cao Duc Thai, *supra* note 94.

145. See sources cited *supra* note 144.

promote “Dharma, Nation, and Socialism.”¹⁴⁶ At a recent party conference, VBC dignitaries publicly proclaimed “their excitement and trust in the party’s leadership, policy, and law of the State, expressing their determination to promote the DDK among ethnic groups in order to concretize the goals of the Congress.”¹⁴⁷

State regulation of the prohibited religious organization *Giáo hội Phật giáo Việt Nam Thống nhất* (Unified Buddhist Church of Viet Nam (“UBCV”)) differs remarkably from that of the VBC.¹⁴⁸ Formed in the South before reunification in 1975, the UBCV refused to join the VBC and place the southern Buddhist associations under the control of the Fatherland Front.¹⁴⁹ As a result, state authorities treat it as a prohibited organization and its officials are actively prevented from organizing religious activities.¹⁵⁰ Until his death in 2008, UBCV leader Thích Huyền Quang was held under house arrest for almost ten years on a series of sedition charges.¹⁵¹ Because there are few substantive theological differences separating the VBC and the UBCV, the dispute primarily concerns attempts by the state to manage unregistered Buddhist organizations.¹⁵²

2. *State-Managed Catholicism*

There are strong parallels between the state’s management of Buddhist and Catholic organizations. The state established the Solidarity Committee of Patriotic Vietnamese Catholics (“SCPVC”) in 1955 as a Fatherland Front

146. *See id.*; *see also* Thích Thanh Từ, *Vietnam’s Buddhism Promotes Unity and Harmony to Build and Defend the Nation*, NHAN DAN (Nov. 10, 2003) (on file with author).

147. Tuấn Vinh, *Những sự kiện đáng chú ý trong tuần (từ ngày 5-9 đến ngày 11-9-2011)* [Significant Domestic Events During the Week (from Sept. 5 to Sept. 11, 2011)], TẠP CHÍ CÔNG SẢN (Sept. 12, 2011), http://www.tapchiconsan.org.vn/Home/Thoi_su_chinh_tri/2011/12883/Nhung-su-kien-trong-nuoc-dang-chu-y-trong-tuan-tu-ngay.aspx, archived at <http://perma.cc/PY75-ZLRY>.

148. *See Spokeswoman Denies Monk III, Under Detention*, HONG KONG AFP, Mar. 17, 1994, reprinted in F.B.I.S. E. ASIA DAILY REP., Pub. No. FBIS-EAS-94-053, Mar. 18, 1994, at 51, available at infoweb.newsbank.com; *State vs. Religion in Vietnam*, ABC (Nov. 19, 2003, 8:20 AM), available at <http://www.abc.net.au/radionational/programs/religionreport/state-vs-religion-in-vietnam/3461042#transcript>, archived at <http://www.perma.cc/08tthPK17df>; HUMAN RIGHTS WATCH, WORLD REPORT 2001 (2001), available at <http://www.hrw.org/legacy/wr2k1/asia/vietnam.html>, archived at <http://www.perma.cc/0Ai9awztXq7> [hereinafter 2001 HRW WORLD REP.]. Vietnamese state authorities claim that the UBCV was incorporated into the VBC. *See Chúng tôi chưa bao giờ bắt người bắt đồng chính kiến [We Never Ever Detained the Dissidents]*, VNEXPRESS (Oct. 25, 2007), <http://vnexpress.net/gl/phap-luat/2007/10/3b9fba47>, archived at <http://www.perma.cc/0qQdFW6yUft>.

149. Interviews with Cao Duc Thai, *supra* note 94; *see also* MINH T. NGUYEN, BUDDHIST MONASTIC EDUCATION AND REGIONAL REVIVAL MOVEMENTS IN EARLY TWENTIETH CENTURY VIETNAM 294 (2007).

150. Interviews with Lawyers, *supra* note 10; ON THE MARGINS, *supra* note 25, at 45 n.119.

151. *See* Andrew Bancombe, *Thích Huyền Quang: Dissident Buddhist Leader*, INDEPENDENT (July 12, 2008), <http://www.independent.co.uk/news/obituaries/thich-huyen-quang-dissident-buddhist-leader-865843.html>, archived at <http://www.perma.cc/0MRrA3hPrHN>.

152. Interviews with Cao Duc Thai, *supra* note 94.

organization.¹⁵³ It was expected to guide Catholic opinion, provide a rallying point for patriotic Catholics, and coordinate religious observance.¹⁵⁴ The SCPVC did not attempt to form a rival church to the Vatican.¹⁵⁵

However, unlike Buddhism, Vietnamese Catholicism is closely tied to international religious organizations. Although foreign Buddhist organizations have influenced Buddhist practices in Vietnam,¹⁵⁶ Buddhism has no transnational counterpart to the Vatican. The Vatican and the Vietnamese state compete to control Catholic organizations, clergy, and followers,¹⁵⁷ complicating state management of Catholics. For example, the state exercises a veto over the ordination of clergy by the Vatican.¹⁵⁸ This power has been repeatedly exercised, most notably when the state initially refused to recognize the Vatican's appointment of Archbishop Jean-Baptiste Phạm Minh Mẫn as a cardinal in 2003.¹⁵⁹ Rather, the state objected to the Vatican's procedure, which had not formally consulted the SCPVC, as required by an agreement between the government and the Vatican.¹⁶⁰

Authorities in Hanoi and Ho Chi Minh City have recently eased restrictions on the number of parish priests and permitted the construction of new churches.¹⁶¹ More seminary students are allowed to study for the priesthood and the number of worshippers has increased in most regions.¹⁶² Despite these liberalizations, the state authorities routinely use their

153. *Id.*; John Gillespie, *Evolving Concepts of Human Rights in Vietnam*, in HUMAN RIGHTS IN ASIA: A COMPARATIVE LEGAL STUDY OF TWELVE ASIAN JURISDICTIONS, FRANCE AND THE USA 452, 460 (Randall Peerenboom ed., 2006).

154. Interviews with Cao Duc Thai, *supra* note 94.

155. See Peter Hansen, *The Vietnamese State, the Catholic Church and the Law*, in ASIAN SOCIALISM AND LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE AND CHINESE REFORM, *supra* note 104, at 310, 313–14.

156. For a discussion about foreign influences on Buddhist practice in Vietnam, see Alexander Soucy, *Nationalism, Globalism and the Re-Establishment of the Trúc Lâm Thiên Buddhist Sect in North Vietnam*, in MODERNITY AND RE-ENCHANTMENT, *supra* note 22, at 342, 342–66.

157. Interviews with Cao Duc Thai, *supra* note 94; see also Hansen, *supra* note 155, at 310–11.

158. See *Interview by Trương Ba Cán with Prime Minister Võ Văn Kiệt*, CONG GIAO VA DAN TOC, Feb. 27, 1994, at 7, translated in *Catholic Paper Interviews Prime Minister*, F.B.I.S. E. ASIA DAILY REP., Pub. No. FBIS-EAS-94-060, Mar. 29, 1994, at 56, available at infoweb.newsbank.com; Hansen, *supra* note 155, at 313; Ho Chi Minh City People's Comm., Announcement No. 19/TB/UB (Mar. 2, 1994), reprinted in *Illegal Activities of Bishop Huynh Van Nghi in Ho Chi Minh City*, SÀI GÒN GIẢI PHÓNG, Mar. 3, 1994, at 1, translated in *Bishop Huynh Van Nghi's Activities Denounced*, F.B.I.S. E. ASIA DAILY REP., Pub. No. FBIS-EAS-94-058, Mar. 25, 1994, at 38.

159. See Margie Mason, *Vietnam Does Not Recognize New Cardinal*, ASSOCIATED PRESS, Sept. 29, 2003, available at <http://www.highbeam.com/doc/1P1-82938125.html>, archived at <http://perma.cc/7CVR-B8EU>.

160. Interviews with Lawyers, *supra* note 10; see also Hansen, *supra* note 155, at 329–31 (arguing that the state seeks to control the organization rather than the theology of the Catholic Church).

161. See Simon Montlake, *Catholics Find More Freedom in Vietnam*, BBC NEWS (Feb. 2, 2006, 1:06 GMT), <http://news.bbc.co.uk/2/hi/asia-pacific/4670614.stm>, archived at <http://www.perma.cc/0DJM-m2rRzqB>.

162. See Nguyễn Hồng Dương, *Some Religious Problems in Vietnam*, 4 RELIGIOUS STUD. REV. 3, 9–16 (2010).

licensing powers to manage the expansion of religious activities.¹⁶³

3. *State-Managed Spirit Worship*

Though the state merely tolerates Catholicism, it actively promotes ancestor worship. Article 5 of the 2004 Ordinance provides that “[t]he State . . . preserves and promotes positive values of the tradition of ancestral worship, commemoration and honoring of the persons with merits to the country or communities, in order to contribute to consolidating the great national unity bloc and satisfy the people’s spiritual needs.”¹⁶⁴ There are several reasons for this disparity. First, ancestor and hero worship is widely practiced by all social strata, including by religious believers and staunchly secular party cadres and state officials.¹⁶⁵ In fact, senior party and state officials organize their own spirit cults, with Hồ Chí Minh and various precolonial emperors represented as semi-divine entities.¹⁶⁶ Unlike their Chinese counterparts, Vietnamese party members are permitted to join religious organizations.¹⁶⁷ Membership in these cults has become a signifier of social status and power.¹⁶⁸ Moreover, as belligerent narratives such as defeating the nation against external enemies lose relevance in contemporary society, the party is strategically incorporating ancestor and hero worship into the DDK.¹⁶⁹

The state actively discourages other forms of spirit worship. Article 30 of the 1992 Constitution proscribes “superstitions and harmful customs.”¹⁷⁰ The term *mê tín dị đoan* (superstition) is not defined in the 2004 Ordinance, but article 247 of the 1999 Penal Code links *mê tín dị đoan* to spiritual mediums or those pursuing other harmful superstitious practices.¹⁷¹ At the same time, the 2004 Ordinance requires the worship of “deities, saints, or traditional idols and other folk beliefs” to comply with the “fine values of history, culture and social ethics.”¹⁷² Because the DDK does not define “fine values,” however, authorities have broad discretionary powers to decide what kinds of spirit worship comply with the ordinance. For

163. Interviews with Lawyers, *supra* note 10; *see also* Stephen Denney, *The Catholic Church in Vietnam, in CATHOLICISM AND POLITICS IN COMMUNIST SOCIETIES* 270, 270–95 (Pedro Ramet ed., 1990).

164. Ordinance No. 21, *supra* note 131, art. 5.

165. *See* Taylor, *supra* note 124, at 1–56.

166. *See* Jellema, *supra* note 22, at 65–66.

167. *See Vietnam*, 2004 U.S. DEP’T ST. INT’L RELIGIOUS FREEDOM REP., *available at* <http://www.state.gov/j/drl/rls/irf/2004/35433.htm>, *archived at* <http://www.perma.cc/0G728Xc7q3G>.

168. Interviews with Lawyers, *supra* note 10.

169. *Id.*; *see also* Jellema, *supra* note 22, at 70–73.

170. HIẾN PHÁP CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM [CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIET.] Apr. 15, 1992, art. 30.

171. Circular No. 4/1998/TT-BVHTT of Nov. 7, 1998 banned astrology, horoscopes, ghost callers, spirit massagers and more. KAREN FJELDSTAD & NGUYỄN THỊ HIỀN, SPIRITS WITHOUT BORDERS: VIETNAMESE SPIRIT MEDIUMS IN A TRANSNATIONAL AGE 199 n.36 (2001) (citing PENAL CODE No. 15/1999/QH10, art. 247).

172. Ordinance No. 21, *supra* note 131, art. 3, § 1.

instance, although members of the *Tam Giáo Tuyên Dương* sect were forced to destroy altars and abandon the sect,¹⁷³ authorities in other provinces permit mass pilgrimages to worship goddess cults by unlicensed religious associations such as the *Hòa Hảo Central Buddhist Church*.¹⁷⁴ City authorities also turn a blind eye to the proliferation of spirit mediums who perform elaborate and expensive rituals to generate good luck for state officials and wealthy entrepreneurs.¹⁷⁵ These examples reveal discrepancies in the state's interpretation of *mê tín dị đoan* and uneven regulation of spirit worship.

F. *Balancing the Liberalization of Religious Regulation with Patriotism*

A consensus is emerging among some western commentators that the party-state tolerates most forms of religious expression.¹⁷⁶ They point to the resurgence of everyday religious practice and a growing realization among party leaders that religion plays a valuable role in combating “social evils.”¹⁷⁷ In a confidential 2010 cable, U.S. Ambassador to Vietnam Michael Michalak urged the State Department not to reinstate Vietnam on the list of Countries of Particular Concern for violating religious freedom.¹⁷⁸ He argued that, despite poor handling of some religious disputes, the overall condition of religious worship had improved.¹⁷⁹

Despite liberalizations, religious freedom remains predicated on loyalty to the DDK. For example, followers of banned religious organizations are still imprisoned for undermining the DDK.¹⁸⁰ The balance between religious freedom and patriotism is fine-tuned during negotiations between party-state officials and the leaders of authorized and—in some cases—unauthorized religious organizations.¹⁸¹ According to interviewed lawyers, this is a two-way process whereby the state confers legitimacy on religious practices and, in return, religious groups must seek approval from the state.¹⁸² For example, Catholic bishops must bargain with state officials over

173. See 2001 HRW WORLD REP., *supra* note 148.

174. See TAYLOR, *supra* note 75, at 23–24.

175. See Interview with Nguyễn Thị Loan, Spirit Medium, in Hanoi, Viet. (Oct. 23, 2006).

176. See Taylor, *supra* note 124, at 1; Shaun Kingsley Malarney, *Return to the Past? The Dynamics of Contemporary Religious and Ritual Transformation*, in POSTWAR VIETNAM: DYNAMICS OF A TRANSFORMING SOCIETY 235, 235–45 (Hy V. Luong ed., 2003).

177. See Taylor, *supra* note 124, at 32.

178. See Michael Michalak, U.S. Ambassador to Viet., *Vietnam Religious Freedom Update – The Case Against CPC*, reprinted in GUARDIAN (Jan. 12, 2011), <http://www.guardian.co.uk/world/us-embassy-cables-documents/244345>, archived at <http://www.perma.cc/0Ypze9V3t6N>.

179. *Id.*

180. Interviews with Lawyers, *supra* note 10; see generally *Vietnam: Eight Montagnards Jailed for ‘Undermining National Unity’*, HANDS OFF CAIN (May 29, 2013), <http://www.handsoffcain.info/news/index.php?iddocumento=17305896>, archived at <http://www.perma.cc/07ZXp34Syr2>.

181. Interviews with Lawyers, *supra* note 10; see generally Hansen, *supra* note 155, at 320–23.

182. See sources cited *supra* note 181.

the number of candidates who can train as priests¹⁸³ and seek state approval to convene religious conferences.¹⁸⁴

In short, the state draws on thick understandings from the DDK as well as party and state policies to micromanage religious affairs. Although religious worship has been privatized in the sense that citizens are now free to worship provided that they do not interfere with others, a thin understanding about religious worship has not evolved into a legally enforceable right.

III. EXPLORING THE POTENTIAL FOR RIGHTS-BASED RELIGIOUS FREEDOMS IN VIETNAM

So far, this Article has shown that the Vietnamese state micromanages the practice of religion. What remains unclear is whether party leaders will support reforms that replace regulation based on thick understandings of religious worship with thin, legally protected rights. According to complexity theory, this transition is most likely to occur when rapid economic and social transformation generates social complexity.¹⁸⁵ This theory suggests that social fragmentation and diversity will erode the Vietnamese state's capacity to use thick DDK narratives to manage religious worship. As previously discussed, this type of thick regulation already gives rise to considerable unevenness and unpredictability in the micromanagement of religious freedom. As Bok reminds us, only thin moral principles are likely to attract broad observance as customary social narratives dissolve in culturally diverse societies.¹⁸⁶ The following discussion searches for the social complexity that might foreshadow a shift to thin regulation.

A. *Empirical Evidence for Social Complexity*

Together with *Đổi Mới* reforms, the party in 1986 cautiously opened the door to foreign trade, investment, and new ideas from the capitalist

183. See, e.g., *Vietnam Church Trains Priests Despite State-Imposed Limitations*, UCANEWS (July 16, 1992), http://www.ucanews.com/story-archive/?post_name=/1992/07/16/vietnam-church-trains-priests-despite-stateimposed-limitations&post_id=41601, archived at <http://www.perma.cc/A2AQ-J3MM>. But see Thomas C. Fox, *Ho Chi Minh City Cardinal on Church Growth in Vietnam*, NAT'L CATHOLIC REP. (Feb. 19, 2011), <http://ncronline.org/blogs/ncr-today/ho-chi-minh-city-cardinal-church-growth-vietnam>, archived at <http://www.perma.cc/JJ6B-KLRR>.

184. Philip Blair, *Archbishop of Saigon Calls on Government to Respect Religious Freedom*, ASIANEWS.IT (May 23, 2011), <http://www.asianews.it/news-en/Archbishop-of-Saigon-calls-on-government-to-respect-religious-freedom-21635.html>, archived at <http://www.perma.cc/682P-RFT7>.

185. See generally Roccas & Brewer, *supra* note 56; see also JAMES MAHONEY & KATHLEEN THELEN, EXPLAINING INSTITUTIONAL CHANGE: AMBIGUITY, AGENCY, AND POWER 12–35 (2010) (discussing a general theory for institutional change).

186. BOK, *supra* note 65, at 53.

world.¹⁸⁷ This policy unleashed a flood of foreign knowledge that has transformed the economy and society.¹⁸⁸ Vietnam shifted from a society in which most people owed their livelihood to the state to a mixed market economy in which most people are now privately employed.¹⁸⁹ Adding to social complexity, the state introduced *xã hội hóa* (socialization) policies that encouraged citizens to take responsibility for their own health, education, housing, and other social services.¹⁹⁰ Research indicates that these policies have profoundly altered the way most Vietnamese understand themselves and religious worship.¹⁹¹ Contrary to Max Weber's prediction that supernatural beliefs lose vitality and relevance with the ascendancy of capitalist rationality,¹⁹² the Vietnamese people turned to religion and rituals to invest the new capitalist economy with moral meaning.¹⁹³ The plurality of religiosity has increased the social complexity for state regulators.¹⁹⁴

Reforms have also spurred an unprecedented migration of villagers to Vietnam's cities.¹⁹⁵ The urban population increased from 19% in 1985 (at the beginning of the *Đổi Mới* period) to 29% in 2010.¹⁹⁶ It is projected to climb to 42% by 2030, adding an additional twenty million urban dwellers.¹⁹⁷ Studies show how urbanization is rapidly changing the values and daily lives of urban Vietnamese, making them more dynamic and self-reliant.¹⁹⁸

As international integration gained momentum, Vietnam entered into bilateral trade agreements with the Association of Southeast Asian Nations ("ASEAN") and the United States, eventually joining the World Trade Organization in 2007.¹⁹⁹ Foreign investors and traders not only imported

187. See Martin Rama, *Making Difficult Choices: Vietnam in Transition* 1, 19–21, 32–35 (Comm'n on Growth & Dev., Working Paper No. 40, 2008); David Kinley & Hai Nguyen, *Viet Nam, Human Rights and Trade: Implications of Viet Nam's Accession to the WTO* 4–7 (Friedrich Eber Stiftung, Occasional Paper No. 39, Apr. 2008).

188. Kinley & Nguyen, *supra* note 187.

189. Interviews with Lê Duy Binh, Principle Economist, *Economica*, in Hanoi, Viet. (Mar., Oct. 2011); see also NGOC Q. PHAM, POVERTY AND ECONOMIC RESEARCH NETWORK: PRIVATIZATION AND POVERTY REDUCTION IN VIETNAM—OPTIMAL CHOICES AND ITS POTENTIAL IMPACTS 3–4 (2010).

190. See U.N. DEV. PROGRAMME, VIET NAM HUMAN DEVELOPMENT REPORT: SOCIAL SERVICES FOR HUMAN DEVELOPMENT, 89–93 (2011), available at http://www.undp.org/content/dam/vietnam/docs/Publications/27099_902_UNDP_Final_Low_res_190112.pdf, archived at <http://www.perma.cc/C4NZ-VUFR>.

191. Interviews with Cao Duc Thai, *supra* note 94; see also Taylor, *supra* note 124, at 49–50.

192. See Taylor, *supra* note 124, at 1–2.

193. See, e.g., Kate Jellema, *Making Good on Debt: The Remoralisation of Wealth in Post-Revolutionary Vietnam*, 6 ASIA PAC. J. ANTHROPOLOGY 231, 231–48 (2005).

194. Interviews with Cao Duc Thai, *supra* note 94.

195. See Terry McGee, *Comparing the Urbanization Process in Vietnam and China*, in 58 VIET. SOCIO-ECON. DEV. 52, 57–67 (2009).

196. See U.N. DEP'T OF ECON. & SOC. AFFAIRS, *World Urbanization Prospects, the 2011 Revision*, <http://esa.un.org/unup>, archived at <http://perma.cc/Y8VY-B78P>.

197. *Id.*

198. See Tran Thi Tuong Van, *Urbanization in Ho Chi Minh City at Present—Changes in Consciousness and Lifestyle of Residents—Some Solutions*, 1 VIET NAM SOC. SCI. 91, 91–100 (2008).

199. See Kinley & Nguyen, *supra* note 187, at 4–7.

much needed capital,²⁰⁰ but they also introduced new ways of working. These new modes of business regulation often bypass the state and reinvigorate private business networks.²⁰¹ This interaction is producing a new class of cosmopolitan business leaders who straddle the Vietnamese and western business worlds.

Global knowledge also diffuses into Vietnam through foreign and domestic media, the Internet, cinema, novels, and other forms of art.²⁰² Although language is still a major constraint on the absorption of foreign knowledge, English and other foreign languages are now more widely understood by the young urban population.²⁰³ Vietnam's diaspora of an estimated 3.7 million *Việt Kiều* (overseas Vietnamese), who mainly reside in the United States, France, Australia, and Canada, provide another important source of foreign knowledge.²⁰⁴ *Việt Kiều* networks have been particularly active in promoting western notions of human rights in Vietnam.²⁰⁵

Global knowledge is not only changing economic and regulatory thinking, it is also reshaping religious beliefs. Studies show, for example, that new versions of *Thiền* (Zen) Buddhism have entered Vietnam from East Asia and the West.²⁰⁶ Catholic practices are constantly changing to reflect the nuances of Vatican theology.²⁰⁷ According to some commentators, there are hundreds of foreign religious groups spreading religious ideas and practices within Vietnam.²⁰⁸ "Larger, more bureaucratic groups, typically Christians from developed countries, tend to register as INGOs," whereas "[s]maller groups, especially Buddhists and Asian Christians, often follow more informal paths, developing relationships locally and/or quietly visiting

200. See generally Rhys Jenkins, *Globalization, FDI and Employment in Viet Nam*, 15 TRANSNAT'L CORP. 115 (2006). Japan, Singapore, Taiwan, and Korea are the largest foreign investors. *Id.* at 125. Most investment has flowed into manufacturing. *Id.* at 127.

201. See John Gillespie, *Exploring the Role of Legitimacy and Identity in Framing Responses to Global Legal Reforms in a Transforming Socialist Asia*, 29 WIS. INT'L L.J. 534, 556–57 (2011).

202. Interviews with Lawyers, *supra* note 10; Interviews with Cao Duc Thai, *supra* note 94; see also Catherine Diamond, *The Pandora's Box of 'Doi Moi': the Open-Door Policy and Contemporary Theatre in Vietnam*, 13 NEW THEATRE Q. 372, 372–79 (1997).

203. See, e.g., Phuong An Nguyen, *Pursuing Success in Present-Day Vietnam*, in RETHINKING VIET. 165, 165–76 (Duncan McCargo ed., 2004).

204. Studies suggest that networks linking *Việt Kiều* to Vietnam are especially influential, not only because foreign knowledge is explained in familiar language and idioms, but also because knowledge is conveyed by trusted intermediaries. See Andrew T. Pham, *The Returning Diaspora: Analyzing Overseas Vietnamese (Viet Kieu) Contributions Toward Vietnam's Economic Growth* 23–24 (DEPOCEN, Working Paper Series No. 2011/20, 2010), available at http://www.depocenwp.org/upload/pubs/AndrewPham/VK%20contributions%20to%20VN%20growth_APham_DEPOCENWP.pdf, archived at <http://www.perma.cc/7GLM-BCWS>.

205. Interviews with Cao Duc Thai, *supra* note 94; see also Kerkvliet, *supra* note 128, at 7–10.

206. See Soucy, *supra* note 156, at 349–54.

207. See Interviews with Cao Duc Thai, *supra* note 94; Hansen, *supra* note 155, at 313 (stating that Vietnamese Catholics have not renounced their allegiance to the Vatican and remain loyal to the "spiritual realm of the established Church").

208. See Andrew Wells-Dang, *Strangers on the Road: Foreign Religious Organizations and Development in Vietnam*, in MODERNITY AND RE-ENCHANTMENT, *supra* note 22, at 399, 399–444.

their Vietnamese counterparts.”²⁰⁹ Of these groups, U.S.-based INGOs promoting evangelicalism among ethnic minorities living in Vietnam’s central highlands provoke the most resistance from state authorities.²¹⁰

In summary, economic reforms, socialization, and globalization have brought about rapid changes in most facets of Vietnamese life. New ideas compete with old, creating contradictory and sometimes confusing public discourse. Modernization theory suggests that the party-state might respond to this complexity by expanding its loyalties to encompass new social groups and ideas. To understand more precisely where this change is most likely to occur, the next section examines at close range deliberative exchanges that promote new ways of conceptualizing religious freedom.

B. *Deliberating Religious Freedom*

Jürgen Habermas theorized that state regulators respond to deliberative discussions circulating in state institutions, media, academic journals, blog sites, and other public forums.²¹¹ Public discourse in western countries, he argued, persuaded governments to codify moral claims as law.²¹² At first sight, Vietnam seems an unlikely site for this kind of deliberative exchange, because the party-state manages the media, religious associations, and public discourse. Yet, research in China²¹³ and Vietnam²¹⁴ suggests that deliberation can articulate claims for human rights in societies that lack democratic discursive spaces.

Different narratives about religious freedom have evolved in Vietnam. Various social groups put forth distinct concerns about religious freedom. Vietnamese public interest advocates, like western human rights groups, stress legally enforceable rights to religious worship.²¹⁵ They advocate decoupling human rights from the thick DDK narratives used by state

209. *Id.* at 412.

210. *Id.* at 418–19; *see also* Interviews with Cao Duc Thai, *supra* note 94.

211. *See* 2 JURGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* 164–97 (Thomas McCarthy trans., 1984) (describing a general theory of dialogical lawmaking); Julia Black, *Proceduralizing Regulation: Part II*, 21 OXFORD J. LEGAL STUD. 33, 33–58 (2001).

212. *See* Sarah Sorial, *Law, Cosmopolitan Law, and the Protection of Human Rights*, 4 J. INT’L POL. THEORY 241, 241–42 (2008).

213. *See* WENFANG TANG, *PUBLIC OPINION & POLITICAL CHANGE IN CHINA* 161–87 (2005).

214. *See generally* BENEDICT KERKVLJET, *THE POWER OF EVERYDAY POLITICS: HOW VIETNAMESE PEASANTS TRANSFORMED NATIONAL POLICY* (2005) (discussing peasants’ use of informal political mechanisms to influence Vietnamese state policy); *see also* Saleminck, *supra* note 23, at 162.

215. *See* Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, Lawyer, in Hanoi, Viet. (Feb., June 2008). Although there is general agreement between domestic and foreign groups about the overall direction of advocacy, domestic activists place less emphasis on court-based protections of religious freedom. *See Manifesto 2006 on Freedom and Democracy for Vietnam by 118 Democracy Activists Inside Vietnam* (Apr. 8, 2006), available at http://www.hrw.org/legacy/pub/2006/manifesto_040606.pdf, archived at <http://perma.cc/6CFG-2L2G> [hereinafter *Manifesto 2006*].

officials to manage religious worship.²¹⁶ Although public interest advocates rarely refer explicitly to transnational human rights discourse, their arguments are firmly anchored in western liberal ideas about universal human rights.²¹⁷ They urge the Vietnamese state to operationalize constitutional guarantees to human rights by enabling citizens to use the law as a weapon against state repression.²¹⁸

In contrast, religious protesters primarily locate their arguments in moral discourse that seeks to broaden, but not displace, DDK narratives.²¹⁹ They want the state to clarify legal regulations, relax managerial powers, and protect religious worship.²²⁰ Protesters invoke a kind of performance legitimacy that holds the state politically and morally, but not legally, accountable for protecting religious worship.²²¹ Western liberal ideas about universal human rights play a marginal role in this discourse.²²²

Public discourse is fragmented in the sense that public interest advocates and religious protesters use different arguments to promote religious freedom. They share, however, a common belief that the government should relax state management of religious organizations. This discourse pressures the government to find alternative ways of regulating religious freedom.

1. *Public Interest Advocates*

A small number of public interest advocates, including law professors, lawyers, bloggers, and even former government ministers, promote public discourse about religious freedoms in Vietnam. Many call for constitutional guarantees for universal human rights, including religious freedom.

For example, Lê Công Định, a lawyer based in Ho Chi Minh City, deployed universal rights-based language to defend dissidents charged with “propagandizing against the regime.”²²³ He argued that human rights, such

216. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215; *Vietnam: Religious Freedom Denied*, HUM. RTS. WATCH (May 9, 2008), available at <http://www.hrw.org/news/2008/05/07/vietnam-religious-freedom-denied>, archived at <http://www.perma.cc/0AKc8yqk8xn>.

217. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215; Manifesto 2006, *supra* note 215.

218. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215.

219. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215; Lan T. Chu, *Catholicism vs. Communism, Continued: The Catholic Church in Vietnam*, 3 J. VIET. STUD. 151, 155–56 (2008).

220. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215.

221. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215; Hansen, *supra* note 155, at 324–25; *Vietnam’s Human Rights Defenders*, HUM. RTS. WATCH (Mar. 23, 2010), <http://www.hrw.org/news/2010/03/24/testimony-sophie-richardson-tom-lantos-human-rights-commission>, archived at <http://www.perma.cc/06bRZ25S13a>.

222. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215.

223. See Interviews with Lawyers, *supra* note 10; Interviews with Lê Công Định, *supra* note 215; Seth Mydans, *Vietnam, Quelling Dissent, Gives Four Democracy Advocates Jail Terms*, N.Y. TIMES

as the rights to free speech and assembly, are inherent to all humans and are not granted by the state.²²⁴ In particular, he objected to the stipulations in the 1992 Constitution that human rights were derogable wherever they conflicted with Vietnamese law.²²⁵ Most of his clients were signatories to the “Manifesto on Freedom and Democracy for Vietnam 2006,” which demanded a multiparty political system, independent media, and freedom of assembly, as well as religious freedom.²²⁶

During the trial of dissidents Nguyễn Văn Đài and Lê Thị Công Nhân in 2007, Đình argued that the constitutional guarantees of “freedom of belief and religion” in Article 70 of the 1992 Constitution were meaningless if state agencies micromanage the internal affairs of religious orders.²²⁷ He pointed out that the state actively promoted legal rights in commerce, land, and family disputes, and challenged judges to extend legal protection to religious freedom and free speech.²²⁸ Đình criticized the courts for functioning like “civil authority machine[s] rather than as . . . adjudicative [bodies]” with a “role to uphold [universal] justice in a community with various [] interests.”²²⁹ He urged them to become more active in protecting rights enshrined in the 1992 Constitution—a process he thought would “assis[t] in blowing . . . vitality . . . into the dry and motionless body of [legislation].”²³⁰ Đình deployed rights-based arguments, not because he believed that judges might acquit his clients, but rather as a tactic to influence public debates about human rights.²³¹ In his experience, the media treated arguments raised in the courtroom as quasi-official discourse and consequently felt authorized to report sensitive arguments about human rights.²³²

Following his arrest and imprisonment for sedition, the same charge used to silence his clients, the media dutifully portrayed Đình as a dissident.²³³ It accused him and other accused dissidents of being unpatriotic (for operating outside the DDK), trivializing the huge sacrifices their forebears made in overthrowing colonial rule, using dissent as a path

(Jan. 20, 2010), http://www.nytimes.com/2010/01/21/world/asia/21vietnam.html?_r=0, archived at <http://www.perma.cc/0hTcNjrrwLJ>.

224. See sources cited *supra* note 223.

225. *Id.*

226. *Id.*; Manifesto 2006, *supra* note 215.

227. See sources cited *supra* note 223; Manifesto 2006, *supra* note 215; cf. *Ambassador Michalak's Meeting with HCMC Bar Association*, PUB. LIBR. U.S. DEMOCRACY (Jan. 3, 2008), http://www.wikileaks.org/plusd/cables/08HOCHIMINHCTTY9_a.html, archived at <http://www.perma.cc/0XnSzoAE2on>.

228. See sources cited *supra* note 227.

229. Lê Công Đình, *An lệ trong vai trò giải thích luật* [The Role of Precedent in Legal Interpretation] (2008) (unpublished manuscript) (on file with author).

230. *Id.* at 4.

231. See Interviews with Lê Công Đình, *supra* note 215.

232. *Id.*

233. See *Xét xử Lê Công Đình và đồng phạm* [Hearing Lê Công Đình and Co-Conspirators], CAND ONLINE (Jan. 20, 2010), <http://www.cand.com.vn/vi-VN/phapluat/2009/6/125316.cand>, archived at <http://www.perma.cc/0Ut8Qiecb9P>.

to personal advancement, and plotting with foreign groups to disrupt economic and political achievements in Vietnam.²³⁴

Despite media condemnation, there is considerable popular support for public interest advocates. Thousands of citizens held peaceful vigils in 2011 to support Cù Huy Hà Vũ, another lawyer arrested for supporting religious freedom and other human rights causes.²³⁵ Vũ gained public attention from his blog site and high-profile cases, such as his defense of Catholic villagers living in Côn Đảo who refused to sell a religious burial site to an eco-tourist resort.²³⁶ Bloggers who organized the protests urged people to voice their support for constitutional rights to religious freedom and free speech.²³⁷

Operating in parallel with public interest advocates, a small group of academic lawyers argue that the 1992 Constitution should provide legally enforceable rights that check the exercise of state power.²³⁸ They believe that, for this to happen, constitutional rights should draw not only from the Constitution and state laws, but also from constitutional court judgments, constitutional customs, and even *luật tự nhiên* (natural law).²³⁹ Like Đình and Vũ, they base their arguments on the western liberal ideal that constitutional guarantees of human rights lack credibility without legal protection.²⁴⁰

Another group of constitutional reformers look to the 1946 Constitution for inspiration.²⁴¹ They argue that Hồ Chí Minh's Confucian constitutionalism, which informed the 1946 Constitution, makes the state

234. VIET. MINISTRY OF FOREIGN AFFAIRS, ACHIEVEMENTS IN PROTECTING AND PROMOTING HUMAN RIGHTS IN VIETNAM, available at <http://www.radicalparty.org/it/node/5078571> (last visited Oct. 27, 2013), archived at <http://www.perma.cc/CD29-975A>; Interviews with Lawyers, *supra* note 10.

235. See *The Party vs. Legal Activist Cu Huy Ha Vu*, HUM. RTS. WATCH (May 26, 2011), <http://www.hrw.org/node/99164/section/1>, archived at <http://www.perma.cc/0Y5fALvY5eG>.

236. Interviews with Lawyers, *supra* note 10; see 2012 USCIRF REP., *supra* note 3, at 270 (listing specifics about the court case).

237. Interviews with Lawyers, *supra* note 10; Đoàn Trang, *Lược sử blog Việt—A Brief History of Blogs in Vietnam*, PHAMDOANTRANG (June 23, 2012), <http://www.phamdoantrang.com/2012/06/luot-su-blog-viet-brief-history-of.html>, archived at <http://www.perma.cc/0orEtNi2kmG>.

238. See Ngô Huy Cương, *Luật Hiến pháp với Văn hóa Chính trị* [Constitutional Law and Political Culture], 1 TẠP CHÍ NGHIÊN CỨU LẬP PHÁP 30, 30–34 (Apr. 2001); Bùi Ngọc Sơn, *Về những điều hiểu chưa đúng về Hội đồng Hiến pháp* [About the Misunderstandings of the Constitutional Council], ĐẠI BIỂU NHÂN DÂN (Aug. 29, 2013), <http://www.daibieunhandan.vn/default.aspx?tabid=76&NewsId=290787>, archived at <http://perma.cc/7ZQJ-FYFA> (arguing that the establishment of a constitutional court that reviews the constitutionality of legislation is not incompatible with socialism).

239. See Ngô Huy Cương, *supra* note 238, at 31–32, 34–35; Lê Cẩm, *Cải cách Hệ thống Tòa án Trong Giai đoạn Xây dựng Nhà nước Pháp Quyền Việt Nam* [Reform the Court System to Build up a Rule-of-Law State in Vietnam], 4 TẠP CHÍ NGHIÊN CỨU LẬP PHÁP 21, 27 (Apr. 2002); Nguyễn Mạnh Cường, *Yêu cầu của việc Xây dựng Nhà nước Pháp quyền đối với Đổi mới Tổ chức và Hoạt động của Các Cơ quan Tư pháp* [How to Reform the Organization and Operation of Judicial Bodies in Order to Build a Rule-of-Law State?], 10 TẠP CHÍ NGHIÊN CỨU LẬP PHÁP 30, 35 (Oct. 2002).

240. See sources cited *supra* note 239.

241. Interviews with Bùi Ngọc Sơn, Law School Lecturer, Viet. Nat'l Univ., Hanoi, in Hong Kong (Dec. 2011, Sept. 2012, Apr. 2013); see also Thanh Lưu, *Hiến pháp không phải để ban ơn cho nhân dân* [The Constitution Is Not to Bestow a Favor upon the People], PHÁP LUẬT (Sept. 3, 2012), <http://plo.vn/chinh-tri/hien-phap-khong-phai-de-ban-on-cho-nhan-dan-39991.html>, archived at <http://perma.cc/CSX2-9SMP>.

responsible for protecting civil virtue.²⁴² Members of this group urge the state to protect not only negative freedoms, such as religious freedoms, but also positive freedoms drawn from neo-Confucian principles of a safe, productive, and ethical society.²⁴³ Although this communitarian project promotes thick regulation based on neo-Confucianism, it also supports a shift to thin regulation of legally protected human rights.²⁴⁴

Most recently, a group of seventy-two prominent Vietnamese, including Nguyễn Đình Lộc, a former Minister of Justice, signed a petition calling for more radical change, such as the protection of human rights according to the UDHR and, most controversially, for the end of Vietnam's single party structure.²⁴⁵ The group has raised concerns within the party because it is comprised not only of public interest advocates, but also of senior retired state officials.²⁴⁶ The party vigorously rejects the group's main proposals.²⁴⁷

2. Transnational Human Rights Discourse

Deliberative exchanges about religious freedom within Vietnam form part of a larger transnational discourse about human rights in Vietnam. At minimum, this discourse has shown party leaders how thin regulation can deal with social diversity and complexity. Foreign governments and INGOs such as Human Rights Watch publicly and often stridently urge Vietnam to observe its obligations under international treaties and to enforce constitutionally guaranteed human rights.²⁴⁸ The Vietnamese government often responds with the relativistic claim that universal human rights reflect western rather than Vietnamese culture.²⁴⁹ Alternatively, it insists that religious freedom and other civil rights cannot be separated from discussions about the right to economic development.²⁵⁰ Occasionally, the

242. See sources cited *supra* note 241.

243. Interviews with Bùi Ngọc Sơn, *supra* note 241.

244. *Id.*

245. See Interviews with Lawyers, *supra* note 10; Bùi Ngọc Sơn, *Petition 72: The Struggle for Constitutional Reforms in Vietnam*, I-CONNECT (Mar. 28, 2013), <http://www.iconnectblog.com/2013/03/petition-72-the-struggle-for-constitutional-reforms-in-vietnam>, archived at <http://www.perma.cc/05YssRSjuSR>; Khanh Vu Duc, *Opinion: The Promise of a Democratic Vietnam*, ASIA SENTINEL (Apr. 19, 2013), <http://www.asiasentinel.com/politics/opinion-the-promise-of-a-democratic-vietnam>, archived at <http://www.perma.cc/0bFSPHjAzXU>; Pip Nicholson, *Regional Developments: Vietnam*, ALC NEWSLETTER, no. 1, 2013, at 2, available at http://www.law.unimelb.edu.au/files/dmfile/Newsletter-2013-1_Final1.pdf, archived at <http://perma.cc/TWC4-GKDH>.

246. Interviews with Lawyers, *supra* note 10; see Nicholson, *supra* note 245, at 2.

247. See TBT Trọng nói về sửa đổi Hiến pháp [General Secretary Trọng Talking About Amending the Constitution], BBC TIẾNG VIỆT (Feb. 26, 2013), http://www.bbc.co.uk/vietnamese/vietnam/2013/02/130226_nguyenphutrong_constitution.shtml, archived at <http://www.perma.cc/0WUL.u1gML24>.

248. See *supra* Introduction.

249. See Nguyễn Duc Thang, *supra* note 30.

250. For example, the Vietnamese government took this approach in responding to criticism regarding the treatment of ethnic minorities in the central highlands of Vietnam. See Office of the High Comm'r for Human Rights, *Examen Des Rapports Présentés Par Les États Parties en Vertu de L'Article 40 du Pacte* [Consideration of Reports Submitted by State Parties Under Article 40 of the ICCPR], U.N. Doc.

government moves beyond these standard refutations and engages with the substance of foreign critiques. For example, it claims that state management of religious organizations to prohibit religious activities that compromise political security and social order is consistent with the ICCPR.²⁵¹ Foreign commentators counter that, in many cases, state management restricts the expansion of religion and thus constitutes a treaty violation because it is not proportionate to perceived threats to state security and order.²⁵²

In addition to public discourse, the United States, the European Community, Australia, and Canada participate in human rights dialogues with the Vietnamese government.²⁵³ These private discussions have addressed the Vietnamese government's treatment of religious expression.²⁵⁴ Some observers believe that sustained dialogue has conveyed a nuanced understanding of western liberal ideas to Vietnamese participants.²⁵⁵ It has shown how thin regulation of religious practices can appeal to diverse populations in western multicultural societies.²⁵⁶ Furthermore, it has corrected misunderstandings about human rights protection in western legal systems and presented a richer account about the role government officials in Vietnam might play in promoting human rights.²⁵⁷ For example, discussions within the party have focused on state institutions that might monitor and advocate for human rights, such as an ombudsman or human rights commission, without necessarily adopting legally enforceable human rights.²⁵⁸

CCPR/CO/75/VNM/Add.1, ¶ 4 (July 29, 2002), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/324c3e69a6e3d217c1256c1e004fb3ad?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/324c3e69a6e3d217c1256c1e004fb3ad?Opendocument), archived at <http://www.perma.cc/0meKSAAm21au>.

251. Interviews Cao Duc Thai, *supra* note 94; see Letter from Pham Quoc Tru, Chargé d'Affaires, Permanent Mission of the Socialist Republic of Viet. to the U.N. Office, the WTO & Other Int'l Orgs. at Geneva, to Gabriela Klaul, U.N. Special Rapporteur on the independence of judges and lawyers (Sept. 13, 2012), [https://spdb.ohchr.org/hrdb/22nd/Vietnam_14.09.12_\(1.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/Vietnam_14.09.12_(1.2012).pdf), archived at <http://perma.cc/5R8G-CFVT>.

252. Interviews with Cao Duc Thai, *supra* note 94; Interviews with Lawyers, *supra* note 10; see, e.g., ON THE MARGINS, *supra* note 25.

253. See, e.g., Media Note, U.S. Dep't of State, U.S.–Vietnam Human Rights Dialogue (Nov. 7, 2011), available at <http://www.state.gov/r/pa/prs/ps/2011/11/176733.htm>, archived at <http://www.perma.cc/06yVZiyB8fS>; *Political and Human Rights Dialogue*, DELEGATION OF THE EUR. UNION VIET. (2004), http://ceas.europa.eu/delegations/vietnam/eu_vietnam/political_relations/political_human_rights_dialogue/index_en.htm, archived at <http://www.perma.cc/0yZRqFidqyM>; Media Release, Austl. Gov. Dep't of Foreign Affairs & Trade, Australia–Vietnam Human Rights Dialogue (Dec. 10, 2009), available at <http://www.dfat.gov.au/media/releases/department/091210.html>, archived at <http://www.perma.cc/0TBxsTr8rFQ>.

254. Interviews with Cao Duc Thai, *supra* note 94; see, e.g., Press Release, Eur. Union Delegation, E.U.–Vietnam Human Rights Dialogue (Jan. 12, 2012), available at http://ceas.europa.eu/delegations/vietnam/documents/press_corner/20120118_en.pdf, archived at <http://www.perma.cc/B9T6-S52V>.

255. Interviews with Cao Duc Thai, *supra* note 94.

256. *Id.*

257. *Id.*

258. See FRAUKE LISA SEIDENSTICKER, U.N. DEV. PROG., BUILDING A NATIONAL HUMAN RIGHTS INSTITUTION: A STUDY FOR THE MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF VIET NAM (2012), available at http://www.vn.undp.org/content/dam/vietnam/docs/Publications/28786_Building_a_NHRI-2.pdf, archived at <http://perma.cc/S4MC-VP4Z>.

Some commentators believe that knowledge about thin, rights-based regulation of human rights is slowly percolating upward through party networks to the senior leadership.²⁵⁹

Other commentators are less optimistic about the effectiveness of human rights dialogues.²⁶⁰ They claim that government officials are learning the language of human rights discourse to engage in international discussions but see little evidence of a cognitive shift toward rights-based regulation.²⁶¹ They also argue that attempts by international agencies to link human rights to trade and aid or to “name and shame” Vietnam often prove counterproductive.²⁶²

Vietnam has used its membership in ASEAN to deflect external pressure on human rights issues.²⁶³ ASEAN’s strong assertion of the principle of noninterference in the domestic affairs of members has lent credibility to Vietnam’s rejection of foreign criticism about human rights violations.²⁶⁴ Recently, ASEAN countries enacted the Charter of Fundamental Rights and established the Fundamental Rights Agency to monitor human rights compliance among member states.²⁶⁵ They developed the Charter to counter the perceived neocolonial agenda of the global human rights project.²⁶⁶ The Charter privileges social stability and economic development—longstanding policy objectives in ASEAN countries—over individual civil rights such as religious freedom.²⁶⁷ Even so, it is possible that the Charter will signal an intention to ASEAN citizens that their governments are now taking civil rights more seriously.²⁶⁸ If so, the Charter may embolden more public interest advocates and citizens to argue for universal rights to religious freedom.

To summarize, there is ample empirical evidence that global discourses

259. *E.g., id.*

260. Interviews with Lawyers, *supra* note 10.

261. *Id.*

262. *Id.* These observations are consistent with empirical studies showing that aid conditionality does not necessarily result in policy reform. *See, e.g.,* Olga Avdeyeva, *When Do States Comply with International Treaties? Policies on Violence Against Women in Post-Communist Countries*, 51 INT’L STUD. Q. 877 (2007).

263. *See, e.g.,* Viet Nam, *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1*, U.N. Doc. A/HRC/WG.6/5/VNM/1, ¶ 16 (Feb. 16, 2009) (noting for its Universal Periodic Review that “Viet Nam is actively engaged in the discussions to establish the ASEAN Human Rights Body and participates in various regional and international conferences on human rights”).

264. Interviews with Cao Duc Thai, *supra* note 94.

265. *See* Andrea Durbach et al., *A Tongue but No Teeth? The Emergence of A Regional Human Rights Mechanism in the Asia Pacific Region*, 31 SYDNEY L. REV. 211, 212 (2009).

266. *See* TAN HSIEN-LI, THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS 24–69 (2011).

267. *Id.* at 206–13; Tan Sri Ahmad Fuzi bin Abdul Razak, *Facing Unfair Criticism*, in THE MAKING OF THE ASEAN CHARTER 17, 17–27 (Tommy Koh et al. eds., 2009).

268. *See* TAN, *supra* note 266, at 251–56.

such as universal human rights can diffuse across sociopolitical borders²⁶⁹ into authoritarian states.²⁷⁰ Human rights dialogues have transmitted the epistemological foundations of western human rights narratives to state actors. Although sustained and reasoned discourse is no guarantee that state actors will accept legally enforceable human rights, it does pressure the government to find alternative ways of regulating religious freedom.

3. *Public Demonstrations*

A growing number of public and sometimes violent protests use emotive language and direct action to demand human rights.²⁷¹ Many protests concerning religious freedom also involve other claims such as the return of land or self-determination for ethnic minorities. For example, in February 2001 thousands of *Tim Lành Đêga* (Montagnard Evangelical Christians) demonstrated in Đắk Lắk province in the central highlands.²⁷² Although reports found evidence that officials harassed the leaders of the *Đêga* religion, the grievances ran much deeper than religious persecution to include claims that officials unlawfully appropriated land.²⁷³

In 2008, thousands of Catholics participated in a mass prayer vigil in Nhà Chung Street in central Hanoi.²⁷⁴ They demanded the return of church land seized by the party in 1954.²⁷⁵ Before the French defeat, this land was used as the Vatican Embassy in Vietnam.²⁷⁶ For decades, church officials quietly negotiated with city officials, but just when the land seemed within their reach, the city government decided to turn the site into a commercial development and then into a public park.²⁷⁷ This decision sparked outrage and mass demonstrations, and after several warnings to disperse, riot police

269. See Thomas Risse et al., *The Socialization of International Human Rights Norms into Domestic Practices*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 1, 1–38 (Thomas Risse et al. eds., 1999). *But see* Avdeyeva, *supra* note 262 (discussing the constraints to the global diffusion of human rights norms in post-communist countries).

270. See Amilie Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1374–78 (2005).

271. For a survey of the protest movement, see Kerkvliet, *supra* note 128.

272. HUMAN RIGHTS WATCH, *REPRESSION OF MONTAGNARDS: CONFLICT OVER LAND AND RELIGION IN VIETNAM'S CENTRAL HIGHLANDS* 9 (2002), available at <http://www.hrw.org/reports/2002/vietnam/>, archived at <http://perma.cc/47FQ-G4DT>.

273. See HUMAN RIGHTS WATCH, *VIETNAM: TORTURE, ARRESTS OF MONTAGNARD CHRISTIANS* 7 (2005), available at <http://www.hrw.org/legacy/background/asia/vietnam0105/>, archived at <http://perma.cc/FUC6-EQEJ>.

274. Interviews with Lawyers, *supra* note 10; *Hanoi Catholics Fight for Lost Land*, AUSTRALIAN (Sept. 23, 2008), <http://www.theaustralian.com.au/news/hanoi-catholics-fight-for-lost-land/story-e6frg6t6-111117556267>, archived at <http://www.perma.cc/0Hbhh3FLTHH>; J.B. An Dang, *Thousands of Catholics Protest Illegal Expropriation of Church's Land*, VIETCATHOLIC NEWS (May 24, 2010), <http://www.vietcatholic.net/News/Html/80517.htm>, archived at <http://www.perma.cc/0kWhTqbx8n>.

275. See sources cited *supra* note 274.

276. *Id.*

277. *Id.*

used force to arrest the organizers.²⁷⁸ Reports about Buddhist demonstrations suggest a similar pattern of dissent, with disputes often beginning with land claims and later escalating into violent clashes.²⁷⁹

4. *The Fragmented Public Discourse on Religious Freedom*

Religious protesters generally focus on pragmatic issues such as government restrictions to the establishment of new places of worship and the training of priests and monks.²⁸⁰ Occasionally, they invoke the UDHR to press their claims.²⁸¹ Yet, in contrast to the liberal legal arguments deployed by public interest advocates and international human rights groups, religious protesters rarely connect religious freedom with legally enforceable human rights.²⁸² They do not synthesize highly contextual and figurative stories about how state regulation affects religion into abstract principles that might inform debates about religious rights.²⁸³ Nor do protesters identify discrepancies in party-state narratives about religion, or propose a new regulatory structure as an alternative to state management of religion.²⁸⁴ This suggests that, in their view, their claims are grounded in the moral righteousness of their struggle with the state. Discourse of this kind, as neo-Habermasian theorists have shown, is capable of reshaping public debates about moral principles such as religious freedom.²⁸⁵

5. *The Changing Nature of Party-state Religious Discourse*

There is a discernible shift in party-state narratives from indifference, even antipathy, to qualified support for religious worship. Party leaders

278. See, e.g., J.B. An Dang, *Beatings and Arrests of Priests and Faithful in the Historic Church of Tam Toa*, ASIANEWS.IT (July 21, 2009), <http://www.asianews.it/index.php?l=en&art=15837&size=>, archived at <http://www.perma.cc/09cJixA1wrQ>.

279. Interviews with Lawyers, *supra* note 10; see VIET. CAN. FED’N, VIOLATIONS OF HUMAN RIGHTS IN VIETNAM QUARTERLY REPORT APR.–JUNE 2012 (2012), available at http://www.david-kilgour.com/2012/VCF_062012.pdf, archived at <http://www.perma.cc/M9GV-GQSW>.

280. Interviews with Cao Duc Thai, *supra* note 94; Interviews with Lê Công Định, *supra* note 215; see also *Buddhist Leader Slams New Decree*, RADIO FREE ASIA (Joshua Lipes, trans., Nov. 30, 2012), <http://www.rfa.org/english/news/vietnam/decree-11302012163304.html>, archived at <http://www.perma.cc/0iBgJAocR9A>.

281. Interviews with Lawyers, *supra* note 10; e.g., KERKVLIIET, *supra* note 214, at 4–5; Manifesto 2006, *supra* note 215.

282. Interviews with Lawyers, *supra* note 10; see, e.g., *Vietnam: Faith Leaders Protest at Government Clampdown on Religion*, INDEP. CATHOLIC NEWS (Oct. 15, 2013), <http://www.indcatholicnews.com/news.php?viewStory=23415>, archived at <http://www.perma.cc/031QewbB1JV>; *Statement of Vietnam’s Clergies Concerning Ordinance on Religion and Belief*, DEMOCRATIC VOICE VIETNAM (Oct. 7, 2013), <http://dvov.org/2013/10/07/statement-of-vietnams-clergies-concerning-ordinance-on-religion-and-belief>, archived at <http://www.perma.cc/0xNhLLzXyKz>.

283. See sources cited *supra* note 282.

284. *Id.*

285. See generally Michael Neblo, *Thinking Through Democracy: Between the Theory and Practice of Deliberative Politics*, 40 ACTA POLITICA 169 (2005) (explaining a deliberative process that develops policy through partly normative, partly empirical “circulation of communicative power”).

have developed a more cosmopolitan outlook and expanded their loyalties to include a wide range of religious beliefs and practices. A consensus is emerging that the party should recognize and promote religiosity in Vietnamese society.²⁸⁶

Some party theorists appeal to the diverse and eclectic sayings of Hồ Chí Minh to justify the party's recognition of religion, thereby reconciling Marxist-Leninist opposition to religious expression with the party's recent acceptance of minority religious practices.²⁸⁷ For example, Hồ Chí Minh is credited with saying that the values underlying Buddhism and Christianity are fundamentally the same as the party's objectives.²⁸⁸ According to this theory, the party should remain staunchly atheist, but acknowledge that in the transition to socialism, religion promotes social order and enriches lives.²⁸⁹ Other theorists argue that because religion has shaped Vietnamese society for centuries, it is an integral component of Vietnamese identity.²⁹⁰ Party narratives also highlight the positive role religions play in combating social evils and aiding the poor.²⁹¹ Whereas the party officials once derided Confucianism as outmoded feudalism, they now enthusiastically endorse the contribution Confucian ethics and ancestor veneration make to social unity and stability.²⁹²

Significantly, official narratives now concede that Catholicism, long vilified as the religion of colonization, is making positive contributions to Vietnamese social and intellectual traditions.²⁹³ Other religions that were once excluded from the ĐĐK now form part of the official narrative, including Theravada Buddhism, the religion of the estimated one million ethnic Khmer living in the Mekong Delta.²⁹⁴ Given the long history of forced cultural assimilation of the Khmers, this change implies an extension

286. Interviews with Cao Duc Thai, *supra* note 94; see generally Đặng Nghiệm Van, *supra* note 122, at 53–57; Phillip Taylor, *The Goddess, the Ethnologist, the Folklorist and the Cadre: Situating Exegesis of Vietnam's Folk Religion in Time and Place*, 14 *AUSTL. J. ANTHROPOLOGY* 383, 383–401 (2009).

287. See Nguyễn Trọng Tuấn, *Vấn đề tôn giáo, tín ngưỡng trong thời kỳ quá độ lên chủ nghĩa xã hội theo tinh thần của Đại hội XI [Religion and Belief Issues During the Period of Transition to Socialism in the Spirit of the XI Congress]*, BÁO ĐIỆN TỬ ĐẢNG CỘNG SẢN VIỆT NAM (May 7, 2012), http://123.30.190.43:8080/tiengviet/tulieuvankien/tulieuedang/details.asp?topic=168&subtopic=306&leader_topic=867&id=BT851240944, archived at <http://www.perma.cc/0yGLqMcT2Fe>.

288. *Id.*

289. *Id.*

290. See, e.g., Huy Thong, *Interrelation Between Catholic and Vietnamese Culture*, 82 *VIET NAM SOC. SCI.* 73 (2001).

291. E.g., *Religion Can Help Wipe Out Social Evils, Gov't. Official Tells Church Agencies*, UCANEWS (Oct. 15, 1998), http://www.ucanews.com/story-archive/?post_name=/1998/10/15/religion-can-help-wipe-out-social-evils-govt-official-tells-church-agencies&post_id=12289, archived at <http://www.perma.cc/0Bq4QD4zJk9>; see also Taylor, *supra* note 124, at 32.

292. See Jellema, *supra* note 22, at 70–73.

293. See generally Nguyễn Hồng Dương, *supra* note 162; Ramsay, *supra* note 23, at 387–90.

294. See ON THE MARGINS, *supra* note 25, at 6–7, 49–53 (citing *Vietnamese Committee Details Licensing of Religious Organizations* (Voice of Viet. Radio Feb. 21, 2008)); cf. Philip Taylor, *Spirits, Iconoclasts and the Borders of the Market in Urban Vietnam*, 11 *HUMAN. RES.* 8, 20 (2004) (asserting that the government considers goddess worship in the Mekong Delta “as reflecting the essence of ‘national identity’”).

of Vietnamese identity to include an ethnic minority. State recognition of Islam, the religion of the Cham ethnic minority group, is another instance in which party leaders are allowing the DDK to become more inclusive and pluralistic.²⁹⁵ Like the Khmer, the Chams were conquered by and then absorbed into the fabric of the Vietnamese nation.²⁹⁶

In an equally significant shift, party-state discourse now recognizes evangelical religions.²⁹⁷ Like Theravada Buddhists and Muslims, many evangelical followers are members of ethnic minority groups.²⁹⁸ State authorities have long considered some evangelical teachings to be contrary to the core Vietnamese cultural traditions enshrined in the DDK.²⁹⁹ For example, evangelical pastors have been accused of discouraging followers from practicing indigenous spiritual rites.³⁰⁰ To harmonize evangelical Christianity with DDK narratives, state officials have encouraged church leaders to deemphasize the religion's Euro-American cultural roots and actively support the government's nationalist project.³⁰¹

The expansion of the DDK is not only confined to religious worship and ethnic minorities. For example, the state authorized the country's first gay pride parade in August 2012 and is considering legalizing gay marriage.³⁰² The inclusion of a wide variety of religious beliefs and other practices into DDK narratives evidences a broadening of party loyalties beyond the Kinh ethnic majority. In accepting that religious and ethnic diversity is part of the national identity, party leaders are moving toward cosmopolitanism.

This raises the core question of whether the expansion of the DDK and relaxation of ideological opposition to religion prefigures a thin, rights-based approach to religious freedom. The state's differential treatment of public interest advocates and academic reformers provides a glimpse into the party's thinking in this area. As discussed previously, a small group of academic lawyers argued with apparent impunity for a constitutional court with powers to enforce constitutional guarantees of religious freedom and other civil rights against the state. Yet, when advocates such as Đĩnh and Vũ used the courts and other public forums such as blogs to express similar

295. ON THE MARGINS, *supra* note 25, at 49.

296. See PHILIP TAYLOR, CHAM MUSLIMS OF THE MEKONG DELTA: PLACE AND MOBILITY IN THE COSMOPOLITAN PERIPHERY 1–29 (2007).

297. See Nguyễn Hồng Dương, *supra* note 162, at 4–5.

298. See *id.* at 17–18.

299. See, e.g., Nguyen Xuan Hung, *Some Results of the Protestant Preaching on Vietnamese Traditional Culture and Religious Beliefs*, 81 VIET NAM SOC. SCI. 39, 40–43, 80–85 (2001); Nguyễn Hồng Dương, *supra* note 162, at 17–18 (discussing the Vietnamese state's past suppression of Protestant ethnic minorities).

300. See sources cited *supra* note 299.

301. See, e.g., Nguyen Xuan Hung, *supra* note 299, at 83–84.

302. *Demonstrators Hold Vietnam's 1st Gay Pride Parade*, BOSTON.COM (Aug. 5, 2012), http://www.boston.com/news/world/asia/articles/2012/08/05/demonstrators_hold_vietnams_1st_gay_pride_parade, archived at <http://www.perma.cc/0tQbteVLPN7>.

views, they faced criminal prosecution.³⁰³

One possible explanation for the different responses is that public interest advocates embarrass the state by publicly revealing shortcomings in the state's treatment of particular individuals. Such cases provide rallying points for *tu tập* (crowd gathering) and other forms of public dissent. Even party cadres sympathetic to civil rights are reluctant to support public interest advocates once cases are perceived as challenging the party and state.³⁰⁴ Academic writings, on the other hand, are abstract and technical, and thus less likely to directly confront the party. In fact, both the National Assembly and the party have sponsored workshops that explored *bảo vệ Hiến pháp* (constitutional protection) and the formation of courts or tribunals with powers to evaluate the constitutionality of state legislation.³⁰⁵ Retired senior officials, such as a former Minister of Justice, have joined with academics to call for legally enforceable constitutional civil rights.³⁰⁶ Some commentators argue that although the constitution is currently “transitional and instrumental,” it is evolving toward legally enforceable guarantees of human rights.³⁰⁷ Before this can happen, however, a consensus must emerge within the party to adopt a thin, rights-based approach to human rights.

CONCLUSION

This Article has shown that, despite foreign criticism, religious expression has flourished in Vietnam over the last two decades. The state's dual regulatory approach explains the discrepancy between foreign perceptions and local experience. Government officials swiftly suppress the political mobilization of religion—a phenomenon that understandably attracts international media attention—but have privatized religious worship by incrementally loosening controls over religious beliefs and practices. This liberalization is unlikely to have occurred without party leaders' acceptance of religious communities previously excluded from the DDK.

What remains less clear is whether the party will shift from thick

303. *Supra* Part III.B.1.

304. Interviews with Lawyers, *supra* note 10.

305. See MARK SIDEL, LAW AND SOCIETY IN VIETNAM: THE TRANSITION FROM SOCIALISM IN COMPARATIVE PERSPECTIVE 19–25 (2008); SIDEL, *supra* note 102, at 183–206.

306. See Interview with Nguyễn Đình Lộc, Former Minister of Justice; Khanh Linh, *Không có gì phải né tránh luật về Đảng* [No Reason to Avoid the Law of the Party], DÂN TRÍ (Oct. 25, 2010), available at <http://dantri.com.vn/c202/s202-432028/Khong-co-gi-phai-ne-tranh-luat-ve-Dang.htm>, archived at <http://www.perma.cc/0K7iZpyVsCn>; see also Lê Nhung, *Sửa Hiến pháp: Giải mã 'quyền lực nhà nước thuộc về dân'* [Amend the Constitution: Decoding 'State Power Belongs to Citizens'], VIETNAMNET (Apr. 8, 2011), <http://vietnamnet.vn/vn/chinh-tri/33802/sua-hien-phap-giai-ma-quyen-luc-nha-nuoc-thuoc-ve-dan-.html>, archived at <http://www.perma.cc/MT9U-J8V7>.

307. SIDEL, *supra* note 102, at 183–206.

discretionary to thin, rights-based regulation of religious freedom. Complexity theory suggests that globalization, urbanization, and economic reforms will continue to awaken multiple religious identities in Vietnam. It seems plausible that at some time in the near future, the DDK will no longer provide a cohesive and meaningful basis for regulating religious worship. There are already vast regional differences in the regulation of *mê tín dị đoan* (superstition). When this occurs, the party will need to augment thick regulation based on particular ethnic values with thin legal rights that appeal to a wide diversity of religious followers. This transformation might follow Thailand³⁰⁸ and Indonesia³⁰⁹ in introducing legally enforceable universal rights to religious worship. Alternatively, it might follow Malaysia in preventing secular courts from reviewing certain religious practices such as Sharia.³¹⁰

For the present, human rights such as religious freedom are still widely viewed, both from within and outside of the party, as social attributes instead of private rights enforceable against the state.³¹¹ Resistance to privately enforceable human rights is not anchored in ideological opposition to religion; rather, it reflects political concerns that citizens will use human rights as weapons to challenge party power.³¹² Indeed, the very notion of a society governed by individual rights remains an anathema to many.³¹³

Political and social attitudes regarding human rights in Vietnam are not static, however; they respond to public deliberation and dissent. The media plays a multifaceted role in promoting human rights discourse.³¹⁴ By reporting stories about public interest advocates and religious protesters, the media transforms individual acts of resistance into broadly circulated public narratives. Surprisingly, party-state control over media outlets has not prevented a diversity of views about human rights from filling

308. See generally Thailand, 2011 U.S. DEP'T ST. INT'L RELIGIOUS FREEDOM REP., available at <http://www.state.gov/documents/organization/192879.pdf>, archived at <http://www.perma.cc/L77G-Q8WY>.

309. See generally Indonesia, 2011 U.S. DEP'T ST. INT'L RELIGIOUS FREEDOM REP., available at <http://www.state.gov/documents/organization/192841.pdf>, archived at <http://www.perma.cc/F3VK-3AMX>.

310. See Elsa Satkumasingam, *Discordant Voices on the Status of Islam Under the Malaysian Constitution*, in LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSES OF LEGAL TRANSFERS 333, 340 (John Gillespie & Pip Nicholson eds., 2012).

311. Interviews with Cao Duc Thai, *supra* note 94; Interviews with Lawyers, *supra* note 10; see also Tine Gammeltoft & Rolf Herno, *Human Rights in Vietnam: Exploring Tensions and Ambiguities*, in HUMAN RIGHTS AND ASIAN VALUES 159, 173 (Michael Jacobsen & Ole Bruun eds., 2000).

312. Interviews with Cao Duc Thai, *supra* note 94; Interviews with Lawyers, *supra* note 10.

313. See David G. Marr, *Concepts of "Individual" and "Self" in Twentieth-Century Vietnam*, 34 MODERN ASIAN STUD. 769, 788–96 (2000) (discussing the influence that the communal nature of Vietnamese society has over the expression of individuality).

314. Interviews with journalists from PHAP LUAT and TUOI TRE, in Ho Chi Minh City, Viet. (Mar., Sept. 2011; Apr., Sept. 2012) [hereinafter Interviews with Journalists].

newspaper columns.³¹⁵ This plurality of views can be attributed to diversity within the party-state, the difficulty of continuously monitoring more than five hundred media outlets, and news editors' preference for sales-generating stories.³¹⁶

A wide variety of views is also found in the *phương tiện truyền thông màu vàng* (yellow media), which consists of blogs and internet chat sites.³¹⁷ Some commentators in these forums point out discrepancies in official accounts about human rights abuses and ridicule the state for its leniency toward guilty officials.³¹⁸ Other bloggers hold the government accountable for performance legitimacy.³¹⁹ They join religious protesters in arguing that, because modern states like Vietnam have the capacity to improve economic and social conditions, they should be held accountable for abuses of human rights.³²⁰

There are mixed messages about the efficacy of transnational human rights dialogues in shifting the attitudes of Vietnamese leaders. Attempts to shame the government seem to provoke hostility rather than reasoned response. Advocacy for religious freedom is most productive when it avoids sticking points—such as the deontological view that universal human rights have an intrinsic value—and searches for complementarities with Vietnamese thinking.³²¹ There are many regulatory positions along the continuum between thick regulation and rights-based religious freedom that might improve freedom of religion in Vietnam. Transnational human rights dialogues can enrich Vietnamese policy discussions by showing how state agencies other than courts can broker tradeoffs between religious freedoms and public order, standards of clear and present danger to the state, and boundaries separating public and private rights. For example, a recent U.N. Development Program project worked with the Vietnamese Ministry of Foreign Affairs to explore how human rights agencies can investigate and

315. *Id.*; see also Russell Hiang-Kheng Heng, *Media Negotiating the State: In the Name of the Law in Anticipation*, 16 SOJOURN: J. SOC. ISSUES SOUTHEAST ASIA 213, 227–34 (2001).

316. Interviews with Journalists, *supra* note 314.

317. See generally Stephen Quinn & Kim Kierans, *Blogging as an Alternative Media in Vietnam*, 2 ASIA'S MEDIA INNOVATORS (July 2010), <http://www.kas.de/wf/doc/1428-1442-1-30.pdf>, archived at <http://www.perma.cc/DVC7-E4WE> (discussing the prevalence of blogging in Vietnam).

318. Interviews with Journalists, *supra* note 314; see generally U.N. Gen. Assembly, *Report of the Working Group on the Universal Periodic Review: Viet Nam*, U.N. Doc. A/HRC/12/11 (Oct. 5, 2009) (enumerating the Vietnamese government's failure to comply with international human rights law).

319. E.g., Interviews with Journalists, *supra* note 314; Osin Huy Đức, *Bẫy Việt Vị của Thủ Tướng [The Prime Minister's Offside Trap]*, FACEBOOK (Sept. 6, 2012), <https://www.facebook.com/notes/osin-huyduc/bay-viet-vi-cua-thu-tuong/454406024582631>, archived at <http://www.perma.cc/59UB-JJSE>.

320. Interviews with Journalists, *supra* note 314; see also James Hookway & Nguyen Anh Thu, *Mobile's Rise in Vietnam Poses Conundrum for State*, WALL ST. J. (Sept. 18, 2013), <http://online.wsj.com/news/articles/SB10001424127887323981304579082191371669488>, archived at <http://www.perma.cc/0NaYm2RVDxN>; A Network of Vietnamese Bloggers, *Vietnam Should Amend Law to Demonstrate Human Rights Council Candidacy Commitment*, PAC. CHRON. (July 19, 2013), <http://www.thepach.com/statement-from-a-network-of-vietnamese-bloggers>, archived at <http://www.perma.cc/0qJ4dVg7EXL>.

321. Interviews with Cao Duc Thai, *supra* note 94; Interviews with Lawyers, *supra* note 10.

monitor human rights complaints without necessarily adjudicating them.³²²

Too often, however, transnational dialogues are predicated on western constitutional understandings of human rights. The focus on rights protection through courts presupposes the rule of law, politically independent courts, and a culture of litigation—a legal culture that has yet to emerge in Vietnam. International human rights groups should consider focusing their advocacy efforts on improving the Vietnamese institutions that regulate religious freedom, such as the provincial and district religious affairs agencies.

However, to truly assess the prospects for human rights reforms in Vietnam, it is necessary to examine internal party-state debates. As Martin Gainsborough has noted:

For all the emphasis in foreign journalistic and academic writing on civil society, the emerging middle class, Buddhist and Catholic religious dissent, dissident intellectuals, youth disillusionment, and rural unrest—all of which are real phenomena up to a point—one gains the strong impression in Vietnam that the main arena of struggle is within the state.³²³

Debates within party and state circles about the establishment of a constitutional court point to internal support for thin, legally protected human rights. Other party cadres, although not supporting legally enforceable human rights, urge the state to relax managerial powers over social organizations and give citizens more scope to complain about human rights abuses through administrative processes.³²⁴ Additionally, powerful factions within the party that wish to maintain state management powers over civil liberties such as religious freedom oppose any shift that gives citizens significant powers to check the state.³²⁵

Yet, movement in this direction cannot be ruled out. Party leaders might conclude that it is politically expedient to embrace new modes of human rights governance to satisfy growing expectations for performance legitimacy and reduce public demonstrations. Reforms might include the creation of a human rights monitoring body and the relaxation of laws suppressing protest of human rights abuses.³²⁶ It seems less likely, at least in

322. See SOCIAL SERVICES FOR HUMAN DEVELOPMENT, *supra* note 190.

323. Martin Gainsborough, *Political Change in Vietnam: In Search of the Middle-Class Challenge to the State*, 42 ASIAN SURV. 694, 706–07 (2002).

324. Interviews with Lawyers, *supra* note 10.

325. For a recent example of this thinking, see Dương Văn Cừ, “Xã hội dân sự”—*một thủ đoạn của diễn biến hòa bình* [“Civil Society”—*a Tactic of Peaceful Evolution*], NHÂN DÂN (Aug. 31, 2012), <http://www.nhandan.org.vn/chinhtri/tin-tuc-su-kien/item/1252402.html>, archived at <http://perma.cc/DW8N-GCDQ>.

326. Despite almost two decades of public administration reforms, many shortcomings remain in making administrative complaints. See ASIA FOUND., THE MECHANISM TO SETTLE ADMINISTRATIVE COMPLAINTS IN VIETNAM: CHANGES AND SOLUTIONS 9–18 (2009), available at <http://asiafoundation.org>.

the short term, that the state will give citizens legally enforceable, universal rights to protect religious worship. Even in liberal democratic countries, courts are often the last state institutions to gain powers to review state action in politically sensitive arenas.³²⁷

Further reforms to human rights governance in Vietnam will require a shift in party thinking. As party leaders grapple with social complexity, a multiethnic society, and increasing interaction with global leaders, they are under pressure to find solutions to cross-cultural problems. Party leaders have already begun to embrace moral cosmopolitanism, which sees all humans as belonging to a single community based on a shared social responsibility and morality. It would require only a small theoretical leap for the state to accept universal rights to religious freedom.

org/resources/pdfs/VNAdminComplaintSettleReportEnglish.pdf, archived at <http://perma.cc/K4E4-3Z3D>. For a discussion about expanding the jurisdiction of administrative courts, see Pham Hong Quang, *Suggested Improvements to the Administrative Court Model and the Proposed Introduction of an Administrative Jurisdiction Body in Vietnam* 1–11 (Asian Law Inst., Working Paper No. 018, 2011), available at <http://law.nus.edu.sg/asli/pdf/WPS018.pdf>, archived at <http://perma.cc/J5MB-NX4J>.

327. France, for example, did not establish a constitutional court until 1958. See Laurent Pech, *Rule of Law in France*, in *ASIAN DISCOURSES OF RULE OF LAW*, *supra* note 49, at 79, 89–98.