

SOEs, Law and a Decade of Market-Oriented Socialist Development in Vietnam

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Abstract

This paper will take as its working assumption the idea that law reflects underlying socio-economic processes and states. Such a 'policy pessimism' is contentious, assuming as it does that legal change has little active role to play in important change processes. However, analytically it permits an investigation of a central question in contemporary Vietnamese history, which is the nature of Vietnam's commercialised state sector in the very early 1990s, when the market economy seems to have emerged, and the extent to which fundamental change occurred, or not, during the following decade.

The paper will examine and compare two sets of information. First, the SOE legislation of the Vietnamese state, as published in the Office Gazette, in force during 1992 and 2002. It will investigate whether any fundamental change has taken place as revealed in the texts and preambles. Second, the contemporary public discourse on SOEs and the 'SOE issue' through the quality Vietnamese press.

It may be argued that the shift to a 'rights-based' stance for Vietnamese commercial legislation will reflect a fundamental adaptation of Vietnamese law to market economy norms. The paper will investigate aspects of this shift as revealed in the above two source sets. Its main focus, however, will be on what the sources can tell us about state: society relations in this area. These seem to suggest that few fundamental changes took place in the 1990s.

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Acronyms/abbreviations (incomplete)

KTVN – Kinh te Viet nam(- Vietnam Economic Times)

1 The background – SOEs in classic and reformed socialist thinking, and the Vietnamese case

1.1 Introduction

For obvious reasons, the meaning of the ‘Socialist’ in ‘Socialist Republic of Vietnam’ is not often discussed in academic fora. I think this is a pity, for, as Tony Benn remarked when interviewed shortly after the fall of the Soviet Union, this ‘is the best thing to have happened to socialism in ages’. Granted that the emerging labour regime in Vietnam appears relatively favourable to workers (Chan and Norlund 1999), at least compared with China, and granted that Vietnam’s focus upon the state sector positions her in a highly unorthodox position in terms of standard policy prescriptions, I welcome the chance to explore. In the longer term, we need to address the ‘Vietnam paradox’, of the surprisingly positive developmental role played by that part of the economy labelled as ‘state’.¹ This was clear in the 1990s, when GDP data showed a rising share produced by the state sector, accompanied by rapid growth and macroeconomic stability, and outcome almost unthinkable in other developing countries, though visible historically elsewhere, such as post-world war II France. But in this paper I want simply to look at law, the 1990s and SOEs.²

Beresford and Fforde 1997 provides one introduction to possible definition of the changing notions of Vietnamese socialism. It argues that the basic ideas of socialism permit a division into necessary and unnecessary elements, and that the crucial partial reforms of the early 1980s saw a shift away from the latter but not the former. The first and most fundamental set, related to the traditional *definition* of socialism, comprised three principles: public ownership of the means of production, central planning and distribution according to labour. The second set were of secondary importance and were in essence *operational* principles. They included: central monopoly of foreign trade, state

¹ Nguyen Thi Canh 2002 stresses the difference between the state economy and SOEs; the former includes areas of state influence and regulation beyond SOEs.

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

monopoly of the domestic circulation of goods, cooperative production in agriculture and handicraft industry, planning of industrial production, state control of finance and credit, state determination of virtually all prices (including wages) and planned allocation of labour. It will be clear that this distinction permits a co-existence of central planning (suitably defined) and public ownership of the means of production with market-based domestic circulation of goods and market-based determination of industrial production. This distinction is, in essence, to argue that the Law of Value is not antipathetic to socialism, so long as the definitional (rather than the operational) elements of socialism are maintained. This is, of course, the same position as that taken by Stalin in his 'The Economic Problems of Socialism in the USSR', and much addressed by important Left intellectuals such as Bettelheim.³ It would seem quite obvious that the basic issue here is that the progressive aspects of capitalism, perhaps expressed in terms of the operation of the Law of Value, had to be contained within and by the power of the socialist regime. It is clear that this intellectual distinction is consistent in many ways with what happened during the 1980s and 1990s, and opens the way to a working definition of the difference between 'classic' and 'reformed' socialism in Vietnam. I argue that (as we put it in Beresford and Fforde 1997) at root the difference can be found in the distinction made above: whilst reform socialism abandoned the 'operational' aspects, it retained from 'classic' socialism the traditional defining elements of public ownership of the means of production, central planning and distribution according to labour, necessarily, however, losing the old content of 'central planning' but replacing it with a pervasive utilization of state authority to regulate the internal workings of the state economy. This can be seen, if one likes, as not amounting to very much of a change, especially if we recall the basic political thrust of these ideas, which is to subordinate the progressive elements of a development of the forces of production to a political power that is based upon various structure, including those associated with the SOEs.

³ It was of courses Stalin, in the famous U-turn in the Bolshevik position on collectivisation that saw the retention of private plots accepted and output from them disposable on markets, that defined what was, in the future, to be a defining difference between Stalinist and neo-Stalinist thinking, and the 'pure' position of Maoism, reflected in the extinction of differences between 'state' and 'economic' structures in the People's Communes, and a position never accepted by the VCP.

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

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

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

1.2 Development thinking and the Vietnamese case

The role of the state in development has a long history, both derived from attempts to create development and to cope with the consequences of rapid change. Attempts to influence the flow of events often come down to discussions about the suitable role of the state, with opinions often polarised between viewing the state as part of the problem, associated with the dominant Washington Consensus of the 1980s and 1990s, and views that treat the state as the most appropriate source of solutions. Within this, Stalinism can be seen as simply an extreme example of ‘statism’, amplified by wartime social mobilisation and the particular certainties of Marxist social science.

Woodside, in his *Community and Revolution* 1976, is a rare example of scholarship that attempted to link more specific Vietnamese concerns to these wider sets of views. He argued that the combination of Vietnamese cultural and philosophical concerns with the particular historical circumstances, of the destruction of community and invalidation of ideas caused by the French conquest, ‘suited’ the ‘proletarian mandarins’ of the Communist movement. The argument could be taken further, to the view that suitable economic system would be one that brought accumulating capital (beyond the peasant household) under ‘public’ regulation through the state economy, with its relationship with

the farming economy mediated through exchange, perhaps market-based, perhaps through a plan, but not something that was ‘spontaneous’.

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

2 The situation in the early 1990s

2.1 Overview

In the early 1990s Vietnam was recovering from the major shocks associated with the emergence of an economy that no longer had as one major activity the use of the apparatus of central planning to allocate Soviet bloc assistance to the state sector. Through the 1980s, SOEs had become increasingly market-focussed.⁴

After the loss of Chinese and most Western assistance in the late 1970s, per capita assistance from the Soviet bloc had risen to per capita levels of around US\$ 20, which is relatively high. The complicated economic events of 1988-90 had seen SOEs cut loose from these supports, and major job losses threatened social stability at a time when a ‘Yeltsin’ solution to the political problems of a ‘reformist’ CP posed major obstacles. The sacking of Tran Xuan Bach appeared to mark the end of these trends. Examination of the detailed policy record, however, shows no clear shift away from the legislation and decrees of the late 1980s; rather, people found that SOEs could and did find ways of generating cash flow and earnings that allowed them to survive, and this could be placed

⁴ See de Vylder and Fforde 1996, Fforde ongoing; micro level data shows this uneven process clearly. For example, the 10-10 Hanoi textile mill had (according to Trong Quyen 8/11/1992) stopped being subject to any central planning in 1985 (i.e. *before* the announcement of ‘doi moi’ at the 1986 Vith Party Congress) and had been the first SOE in the city to be allocated capital upon which a return had to be made (as part of the shift to state businesses), in 1990. For a contrary example, of rather slow adaptation to the market, see for example Vu Phong Tao (17/9/1992) on the Viet-Tiep local factory, which had only really started to diversify in 1992.

under a heading of ‘state-led rationalisation’.⁵ Parallel to this, the balance of payments was brought under control, tendencies for inflation to return after the successful anti-inflationary measures of 1989 curbed, and a tax base recreated that could secure resources for the government from what was now in many ways an ‘unplanned’ economy. But the economy was only ‘unplanned’ in the sense that the planning methods of the classic neo-Stalinist system no longer existed. Through a range of mechanisms the government continued to influence the pattern of economy growth, which, by the middle of the decade, was increasingly seen as regime-threatening in its stress upon the urban areas and SOEs.

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

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

⁵ See Johnson 1982 for the importance of ‘rationalisation’ within the economic development support activities of MITI in Japan.

2.2 Law and policy towards SOEs

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

The thrust of legislation was still coming from the reforms of the late 1980s, specifically 217-HDBT, which was a strong attack on the central planning system, and other guiding documents that, it is clear (see Table 1) were to do with four areas:

- first, *regulation* - matters such as # 13 (business accounting) and # 26 (on the role of the Chief Accountant), also # 144 (financial management – also # 408);
- Second, addressing *particular issues of the moment*, specifically dealing with shed labour (# 2); and the continuing program of equitisation.
- third, matters to do with *profit shares and the nature of the property relations* between the state and the SOE (# 93 on depreciation and # 316 on ‘capital allocation’, as well as decree # 27 on Enterprise Unions);
- Fourth matters to do with the *creation and dissolution* of SOEs (# 315), especially the program of re-establishment of SOEs (# 388).

The process of negotiation and renegotiation of matters to do with state property – profit sharing (though often not called by that name), and relations between SOEs and the state (importantly # 217, but also the decree on Enterprise Unions) show a continuity of focus that went back to the start of the 1980s and, as we will see, on into the 2000s. As is usual, to the uninitiated much of this can appear arcane, but an apparently dry decree on depreciation needs to be understood beside the reality that depreciation payments were, in essence, part of what value the SOE could retain from its commercial activities. And this was negotiable, regulated through these documents and decisions (a tendency that would also continue into the 2000s). Here there are already the beginnings of an apparent *reversal* in direction, so that whereas law of the late 1980s had reduced the power of formal state property rights over SOEs, in the very early 1990s (very probably influenced by the context – see above), this was reversed. To gloss the preamble to # 93:

“Earlier decrees - # 217 and # 50 - had stipulated that 100% of ‘basic depreciation’ (a category from the formal accounting system) was to be left to the enterprise - only for a small number of large projects was some to be given to the State budget. # 93, however, bearing in mind the State's need for revenue to carry out key investments, stipulated that: 1. new projects must pay 70% of basic depreciation to the State for the first three years, the remainder goes to ‘own-capital’ for use in the enterprise's own investments; 2. for existing base units, depreciation on assets paid for out of State budgetary funds will be left to the units at an average rate of 50% for all branches - the rest will be paid to the State budget. The Min of Finance will fix concretely the % retention for each enterprise in accordance with demand and requirements for replacement of the enterprise's assets; 3. The decision came in to effect on 1/7/89”

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

2.3 Local views of SOEs and their problems

As in the next section, this discussion rests simply upon a reading of articles related to SOEs in the quality Vietnamese press. A search of my databases for 1992 and early 1993 turned up over 100 articles relating to SOEs. Perhaps the most single telling one was a ‘Tin ngan’ (Short News) in # 4 (p.9) 1993 of KTVN, simply entitled – SOEs ‘Holding to their key role but still loss-making’. They reportedly held 2/3 of economic assets and received 90% of invested capital. That competition at this stage was mainly coming from imports and other SOEs is relatively clear (eg Vu Manh Cuong 22/1/1992).

These public discussions focus to a great extent upon the problems of particular SOEs. This was an approach going back many years, for example to the early 1980s, before ‘doi moi’, when the official press carried many articles discussing the pros and cons of early steps to the commercialisation of SOEs. There is less concern, especially compared with

the perceptions a decade later, with the details of systemic change; rather, the ‘market economy’ – the ‘new system’ – was largely taken as given.⁶ The concern of many articles was to show how SOEs had, through positive exploitation of the market mechanism, done well in terms of survival, maintenance of employment, payments to the state, and increased economic activity. These micro experiences show much about how Law fitted into the local meaning of state commerce.

2.3.1 Regulation

This topic was not widely discussed. It is clear from the texts that widespread illegality was happening (see, for example, the discussion of kickbacks in the construction industry in Nguyen Toan Thang and Trong Dat 21/12/1992). Law itself was not an active element in regulating the important changes of the moment. This is not so surprising, as central to them was the push to secure ‘return on capital’ as the central gauge of enterprise performance, in a situation where SOEs’ formal structure did not permit this core element of the Law of Value to be clearly realised. The shift to *state business* status, with the importance of treating SOEs as sites for the use of capital, did, however, mark this clearly. Thus, for example, Pham Bang Ngan (7-13/10/93) “the most specific characteristics of commercial performance for a business is the budgetary contribution target. High contributions, on the basis of high turnover, and high and rational employee incomes ... are the most accurate way of establishing the commercial results of a business from the point of view of state management”.

2.3.2 Particular issues of the moment

The over-riding issue of the moment, which comes through very strongly from these articles, was to ensure that SOEs survived, and were capable of competing, holding markets and employees, under the often very difficult economic conditions. Pro-SOE positions saw their main duties as often weakening their competitive position. Thus, for example, Dam Minh Thuy (13/8/1992) argued that four factors tended to push up their costs:

⁶ For example, in discussions of the Hai Phong refrigerator works (Trong Nghia 8/12/1992); the garments industry (Phan Huy Hien 3/11/1992).

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

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

2.3.3 Profit shares and the nature of property relations

As we have seen, law was pushing for a further redefinition of the relationships between SOEs and the state, and towards a formation of state interests that was more to do with return on capital and investments. An important element of this was the treatment of SOE's 'own' capital. For example, the success story of the Hung Yen garments export factory (Tran Da Uyen 8-14/7/1993) referred to the financing of new investments of 4 bn dong as being made up of 3 bn from the SOE's 'own capital' (von tu co).

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

2.3.4 Creation and dissolution of SOEs

There were extensive reports of the re-establishment of SOEs as 'State businesses' (i.e. from *Xi nghiep quoc doanh*, to *Doanh nghiep nha nuoc*), in accordance with decision no. 388 (20/11/91). However, this was not a topic that generated much detailed discussion, suggesting, as is probably the case, that the shift was largely nominal. To quote Trong Nghia (14/12/92) "this is just the first step, the problem is how, through categorising SOEs and reorganising production the city and the Ministries can rapidly concentrate capital in stable and progressive enterprises that are short of capital". The effects of # 388 could include dissolution of SOEs (NCN Hai phong 8/7/1992) and were clearly part of the ongoing process of rationalisation,

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

- The distinction between ‘lien ket’ and ‘lien doanh’ (Trong Nghia 5/11/1992); the former referred to cooperation that contained a technical basis, and was covered by the notion of ‘contract’; the latter was understood to involve a pooling of capital. That the distinction was locally significant points simply to the characteristics of the capital market at the time.
- That of ‘share groups’ – see above.

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

Another example of this institutional variety was that of an early example of privatisation, that of the HCM City refrigerator factory (Tran Trung 31/10/93). This was reportedly the second SOE to be privatised in the City. There were very few details of how this had been done. By the late 1990s its shares were being actively traded.

2.3.5 Ideological issues

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

2.4 Conclusions

Examination of the legislation and the articles from the quality Vietnamese press seems to lead to the conclusion that there is no significant difference between the position taken by Stalin and that of the VCP at this time. Whilst the Law of Value is to be allowed to

operate, and in Vietnam in the early 1990s this is clearly to a far greater extent than in early 1950s Soviet Russia, law and other elements of state activities are part of a conscious attempt to subject it to the priorities of the socialist regime. Further, the apparent willingness to permit extra-legal activities that clearly could have a strong effect upon state control suggests that law was not perhaps the most important part of how the VCP governed SOEs, through various channels.

3 The situation in the early 2000s

3.1 Overview

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

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

It is important to stress how important the state sector was to the rapid growth of the 1990s, and how much support it had been obtaining from the state. Even by the early 2000s, 85% of subsidised credits were going to SOEs (Bac Hai 15/5/2002).

A final point is that it is useful not to assume that change processes regarding SOEs, as in other cases, are best seen in terms of a metaphor of policy and policy implementability. I have argued elsewhere (Fforde 2002) that the apparently random pattern of SOE equitisation⁷ and reform, when viewed as a policy-driven process, could as easily reflect a process where the key element of equitisation is the de facto and (now) de jure recapitalisation of an existing joint venture (rather than a Weberian bureaucratic entity). Further, that since the apparent net flow of capital at equitisation is *inwards* (Fforde 2002), a more persuasive metaphor may well be the need for equitisation to compete with other opportunities for increasingly important and mobile capital.

3.2 Law and policy towards SOEs

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

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

⁷ Occasional confusion continues about the significance of this term. Literally translated as 'equitisation', it seems as often to be used to refer to the re-establishment of an SOE as an equity company, with some ownership rights expressed through that form, as it refers to an avowed process of privatisation.

3.3 Local views of SOEs and their problems

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

One can note, though, that the ‘formal reform’ aspects of what was happening were reflected in detailed regulation of the various ‘forms’ of SOE: typologies were set by state decision rather than by the market. Thus, in one example amongst many, Doan Kim (30/9/2002) refers to decree # 58 as defining the following ‘types’ of SOE:

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

Doan Kim argues that the basic reason for the slow pace of SOE reform is that Ministries and localities are afraid of ‘losing’ them. Le Dang Doanh argues that equitisation is essentially the transfer of the business to a new investor (sic – ‘nha dau tu’, not ‘owner’ – ‘chu’) to increase the efficiency of the business (Le Dang Doanh in Bac Hai 27/9/2002).

3.3.1 Regulation

By this stage the ‘new regulations’ section of the leading newspaper, the Vietnam Economic Times, was producing regular and high quality glosses of new decrees, on topics such as the treatment of financial aspects of SOE dissolution (eg # 66 in TBKTVN 30/8/2002 p.2).

3.3.2 Particular issues of the moment

The dominant issue of the moment was the effort to improve competitive performance nationally, of which rationalisation of SOEs was a central part, where rationalisation was focussed upon property relations understood, essentially, as a further extension of the Law of Value through equitisation and the accelerated divestment of smaller SOEs (which – see below – were NOT treated as subject to equitisation, but rather to simpler and more radical (in terms of the Law of Value) measures.

As part of this we see legal decisions to manage and deal with the old problem of the unpaid debts of many SOEs (# 69). In a way quite familiar from the early 1990s, if not far earlier, this decree stated (to gloss PV 15/7/2002) that ‘the SOE must itself deal with the problem, acting with the debtor to share burdens and solve the issue ...’.

3.3.3 Profit shares and the nature of property relations

There are a wide range of stories that discuss the natural implications of the shift to equity companies, such as the granting of permission for businesses to sell shares to foreign investors (Chan Hung 18/9/2002), which is discussed in the context of a draft decree from the Ministry of Finance. This was earlier said to be required to occur through a financial intermediary. Priority was to be given to sales ‘within’ the SOE, including sales to poor workers.

There was also much discussion of how SOEs were to be valued, with officials such as Tran van Ta (a Deputy Minister of Finance) arguing that market valuation was needed (Quy Hao 13/9/2002).

Showing the process-nature of change, and the role of law in underpinning state projects, we see ideas floated that would have removed the power of line Ministries over SOEs

(called ‘abolishing the ‘lead management role’) and vesting delegated state power in the hands of the Ministry of Finance as holder of the state’s shares (Quy Hao 31/7/2002).

Perhaps the clearest reflection of the nature of property relations can be seen in the reported differences between two decisions on equitisation - # 44 (1998) and # 64 (2002). These were reported (Kim Dan – Bac Hai 21/6/2002) as:

- It was no longer obligatory to use all the workers in the SOE at equitisation, only as many as possible.
- Earlier, a corporate entity could buy a maximum of 10-20% of the shares (sic), and an individual 5-10%; now there were no limits.
- SOE management staff, from deputy section heads upwards, were no longer limited in the numbers of shares sold at ‘favourable prices’. All employees could buy, and allocation would be based upon period in state employment (sic – not specifically at the SOE) prior to equitisation.
- It was now compulsory to sell shares outside the SOE at equitisation, to a minimum of 30%. Priority should be given to producers and suppliers of agricultural, forestry and marine products inputs to the SOE, and all sales had to go through financial intermediaries.
- The establishing shareholders had to have at least 20% of the equity.
- The form of shares would be based upon the Ministry of Finance’s model, but did not have to follow it exactly.
- A variety of measures could be used to value the SOE being equitised.
- Land use rights could only be part of the deal for SOEs involved in housing and infrastructure. All others would still have to rent their land from the state.
- Employees would get a maximum of 10 shares per year of employment at the favourable price (defined as 30% below the general price of 100,000 dong per share).
- The value of the SOE would be set by the Minister or the Chairman of the relevant People’s Committee.

- The Prime Minister would no longer directly approve all equitisations, but only the general plan of each Ministry and locality.

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

Another area which offered great scope for confusion was the position of the General Companies. Their history is complex, but dates back well into the 1970s and a flirtation with the apparent success of the DDR ‘combinaten’ in easing the problems of central planning. Central to the discussion here of the role of law, and its continued irrationalities, is that the question of the power of General Companies over their constituent SOEs once the latter had been equitised appears to have been left open. Thus whilst the share holders would appoint, in some arguments, the management board of such an SOE, the General Company would appoint the General Manager.⁸ Here legislation to shift to a ‘Mother Company – Child Company’ model emerged (Minh An 13/3/2002). Again, though, there were ‘experiments’ with four models (BH 27/2/2002). An Order of early 2002 apparently stated that an equitised SOE would remain a member of any General Company it had belonged to (DT 20/2/2002).

In a further extension of the experiments with legal forms seen in the early 1990s, we seen General Companies shifting to a situation where they have ‘no state supplied capital’ (Minh An 3/4/2002). This apparently meant that they would shift to basing their activities upon collateralised bank loans (90%) and likely own capital. This was reported as being widely viewed as a rational model.

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

⁸ The original legislation on the new-style General Companies was extremely opaque on their rights and powers (see VECA # xx). On the situation in the early 2000s, see for example Bac Hai 20/5/2002,

3.3.4 Creation and dissolution of SOEs

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

Decree # 49 follows on a series of decrees going back to the 1980s on relatively simple methods for handing small SOEs over to other agents, through ‘allocation, sale, business contracting (khoan kinh doanh) or renting (thue). According to Hoanh Anh (3/4/2002), many of these were loss-making, but the possibilities for sales were there if conditions were eased further.

3.3.5 Ideological issues

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

3.4 Conclusions

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

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

4 Conclusions: law and the nature of market-oriented development in Vietnam

This paper supports the hypothesis that there was no fundamental change in the basic structures of state: SOE relations during the decade from around 1992. The decade did not start with a SOE sector that was a-legal in the sense that pure Stalinism could be said to ignore the need to regulate 'outside' activities, of which those aimed at the market, and in a Marxian sense accepting of the Law Of Value, appear the most likely candidate. Rather, SOEs immediately after the crisis of 1989-91 were legally viewed as objects of regulation rather than control, or, rather, both, but certainly not subject to a definitive plan. As Beresford has stressed, planners had grown long accustomed to negotiating with SOEs, and from this it was not a long step to treating their commercial activities as such,

relatively autonomous from the state's wider goals – the plan - and driven as much by profit as other goals. Neither did the decade end with a clear program of 'privatisation'; rather, SOEs, even the equitised ones, continued to operate in an environment where rationalisation and regulation went hand in hand, and where their activities were clearly subject to the wider political and social intentions of government and party.

If, then, we trace Vietnamese socialism back to Stalin's great surprise of the early 1950s, when he re-admitted economics to formal discussion, and the Law of Value to an acceptable 'existence' within what Brezhnev was later to call 'existing socialism', then clearly so long as the VCP and its government continue to hold to their definitions of the defining elements of socialism as "public ownership of the means of production, central planning and distribution according to labour", and consider that the relations they have with the economy provide the political and developmental results that central planning promised and failed to deliver, then they have much room for manoeuvre. Central to this is the 'public' nature of the various business forms pertaining. If it has well be said that 'in Vietnam, the private is not entirely private and the public not entirely public',⁹ then clearly much will turn, not on the private nature of SOEs, but the public nature of private companies.

Melbourne

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⁹ Dao Xuan Sam, personal communication – 'Tu khong han la tu, cong khong han la cong'.

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