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Gender Equality and Women's Issues in Vietnam: The Vietnamese Woman—Warrior and Poet

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GENDER EQUALITY AND WOMEN'S ISSUES IN VIETNAM: THE VIETNAMESE WOMAN—WARRIOR AND POET

Wendy N. Duong[†]

Abstract: Exploration of women's issues in Vietnam strengthens the emerging voice of the "exotic other female" in contemporary international feminist discourse. Any women's movement in Vietnam today must be cast as the revitalization of the Vietnamese woman's collective cultural identity, rather than as a Western imported feminist doctrine. The Vietnamese woman's collective cultural identity is based on the history and cultural folklores of Vietnam, including expressions of feminist ideas in law and literature, and a long history of warfare and collective sufferings, wherein women have been seen as martyrs, national treasures, and laborers in war and in peace.

The advocacy of gender equality in Vietnam today is limited by eight "risk factors." First, Vietnam's strong matriarchal heritage that persisted through its early history has at times led to the disingenuous proposition that Vietnam has no need for a feminist movement. Second, Vietnam's repetitive, prolonged war and poverty have together overshadowed gender issues. Third, women's movements in Vietnam have not evolved into a doctrine with a structured basis that is independent from nationalism, socialism, or literary movements. Fourth, gender equality in Vietnam has become entangled in what this Article describes as the "fallacy of a trio," in which gender equality becomes synonymous with nationalism and socialism. Fifth, the rule of law in Vietnam has traditionally been considered secondary to customs derived from the oppressive values of Vietnamese Confucian society and the autonomy of the Vietnamese agricultural villages. Sixth, women's rights advocacy has been caught up in the "universality versus cultural relativism" discussion, further complicated by the question of whether there should be "Asian-styled gender rights" in Vietnam. Seventh, Vietnam, despite its age, is a new nation with a wide variety of philosophical bases, legal traditions, and paradoxical values. Finally, the single-party political system of modern Vietnam renders any feminist movement susceptible to Party politics.

The limitations on advocacy for gender equality are illustrated by the shortcomings of Vietnam's Year 2000 National Action Plan, which attempted to address women's issues in the aftermath of the United Nations Fourth World Conference on Women held in Beijing in 1995. While the reassertion of cultural identity can effectively empower Vietnamese women, the feminist advocate must approach cultural identity with caution in order to avoid the semantic traps of euphemism, empty ethnocentrism, and unhealthy preoccupation with the past that can impede progress for the future.

[†] This article was originally written as the author's LL.M. thesis in conjunction with a seminar on Asia Pacific Legal Community taught by Professor Raul Pangalangan and Professor William Alford, Director of the Center for East Asia Legal Studies, Harvard University. The author would like to thank the following individuals: Dr. Ta Van Tai, for lending the author research material; Ms. Helena Alvia, S.J.D. candidate, Harvard Law School, for helping the author identify feminist jurisprudence material; Mrs. Phan Ngoc Chan of the Yenching Library, Harvard University, for her invaluable assistance with locating Vietnamese sources; and Professor William Alford for agreeing to supervise the author's article while on sabbatical, giving the author the freedom to follow her instinct, and restoring her faith in the belief that "law as social engineering can be an art" (quoting Professor Alford from the fall seminar).

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Toi muon coi con gio manh, dap lan song du, chem ca trang kinh o be Dong, quiet sach bo coi, danh duoi quan tham bao de cuu dan ra khoi con dam duoi, coi ach no le, chu khong them bat chuoc nguoi doi cui dau cong lung lam ti thiep cho nguoi ta . . .

*I want to ride the strong wind, tread fierce waves, kill sharks in the East Sea, clean up the frontier, drive out greedy and cruel aggressors to save people from drowning; I will not imitate the ordinary others—bowing and kneeling, serving as a concubine to anyone . . .*¹

*Like one fragment of the myriad fragments from a mirror that reflects a common reality [and] identity, I bear the joy and the burden of the collective experience shared by Vietnamese women of all ages. Both a joy and a burden because, while the myriad unfoldings of our own unique circumstances have so enriched our lives and made them more significant, there stubbornly remain warped perceptions which distort and cloud our vision of our own identity and destiny.*²

I. INTRODUCTION

Discussing feminism in the Socialist Republic of Vietnam (“Vietnam”) can be an intellectually dangerous, sensitive, and imprecise task. The conceptual and linguistic structure of the Vietnamese culture contains no framework for feminism as a doctrine. There is no word for “feminism” or “feminist” in the Vietnamese language. (The term “*Nu Si*” traditionally refers to the female literati, and “*Nu Anh Hung*” is used for a heroine.) Vietnamese researchers of women’s studies today define the English word, “feminism,” in shorthand as a social movement “aim[ing] to improve the social position of women in concrete ways.”³

Historically, women’s movements in Vietnam have not stood independently from nationalism or socialism, and feminist advocacy can easily get entangled in party politics or ethnocentric emotionalism. In the single-party state of Vietnam, any form of social advocacy may be viewed with suspicion. Outside Vietnam, particularly in the United States, the exiled Vietnamese community is still infused with anti-communist sentiments, as seen in the 1999 political conflict and demonstrations in Little

¹ Statement attributed by oral literature to Trieu Thi Trinh, A.D. 248. TRAN TRONG KIM, VIETNAM SU LUOC [SUMMARY OF VIETNAMESE HISTORY] 53 (Tan Viet Publishing House 1964).

² Cong Huyen Ton Nu Nha Trang, *The Makings of the National Heroine*, VIETNAM REV., Autumn-Winter 1996, at 388. Dr. Cong Huyen Ton Nu Nha Trang has written on Vietnamese women in research projects supported by the Southeast Asia Program at Cornell University and the Rockefeller Foundation.

³ TRAN THI VAN ANH & LE NGOC HUNG, WOMEN AND DOI MOI IN VIETNAM 35 (1997). The term “feminist” is used primarily by non-Vietnamese researchers to describe a number of female scholars, writers, speakers, and researchers in Vietnam today, although these Vietnamese women do not refer to themselves as such. See, e.g., KAREN GOTTSCHANG TURNER & PHAN THANH HAO, EVEN THE WOMEN MUST FIGHT: MEMORIES OF WAR FROM NORTH VIETNAM 155 (1998).

Saigon, Orange County.⁴ Furthermore, modern Vietnamese sources of news and information have not always been free from propaganda or unaffected by the political conflict between communists and non-communists.⁵

Researching Vietnamese feminism from a legal perspective is a complex endeavor. The difficulty stems from such factors as the legal system in Vietnam, where rights are statutorily enumerated and cannot be implied, and problems in the enforcement of law that can create a gap between law and reality. Research also requires dealing with the distinction between the Vietnamese women in Vietnam (once divided into North and South) and those who live in exile (divided into first- and second-generation). The diversity in the women's cultural and political backgrounds increases the complexity of this endeavor.⁶ At the same time, this subject requires "debugging" the myth and bridging the gap between the common notion of feminism in the West and the stereotype of the demure, victimized Asian woman in Puccini's "Madam Butterfly" or Broadway's "Miss Saigon," an image quite often unchallenged in American popular culture.

Against such backdrop, this Article approaches "Vietnamese feminism" as a search for the positive collective identity of Vietnamese women—something with which all Vietnamese women can identify,

⁴ The anti-communist sentiment results not only from deeply rooted ideological differences, but also from unhealed wounds of "boat people." In March of 1999, a merchant in Little Saigon, Orange County, California, displayed the Socialist Republic of Vietnam's national flag and a picture of Ho Chi Minh as an example of his America-given freedom of speech. Thousands of inhabitants of Little Saigon walked in protest, violence almost erupted, and the case was taken before a California judge, who affirmed the merchant's constitutional rights. The case led to a nationally driven campaign among Vietnamese Americans to review the human rights question in Vietnam, persisting as headline news in the ethnic Vietnamese press, overshadowing the 1999 presidential impeachment as well as the Middle East and European war crises. See, e.g., NGAY NAY [TODAY] NEWSPAPER, Vol. 16, No. 407 (Mar. 15, 1999) (ethnic Vietnamese press).

⁵ Sources referred to include (1) Vietnamese authors of the Socialist Republic of Vietnam; (2) authors who wrote under French colonialism or the defunct South Vietnam; (3) the exiled community in the United States, and other non-communist countries; and (4) a small number of non-published materials and personal interviews.

⁶ The author of this Article had hoped the subject of Vietnamese women would lend itself to the apolitical, universal concern of humanity. Unfortunately, the author has not been able to avoid encountering ideological and politicized viewpoints in the written materials produced by both sides of the Vietnam War during the conflict as well as post-unification. Her reliance on Vietnamese sources published by either side may invoke an emotional reaction from fellow Vietnamese, despite her efforts to adhere to scholastic standards and to draw arguments from all angles. The intertwining nature of truths, myths, and propaganda is further complicated by (1) the uncontrolled mania of self-publication by the Vietnamese exiled community in their need to preserve their views; (2) the inconsistencies and inadequacies in citations and statistics; and (3) the lack of access to publishing and research facilities for Vietnamese authors during wartime. The abundant Vietnam-related literature from the West also put the author in a deeper state of ambivalence, as popular Western sources may contain their own slants and inadvertent errors.

regardless of locale, generation, or ideology.⁷ This Article traces what is inherent in the Vietnamese culture on the role and aspiration of its women through the ages, and explores the developmental path for advocating gender equality in Vietnam. This Article argues that there exists in the Vietnamese heritage evidence of a positive collective identity urging Vietnamese women to take the lead in society and to resist gender and social injustice. At various times and to a more limited extent, the rule of law may reflect this cultural identity and aspiration. To advocate gender equality in Vietnam, it is necessary to revitalize and capitalize on this cultural identity. For Vietnamese women to make a step forward from the nostalgic past uncovered herein, the advocacy of gender equality in Vietnam must necessarily include two inseparable steps: (1) the eradication of gender inequality in all aspects of life, and (2) the improvement of the living conditions of Vietnamese women, whether or not the agenda is set in the context of gender disparity. In other words, equality cannot mean "equality in poverty" and misery.⁸

Part II of this Article summarizes the concept and definitional framework of the term "feminism." Part III provides a general background on Vietnam and Vietnamese women.⁹ In this regard, this Article can only highlight a few important parts of the rich heritage of Vietnam and Vietnamese women because thousands of years of history are not easily confined to a limited space. Part IV identifies eight factors that have hindered the development of a feminist doctrine in Vietnam and continue to challenge the advocacy of feminism in Vietnam today. Part V concludes that Vietnamese women have the ingredients from their cultural and historical backgrounds to undertake the challenge of advocating gender equality in their country, but that the advocate must set restraints on her enthusiasm for the reassertion of her cultural identity.

Although expressions of the collective identity for Vietnamese women may not fit into any existing feminist theories as we know them in the West, the Vietnamese expressions have served the same feminist objectives for generations of Vietnamese women. Because of the unique history of

⁷ Today, researchers of women's studies in Vietnam distinguish gender injustice from social injustice, advocating the incorporation of "the Gender and Development" concept ("GAD") into policy-making, rather than the more limited concept of "Women in Development" ("WID"). See TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, 60-71.

⁸ Phan Thanh Hao, Informal Talk at the Center of East Asia Legal Studies, Harvard Law School (Apr. 23, 1999) (notes on file with author) (Phan Thanh Hao is a Vietnamese journalist).

⁹ Due to a lack of in-country access and field research, this Article relies on statistics from studies conducted at various times during the 1990s, and then makes general observations therefrom, both for historical purposes as well as for ascertaining trends. Thus, the conclusions reached based on statistics are indicative of conditions in Vietnam over the past ten years or so, rather than at any one point of time.

Vietnam and its hybrid culture, a Vietnamese advocate for gender equality should adopt a cultural approach to gender issues, viewing herself as that “exotic other female,”¹⁰ a displaced figure caught between modernization and traditions, quite often portrayed as a non-engaging absentee in the international feminist discourse.

II. THE CONCEPTUAL AND DEFINITIONAL FRAMEWORK OF FEMINISM FOR A STUDY OF VIETNAM

A. *Defending the Esoteric Cultural Approach*

The use of cultural identity as the root of feminism is not entirely new or unwelcomed in today’s climate. The concept has support in two trends of thought already expounded by authors and feminist writers: (1) “cultural appropriation” and (2) the “exotic other female” view.

“Cultural appropriation” focuses on whether, despite individual variation, proof or indicators of a cultural identity can be extracted from the influx of cultural changes and conflicting values characterizing a particular group. Cultural studies theorists have observed the trend for cultural appropriation, which draws a nexus between a cultural object and a group or nation that claims possession to such cultural object, analogous to a creator’s claim that he or she owns certain intellectual property.¹¹ Ascertaining cultural identity for Vietnamese women is an “appropriation” claim, whereupon the culture of the nation becomes the “collective individual,”¹² imagined like a biological organism to be delimited in terms of a set of traits, cultural heritage, and personality.¹³ This “possessive individualism” increasingly dominates the language and logic of political claims to cultural autonomy.¹⁴

Recent anthropological developments show that because cultures are not internally homogeneous, traditions are actively invented, negotiated, or

¹⁰ Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, *New Eng. L. Rev.*, in FEMINIST LEGAL THEORY VOL. II: POSITIONING FEMINIST THEORY WITHIN THE LAW 297-98 (Frances E. Olsen ed., 1995) [hereinafter FEMINIST LEGAL THEORY].

¹¹ See Rosemary F. Coombe, *The Properties of Culture and the Politics of Possessing Identity: Native Claims in the Cultural Appropriation Controversy*, in AFTER IDENTITY: A READER IN LAW AND CULTURE 251-67 (Danielsen & Engle eds., 1994).

¹² *Id.* at 262.

¹³ *Id.*

¹⁴ See, e.g., Richard Handler, *Who Owns the Past?: History, Cultural Property, and the Logic of Possessive Individualism*, in THE POLITICS OF CULTURE 63-74 (Brett Williams ed., 1991); CRAWFORD BROUGH MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* (1962).

even re-imagined the same way social agents negotiate their political lives and relationships. Ultimately, the culture claimed by the group becomes the product of current needs and interpretations.¹⁵ In the case of feminism in Vietnam, this re-invention and re-interpretation can take place to enable the birth of a Vietnamese national feminist culture, rooted in the cultural appropriation phenomenon that has joined together philosophers, feminists, and critical race theorists around the world.¹⁶ The cultural identity re-assertion would serve as the needed “radical act” for decision-makers to take women seriously—the first crucial step of any feminist method.¹⁷

The use of cultural identity as the root of feminism also has support under doctrinal discussion by international feminists relating to the “exotic other female.” These authors argue that international law must recognize the experience of non-western women. In the anthropological sense, the “exotic other female” building her “project” on cultural identity becomes a storyteller, because:

[S]tories, epics, and songs of the people . . . are now beginning to change. The storytellers who used to relate inert episodes now bring them alive and introduce into them modifications which are increasingly fundamental. There is a tendency to bring conflicts up to date and to modernize the kinds of struggle which the stories evoke, together with the names of heroes and types of weapons. The method of allusion is more and more widely used. The formula “This all happened long ago” is substituted with that of “What we are going to speak of happened somewhere else, but it might well have happened here today, and it might happen tomorrow.”¹⁸

Inherent in “storytelling” is the sense of “nostalgia” about the past, but such nostalgic sentiment should not be about the “extinct” and the “begone.” This Article thus invites its readers to travel into the nostalgic past of Vietnam that can be revitalized into a new reality.

The idea of the “exotic other female” setting her own agenda and method has taken form internationally. More recently feminists have turned

¹⁵ Coombe, *supra* note 11, at 263; Handler, *supra* note 14, at 68-69.

¹⁶ Coombe, *supra* note 11, at 266 (citing Martha Minow & Elizabeth Spelman, *In Context, in PRAGMATISM IN LAW AND SOCIETY* 247 (M. Brant & W. Weaver eds., 1991)).

¹⁷ Christine Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 *STAN. L. REV.* 751, 764 (1989) (book review).

¹⁸ Frantz Fanon, *Reciprocal Bases of National Culture and the Fight for Freedom, in THE WRETCHED OF THE EARTH* 191 (Constance Farrington trans., 1968).

their focus from the differences between men and women to the differences among women.¹⁹ In international law, doctrinal or liberal feminists make their universal human rights claims while admittedly dealing with the tension between cultures. Institutional feminists, on the other hand, focus on the enforcement mechanism for women's rights within the existing institutional structure. The external critics, to the contrary, situate themselves outside the human rights system and advocate broader structural changes, from linguistics to philosophy, or social customs.²⁰ These are by no means the only feminist methodologies.²¹

The natural tendency to develop diverse views within feminism can both help and hinder the goal. The woman's point of view is undermined if equated with one single theoretical stance or perspective, and the preoccupation with theories can also hinder a feminist movement. For example, "relational" theorists (those who advocate feminist orientation based on relationships), argue that women are more likely to use a "different voice," stressing responsibilities and relationships rather than abstract principles of rights and justice.²² On the other hand, the distinction between a masculine voice and a feminine voice has also been criticized as sliding uncomfortably into socio-biologism that merely puts women back in their restricted place.²³ To assume one theoretical stance is to undermine the importance of diversity among feminists.²⁴ Specifically, theorists have

¹⁹ Compare, e.g., Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 14 WOMEN'S RTS. L. REP. 151, 164-74 (1992).

²⁰ See, e.g., Engle, *supra* note 10, at 285-87.

²¹ For a different way of categorizing feminist epistemology, see Linda Hirshman, *The Book of "A,"* 70 TEX. L. REV. 971 (1992) (distinguishing rational empiricism, which hopes to achieve neutrality by equal treatment, from other epistemologies; distinguishing further between "positionality" and "pragmatism," and between "parochial" and "standpoint" epistemology).

²² CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

²³ CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989).

²⁴ For example, drawing on postmodernist analysis, Western contemporary feminists stress the inability of any single overarching framework to provide an adequate account of a social experience. AUDRE LORDE, *SISTER OUTSIDER* (1984); Deborah Rhode, *The Woman's Point of View*, in *FEMINIST LEGAL THEORY*, *supra* note 10, at 61-68; Nancy Fraser & Linda Nicholson, *Social Criticism Without Philosophy: An Encounter Between Feminism and Postmodernism*, in *THE INSTITUTION OF PHILOSOPHY: A DISCIPLINE IN CRISIS?* 283 (Avner Cohen & Marcelo Dascal eds., 1988). See also Martha Minow, *Feminist Reason: Getting It and Losing It*, in *FEMINIST LEGAL THEORY*, *supra* note 10, at 47-60. In America, the trend for diversity in the woman's point of view has primarily been used to accommodate racial differences and sexual orientation. See Williams, *supra* note 19. Continental feminists have examined gender issues in other structural ways. In particular, French feminists have undertaken the task of de-constructing the dominant masculine modes of speech and writing. See, e.g., Luce Irigaray, *Sexual Difference*, in *FRENCH FEMINIST THOUGHT: A READER* 119 (Toril Moi ed., 1987); ARLEEN B. DALLERY, *THE POLITICS OF WRITING: ECRITURE FEMININE IN GENDER/BODY/KNOWLEDGE* 52 (A.M. Jaggar & S.R. Bordo eds., 1989). American writers likewise have challenged the sexist nature of language, especially in male-dominated fields. See, e.g., Carol Cohn, *Sex and Death in the Rational World of Defense Intellectuals*, 12 (No. 4) J.

recognized that feminism in the developing world is neither a Western nor communist import, and that perspectives of international law must include the experience of non-Western women, who are drawing the political connections between the subordination that occurs at home and the paternal international structure that sanctions action by the economically and militarily stronger states.²⁵

From the colonial and post-colonial era, the voices of women and of the developing nations have combined, articulating how the perspectives of the subordinated have come together as a cultural coincidence.²⁶ The woman of color has become a visible "exotic other female" whose experience and tradition is, quite often, not readily comprehended elsewhere.²⁷ But the participation of that "other female" is ineffective if all it does is to invoke curiosity. On the other hand, she should not pass up the opportunities to arouse curiosity,²⁸ and her point of view should not be homogenized or essentialized.²⁹ This necessitates reflection on the exotic female's cultural roots.

For a number of reasons, the explorer or advocate of "Vietnamese feminism" runs the risk of being disingenuous. This risk is inherent because feminism—a doctrine capable of producing revolutionary impact on society because it affects the utilization of labor—is discussed within the context of a developing country still recovering from prolonged warfare, foreign influence, and poverty, where the term "revolution" has traditionally been equated with nationalism.³⁰ Issues raised by Third World feminism require a reorientation of thinking to deal with problems of the least fortunate, rather than providing the infrastructure to accommodate the needs of the most

WOMEN CULTURE & SOC'Y 687 (1987) (examining the masculine nature of national defense and nuclear industry, suggesting the dual task of (i) de-constructing techno-strategic discourse and dismantling the dominant voice of militarized masculinity; and (ii) reconstructing alternative visions of possible futures). See also Hilary Charlesworth et al., *Feminist Approaches to International Law*, in FEMINIST LEGAL THEORY, *supra* note 10, at 247 (citing S. HARDING, THE SCIENCE QUESTION IN FEMINISM 194 (1986)).

²⁵ Christine Chinkin, *A Gendered Perspective to the International Use of Force*, 12 AUSTL. YEARBOOK INT'L L. 279, 284 (1992).

²⁶ Charlesworth et al., *supra* note 24, at 250-52.

²⁷ Audre Lorde, *Age, Race, Class, and Sex: Women Redefining Difference*, in SISTER OUTSIDER 114, 117 (1984).

²⁸ Rhode, *supra* note 24, at 67.

²⁹ *Id.* at 68.

³⁰ Linguistically, the term "*cach mang*" [revolution] refers to reforming Heaven's mandate. See HUE-TAM HO TAI, RADICALISM AND THE ORIGIN OF THE VIETNAMESE REVOLUTION 171 (1992). The term is not necessarily the same as "*cach mang vo san*" [revolution of the proletariat or communist revolution]. However, in today's Vietnam, *cach mang* automatically refers to the revolution organized by the Communist Party. For an in-depth exposition of the Vietnamese revolution, see HUE-TAM HO TAI, *supra*.

privileged.³¹ It is all the more important that women's issues in such a society be viewed in the context of culture.

B. Elements that Define Common Objectives and Bind the Vietnamese Advocate to the International Feminist Community

Both Western feminism and the Vietnamese expression of the female identity strive for the following results or objectives:³²

- Promote the pro-active role, positive self-image, and socio-economic and emotional independence of women;³³
- Create public awareness of gender injustice by presenting the plights of women and ways to alleviate them;
- Maximize leadership of, and participation by, women in traditionally male-dominated areas of society;
- Eliminate gender-based societal restrictions; identifying, challenging, and abolishing cultural beliefs and behaviors that reflect or are motivated by gender biases;³⁴
- Bring about legal and social reforms and attitude change to improve the status of women. This involves changing the inequity in the power dynamics between men and women and moving outside the formal legal structure if necessary;
- Achieve equal status, equal opportunities, and equal results for both men and women, which may go beyond equal rights laws.³⁵

³¹ Charlesworth et al., *supra* note 24, at 255.

³² See, e.g., U.N. Fourth World Conference on Women (the "Beijing Conference"), available at <http://www.un.org>; see generally THE INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE (Carol Elizabeth Lockwood et al. eds., ABA Section on International Law and Practice 1998).

³³ In Vietnam, this has been done through, among other things, the use of humorous folk songs to mock and challenge male superiority. See VU NGOC PHAN, TUC NGU CA DAO DAN CA VIET NAM [ANTHOLOGY OF FOLK LITERATURE IN VIETNAM] 401-36 (Hoi Nghien Cuu va Giang Day Van Hoc Thanh Pho Ho Chi Minhed., 9th ed. 1992). One can argue that the use of irony and mockery to combat the chauvinist male is a form of radical feminism.

³⁴ *Id.*

³⁵ Note that scholars have reexamined the normative structures of international law to identify gender bias within state systems and the international community, toward the same or equivalent objectives as those stated herein. See, e.g., Charlesworth et al., *supra* note 24, at 255-68 (arguing that the statist system serves male elites, that power structures within governments are overwhelmingly masculine, and that the public-private distinction in international law excludes women from the public domain and victimizes women in the private sphere); see also Andrew Byrnes, *Women, Feminism and International Human Rights—Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation? Some Current Issues*, 12 AUSTL. YEARBOOK INT'L L. 205 (1992); Shelly Wright, *Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions*, 12 AUSTL. YEARBOOK INT'L L. 242 (1992).

Equality does not necessarily mean having the same or equivalent rights.³⁶ Nor does it necessarily mean the measurement of women under male-imposed standards that require women to be man-like to receive the same benefits and rights as men. Rather, it means ultimately eliminating all forms of subordination and subjugation of women in all aspects of life; and

- Vindicate women's individual rights and their pursuit of happiness through the exercise of their freedom of choice.³⁷

This Article argues that the history, culture, and literature of Vietnam bear seeds of the above elements, which together define the term "feminism" for purposes of the discussion herein. In summary, "feminism" refers to any systematic approach or effort to attain gender equality by striving for any, or all, of the objectives stated above.³⁸ Thus, for purposes of definition, this Article disregards the divergence in theories that color the contemporary feminist discourse, while maintaining the authentic diversity of the women it represents. At bottom, feminism is "a way of asking questions . . . rather than a set of political conclusions about the oppression of women."³⁹ Since diversity of voices within feminism is inevitable, efforts to reconcile feminist methodologies can only be made based on the common objective. Advocates of gender equality all start with a common ground—identifying the plights of women. They also meet in the same playing field as they attempt to eradicate gender injustice, maximize female potential, and improve the living conditions of all women. The voices heard from the Vietnamese culture have travelled the same course, even though they may

³⁶ See, e.g., Drucilla Cornell, *Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State* [hereinafter *Sexual Difference*], in FEMINIST LEGAL THEORY *supra* note 10, at 529; Drucilla L. Cornell, *Gender, Sex, and Equivalent Rights*, in FEMINISTS THEORIZE THE POLITICAL 280, 281 (Judith Butler & Joan W. Scott eds., 1991).

³⁷ See, e.g., CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 153-54 (1989) (discussing freedom, sexual expression, and concepts of the self).

³⁸ This Article does not necessarily include in the definition the notion that feminism has to be in the form of a movement. Such a limited definition would rule out expressions advanced by "sentimentalist" writers and philosophers who remained detached to any movements, yet made contributions to the changing status and image of women by virtue of their own lives, works, and struggles for personal freedom. See SIMONE DE BEAUVOIR, THE SECOND SEX 141 (H.M. Parshley trans. ed., 1974) (using the term "sentimentalist feminist" to describe earlier French writers such as George Sand and Madame De Stael). Because this Article equates feminism in Vietnam with cultural identity as a mode of thinking for the advancement of gender justice, the concept is much broader than a movement, which is only an organized effort to push a certain agenda.

³⁹ Charlesworth et al., *supra* note 24, at 248 (citing Hartsock, *Feminist Theory and the Development of Revolutionary Strategy*, in CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM 56, 58 (Z.R. Eisenstein ed., 1979)); Elizabeth Gross, *Conclusion: What is Feminist Theory?*, in FEMINIST CHALLENGES: SOCIAL AND POLITICAL THEORY 190, 196-97 (C. Pateman & E. Gross eds., 1986).

not have conformed to, or resembled, the theories formulated elsewhere. As one author has noted:

Inequality on the basis of sex, women share. It is women's collective condition. The first task of a movement for social change is to face one's condition and name it. The failure to face and criticize the reality of women's condition, a failure of idealism and denial, is a failure of feminism in its liberal forms.⁴⁰

C. *Developing a Vietnamese Agenda and Methodology Independent of Western Doctrines*

Despite the need to internationalize a women's movement to gain worldwide support, it is unnecessary, awkward, and inherently dangerous, although arguably possible, to translate the "Vietnamese collective female identity" doctrinally into a boilerplate recognizable by the West. The current feminist discourse already contains controversies over the "exotic other female," including, for example, heated debates on the cultural significance of female circumcision practices⁴¹ (which fortunately are not a cultural practice in Vietnam). Western feminists have already been criticized for ignoring or misunderstanding Third World feminists, who represent perhaps the poorest and least privileged populace.⁴² There is no necessity for the Vietnamese woman to inflame these international debates by transforming her cultural experience into a Western-equivalent "doctrine," especially since she is painfully aware that the existence of a "doctrine" would likely add nothing to the strength of her position domestically, considering the constitutionally endorsed single-party, single-doctrine political system of Vietnam.⁴³ Expressions of Vietnamese cultural

⁴⁰ MACKINNON, *supra* note 37, at 241-44. For another review of contemporary progress of feminism and the differences between men and women, see VIRGINIA VALIAN, *WHY SO SLOW: THE ADVANCEMENT OF WOMEN* (1998).

⁴¹ See, e.g., Kay Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 HARV. WOMEN'S L.J. 155, 165 (1985); K. Hayter, *Female Circumcision—Is There a Legal Solution?* J. SOC. WELF. L. (U.K.) 323, 325 (Nov. 1984); Hope Lewis, *Between IRUA and Female "Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 31 (1995).

⁴² Charlesworth et al., *supra* note 24, at 252 (citing K. JAYWARDENA, *FEMINISM AND NATIONALISM IN THE THIRD WORLD* (1986) and C. ENLOE, *MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS: BANANAS, BEACHES AND BASES* 42-64 (1989)).

⁴³ See CONST. OF THE SOCIALIST REPUBLIC OF VIETNAM 1992 [hereinafter 1992 CONST.], pmb1., art. 4, in *THE CONSTITUTIONS OF VIETNAM 1946-1959-1980-1992* 151 (The Gioi 1995).

identity, on the other hand, are less likely to be considered a politically sensitive, suspect group of “doctrines,” as members of the culture tend to accept cultural identity as something apolitical and innate.

To illustrate the problem of “translating” or “transporting” feminism, this Article uses as an example the American liberal feminist agenda, articulated by University of Chicago Law Professor Mary Becker. Professor Becker identified two principle threats to women in America: (1) the rhetoric of rights are being used to hurt women (for example, the right to free speech under the First Amendment of the U.S. Constitution is used to exploit women in pornography); and (2) settled and subconscious biases are reflected in language and should be eliminated (for example, bachelor vs. spinster, master vs. mistress, sir vs. madam, etc.) Both phenomena are out of context in Vietnam.

With respect to Professor Becker’s first phenomenon regarding the use of the right to free speech to sexually exploit women, the incompatibility of American and Vietnamese culture and society is significant. The typical Vietnamese woman living in her single-party state where freedom of speech is politically qualified and cannot be taken for granted would not understand Professor Becker’s First Amendment argument. Furthermore, Professor Becker may not be fully aware of the sad realities faced by Vietnamese women in their developing economy: the trafficking of women⁴⁴ into slavery and prostitution, the sale of mail-order brides,⁴⁵ various other forms of sex trade in which women often willingly participate because of poverty, and the high rate of female mortality due to both back-room abortion and malnutrition.⁴⁶

In such desperate situations, other expressions of womanhood are more meaningful than the free speech issues raised by Professor Becker.

⁴⁴ See, e.g., *The Long Story of Selling/Buying Humans*, PHU NU VIET NAM [VIETNAMESE WOMEN] No. 45 (1959), Sept. 14, 1998 (central communique of the Vietnam Women’s Union reporting the selling and buying of Vietnamese women into China, whereupon the broker would make about 700,000 *dong* per woman sold, or less than U.S. \$70 per woman); PHU NU THU TU [WOMEN’S WEDNESDAY] Year XXIII No. 81, Oct. 21, 1998 (followup reporting on the trafficking of women); PHU NU THU BAY [WOMEN’S SATURDAY] Year XXIII No. 82, Oct. 24, 1998 (continued reporting from Ho Chi Minh City on trafficking of women, including teen girls under sixteen years of age).

⁴⁵ See, e.g., PHU NU THU BAY [WOMEN’S SATURDAY], Year No. XXIII, No. 80, Oct. 17, 1998 (official communique of the Vietnam Women’s Union of Ho Chi Minh City reporting on mail-order bride as means to transport and transact women illegally).

⁴⁶ U.N. Press Release WOM/1105, Status of Women Commission Concludes Discussion of Women and Health, and Follow-up to Beijing Conference (March 3, 1999) (statement attributed to Tran Mai Huong, Vietnam’s spokesperson), available at <http://www.un.org>. Ms. Huong also warned that there are no accurate statistics on sexually transmitted diseases. *Id.* Statistics on AIDS, therefore, must also be difficult to attain with accuracy, although the media reported that Vietnamese are dying daily in area hospitals from AIDS. See PHU NU THU BAY [WOMEN’S SATURDAY] Year XXIII No. 82, Oct. 24, 1998 (reporting from Ho Chi Minh City regarding daily deaths due to AIDS).

One example of such other expressions of womanhood is what Vietnamese women often refer to as the dilemma of the “floating glutinous rice cake.” Two centuries ago, in combating the sexual exploitation of women, the Vietnamese poetess Ho Xuan Huong praised the virtue of the “floating glutinous rice cake.”⁴⁷ The rice cake has no steady form or shape, no constant abode, molded by unseen hands. Facing no imminent prospect of betterment, the Vietnamese woman has only one pragmatic choice: to hold on to, and nurture the “glorious, crimson soul inside that shapeless rice cake.” In the Vietnamese culture, the color red symbolizes power or empowerment, as well as fearlessness and sacrifice. Red also represents joy, luck, and the beautification that restores wholesome femininity. The “crimson soul,” referring to the red-bean filling inside the rice cake, symbolizes humanity, femininity, and the spirit that triumphs over the infliction of indignity upon womanhood. In Vietnam, the “crimson soul” message calling for women to improve their situations within the limitations of their society, is just as feminist, inspirational, and attention-getting as the banners and shouts for free speech, pro-choice, anti-pornography, or political correctness in the United States.

With respect to Professor Becker’s second identified problem, linguistic bias, gender bias in Vietnam does not manifest itself linguistically in the same way as it does in the English language. For example, the Vietnamese language uses a complex system of pronouns to distinguish gender as well as relationship. This system incorporates all family relationships into the first and second person pronouns.⁴⁸ The second person is called “Mr.” or “Mrs.” in an impersonal setting, but may become “Uncle” or “Aunt” when a certain degree of closeness, trust, and respect have been attained in the relationship. If a person views him or herself as subordinate or junior in status, or as an endeared, dependent, younger or “weaker” person, the person would call himself or herself “*em*,” a unisex pronoun which means “junior” or “younger sister or brother.” Men in social units would call themselves “*em*” in relation to a man who is older or higher in rank or respect. “*Em*” is also used generically to refer to babies, children, or

⁴⁷ “*Lon nho mac du tay ke nan, ma em van giu tam long son.*” See THAI BACH, THO HO XUAN HUONG [THE POETRY OF HO XUAN HUONG] 18 (Khai Tri Publishing), reprinted in America by Co So Nhan Van (Nhan Van Publishing 1983).

⁴⁸ DINH VAN DUC, NGU PHAP VIET NAM [VIETNAMESE LINGUISTICS] (NXB Dai Hoc va Trung Hoc Chuyen Nghiep 1986); TRUONG VAN CHINH & NGUYEN HIEN LE, KHAO LUAN VE NGU PHAP VIET NAM [RESEARCH AND DIALOGUE ON VIETNAMESE LINGUISTICS] (Hue University 1963). See also NGUYEN DINH HOA, LANGUAGE IN VIETNAMESE SOCIETY (Patricia Nguyen Thi My-Huong ed., 1980).

students.⁴⁹ The use of the pronoun "*em*" by a woman in the first-person is particularly sensitive because culturally, women have been trained to call themselves "*em*" in dialogues with their husbands. Culturally, when "*em*" is used by a woman to refer to herself, the connotation may automatically affirm the man's social and sexual power.

In today's Vietnam, generally, women may feel the need to refer to themselves in the first person as "*em*," because of their subordinate place in certain social settings. For instance, women who work as "official" tea or coffee servers at business meetings automatically refer to themselves as "*em*" when they address male officials or businessmen. Even when a woman is conducting business in a position other than a tea server, she may feel obligated to use "*em*" to refer to herself in addressing a higher ranked male or the person in control, thereby willingly "lowering" herself into an inferior status. The exception is when the woman is in a position of power. For example, the Vice President of Vietnam, Madame Nguyen Thi Binh, would not refer to herself as "*em*" when addressing the President, the Prime Minister, or the National Assembly.

The feminist's task, therefore, lies not in "de-feminizing" the unisex pronoun "*em*," but rather in addressing the social attitudes of both women and men. Restructuring the language usage would only uproot a complex, yet delicate cultural and linguistic tradition that may not be entirely gender-based. The solution lies instead in changing the contemporary Vietnamese woman's self-image and upgrading her socio-economic and professional standing so that she no longer feels compelled to use the "junior" pronoun to refer to herself. This can only happen if interactions between genders are truly conducted at arm's length with equal leverage. Otherwise, the ill symptoms inherent in the choice of pronouns will continue, reinforcing the cultural conditioning of inferiority that legitimizes social and sexual subordination of the female sex. The process of change must be gradual and must address social attitudes rather than the mere restructuring of language.

III. VIETNAM: BACKGROUND—THE COUNTRY, LAW, POLITICS, AND WOMEN⁵⁰

Within its approximately 329,600 square kilometers, Vietnam has a growing population rapidly approaching eighty-one million, making it the

⁴⁹ In teacher-student relationships, the student may also call himself or herself "*con*," a unisex pronoun which means "child."

⁵⁰ This Part focuses only on features deemed germane, directly or indirectly, to the feminism analysis and is not intended to serve as a country report.

twelfth largest population in the world.⁵¹ Women account for approximately 51% of the population. In the 1990s, the percentage of women in the workforce fluctuated from 50.6% to 52.5%.⁵²

An S-shaped narrow strip of land, Vietnam's 3260 kilometer eastern coast is bordered by the South China Sea (called "East Sea" in Vietnam).⁵³ Its geographical characteristics include mountainous areas, coastal land, and fertile agricultural areas near the Red River in the north and the Mekong River in the south. Farming, fishing, mining, and forestry have traditionally been important in the Vietnamese economy.⁵⁴ The Truong Son (Elongated Mountain Range), the foothills of which contain the Ho Chi Minh Trail,⁵⁵ separates Vietnam from Laos and, in the narrowest part of central Vietnam, almost hovers over the South China Sea.

A. *The Old Country—The Vietnamese Woman and the Myths of Origin*

1. *Mother Vietnam—Who Are You?*

Folklore plays an important role in Vietnamese life⁵⁶ and, hence, has contributed to the identity of Vietnamese women. The following stories taken from Vietnamese folklore illustrate the point: (1) the folklore of the

⁵¹ See U.N. Press Release POP/702, World Bank Declares Strong Support for Reproductive Health Services, Women's Empowerment (Feb. 11, 1999) (statement attributed to Madame Tran thi Trung Chien, Vietnam's Minister of Population of Vietnam) [hereinafter Tran thi Trung Chien's Statement], available at <http://www.un.org>; FREDERICK BURKE & DAVID HOWELL, VIETNAM: A LEGAL BRIEF (Baker & McKenzie 1992). Vietnam's population is also a very young one—sixty percent of the general population is under the age of thirty. President Bill Clinton, Speech delivered at Hanoi University in Hanoi, Vietnam (Nov. 17, 2000).

⁵² TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 86 (citing labor data released by the General Statistical Office, 1991, 1995); The Socialist Republic of Vietnam Government, *Vietnam National Plan of Action for the Advancement of Women in Vietnam by the Year 2000* (Oct. 4, 1997) [hereinafter *NPA 2000*], available at <http://www.un.org/womenwatch/followup/national/vietnam.htm>.

⁵³ Decades of territorial disputes between Vietnam and China over the Paracels and Spratlys Islands increase Vietnam's sensitivity regarding how the South China Sea should be called. The name "South China Sea" is viewed as undermining Vietnam's sovereignty claims to the area. See also Wendy Duong, *The Long Saga of the Spratly Islands "Elongated Sandbanks": Overview of the Territorial Disputes Among Vietnam, China, and other ASEAN Nations in the South China Sea*, in *CURRENTS* 47-55 (Summer 1997). For purposes of this Article, the international name "South China Sea" is used.

⁵⁴ PRICE WATERHOUSE, VIETNAM: A GUIDE TO THE FOREIGN INVESTOR 8 (3d ed. 1994). See also WILLIAM A.W. NEILSON ET AL., VIETNAM INVESTMENT MANUAL 169 (Frederick Burke ed., 1995).

⁵⁵ LICH SU DUONG HO CHI MINH [HISTORY OF THE HO CHI MINH TRAIL] (Hanoi: NXB Quan Doi [Military Publishing] 1995).

⁵⁶ The importance of myths and folklore in the formation of cultural identity is well accepted in cultural anthropology. See, e.g., MARGARET MEAD, *CONTEMPORARY ANTHROPOLOGY SUMMARY* (London 1944); VIEN VAN HOA DAN GIAN [INST. OF FOLK CULTURE], *QUAN NIEM VE FOLKLORE [CONCEPTS OF FOLKLORE]* (1990); NGUYEN DANG THUC, *LICH SU TU TUONG VIET NAM TAP I [HISTORY OF VIETNAMESE THOUGHTS VOL. I]* 35-54 (1992).

“Founding Parents”; (2) the tale of Princess Tien Dung; and (3) the story of the Awaiting Wife. Together, these stories illustrate the indigenous roots of the free-spirited Vietnamese woman who preferred to be master of her fate and demonstrated perseverance in her actions.

a. “The founding parents” folklore

The mountain-meet-ocean geographical characteristic of Vietnam is significant to the cultural identity of Vietnamese women, because the culture associates mountains with fatherhood and the ocean with motherhood.⁵⁷ Yet, in the folklore describing the origin of Vietnam, the Founding Mother *Au Co* (Fairy Bird) took up residence in the mountains, having divorced the Founding Father *Lac Long Quan* (Dragon King), who took up residence in the South China Sea. Theirs was a friendly divorce due to incompatibility, finalized with a mutually agreed settlement, whereupon the couple divided their one hundred children into two resettlement groups. Out of the first one hundred Vietnamese, fifty went with Father, and fifty went with Mother.⁵⁸

⁵⁷ See, e.g., UY BAN KHOA HOC XA HOI VIETNAM [SOCIAL SCIENCES COMMITTEE], LICH SU VIET NAM TAP I [VIETNAMESE HISTORY VOL. I] 11 (Nha Xuat Ban Khoa Hoc Xa Hoi 1971) (noting that “water” or “country” is associated with motherhood). See also “*Cong cha nhu nui Thai Son, nghia me nhu nuoc trong nguon chay ra*” [Father is the Great Mountain, Mother is water from the source] (quote from Vietnamese folk song). NGUYEN DANG THUC, *supra* note 56, at 306; Huynh Sanh Thong, *Live by Water, Die for Water: Metaphors of Vietnamese Culture and History*, VIETNAM REV., Autumn-Winter 1996, at 121 (pointing out that Vietnamese culture associates “water” or “ocean” with the national identity—the word for “country” is the same as “water” in Vietnamese). Cultural heritage is described as “Mother Vietnam” (*Me Viet Nam*) while physical “homeland” is either described as “Father Vietnam” (*Que Cha*) or as “Mother Vietnam” (*Que Me*).

⁵⁸ See, e.g., Tran The Phap, *Truyen Hong Bang [The Story of Hong Bang]*, in LINH NAM CHICH QUAI [THE EXTRAORDINARY ANECDOTES AND LEGENDARY FIGURES OF THE NAM’S] 43-34 (translated from classical text into *Quoc Ngu* by Le Huu Muc, 1961). See also BINH NGUYEN LOC, NGUON GOC MA LAI CUA DAN TOC VIET NAM [THE MALAY ROOTS OF THE VIETNAMESE PEOPLE] 741-42 (La Boi Publishing 1971) (using empirical proof and Western scientific methods to connect Vietnamese culture to Malay culture; recounting folklore of “the one hundred children of a married couple” from Muong ethnic culture (*montagnard* aboriginal group in Vietnam)). Universally cultural anthropological studies of Vietnam have recorded the Founding Mother as a mystical bird (the totem of aboriginal Vietnamese), and the Founding Father as a dragon (a mystical serpent or python). At least one Vietnamese researcher has attempted to trace the history of human cultures and religions to the coiling image of a serpent, representing the cult of the Mother Goddess. See Huynh Sanh Thong, *In the Beginning was a Worm*, VIETNAM REV., Autumn-Winter 1996, at 536-42; Huynh Sanh Thong, *The Serpent, the Wound and the Bow: A New Interpretation of the Myth and Tragedy of Philoctetes*, J. OF UNCONVENTIONAL HISTORY, Winter 1995-96. Today, north Vietnam still has temples worshiping the mystical snake. See Le Xuan Quang, *Loi Noi Dau [Preface]*, in THO THAN O VIET NAM [THE POLYTHEISTIC RELIGIONS OF VIETNAM] vol. 1, 5-6 (Nha Xuat Ban Hai Phong 1996). Huynh Sanh Thong suggested that primitive matriarchy, symbolized by the water snake, persisted in Vietnam during the first Christian millennium, as evidenced by the historical fact that Vietnamese women, rather than men, led the struggle for national territory. He hypothesized that neo-Confucianists might have modified the legend to bring Vietnamese mythology more in line with the Confucian ideal of a father figure. See Huynh Sanh Thong, *supra* note 57, at 139-40.

Thus, Vietnamese associate their myth of origin with the reconciled conflict of a divorce, where Mother, whose nature was that of water, took the form of a bird and flew to the mountains, and Father, whose nature was that of the mountains, took the form of a dragon and swam to the "East Sea."⁵⁹

The "Founding Parents" folklore was documented with different slants, demonstrating the tension between male chauvinism and the feminist voice in Vietnam. In most textbooks written by Vietnamese male historians, the Dragon King had summoned the Fairy Bird and given her a lecture, justifying their divorce based on their "dragon-bird" inherent incompatibility.⁶⁰ In a rarer oral version, no emphasis was placed on who initiated the decision and who complied with it. This version stands for post-conflict consensus building, carried out by both the Dragon King and the Fairy Bird on equal terms. The Founding Mother, or Fairy Bird, is not portrayed as a follower but, instead, as a pioneer who, when driven by need, leads her children toward the mountains, away from the ocean, which culturally signified a mother's natural habitat. This image comports more with the Vietnamese indigenous matriarchal society (*mau he*),⁶¹ whereas the version ascribing decision-making to the Dragon King conforms more to the Confucian patriarchal value. The indigenous culture's notion of a female pioneer was alien to the Confucian female prototype, which was imported to Vietnam during the first period of Chinese governance (111 B.C.-A.D. 39)⁶² The Confucian woman's virtue is in following, not leading.⁶³ Thus, in the

⁵⁹ A number of Vietnamese sources state that the Founding Mother, *Au Co*, and the Founding Father, *Lac Long Quan*, were not just myths, but were real historical figures among the early resettlers from southern China—descendants of the Chinese emperor, Than Nong (the Farming God), who allegedly taught East Asians wet rice farming. QUYNH CU & DO DUC HUNG, *CAC TRIEU DAI VIET NAM [THE VIETNAMESE MONARCHS]* 9-10 (Thanh Nien Publishing 1995).

⁶⁰ One such version was retold in Huynh Sanh Thong, *supra* note 57, at 136-39. In Professor Thong's version, the Founding Father made the decision to divorce, telling the Founding Mother what to do. The couple's 100 children were all sons, but it was the Founding Mother who decided which son should rule the newly founded kingdom. *Id.* at 138. *Accord* TA DUC, TINH YEU TRAI GAI VIET XUA [ROMANTIC LOVE IN ANCIENT VIETNAM] (2d ed. Thanh Nien Publishing 1997) (adamantly alleging that the first 100 Vietnamese—children of the Dragon King and the Fairy Bird—were all handsome sons, oblivious to the fact that if these had been all men the first Vietnamese could not have procreated).

⁶¹ Ho Thi Anh Nguyet, *Truyen Thong Van Hoa, Lich Su Cua Ngươi Phu Nu Viet Nam [The Cultural and Historical Traditions of Vietnamese Women]*, Ky Yeu Dai Hoi Quoc Te 1996: Viet Nam Dan Chu & Phat Trien [Record of the International Congress 1996: Vietnam Democracy and Development] (Hoi Chuyen Gia Viet Nam [The Association of Vietnamese Professionals] Aug. 1996) (citing Toan Anh, NGUOI VIET, DAT VIET, GOC TICH DAN VIET NAM [THE VIETNAMESE PEOPLE, VIETNAMESE LAND, AND THEIR ORIGIN] (Cuu Long Giang 1967)); NAM THIEN NGUYEN DUC SACH, THE VIETNAMESE CULTURAL BIBLE 353 (Hoa Tien Rong 1993); 1 CAO THE DUNG, VIET NAM BINH SU VO DAO [VIETNAMESE MILITARY HISTORY] 141 (Tieng Me 1993); NGUYEN THUY & TRAN MINH XUAN, TINH THAN VIET NAM [THE VIETNAMESE MENTALITY] 51 (Mekong & Ty Nan 1992).

⁶² The first period of Vietnam's subordination to China occurred approximately four centuries after the life of Confucius (551-479 B.C.). See TRAN TRONG KIM, *supra* note 1.

⁶³ One scholar describes the Vietnamese Confucian female prototype as follows:

Confucian model, the “ideal” woman always follows the man, whether he is her father, husband, or son.

As a result of this foundational folklore, womanhood in Vietnam stands not only for strength, productivity, creation, and repair, but also for the tragic and straining notion of self-sacrifice and human struggle. Neither anthropologists nor fable tellers deny that the Fairy Bird led the exodus to the mountains as a *femme sole*, a single parent. Further, since the history of human resettlement seemed to progress from the highlands down to the plateaus (toward water, or the ocean), it appeared that the Fairy Bird was simply leading her children back to her own roots—a survival mission after the equal division of labor with the Dragon King. She was the master of fate, equal to her male partner, undertaking the ambitious and difficult task of resettlement.⁶⁴

b. *The story of Princess Tien Dung*

During the *Hung* Era (2879 to 258 B.C.),⁶⁵ another folktale emerged as a testament to the indigenous Vietnamese woman’s ability to exercise her

She has as guidance the rule of three obediences according to which she was to obey three masters in her life: father, husband, and son. The rationale for her subjugation was the conventional belief in the inferior nature of her sex: she was weak, ignorant, and prone to mistakes, thus she had to constantly depend on men’s wisdom to conduct herself. In order to reflect favorably on the honor of these men, she was most of all expected to uphold the ultimate value of chastity. Chastity in the unmarried girl meant virginity; in the married woman, it referred to her unconditional faithfulness to her husband, alive or dead. To help the woman play well her designated roles, she was reminded to cultivate the four feminine virtues: diligence in housework, attractiveness in person, reticence in speech, and modesty and politeness in behavior.

Cong Huyen Ton Nu Nha Trang, *The Image of Women in Vietnamese Literature*, Guest Lecture on Asian Studies/Women’s Studies; Cornell University (Apr. 1987) (notes on file with author); Cong Huyen Ton Nu Nha Trang, *The Traditional Roles of Women as Reflected in Oral and Written Vietnamese Literature* (1973) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with author). See also NHAT THANH VU VAN KHIEU, DAT LE QUE THOI [CUSTOMS OF THE HOMETLAND] 74, 75 (Ho Chi Minh City Publishing 1992) (describing Confucius values governing Vietnamese women).

⁶⁴ Such high hopes for womanhood were consistent with another Vietnamese legend explaining the beginning of the world: Lady Nu Oa was a woman who bore stones and patched up the broken vault of Heaven. For an innovative discussion of the Lady Nu Oa anecdote, see KIM DINH, HUNG VIET SU CA [THE HISTORICAL CHORAL OF HUNG VIET] (Thang Mo Publishing 1984) (Kim Dinh was a progressive Catholic priest who advocated that Vietnam return immediately to its indigenous maternal culture, represented by Lady Nu Oa, instead of continuing what he considered to be “the paternalism of Mao Tze Tung or Ho Chi Minh thoughts”).

⁶⁵ See NGUYEN KHAC THUAN, THE THU CAC TRIEU VUA VIET NAM [ANNALS OF VIETNAMESE DYNASTIES] (2d ed. Nha Xuat Ban Giao Duc 1996). Since the word “king” in Vietnamese, “vua,” is unisex, there is no historical evidence (other than the long-established, unchallenged assumption) that all of these eighteen rulers were men. It was until much later, through the influence of Chinese literature, that Vietnam imported into its language Chinese words such as *emperor* (*hoang de*), *empress* (*nu hoang*), and

freedom of choice, even an unconventional, unpopular choice. Princess Tien Dung, daughter of a *Hung* king,⁶⁶ decided not to get married, a decision as unconventional to the Confucian model as the Fairy Bird's divorce. The Princess spent her life traveling, and, under extraordinary circumstances, chose for her mate a "homeless" man too poor to even possess the basic possessions, including clothes. As the story goes, Tien Dung traveled with her entourage to a deserted beach and, moved by the beauty of nature, decided to set up a tent to take a bath. Unknown to her, the beach was inhabited by one man, Chu Dong Tu, who was too poor to have any clothes to wear. Seeing the arrival of the princess, the embarrassed Chu Dong Tu hid himself under the sand. Tien Dung's tent was built right above where Chu Dong Tu was hiding. As Tien Dung took her bath, fresh water washed away the sand, and the naked Chu Dong Tu appeared as though he were emerging from the sea. Tien Dung chose Chu Dong Tu as her mate, ignoring the *Hung* king's disapproval of her choice. Tien Dung and Chu Dong Tu became the image of Taoism in the Vietnamese folk culture because of their free life, unattached to materialistic possessions.⁶⁷ For the lesser-educated populace, they symbolized magic.⁶⁸

Princess Tien Dung resurfaced 1400 years later in another folktale, where she appeared as a prophet in the dream of Nguyen Trai, son of a mandarin.⁶⁹ In the dream, she showed Nguyen Trai how to find Le Loi, the founder of the Le Dynasty.⁷⁰ Nguyen Trai allegedly followed her advice and became the premier strategist for the Le emperors.⁷¹

queen (*hoang hau*, meaning wife of a king). At some point, Confucian cultural belief must have connected the unisex word "vua" (king—leader of a kingdom) to the image of a man. At least one writer documented the names of the eighteen *Hung* kings, together with names of successive Chinese governors during periods of Chinese governance. These eighteen names include female-sounding names. See *id.* at 14-15. In various accounts of the myth, the first *Hung* king was the oldest "child" of the Founding Father, Lac Long Quan. Because the word "child" ("con") in Vietnamese is unisex, again there is no historical evidence that the oldest "child" who founded the Van Lang Kingdom was a man. *Id.*

⁶⁶ Tran The Phap, *Truyen Dam Nhat Da* [*The Story of the Nhat Da Marshland*], in LINH NAM TRICH QUAI *supra* note 58, at 51.

⁶⁷ PHAN KE BINH, NAM HAI DI NHAN [THE EXTRAORDINARY FIGURES OF THE SOUTH SEA] 163-68 (Nha Xuat Ban Tre 1996).

⁶⁸ NGUYEN DANG THUC, *supra* note 56, at 248-62.

⁶⁹ A "mandarin" was an official of the King's court: a public servant, government official, or Confucian scholar who had passed the King's examination.

⁷⁰ PHAN KE BINH, *supra* note 67.

⁷¹ NGUYEN NGOC KIM, NGUYEN TRAI: THAN THE VA SU NGHIEP [NGUYEN TRAI: BIOGRAPHY AND ACHIEVEMENT] (Anh Phuong Publishing 1951) (a mystical account of the life story of Nguyen Trai).

c. *The story of the awaiting wife*

The “master of fate” image of the Vietnamese indigenous woman was complemented in folklore with additional attributes, perseverance and resilience, in *The Story of the Awaiting Wife (Hon Vong Phu or Nang To Thi)*.⁷² In a popular version of this folktale, the woman’s husband had been sent to war. As she waited for his return, the young wife, carrying their baby, went to the top of the mountain and stood so that she could see him from afar. Her wait never came to an end, and eventually she turned into a limestone statue. She stood for centuries, overlooking the South China Sea and became part of the mountainous landscape of Vietnam. The story paralleled Western tales regarding humans turning into stone or rock, such as the Greek story of Medusa and the account of the Cities of Sodom and Gomorrah from the Hebrew Torah. In Vietnamese folklore, however, the transformation did not have a negative connotation. Vietnamese tend to regard the Awaiting Wife as a war victim. But, the rueful story can also be interpreted as containing a poetic feminist message: it spoke of how the perseverance and strong will of Vietnamese women could defeat time, capable of turning the perishable flesh and bone into the more permanent formation of rock. Mother Vietnam, in the image of the Awaiting Wife, is the “solidification” and “perpetuation” of a spirit that refuses to disintegrate, determined to reach eternity.

2. *Early Feminist Literature of Vietnam*

More than 1700 years after the stories of the Founding Parents and Princess Tien Dung, the Vietnamese poetess Ho Xuan Huong illustrated this same image of a free-spirited Vietnamese woman who exercised her freedom of choice. The popularity of Ho Xuan Huong’s poetry demonstrated acceptance by the Vietnamese culture of feminist ideas despite Confucian indoctrination.⁷³ In her mid-life, the poetess allegedly led a traveling existence like Princess Tien Dung.⁷⁴ As a young woman, she did

⁷² I NGUYEN DONG CHI, KHO TANG TRUYEN CO TICH VIET NAM [THE TREASURY OF VIETNAMESE FOLK TALES] 404-15 (Vien Van Hoc ed., 7th ed. 1993). The research of this folklorist shows that China also has an analogous folk tale about a wife who turned into stone while waiting for her husband. The “Awaiting Wife” statue is found in the mountainous province of Lang Son, near the Chinese border, north Vietnam, and in various provinces of central Vietnam (Khanh Hoa, Ninh Thuan, and Thanh Hoa). *Id.*

⁷³ THANH LANG, BANG LUOC DO VAN HOC VIET NAM, QUYEN THUONG NEN VAN HOC CO DIEN TU THE KY XIII DEN 1862 [THE MAP OF VIETNAMESE LITERATURE, THE CLASSICS, 18TH CENTURY TO 1862] vol. 1, at 535.

⁷⁴ DANG DINH LUU, NU SY TAY HO [THE POETESS OF TAY HO] 240-55 (Thanh Nien Publishing 1998) (speculating on Ho Xuan Huong’s travelling experience based on her naturalist philosophy).

not have the fortune of freedom of choice. Victimized by a polygamous society, Ho Xuan Huong used her double entendre poetry, full of sexual innuendo and sensual images, to lament for suppressed womanhood and to lash out at respected men in society, including kings, mandarins, monks, scholars, and moralists.⁷⁵ She went as far as declaring that if she could change her destiny and become a man, she would exceed the valor of her male contemporaries.⁷⁶ To defy restrictions, she challenged, "Bury literature underground, discard ambitions onto the cosmos! Heaven's scale of justice has been lost, the metaphysical luggage has been closed!"⁷⁷

In Vietnamese classical literature, Ho Xuan Huong was the champion of womanhood, combining eroticism with the cry against the social injustice inflicted upon women. Vietnamese socialist historians uniformly classified her poetry as feminist in nature and considered her a fighter for women's liberation.⁷⁸ Her lyrical and image-filled poetry addressed issues that were taboo in common discourse, such as the sexual exploitation of women in polygamy, and the hypocrisy of society's criminal and moral deterrence against illegitimate pregnancy. Even at the high point of Vietnam's Confucian culture of the 18th century, she approved of single mothers, voicing the Vietnamese woman's protest against male chauvinism and demonstrating the tension between Confucian ethics and the indigenous culture that accorded women more freedom and respect. Even traditional men of her time admired her poetry because it spoke for the literati's outrage against social injustice. Her work survived primarily through oral recitals, and was not catalogued until the first half of the twentieth century. Even then, male moralists continued to criticize Huong's poetry as immoral, stirring controversial literary debates, including the speculation whether she truly existed or was in fact a man taking on a female pen name.⁷⁹ One truth stands undenied: without the culture's collective stamp of approval, her work would have been buried with time.

Vietnam's folk literature shows ample evidence that the common people sided with Huong's outspokenness. The voice from the ancient

⁷⁵ *Id.*; see also THAI BACH, *supra* note 47.

⁷⁶ NGUYEN KHAC VIEN, *VIETNAM: A LONG HISTORY 135* (Hanoi 1987).

⁷⁷ Author's translation. The original is, "*Chon chat van chuong ba thuoc dat, nem tung ho thi bon phuong troi, Can can tao hoa roi dau mat, mieng tui can khon that lai roi.*" THAI BACH, *supra* note 47, at 69.

⁷⁸ UY BAN KHOA HOC XA HOI, *supra* note 57, at 393.

⁷⁹ See, e.g., THAI BACH, *supra* note 47 (commenting on the scarce biographical data on Ho Xuan Huong's life and the revolutionary, pro-women nature of her work); see also NGUYEN SY TE, *HO XUAN HUONG* (Nguoi Viet Tu Do Publishing 1956) (documenting the various literary debates, including criticism of Ho Xuan Huong's poetry by Nguyen Van Hanh, who used Freudian theory to classify Ho Xuan Huong as a clinical case of sexual suppression).

countryside described an egalitarian division of labor in rice farming between husband and wife,⁸⁰ similar consensus-building in the fishing industry,⁸¹ the wife's domineering role in the household,⁸² and gender equality in social roles.⁸³ Folk songs showed tacit approval of illegitimate pregnancy, denouncing the hypocrisy of love in wedlock and sexual abstinence,⁸⁴ and making fun of the polygamous Vietnamese male, having to "sleep in a pig's farm" because he was incapable of managing his wives.⁸⁵ The folk voice often denounced the supremacy of men, valuing them at "three coins for a dozen," portraying them as helpless beings whom Vietnamese women could "cage" and "carry around" for amusement.⁸⁶ The folk voice freely expressed feelings of love and romanticism, the type of freedom in mating and dating absent in the Confucian tradition or learned literature.⁸⁷ Folk literature also recognized the vulnerability of womanhood in a feudal society, lamenting that a woman was like "a drop of rain, either falling into the palace or out in the rice field," ruefully voicing women's frustration at the lack of control over their lives.⁸⁸ Curiously, in a different

⁸⁰ "*Chong cay, vo cay, con trau di bua*" [husband ploughing, wife harvesting, the buffalo pulling the plough] (folk song).

⁸¹ "*Thuan vo thuan chong tat be Dong cung can*" [Seeing eye to eye, husband and wife can scoop the East Sea] (proverb).

⁸² "*Nhat vo nhi troi*" [Wife first, Heaven second] (proverb); "*Lam trai rua bat quet nha, vo goi thi da, bam ba toi day*," [To be a worthy man I must wash the dishes and sweep the floor; when my wife calls, I respond, "Yes M'am your helper is here!"] (folk song).

⁸³ "*Ong an cha, ba an nem*" [Husband eats bacon, wife eats sausage] (proverb); "*Cua Chong Cong vo*" [Husband's property became wife's because of her labor] (proverb reflecting the concept of community property in indigenous Vietnam).

⁸⁴ "*Khong chong ma chua moi ngoan, co chong ma chua the gian su thuong*" [Pregnancy in wedlock is the norm of ordinary people; only illegitimate pregnancy shows extraordinary piety] (folk song); "*Lang lo chet cung ra ma, chinh chuyen chet cung khieng ra ngoai dong*" [There is no difference between a promiscuous woman and a pious woman; both will die some day, turning into a ghost, having been buried in the same rice field] (folk song).

⁸⁵ "*Mot vo thi nam giuong leo, hai vo thi xuong chuong heo ma nam*" [With one wife he can sleep in bed. With two wives he will be demoted to a pig's farm!] (folk song).

⁸⁶ "*Ba dong mot chuc dan ong, chi bo vao long chi ganh di choi*" [For three coins she can get a dozen of men, whom she cages and carries around for fun] (folk song). See also Mai Thi Tu, *The Vietnamese Woman Yesterday and Today*, in VIETNAMESE WOMAN 18-19 (Xunhasaba 1966) (socialist writer saw protest against gender injustice in folk literature and Ho Xuan Huong's poetry); VU NGOC PHAN, *supra* note 33 (recitation of folk songs ridiculing polygamy, hypocrisy of restrained widowhood, and mistreatment of women and peasants).

⁸⁷ See, e.g., VU NGOC PHAN, *supra* note 33, at 53-62; TA DUC, *supra* note 60.

⁸⁸ "*Than gai nhu hat mua sa, hat vao cung cam hat ra ruong cay . . .*" [A woman is a drop of rain, falling inside the palace or out in the rice field] (folk song). Although folk literature expressed female assertiveness, it also depicted a dependent and helpless woman in an agrarian culture, suffering from prejudices in a male-dominated society. "*Gai khong chong chay nguoc chay xuoi, Khong chong khon lam chi em oi*" [The spinster runs up and down stream [looking for a husband], I must tell my sisters of the plight of being husbandless] (folk song); "*Chang oi phu thiep lam chi, thiep la com nguoi danh khi doi long*" [Why abandon me, my nobleman, just consider me old, left-over rice, your last resort] (folk song); "*Khon ngoan cung the dan ba, dau la vung dai cung la dan ong*" [She is smart, she is still a woman; he is

time and place, Western feminists might have agreed with the “drop of rain” metaphor used by the ancient Vietnamese folk voice.⁸⁹

Both folklore and learned literature have greatly contributed to the cultural identity of Vietnamese women.⁹⁰ Spiritually, the Vietnamese culture has a long history of worshiping femininity through goddesses and deities, and bases the structure of life on the reconciliation between the “yin” (motherhood) and the “yang” (fatherhood), viewing femininity as a stabilizing force.⁹¹ Nonetheless, at the beginning of the 21st century, Vietnam is a complex society whose economic needs overpower the longing for nostalgic mysticism, and whose social development cannot depend solely on the richness of its ancient poetry, folkloric myths, or cosmology.

dumb, he is still a man] (folk song); “*Chong gian thi vo lam lanh, mieng cuoi hon ho rang anh gian gi?*” [When her husband is mad, she must yield; smiling cheerfully, she must ask to soothe his fury]. For a discussion of the paradoxical values on gender relations in Vietnamese society, see discussion *infra* Part IV. Oppression of women was portrayed by early French colonists as they came into contact with life of the Hue imperial court: forty-three women serviced the emperor’s quarters, thirty women functioned as his guards, thirteen others took care of his hygiene, clothes, nails, hair, cigarettes, and ink. At night, the women slept around his bed, prepared to serve as shields in case of an assassination attempt. Description of the twenty-five-year-old Emperor Dong Khanh, who reportedly had 100 royal concubines, was as follows. Every day a group of women took turns servicing him. At least five women were around all the time, taking care of his hygiene, preparing his turban, manicure, perfumed oil, with the goal that every detail be perfect. This same group of five women also served his meals. See TON THAT BINH, KE CHUYEN CAC VUONG PHI, CONG CHUA, NU CUNG TRJEU NGUYEN [TALES OF THE ROYAL CONSORTS, PRINCESSES AND ROYAL MAIDS OF THE NGUYEN DYNASTY] 67-68, 144 (Nha Xuat Ban Da Nang 1996) (citing CH. GOSSELIN, L’EMPIRE DE’ANNAM, and F. BAILLE, LES ANNAMITES). The Nguyen emperors modeled their Violet City (*Tu Cam Thanh*) after Peking’s Forbidden City. However, the Vietnamese monarch was simply a miniature compared to Peking. Overall, the subordination of women in royal servitude in Hue was much less severe and treatment more humanitarian. For example, the Vietnamese Violet City had no prison for disfavored wives, concubines, or royal maids. Further, when the emperor died, his wives did not have to die to serve him on “the other side of the world,” as they did under certain dynasties of China (e.g., one of the Chu emperors, who allegedly died in 771 B.C. and one of the Ming emperors, who allegedly died in 1424). See TON THAT BINH, *supra*, at 19. Royal concubines and maids of a Nguyen king, however, were moved from the palace to modest abodes near his tomb so they could take care of the tomb and its surroundings. CAO THE DUNG, CHAN DUNG PHU NU VIET NAM TRONG VAN HOA SU [PORTRAYAL OF VIETNAMESE WOMEN IN CULTURAL HISTORY] 234 (Tieng Me Publishing 1990).

⁸⁹ After years of articulating gender advancement, at least one writer from the western hemisphere still sketches an extremely hopeless vision of the alienation between the sexes, viewing women today as colonized objects shaped by and for men, in a system of male dominance motivated entirely by the male sex drive. See MACKINNON, *supra* note 37. For a critique thereof, see *Sexual Difference*, *supra* note 36; Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN.L.REV. 581, 590-601 (1989). See also Lucie E. White, Seeking “. . . The Faces of Otherness . . .”: A Response to Professors Sarat, Felstiner, and Cahn, 77 CORNELL L.REV. 1499 (1992).

⁹⁰ Cong Huyen Ton Nu Nha Trang, *supra* note 63.

⁹¹ 2 NGUYEN DANG THUC, *supra* note 56, at 102-15, 181; NEIL L. JAMIESON, UNDERSTANDING VIETNAM 11-28 (1993).

B. *Economic Transition under the Doi Moi Policy—A New Nation, New Constitution, and New Laws—But What Has Happened to Women?*

1. *Vietnam's Economic and Legal Changes*

A basic understanding of Vietnam's economic history and condition is necessary to put women's issues into perspective. After the fall of Saigon on April 30, 1975, the Vietnamese Communist Party ("Party") immediately implemented a centralized economy in South Vietnam, abolishing the existing private sector. Saigon became Ho Chi Minh City, and its "liberation" date of April 30, 1975 was declared a national holiday.⁹² Urban Vietnamese were moved to "economic zones" and forced back to manual labor, and collaborators of the South Vietnamese regime were sent to re-education camps.⁹³ A unified Socialist Republic of Vietnam was formed in 1976, replacing the former Democratic Republic of Vietnam (North Vietnam).⁹⁴ This economic restructuring, together with disastrous harvests, the war against China, Vietnam's invasion of Cambodia in the late 1970s, the ongoing U.S. trade embargo,⁹⁵ and finally the collapse of the Soviet Bloc, led to Vietnam's economic deterioration.

⁹² BO LUAT LAO DONG CUA NUOC CONG XA HOI CHU NGHIA VIET NAM VA CAC VAN BAN HUONG DAN THI HANH [THE LABOUR CODE OF THE SOCIALIST REPUBLIC OF VIETNAM AND IMPLEMENTATION DOCUMENTS] (1994), art. 73 (Vietnam) [hereinafter LABOR CODE] (declaring April 30 as Victory Day, one of the five national holidays).

⁹³ See, e.g., DOAN VAN TOAI & DAVID CHANUFF, *THE VIETNAMESE GULAG* (1986) (account of hellish life in Vietnamese re-education camp); BRIGITTE FRIANG, *LA MOUSSON DE LA LIBERTE VIETNAM: DU COLONIALISME AU STALINISME* (1976) (narrative of life in Saigon after 1975 by a young Vietnamese intellectual who stayed as a volunteer to serve the new regime and then escaped by boat).

⁹⁴ See TRUONG NHU TANG, *A VIETCONG MEMOIR*, 283-90 (1985); NAYAN CHANDA, *BROTHER ENEMY—THE WAR AFTER THE WAR: A HISTORY OF INDOCHINA SINCE THE FALL OF SAIGON* (1986). See also 1992 CONST., *supra* note 43, pmb1. (declaring the formation of the unified Vietnam on July 2, 1976).

⁹⁵ The United States imposed a trade embargo against North Vietnam as of April 1954, and against the unified Vietnam as of May 1975. The 1988 Bush Administration established a "road map" approach, tying relations between the United States and Vietnam to issues concerning Americans "Missing In Action" ("MIA") in Vietnam. The "road map" involved a step-by-step gauging of Vietnamese actions and progress. In the early 1990s, the United States removed its objections to the lending of international funds to Vietnam by multi-lateral institutions such as the International Monetary Fund ("IMF") and the World Bank. See Baker & McKenzie, *Vietnam: Overview of the Institutional and Legal Framework, The Petroleum Law, and Relevant Legal Matters in the Socialist Republic of Vietnam* (1993) (unpublished manuscript, on file with author). President Clinton lifted the embargo in 1994. In 1995, a Liaison Office was established in Hanoi to handle the MIA issue and to pave the way for the opening of an embassy. The United States appointed an ambassador to Vietnam in 1996. Symbolic of restored relations between the two countries is the making of the film "*Sound of the Violin at My Lai*," directed and produced by Vietnamese artists, describing the reunion between a few American soldiers who saved a few villagers during the unfortunate My Lai massacre, and how one American soldier had returned to My Lai with his violin. See PHU NU VIETNAM [VIETNAMESE WOMEN] No. 50 (1964), Oct. 12, 1998 (reporting on the making of the film).

In 1986, the Sixth Vietnamese Communist Party Congress announced *Doi Moi*, a renovation policy that combines socialism with a market economy.⁹⁶ Under *Doi Moi*, Vietnam initiated a vast program of legal reforms,⁹⁷ beginning with the enactment of the Foreign Investment Law in 1987.⁹⁸ However, because of the persistence of the U.S. trade embargo, it was not until after February 1994 that Americans could invest in Vietnam. Vietnam thus had approximately three years of commercial relations with the United States (1994-1997) before the regional currency crisis devastated Asia's economy and slowed the progress of Vietnam in the late 1990s. But even before the crisis, Vietnam's economic growth had slowed down, partly because of the Party's resistance to reforming the state sector, causing the World Bank to urge bluntly for more substantial reforms.⁹⁹

Vietnam's efforts to revamp its legal system in order to create economic change has led to tension with foreign countries to whom Vietnam

⁹⁶ *Doi Moi* came about at a time when the Vietnamese post-war society, with the North and South having been united, seemed no longer able to define humanitarianism. These realities were astutely portrayed in Tran Van Thuy's banned art film, "*How to Behave*," released due to the intervention of the "father" of *Doi Moi*, the Sixth Congress Communist Party leader Nguyen Van Linh. The film was characterized by the *American Historical Review* as "an important historical document . . . A fascinating glimpse into Vietnamese society at the start of economic and social change." Cf. Worcester Consortium Colloquium, *Memories, Markets and Militaries: Vietnam in the 1990s*, Clark University, Holy Cross College (Nov. 7-8, 1996).

⁹⁷ *Doi Moi* has undermined the country's communist label. One dominant "socialist" feature left in Vietnam's economy today is its Land Law, which prohibits private ownership of land (subjecting foreign investors, therefore, to long-term leases of land use rights). See Baker & McKenzie, *supra* note 95. This feature of the Land Law is a direct vestige of the Soviet-style command economy, implemented in North Vietnam immediately after the declaration of independence from the French in 1954. See John Gillespie, *Private Commercial Rights in Vietnam: A Comparative Analysis*, 30 STAN. J. INT'L L. 325, 330 (1994); Carol Rose, *The "New" Law and Development Movement in the Post-Cold War Era*, 32 L. & SOC'Y REV. 93, 95 (1998).

⁹⁸ The Foreign Investment Law was modeled after China's investment regime, offering three legal forms for foreign investors to do business: the joint venture, the wholly-owned foreign enterprise, and the business cooperative contract. See *Luat Dau Tu Nuoc Ngoai Tai Viet Nam* [The Law on Foreign Investment] (amended 1990, 1992) (Vietnam); Nghi Dinh Cua Chinh Phu Quy Dinh Chi Tiet Viiec Thi Hanh Luat Dau Tu Nuoc Ngoai Tai Viet Nam [Decree 18-CP Regulations Governing in Detail the Implementation of the Law on Foreign Investment in Vietnam] (Apr. 16, 1993) (Vietnam). The "Representative Office" is a separate form for the foreign company to establish an in-country presence without a profit-making operation. See Circular No. 3/TM-CP Guiding the Implementation of the Law on the Establishment and Operation of Representative Offices of Foreign Economic Organizations in Vietnam, Ministry of Trade (Feb. 10, 1995), VIETNAM L. & LEGAL FORUM, Mar. 1995, at 24-26. See also Interview with Nguyen Van Ich, former chairman of the State Committee for Cooperation and Investment (defunct licensing authority for foreign investment in Vietnam at the inception of *Doi Moi*) (notes on file with author) (Mr. Ich recounted the experience of drafting Vietnam's Foreign Investment Law). ACCORD CLIFFORD CHANCE, VIETNAM: A GUIDE TO THE LEGAL FRAMEWORK (1994).

⁹⁹ Nayon Chanda, *Blown Away*, FAR E. ECON. REV. Dec. 25, 1997-Jan. 1, 1998, at 22, 26. ACCORD ASIA DEVELOPMENT BANK, BUILDING SUSTAINABILITY FOR LEGAL TRAINING OF GOVERNMENT LAWYERS IN VIETNAM (1997); ASIA DEVELOPMENT BANK, INSTITUTIONALIZING LEGAL TRAINING (1998); ASIA DEVELOPMENT BANK, RETRAINING LEGAL PROFESSIONALS IN A MARKET ECONOMY (1998).

has looked to for guidance.¹⁰⁰ In 1995, eight years after the enactment of Vietnam's Foreign Investment Law that implemented *Doi Moi*, an American corporate attorney described Vietnam as follows:

[T]he place . . . appears to be much like the [People's Republic of China (PRC)]: no freedom of assembly, no free press, a nation controlled by one political party and its Politburo, the possibility of being imprisoned for undermining the policy of unity and, essentially, no rule of law but rather a system where law is a tool of the government and that word covers a multitude of bureaucrats. Add to this costs and the corruption factors (not caused solely by the Vietnamese but also encouraged by early foreign investors) and you have a clone of the PRC. Perhaps there is the difficulty in business and social styles between the people of old North and South Vietnam, compounded by the fact that, economically, the South is to the North what Guangzhou is to Beijing . . . Externally, Vietnam has a 2,200-year-old problem: [the PRC] . . . [H]ow do I see Vietnam developing? My guess is that it will adopt a French-like civil code, an American-style commercial code, an American-style financial structure, a PRC-style administrative system . . .¹⁰¹

Vietnam's experience with foreign legal assistance demonstrates the tension between economic changes through legal reforms and a single-party political framework that remains purposely intact (China experienced the same tension in its economic and legal reforms decades ago).¹⁰² Vietnamese officials temper their welcome of foreign legal assistance with concerns that outside actors, particularly from the United States, may seek to overthrow the Party, a paranoia intensified by President Clinton's expressed hope that

¹⁰⁰ This call for foreign legal assistance occasioned the re-ignition of the "Law and Development Movement" of the 1960s and 1970s. Help has come from international institutions, philanthropy organizations, the private sector, and a few European countries. See Rose, *supra* note 97, at 105-20.

¹⁰¹ Edward Neunuebel, *Vietnam: An American Lawyer's Perspective*, in VIETNAM LAW YEARBOOK 1995 (Stuart Allen ed., 1995).

¹⁰² *Id.*; Mark Sidel, *Law Reform in Vietnam: The Complex Transition from Socialist and Soviet Models in Legal Scholarship and Training*, 11 UCLA PAC. BASIN L. J. 221 (1993). Compare William P. Alford, *Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers*, 141 CHINA Q. 22 (1995).

normalized diplomatic and trade relations should advance the cause of freedom in Vietnam as it did in Eastern Europe.¹⁰³

The tension is conceptually captured in Vietnam's current constitutional framework. In 1992, six years after the institution of *Doi Moi*, the National Assembly revised the Constitution, incorporating *Doi Moi* into the law of the land. The 1992 Constitution formally recognizes the private economic sector,¹⁰⁴ while maintaining Vietnam's single-party Marxist political philosophy, establishing clearly that the Party represents the interest of the people and the State, and is the "force leading the State and society."¹⁰⁵

The main challenge to Vietnam has been the development and mastery of new concepts and the reflection of these concepts in new legislation.¹⁰⁶ In 1995, the private international bar observed that in the decade after *Doi Moi* was first announced, Vietnam had passed 120 laws and more than 1000 decrees, circulars,¹⁰⁷ ordinances, and decisions.¹⁰⁸ Only

¹⁰³ See Sidel, *supra* note 102. On a number of political issues, Vietnam underwent a complete about-face. Overseas Vietnamese were encouraged to return and invest in the country. 1992 CONST., *supra* note 43, art. 25. A U.S. law firm was retained to defend Vietnam's position against China in the Spratlys territorial dispute. See Covington & Burling, *Opinion Re: Competing Claims of Vietnam and China in the Vanguard Bank and Blue Dragon Areas* (Jan. 27, 1995). The *Hoa Lo* (once a prison nicknamed "Hanoi Hilton") today is a foreign-owned joint venture hotel. In July 1995, Vietnam joined ASEAN and became the first socialist member of an organization initially established to counter communism, creating much trepidation on all sides whether its socialist trade regime could adjust fast enough for the ASEAN agenda. See Manuel F. Montes, *The Economic Miracle in a Haze*, in GROWING PAINS: ASEAN'S ECONOMIC AND POLITICAL CHANGES (Asia Society 1997).

¹⁰⁴ The 1992 Constitution describes the Vietnamese economy as: "a multi-component commodity economy operating in accordance with market mechanisms under the management of the State and following the socialist orientation." 1992 CONST., *supra* note 43, art. 15. See also *id.* art. 21 (recognizing private capitalist sector).

¹⁰⁵ *Id.* art. 4.

¹⁰⁶ See ASIA DEVELOPMENT BANK, TECHNICAL ASSISTANCE FOR RE-TRAINING OF GOVERNMENT LEGAL OFFICERS (1998); ASIA DEVELOPMENT BANK, BUILDING SUSTAINABILITY FOR LEGAL TRAINING OF GOVERNMENT LAWYERS IN THE SOCIALIST REPUBLIC OF VIETNAM (1997). At the lifting of the U.S. trade embargo, investors voiced the following concerns about Vietnam: inadequacies in the legal system; long term political instability; bureaucracy and arbitrary applications of the rules of law; and infrastructure inadequacies. See THE ECONOMIST CONFERENCES, OPERATING IN VIETNAM: A MANAGEMENT FORUM 16 (1994) (Conclusions Paper of Conference in Ho Chi Minh City, Apr. 11-12, 1994, sponsored by Bank of America and the law firm of Baker & McKenzie) [hereinafter THE ECONOMIST CONFERENCES].

¹⁰⁷ Circulars in the Vietnamese legal system are administrative orders issued or promulgated by various government ministries and agencies.

¹⁰⁸ THE ECONOMIST CONFERENCES, *supra* note 106, at 33 (statement by Nguyen Tan Hai, Baker & McKenzie Representative, Hanoi); see also Rose, *supra* note 97, at 96-97. "Law" is enacted by the National Assembly and has the highest precedential value below the Constitution. Other "sub-Law" documents (Presidential Orders, Government Decrees, and Ministerial Circulars), while having the "legal" effect of law, are issued by the executive branch. See Hoang The Lien, Democracy in the Renovation "Doi Moi" of Vietnam, Presentation at the 1992 International Symposium on Democratic Experiences in Southeast Asian countries, Thmamasat University, Bangkok, Thailand (Dec. 7-8, 1992) (on file with author).

forty-four written policies were issued concerning women, in whole or in part,¹⁰⁹ and only nineteen resolutions, decisions and decrees addressed women's issues.¹¹⁰ The enactment of a large number of new laws is useless if they fail to address important concerns, including the concerns of women, or to implement effective solutions and achieve the purpose of the rule of law.

2. *Women and Vietnam's Human Rights Record*

In general, the 1986 legal and economic reforms under *Doi Moi* have improved human rights in Vietnam. Throughout the eighties and early nineties, Vietnam released political prisoners associated with the former South Vietnam and allowed them to join their families in the United States. Those who stayed in the country had their citizenship restored. Key dissident writers and poets were released and allowed to immigrate to the United States after long years of imprisonment.¹¹¹ Most recently, Vietnam released U.S.-trained professor Doan Viet Hoat, who taught at *Van Hanh*, the only Buddhist private university in Saigon under the previous regime.¹¹² Several well-known artists were allowed to visit foreign countries, including the United States.¹¹³

The 1992 Constitution guarantees freedom of movement, domestically and abroad (entry and exit), freedom of speech, freedom of the press, freedom of association, and freedom of demonstration, but only "in accordance with the provisions of law."¹¹⁴ The 1992 Constitution protects freedom of religion, but also declares that no one "can misuse beliefs and religions to contravene the law and State policies."¹¹⁵ The Vatican nominee to Vietnam was rejected,¹¹⁶ and the arrests of Buddhist monks and open

¹⁰⁹ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 226.

¹¹⁰ *Id.* at 225-26.

¹¹¹ Among these individuals was the dissident poet Nguyen Chi Thien, now in his sixties, who had been in prison since eighteen years of age. Since his arrival in the United States, the poet has appeared to give testimony before the U.S. Congress.

¹¹² See DOAN VIET HOAT VA NHOM DIEN DAN TU DO [DOAN VIET HOAT AND THE CASE OF THE FREEDOM FORUM] (Tram Hoa Publishing 1993).

¹¹³ One such visiting artist was Nguyen Huy Thiep, whose short stories artfully wiped out the historical distinction between heroes and anti-heroes, arguably construed as implicit criticism of the one-dimensional reverence given to the ruling party and its leaders. See NGAY NAY [TODAY] Newspaper, vol 16, No. 399 (Houston, Tex Oct. 15, 1998) (Vietnamese ethnic press reporting on Nguyen Huy Thiep's visit to University of California at Berkeley). See also K.W. Taylor, *Locating and Translating Boundaries in Nguyen Huy Thiep's Short Stories*, VIETNAM REV. 439-65 (Autumn-Winter 1996).

¹¹⁴ 1992 CONST., *supra* note 43 arts. 68, 69.

¹¹⁵ *Id.* art. 70.

¹¹⁶ See, e.g., ECON. INTELLIGENCE UNIT, COUNTRY REPORT: INDOCHINA: VIETNAM LAOS CAMBODIA 15 (4th quarter 1993) [hereinafter THE ECONOMIST INTELLIGENCE UNIT].

conflicts between the government and the United Buddhist Church caught international attention as early as 1993.¹¹⁷ The most recent controversy involves the dismissal of General Tran Do from the Party, as well as the various criticisms directed at the Party, raised by Tran Do and his defenders.¹¹⁸

Doi Moi has also improved the plight of "boat people." Together with the repatriation policy of neighboring Asian countries, *Doi Moi* stopped the flow of boat people who risked their lives at sea and crowded the ports of Asia to escape the socialist regime.¹¹⁹ In the late 1970s and the 1980s, the plights of boat people included the plights of many Vietnamese women and children who escaped the regime. An undocumented number of them were raped by pirates at sea, left despaired in crowded refugee camps while waiting resettlement, or left suffering from other mental health, culture shock, and adjustment problems associated with exile, displacement, and resettlement.¹²⁰ Those who stayed in Vietnam shared in the collective plights of poverty and political transitions.¹²¹

However, changes under *Doi Moi* have occurred either in isolation or incrementally. As of 1997, one author reported the result of a Freedom House study giving Vietnam a score of 6.8 in terms of human rights violations (a score of one representing the best performance and a score of eight representing the worst).¹²² On the other hand, Vietnamese jurists have

¹¹⁷ *Id.* at 13-14.

¹¹⁸ Nguyen Van Dao, *Cuu Thu Truong Ng.V.Dao Cong Khai Benh Tran Do, To Lanh Dao Tham Nhung*, [Former Vice Minister Ng.V.Dao Defended General Tran Do, Charging Corruption by Leadership], Viet tu Trong Nuoc [Column from Vietnam] NGAY NAY NEWSPAPER, No. 407, Mar. 15, 1999; General Pham Hong Son, "Dang Lanh Dao, Dang Cam Quyen," ["the Party Leads, the Party Controls"], Viet tu Trong Nuoc [Column from Vietnam] NGAY NAY [TODAY] NEWSPAPER, No. 407, Mar. 15, 1999. Although critical of the Party and the government, the opposition voices remain loyal and complementary to Ho Chi Minh and his legacy.

¹¹⁹ Compare William S. Ellis, *Hong Kong's Refugee Dilemma*, 156 NAT'L GEOGRAPHIC 709 (1979) and Janelle M. Diller, *In Search of Asylum: Vietnamese Boat People in Hong Kong* (The Indochina Resource Action Center, Nov. 1988). See also B. GRANT, *BOAT PEOPLE: AN AGE' INVESTIGATION* (1979) (account of Chinese expulsion from Vietnam); J. HASKINS, *THE NEW AMERICANS: VIETNAMESE BOAT PEOPLE* (1980); L. HITCHCOX, *VIETNAMESE REFUGEES IN SOUTHEAST ASIAN CAMPS* (1991); L. Knoll, *Hong Kong: Plight of the Boat People*, 179 NAT'L GEOGRAPHIC 133 (1991); R. ROSENBLATT, *CHILDREN OF WAR* (1983) (account of Sino-Vietnamese teens escaping by boat to Hong Kong).

¹²⁰ See generally *supra* note 119.

¹²¹ See generally CHANDA, *supra* note 94; W. DUIKER, *VIETNAM SINCE THE FALL OF SAIGON* (rev. ed. 1985). Compare TRUNG TAM KHOA HOC XA HOI VA NHAN VAN QUOC GIA, VIEN SU HOC [CENTER OF SOCIAL SCIENCE & HUMANITY, THE HISTORY INSTITUTE], THANG LOI KHANG CHIEN CHONG MY VA 20 NAM XAY DUNG DAT NUOC SAU CHIEN TRANH [ANTI-AMERICAN VICTORY AND 20 YEARS OF POST-WAR RECONSTRUCTION] (1995); VIETNAM TODAY: ASSESSING THE NEW TRENDS (Thai Quang Trung ed., 1990).

¹²² John D. Montgomery, *Are Asian Values Different?*, in *VALUES IN EDUCATION: SOCIAL CAPITAL FORMATION IN ASIA AND THE PACIFIC* (John Montgomery ed., Hollis Publishing 1997) (Professor Montgomery is Ford Foundation Professor of International Studies, Emeritus, at Harvard and Director of Soka University of America's Pacific Basin Research Center).

defended the human rights record of the Party, maintaining that at all times Vietnam's current political system observes democratic and humanistic values. Although Vietnam did not join the United Nations until 1977, it has been a party to a number of important international conventions and covenants on human rights, *inter alia*, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the 1966 Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; and the 1990 Convention on the Rights of the Child.¹²³ The Socialist Republic, according to these writers, represents the harmony and balance between the individual and the public good.¹²⁴

Despite the open-door policy of *Doi Moi*, the government occasionally views foreign influence and social changes as possible political risks to the Party. For example, the Party, through its official communique, the *Nhan Dan* newspaper (The People), reminds the public of the danger of "peaceful evolution" (*dien bien hoa binh*), referring to the process of peacefully overthrowing the government by instigating social changes, typically through "cultural products."¹²⁵ The Party also views Ho Chi Minh City (formerly Saigon) as a "prime ground" for subversive activities.¹²⁶ During the 1996 voting and meeting of the Party Congress, the government imposed interim restrictive measures upon foreigners' travels to the country for the week.¹²⁷ Women's issues, however, may not fall under this scrutiny,

¹²³ See, e.g., Le Minh Thong, *Nghien Cuu Ly Luan: 50 Nam—Tuyen Ngon The Gioi Ve Quyen Con Nguoi*, [Editorial: Fifty years After the Universal Declaration of Human Rights], in NHA NUOC VA PHAP LUAT [STATE AND LAW] (monthly publication) No. 4(120) (The Institute of State and Law, National Center for Social Sciences and Humanities 1998), at 33-43.

¹²⁴ *Id.*

¹²⁵ See, e.g., Diep Minh Tuyen, *Trao Doi Y Kien: Nhan Dien Am Muu Dien Bien Hoa Binh Trong Van Hoc Nghe Thuat*, [Editorial: Recognizing the Conspiracy of Peaceful Evolution in Literature and the Arts], NHAN DAN Newspaper No. 44(352), Oct. 29, 1995. See also Nguyen Nham, *Why Is the Management of the State by Law still Weak?*, QUAN DOI NHAN DAN [PEOPLE'S MILITARY], June 3, 1997, at 3; Foreign Broadcast Information Service-East Asia, FBIS-EAS-97-203, July 22, 1997, at 3 (U.S. Government Translation Service).

¹²⁶ See, e.g., *Vietnam, Human Rights in a Season of Transition: Law and Dissent in the Socialist Republic of Vietnam*, HUMAN RIGHTS WATCH REP. 7(12), Aug. 1995, <http://www.hrw.org/hrw/reports/1995/Vietnam2.htm>, at 2-4.

¹²⁷ See *Vietnam Bars Foreigners*, ASIAN WALL ST. J., June 12, 1968. At one time, the Vietnamese government continued to show sensitivity to human rights discussions, even if it this meant opening old

as they can emerge as joint concerns of the government and activists. There has been no reported case in Vietnam where an advocate of women's rights was detained because of outspokenness.¹²⁸

With regard to female labor issues, *Doi Moi* spurred new concerns. Although *Doi Moi* improved the economic climate by spawning new jobs in new factories (run by either domestic enterprises or foreign-owned joint venture enterprises), it also created new problems with respect to female labor. For example, a Vietnamese journalist stated that as of 1995, at least 18.5% of Vietnamese women worked consistently over sixty hours per week, including Sundays,¹²⁹ at an average salary of U.S. \$50 per month.¹³⁰ The same journalist reported that in certain joint venture factories, female workers had their mouths taped so they would not talk during assembly work, and those who violated workplace rules were confined in restrooms as a form of punishment.¹³¹ About 44.3% of the female workers in foreign-owned joint venture factories surveyed in a study responded that they were physically ill at work, yet had to keep working for fear they would lose their jobs.¹³² The well-publicized labor-management dispute in Nike factories in Vietnam raised allegations of sexual and physical abuse, presenting another example of the tension between the newly arrived foreign investors and Vietnamese female labor under *Doi Moi*.¹³³ The Politburo once

wounds and hostilities. Approximately one month before the lifting of the U.S. trade embargo, Vietnam's Deputy Foreign Minister Le Mai stated:

It is clear that over the past 40 years [the U.S.] has confronted us on human rights and now they want a dialogue on the issue. Will they prepare to repay their human rights debts for the Vietnamese people? Or will they, after failing to defeat us in their human rights confrontations, now change their tricks by resorting to a human rights dialogue to subjugate us?

Rose, *supra* note 97, at 100 n.18 (quoting FBIS-EAS-94-020, Jan. 31, 1994). See also ECON. INTELLIGENCE UNIT, *supra* note 116, at 15 (reporting that an Australian human rights team was denied in-country investigation because it allegedly would interfere with Vietnam's internal affairs). Accord Amnesty Int'l, *Socialist Republic of Vietnam: Continuing Concerns*, HUMAN RIGHTS WATCH/ASIA, Oct. 1993; Vietnam, *The Suppression of the Unified Buddhist Church*, HUMAN RIGHTS WATCH/ASIA, Mar. 1995; Vietnam, *Human Rights in a Season of Transition: Law and Dissent in the Socialist Republic of Vietnam*, *supra* note 126, *Human Rights in the APEC Region*, HUMAN RIGHTS WATCH/ASIA, Nov. 1995.

¹²⁸ However, gender issues are susceptible to Party politics and can be heightened into tremendous political conflicts, presenting one of the most complex challenges for the advocate. See *infra* Part IV.

¹²⁹ Kim Chung, *Joint Venture Employees*, VIETNAM ECON. NEWS, No. 14, Apr. 7-13, 1995. In Vietnam, working on Saturdays is the norm. See LABOR CODE, *supra* note 92, art. 72 (mandating at least one day of rest per week, scheduled for Sunday or as otherwise agreed).

¹³⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 123.

¹³¹ Chung, *supra* note 129.

¹³² TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 123.

¹³³ See *Two Sides of Nike in Vietnam*, INDOCHINA INTERCHANGE, Dec. 1996, at 12 (Nike responded that it would investigate and take corrective measures); *Sweatshop Economics*, UMI 63(3), Dec. 1., 1997, available at 1997 WL 27514288. Cf. *Nike Pledges to End Child Labor and Apply U.S. Rules Abroad*, N.Y. TIMES, May 13, 1998, at D1 col.2.

acknowledged a charge made by the former general secretary of the Party, Nguyen Van Linh, that “[the Party was] slow in modernizing the mobilization of women and in amending policies relating to women.”¹³⁴ On July 29, 1993, the chairwoman of the Vietnam Women’s Union (“VWU”) allegedly lodged a similar complaint when the Party finally issued the first comprehensive resolution strengthening women’s mobilization, six years after *Doi Moi*.¹³⁵

In summary, *Doi Moi* has led to some improvements in human rights in Vietnam, but the changes continue to be slow and have led to new problems for women.

3. *Female Leadership in the Government and in the Private Sector*

Overall, in the unified Vietnam, Vietnamese women have not had a strong presence in Party politics, and the number of women in policy-making positions continues to be low under *Doi Moi*. The President of Vietnam is the head of state and is assisted by the vice President. Although the Vice Presidential position is currently held by a woman, Madame Nguyen Thi Binh, her position inherently lacks policy-making power because she is not a member of the Politburo, the nucleus of the Party and the ultimate policy-making body. This prevents her from effectuating significant change.¹³⁶ (In contrast, the real executive power rests with the Prime Minister, who is a member of the Politburo¹³⁷ and heads the central government.¹³⁸) Despite her active role representing communist causes as a diplomat during the Vietnam War,¹³⁹ since unification, Madame Binh has been much less visible, although she occasionally makes statements to the press¹⁴⁰ and spoke at the United Nations Fourth World Conference on

¹³⁴ ECON. INTELLIGENCE UNIT, *supra* note 116, at 13.

¹³⁵ *Id.*

¹³⁶ As the Vice President, Madame Binh does, however, fill in for the President in case of his disability until the National Assembly selects a new President. 1992 CONST., *supra* note 43, arts. 107-08

¹³⁷ *Id.* art. 110.

¹³⁸ The central government is distinguished from local governments in the cities and provinces and run by the People’s Committee under an elected People’s Council. *Id.* arts. 119, 123.

¹³⁹ Madame Binh was formerly the Minister of Education and head of the delegation to the 1972 Paris Peace Talk. Madame Binh later represented the cause of the “National Liberation Front,” the communist movement in South Vietnam. HOANG VAN THAI, *HOW SOUTH VIETNAM WAS LIBERATED* (The Gioi 1992). A distinction must be made between the U.S.-backed “Republic of Vietnam” (the Saigon Government prior to 1975) and the “Republic of South Vietnam,” which was recognized by Vietnamese Communists as the state fighting for independence in the South. *Id.* See also C.A. THAYER, *WAR BY OTHER MEANS: NATIONAL LIBERATION AND REVOLUTION IN VIETNAM 1954-60* (1991).

¹⁴⁰ See, e.g., Fuminori Murata, *Vietnam’s Old Guard Finds New Foe: Fears of Foreign Funds Eroding Power*, NIKKEI WEEKLY, May 21, 1996, at 24 (quoting Madame Nguyen Thi Binh). Madame Nguyen Thi Binh was the granddaughter of the nationally known Vietnamese patriot Phan Chu Trinh, who

Women in 1995 (the "Beijing Conference"), advocating the education of female children in Vietnam.¹⁴¹ Recent statistics illuminate the lack of adequate and meaningful female representation in the leadership of the Vietnamese government. A 1996 release on the demographics of the Politburo reveals that of its nineteen members, only one member is a woman, Madame Nguyen Thi Xuan My,¹⁴² who is in charge of the "control committee," which performs an auditing function. Of the 170-member Central Committee of the Party, only eighteen are women, a modest 10%. These women are in charge of matters typically associated with domestic affairs such as milk, children, trade education, auditing, planning, public health, labor, war invalids, social welfare, the VWU, and various local administrative and elected positions in non-essential provinces (other than major commercial centers). United Nations data show that as of January 1996 only 7% of the ministerial rank were women, 4.4% of the sub-ministerial rank were women, and total female participation in government leadership remained at a modest 5.3%.¹⁴³

Female membership in the Party is also slim. The latest data show that of the 2,128,742 Party members, only 359,475 were women (16.9%).¹⁴⁴ Although Ho Chi Minh had envisioned that "if women are not freed, the construction of socialism will only be halfway done,"¹⁴⁵ sadly the official figures reflecting women's participation in his Party has not equaled his aspiration for a healthy 50% ratio. Because the Party is constitutionally "the leadership force" of the State and society, a low percentage of women in Party membership, especially in core bodies like the Politburo and the Central Committee, speaks for the marginal participation of women in national policy-making. In analyzing these statistics, however, it should be kept in mind that Vietnamese women today may or may not view Party

preceded Ho Chi Minh's generation. See THE NGUYEN, PHAN CHU TRINH 1872-1926 (Van Hoa-Thong Tin 1998). Her given name was Chau Sa (Dew Pearl), denoting her mandarin background. For her political and diplomatic career, she took on the name Nguyen Thi Binh, meaning "Nguyen the Woman of Peace." See also Interview with Nhu Phong Le Van Tien, former South Vietnamese journalist, in Boston, Mass. (Mar. 1999) (notes on file with author) (discussing biographical data on Vice President Nguyen Thi Binh).

¹⁴¹ Nguyen Thi Binh, Vice President of the Socialist Republic of Vietnam, Statement at the U.N. Fourth World Conference on Women at Beijing (Sept. 4, 1995) (on file with author).

¹⁴² See, e.g., VIET NAM NEWS, July 2, 1996 at 1.

¹⁴³ *Fact Sheet on Women in Government as of January 1996*, at Gopher://gopher.un.org/00/sec/dpecsd/daw/ wormgovt/factsheets/PERCENT.EN. (data compiled by the Advancement of Women, U.N., based on January 1996 information from the Worldwide Government Directory 1996, Bethesda, MD).

¹⁴⁴ *The Communist Party of Viet Nam: Facts and Figures (1991-1995)*, VIET NAM NEWS, June 30, 1996, at 1.

¹⁴⁵ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 48 (quoting Ho Chi Minh on the issue of liberating women). See also HO CHU TICH VA VAN DE GIAI PHONG PHU NU [PRESIDENT HO ON WOMEN'S LIBERATION] (Women's Publishing ed., 1970).

membership as meaningful participation in government or the political process.¹⁴⁶

Statistically, women's participation in the National Assembly, the elected legislative body of Vietnam, appears better than in the Party. Constitutionally, the National Assembly is the highest government body of the land. It supposedly represents the people and has policy-making power. It can dismiss the President, the Vice President, and the Prime Minister.¹⁴⁷ In reality, the National Assembly is a limited law-making body in a culture not yet shaped by law.¹⁴⁸ For the 1997-2001 term, Vietnam has 122 female representatives in the National Assembly, or 26.2%,¹⁴⁹ one of the highest in Southeast Asia (compared to the norm of 2-10% in neighboring countries).¹⁵⁰ At the local levels, approximately 20.4% of all members of municipal and provincial People's Councils are women.¹⁵¹ These percentages still do not correspond to the percentage of women in the total population and the work force (approximately 52%).¹⁵²

¹⁴⁶ Non-Vietnamese researchers observe that in the more relaxed political climate of *Doi Moi*, Vietnamese women tend to rely on their immediate community to resolve disputes and push action agendas. For example, a conflict over stall use fees in Ho Chi Minh City's Ben Thanh Market in 1997 showed that women traders opposed local authorities' illegal collection of stall fees by relying on their community for press coverage and rallying. The dispute demonstrated the gender dynamics of *Doi Moi*, the resilience of women traders, and their community identity. (The Ben Thanh market represents the community of small business traders, primarily female, and has been in existence since colonial times.) See Anne Marie Leshkovich, *Sister Traders v. District Cadres: A Conflict over Stall Use Fees in Ho Chi Minh City's Ben Thanh Market*, Address at the Harvard Law School, East Asian Legal Studies Workshop (Nov. 21, 1997). The same community sense was invoked to help solve a murder case, substituting press coverage and local protest for judiciary and police remedies. See Mark Sidel, *Law, the Press and Police Murder in Vietnam: The Vietnamese Media and the Trial of Nguyen Tung Duong*, Address at the Harvard Law School, East Asian Legal Studies Workshop, Gender & Law in Vietnam (Nov. 21, 1997).

¹⁴⁷ 1992 CONST., *supra* note 43, art. 84.

¹⁴⁸ See discussion *infra* Part IV.E. Only "Laws" and "Codes" ("*Luat*," or "*Bo Luat*") are drafted and reviewed by the Standing Committee of the National Assembly. 1992 CONST., *supra* note 43, arts. 88, 90. Sub-Law documents governing the daily activities of society and of the government are created by the executive body. The enactment of Laws and Codes can be an arduous, bureaucratic process that fatigues the public. For example, according to media reports, twenty-four drafts of the pending Education Code have been introduced, yet the debate in the National Assembly has shown no sign of consensus. PHU NU THU TU [WOMEN'S WEDNESDAY] Year XXIII No. 89, Nov. 18, 1998.

¹⁴⁹ See *NPA 2000*, *supra* note 52, pt. I.

¹⁵⁰ PHU NUTHU TU [WOMEN'S WEDNESDAY] Year No. XXIII, No. 77, Oct. 7, 1998 (official communique of the Vietnam Women's Union ("VWU") of Ho Chi Minh City) (reporting on conference joining female representatives of National Assembly).

¹⁵¹ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 157.

¹⁵² Interestingly, in North Vietnam, the highest percentage of women in the National Assembly (32.3%) occurred between 1971 and 1976, the period of time that marked the end of the Vietnam War and the Paris Peace Talk. See TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 155. Perhaps the great use of men in battlefields to bring about a war victory left more elected seats in the National Assembly to be occupied by women. After the war, the percentage of women in the National Assembly dropped gradually to 17.7%, and is now on the upswing. *Id.*

Doi Moi did increase the small number of female general directors running business enterprises,¹⁵³ but in general few women occupy leadership positions in business. Particularly, the trend is to have the woman as “deputy director,” assisting the chief, who is usually a man.¹⁵⁴ A similar trend also exists in the State sector, where the percentages of women in director or deputy director positions never exceed 4.8% in any industry or region.¹⁵⁵ Even within the VWU, among the 9,635 women chairing various neighborhood branches, only 2% have higher education, and only 17.7% finished high school.¹⁵⁶ According to the female leadership involved in the Beijing Conference, Vietnamese “the number of women engaging in power and management is generally low and unequal to their potential and wish.”¹⁵⁷

C. *The Socio-Economic Status of Vietnamese Women in the 1990s*¹⁵⁸

Despite the strong image of female heroines in Vietnamese folklore and history, Vietnamese women today face an ongoing socio-economic struggle to deal with disadvantages at home, at work, and in health and education.

1. *Domestic Life*

At the dawn of the new millenium, the primary role of women in Vietnam is still seen as caring for the home and family. Statistics released for the 1990s show that consistently, in families of varied lifestyles,¹⁵⁹ and particularly in rural areas, women still shoulder the majority of the housework, and are primarily responsible for raising children.¹⁶⁰ Culturally, housework means more than housekeeping and being barefoot and pregnant—Vietnamese women are expected to be the “interior marshal” (*noi tuong*) or the “hand to lock the key and open the drawer of treasury” for the

¹⁵³ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 154, 167.

¹⁵⁴ *Id.* at 158.

¹⁵⁵ *See id.* at 167.

¹⁵⁶ *Id.* at 159.

¹⁵⁷ *NPA 2000, supra* note 52, pt. I.

¹⁵⁸ For a statistical analysis of Vietnamese household living standards see HEALTH AND WEALTH IN VIETNAM: AN ANALYSIS OF HOUSEHOLD LIVING STANDARDS (Dominique Haughton et al. eds., 1999). The HEALTH AND WEALTH IN VIETNAM Article offers a broad historical, political, and cultural perspective and does not contradict the conclusions reached in this Article.

¹⁵⁹ Families of varied lifestyles were classified by surveyors as state workers, non-state workers, intellectual families, and farming families. *See* TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 179-86.

¹⁶⁰ *Id.*

family (*tay hom chia khoa*).¹⁶¹ This “*noi tuong*” or “key-locking” job involves managing all aspects of family affairs so that her husband can be free to pursue other “noble” things, such as poetry or other cultural activities.¹⁶²

The war has left an obvious imprint on the demographics: of the more than 3.3 million Vietnamese women who are over sixty years old, many are invalid, disabled, ill, and unable to work.¹⁶³ The impact of poverty is evident among young women: many young women have too many babies within a short time, work too hard, and suffer from malnutrition. These women are exhausted and “washed out” by the time they are middle-aged.¹⁶⁴

2. *Employment*

Despite the persistence of the traditional view that the woman’s primary role is in the home, women in Vietnam do maintain a presence in the workforce, although in less than optimal positions. Statistical studies confirm that women have fewer employment choices than men, receive lower compensation,¹⁶⁵ have less job stability in the private sector,¹⁶⁶ and have to moonlight to make ends meet more frequently (86% of female workers hold more than one job).¹⁶⁷ Women make up between 50.6% and 52.5% of the workforce,¹⁶⁸ constituting 76.2% of education workers and teachers, and 62.3% of health care profession.¹⁶⁹ Workers in both fields are severely underpaid.¹⁷⁰ For example, the monthly salary of a teacher is estimated to be 190,000 *Dong* (or U.S. \$15).¹⁷¹ Women occupy 100% of preschool teaching, 80% of primary school teaching, and 81% of nursing jobs.¹⁷² Most female workers have low-skilled, low-wage jobs,¹⁷³ or petty

¹⁶¹ *Id.* at 184

¹⁶² Phan Thanh Hao, *supra* note 8 (commenting on Vietnamese men’s habit of writing poetry as a cultural activity).

¹⁶³ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 206.

¹⁶⁴ *Id.* at 205-06.

¹⁶⁵ *Id.* at 90-92.

¹⁶⁶ *Id.* at 110-11.

¹⁶⁷ *Id.* at 113.

¹⁶⁸ *Id.* at 85.

¹⁶⁹ *Id.* at 86; Tran thi Trung Chien’s Statement, *supra* note 51. See also TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 102.

¹⁷⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 113.

¹⁷¹ Nguyen Huu Quynh Tram, *Hien Trang cua Ngươi Phu Nu Trong Nuoc* [Conditions of Vietnamese Women in the Country], Ky Yeu Dai Hoi Quoc Te 1996 Viet Nam Dan Chu & Phat Trien (Hoi Chuyen Gia Viet Nam, Aug. 1996) [Yearbook of 1996 International Congress, Democracy & Development in Vietnam, Association of Vietnamese Professionals August 1996] at 375, 379 (Ms. Tram allegedly founded Alliances Working for Asian Rights and Empowerment (“AWARE”) in 1993).

¹⁷² TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 87.

artisanry jobs, yet in general, still make less money than men in each field.¹⁷⁴ About 42.6% of female workers have incomes that do not cover the basic needs such as food and clothing for their families.¹⁷⁵

Approximately 79.9% of the female labor force works in the agriculture industry, which still involves manual labor.¹⁷⁶ About 78% of working-age laborers are found in rural areas, and over 60% of these are women.¹⁷⁷ The norm, therefore, has been the feminization of farming labor, concentrating the majority of Vietnamese female labor in rural areas where living conditions are often primitive.¹⁷⁸ A full-time female farmer makes about 65,000 *Dong* per month (U.S. \$5-6).¹⁷⁹ One day's labor earn at most about 5,000 *Dong* (or close to U.S. \$0.50). Additional jobs, such as knitting nets or making noodles or alcohol can earns about 3,000 *Dong* (or less than U.S. \$0.30) per day.¹⁸⁰ In urban areas, migrant women often take jobs as maids, street vendors, or garbage collectors.¹⁸¹ Quite often, they perform "petty" labor that is not considered "real" work. Another study shows that 35% of the female work force do not have regular or steady jobs.¹⁸²

The female inhabitants of rural Vietnam remain the most disadvantaged workers in the country. Because farmers continue to find it difficult to get land,¹⁸³ poor rural women often resort to working as hired labor. These women often must accept any job that is offered, even if the job exposes them to harmful or even toxic conditions. For example, the World Health Organization ("WHO") reports that 52% of the pesticides used in Vietnamese farms are "very toxic."¹⁸⁴ A study conducted in the early 1990s revealed that women virtually never wear safety gloves, heightening their exposure to toxic chemicals.¹⁸⁵ Women often perform hard labor without the aid of automation, and work longer hours than men (sixteen to

¹⁷³ For example, in the textile and garment industry, 70% of workers in production workshops are women. *Id.* at 87.

¹⁷⁴ *Id.* at 113.

¹⁷⁵ *Id.* at 112.

¹⁷⁶ *Id.* at 89. Only 19.3% of the Vietnamese population lives in urban areas. *Id.* at 101.

¹⁷⁷ *Id.* at 88.

¹⁷⁸ *Id.* at 88.

¹⁷⁹ *Id.* at 96

¹⁸⁰ *Id.* at 98.

¹⁸¹ *Id.* at 102.

¹⁸² *Id.* at 107.

¹⁸³ *Id.* at 91 (noting that between 30 and 100% of land has been taken back from farmers by local authorities, as farmers could not fulfill their contract assignments for output; in Dong Thap province, approximately 19% of households are short of land or landless). The Land Law pronounces that land and natural resources belong to the State. As a result, farmers cannot directly own the land they farm.

¹⁸⁴ *Id.* at 119.

¹⁸⁵ *Id.*

eighteen hours per day compared to twelve to fourteen hours).¹⁸⁶ Furthermore, about 51.2% of female workers in the railway sector work in toxic environments, and 74% of women in light industry work under conditions harmful to their health.¹⁸⁷

Women in Vietnam have other employment-related problems. For example, few women in Vietnam have labor contracts. Only 30% of the private enterprises in Ho Chi Minh City have trade unions. Nearly 76% of the female laborers have not entered into contracts as the labor laws require.¹⁸⁸ Without labor contracts, female laborers fall outside the protection of the Labor Code and enjoy no maternity leave or benefits.¹⁸⁹ In addition, studies show that 85.6% of female workers in light industry suffer from poor health.¹⁹⁰ On average, a female laborer is forced to retire in her early forties because of health problems.¹⁹¹

Further, women have a high unemployment rate. The first half of the decade showed an official unemployment rate of 20% in cities.¹⁹² In the budget year 1990-91 alone, it was alleged that the State fired 553,000 women.¹⁹³ Since then, the restructuring of state-owned sectors of the economy has also caused female state-sector labor to decrease. Female workers are usually the first to be fired since their professional qualifications and skill levels are generally lower than men.¹⁹⁴ Since 1991, there has been a 70% reduction of labor in the state sector, which has pushed female labor back into the agricultural sector.¹⁹⁵ Second jobs are commonplace for female government workers,¹⁹⁶ whose average wage still ranges between U.S. \$30 and U.S. \$50 per month.

Moreover, many fields of work remain male-dominated. During the first half of the decade, male-dominated employment fields included the

¹⁸⁶ UNICEF, VIETNAM: CHILDREN AND WOMEN: A SITUATIONAL ANALYSIS 33 (1994). Among female farmers, the *montagnards* suffer the most: living in the mountains, they usually walk two to three kilometers to their place of work. Many of them spend the night in the fields at harvest, and many grow rice on steep hills and slopes. TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 118. For a description of the ethnic minorities and aboriginal tribes in Vietnam, see, for example, Howard Sochurek, *Vietnam's Montagnards*, 133 NAT'L GEOGRAPHIC 443 (1968).

¹⁸⁷ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 118.

¹⁸⁸ *Id.* at 110-11.

¹⁸⁹ Nguyen Huu Quynh Tram, *supra* note 171.

¹⁹⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 129.

¹⁹¹ *Id.* at 131.

¹⁹² Nguyen Huu Quynh Tram, *supra* note 171 (citing Steve Raymer, *Vietnam's Women Get Shut Out/ They Fight an Uphill Battle for Power as Economy Opens Up*, S.F. CHRONICLE, July 17, 1994, available at 1994 WL 4075589). The unofficial rate has been reported as high as 45%. *Id.*

¹⁹³ *Id.*

¹⁹⁴ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 105.

¹⁹⁵ *Id.* at 89.

¹⁹⁶ Nguyen Huu Quynh Tram, *supra* note 171.

agriculture (71.6% male), medicine (78.4% male), and business (82.1% male).¹⁹⁷ Women made up approximately 46% of the teaching profession.¹⁹⁸ Vice President Nguyen Thi Binh was quoted as stating:

In a developing country like ours, women cannot effectively be a mother and a member of society at the same time. In time of transition, women are the last to be hired and the first to be fired. [Yet] [w]omen contributed substantially to the defense and the post-war construction of the country. But the role given to us was not commensurate with our contributions because of thousands of years of ingrained feudal values.¹⁹⁹

More recent statistics fail to show substantial improvement. Although women occupy half of the workforce, they only outnumber men in select fields, such as teaching (66% female), health care and insurance (64% female), finance (64% female), agriculture (53% female), and trading and supplies (71% female).²⁰⁰ To the extent Vietnam is still an agricultural society, women continue to be the driving force behind the economy. As Vietnam transforms into an industrialized, technology and information society, women are not occupying "trend-making" positions, and hence are not part of the dynamics of change.

On the other hand, *Doi Moi* has created more opportunities for Vietnamese women to do what they have traditionally done best: self-employment and the management of small proprietorships. The private sector absorbs 87% of the total female labor force, and women make up 67% of self-employed workers.²⁰¹ As of the early 1990s, women owned and operated about 70% of the total number of retail tailors in Vietnam.²⁰²

¹⁹⁷ *Id.*

¹⁹⁸ This number should be compared to statistics released later showing that 66% of education workers are women. The difference between the two percentages probably represents women in educational administration. See Nguyen Huu Quynh Tram, *supra* note 171, at 379. Compare TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 86.

¹⁹⁹ Steve Raymer, *Vietnam's Women Get Shut Out/They Fight an Uphill Battle for Power as Economy Opens Up*, S.F. CHRONICLE, July 17, 1994, available at 1994 WL 4075589. Likewise, Madame Nguyen Kim Cuc, then spokeswoman for the VWU, lamented: "It is a long time before we can fight two out of three enemies: illiteracy and starvation."

²⁰⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 86.

²⁰¹ *Id.* at 161.

²⁰² *Id.* at 161-62.

3. Health

Generally speaking, rural Vietnamese women have poor health. The lives of rural women continue to be plagued by malnutrition and anemia. These conditions are worsened by superstition, a lack of proper medical care during pregnancy, and insufficient knowledge of child-rearing. As a result, between 30 and 41% of Vietnamese children suffer from malnutrition.²⁰³ Further, between 70 and 80% of pregnant women suffer from anemia, and at least 50% of women suffer from gynecological diseases.²⁰⁴ In addition, many women lack birth control education, and approximately 40% of those women who have abortions return for a second abortion within three to six months of their first procedure.²⁰⁵

A number of Vietnamese-American scholars²⁰⁶ have criticized Vietnamese government health officials for regarding women as merely as an element in the nation's population control plan.²⁰⁷ They also hold these officials responsible for the hasty emphasis that is placed on population control at the expense of the health and welfare of Vietnamese women. For example, a sterilization procedure was used on thousands of Vietnamese women, allegedly as part of a worldwide immigration-control agenda, that invoked suspicion in the international human rights community.²⁰⁸

The cultural preference for male children has a detrimental impact on women in Vietnam. This preference stems from the view that only men can serve as the main blood line for continuing the family name. It results in many Vietnamese women continuing to have children, despite serious

²⁰³ *Id.* at 131.

²⁰⁴ *NPA 2000*, *supra* 52, pt. I.

²⁰⁵ UNICEF, *supra* note 186, at 53.

²⁰⁶ In the exile community, a few educated women vocally promoted the necessity for Vietnamese women to join the global trend of regarding women's rights as universal human rights. It is doubtful whether their voices were heard outside the exile community and, unless bound to undertakings by the international community, their work generally remains individualized and unnoticed. *See, e.g.*, Ho Thi Anh Nguyet, *Tam Quan Trong cua Ngươi Phu Nu Trong Tien Trinh Canh Tan Viet Nam [The Importance of Women in the Development of Vietnam]* *supra* note 61, at 372 (Dr. Ho Thi Anh Nguyet is a physician who practices medicine in the U.S.); Xuyen Dong Matsuda, *Nhung Goi Y So Khoi Giup Nang Cao Doi Song Phu Nu Tai Viet Nam [A Few Suggestions on Raising the Living Conditions of Vietnamese Women]*, in KY YEU DAI HOI QUOC TE 1996 388 (Viet Nam Dan Chu & Phat Trien [Yearbook of the International Congress: Vietnam Democracy & Development Aug. 1996] (Ms. Matsuda is a psychologist and mental health worker in Orange County, California who allegedly received the 1994 Orange County Human Relations Award).

²⁰⁷ Nguyen Huu Quynh Tram, *supra* note 171, at 378; *Cam Van, Triet San Vinh Vien 50 Ngan Phu Nu Bang Thuoc Quinacrine Co The Gay Ung Thu [Permanent Sterilization of 50,000 [Vietnamese] Women by Quinacrine Possibly Causing Cancer]*, THE KY [21ST CENTURY MAGAZINE] 70, No. 111, July 1998.

²⁰⁸ Alix M. Freedman, *Two American Contraceptive Researchers Export Sterilization Drug to Third World*, WALL ST. J. INTERACTIVE ED., June 18, 1998, available at <http://csf.Colorado.edu/lists/elan/jul98/0047.html>. *See infra* Part IV.F.

poverty, child-rearing problems, and the government's population control mandate.²⁰⁹ This preference for male children also reduces educational opportunities for female children.²¹⁰ Vietnamese researchers in exile have concluded that this lack of education will continue to affect population control and that effective measures can only be implemented if the status of women in society and their living conditions are substantially improved.²¹¹

Vietnam's serious environmental problems also affect women's health. More than 50% of urban and 30% of rural populations drink water that does not meet minimum health standards.²¹² For example, in Ho Chi Minh City, 40% of the population does not have basic plumbing.²¹³ Water systems have been privatized to attract foreign investment, which has had the effect of making drinking water a commodity for the wealthy. Women must often carry water from faraway locations to their families.²¹⁴ Untreated manure, waste, garbage, urine, dead animals, and lack of proper restroom facilities all add to serious soil and water contamination and account for many health problems faced by Vietnamese women.²¹⁵

Prostitution of Vietnamese women and children is yet another major health problem. *Doi Moi* has increased the number of young women who move to the cities to engage in prostitution, often catering to foreigners and tourists.²¹⁶ As a result, the AIDS epidemic in Vietnam is spreading, and

²⁰⁹ Nguyen Huu Quynh Tram, *supra* note 171.

²¹⁰ *See infra* Part III.C.4.

²¹¹ *See, e.g.*, Nguyen Huu Quynh Tram, *supra* note 171, at 47 (citing UN Chronicle, U.N. Department of Public Information, Sept. 1994).

²¹² TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 125.

²¹³ *Id.* at 125-28. Along the Mekong River area, 60% of the population does not have acceptable water to drink. In Ben Tre, only 3% of the population has water through a plumbing system, and more than 70% either use water from rivers and sewage, or are forced to buy water from government agencies. *Id.* *See also* Nguyen Huu Quynh Tram, *supra* note 171 (citing THE RICE PAPER No. 4, Dec. 5, 1995).

²¹⁴ Nguyen Huu Quynh Tram, *supra* note 171.

²¹⁵ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 126-27.

²¹⁶ Nguyen Huu Quynh Tram, *supra* note 171 (quoting Madame Le Thi Quy of Hanoi's Center for Research on Family and Women, and citing Peter Jansen, *Vietnamese Women Get Bad Deal from Doi Moi*, ARAB NEWS, Oct. 7, 1994 (attributing conclusion to the data collected from WOMEN'S MAGAZINE OF HO CHI MINH CITY, Tran Bui Vinh Phuoc, Speech at Harvard University (July 1994); Tuan Bao Phap Luat, LAW WEEKLY, July 12, 1993 (reporting investigation conducted by THE WOMEN'S MAGAZINE, May 13, 1992 issue, charging that prostitutes, disguised as employees of hotels, coffee houses or massage parlors, shared 50% of their earnings with hotels, thereby escaping government regulations prohibiting solicitation). Perhaps the puritan values and cultural tradition of revering women as heroines and national treasures have made it difficult for researchers to gather accurate data on prostitution, venereal diseases, or sex crimes, such as rapes. Data on sexual abuses of women or comfort women (*can bo ho ly*), if any, during wartime were also difficult to gather. Very few women volunteered evidence of sex crimes, even if they occurred in the context of war. *See* LELY HAYSLIP, WHEN HEAVEN AND EARTH CHANGED PLACE (1989) (the wife of an American soldier relating experience of being raped by militiaman during Vietnam War only after she had arrived in America).

accounts for approximately 50% of the sexually transmitted diseases found in arrested prostitutes.²¹⁷

According to the Ministry of Labor, at least 15% of arrested prostitutes were between thirteen and sixteen years old.²¹⁸ The rise in child prostitution has been attributed, in part, to the rapid economic growth seen recently in developing Asian countries. In addition, the phobia of AIDS that exists among patrons of the sex trade has also contributed to this increase, as customers often assume that young children are free of, or constitute a cure for, AIDS.²¹⁹

4. Education

Education for women in Vietnam has failed to improve. The illiteracy rate for women is 16.6%, more than twice the rate for men.²²⁰ Despite a national literacy rate of 90%, female children are still disadvantaged in education, due to backward thinking that allows disproportionate family investment in male children.²²¹ In rural areas, female children are often kept home from school; instead they are "volunteered" by their parents to stay home and help with housework or small artisan activities that supplement the family's income.²²² In the early 1990s, only 1.1% of women had university degrees, compared to 2.1% of men.²²³ While the proportion of university degree holders has increased since this time, the inequity between the sexes has not been remedied in higher education. Sixty-four of dropouts are female.²²⁴ In addition, only 5% of those with doctoral degrees are women.²²⁵

²¹⁷ Nicole Thanh Cam Vecchi, *HIV: The New Epidemic*, 14 VIET NAM FORUM 244, 247 (Yale Center for International and Area Studies 1994).

²¹⁸ *Id.* at 246.

²¹⁹ Nguyen Huu Quynh Tram, *supra* note 171. Compare Congresswoman Sheila Jackson Lee (D.Texas), Speech at the Women of Color Conference, Harvard Law School, (Apr. 17, 1999) (Congresswomen reporting on trip to Africa; commenting on analogous tragedy in Africa that children were used as sexual commodity and as "cure" for AIDS) (notes on file with author).

²²⁰ *Id.* at 132. See also *NPA 2000*, *supra* note 52, pt. I.

²²¹ The assertiveness of women in the indigenous culture saves Vietnam from the custom of killing baby girls, female circumcision, or other forms of body mutilation based on gender-based cultural belief. Ho Thi Anh Nguyet, *supra* note 61, at 356, 365-666.

²²² Nguyen Huu Quynh Tram, *supra* note 171, at 379; Stuart Fraser, *Vietnam: Educational Profiles: Census Data 1979, 1989: Prospect for 1999*, J. FOR VIETNAMESE STUDIES, No. 5, Jan. 1992, at 80-84.

²²³ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 132.

²²⁴ *Id.* at 136.

²²⁵ *Id.* at 139.

5. *Other Social Challenges Facing Contemporary Vietnamese Society*

The particular struggles of Vietnamese women are further complicated by some of the larger social problems in Vietnam. The decade following the introduction of *Doi Moi* became a battlefield for moral and social debates. Some of most recognized challenges in contemporary Vietnamese society are drug addiction,²²⁶ sexual abuse of children,²²⁷ homeless children,²²⁸ and various health problems such as AIDS and leprosy.²²⁹

Another disturbing trend is the disintegration of the family. This problem takes many forms, such as domestic violence²³⁰ and divorce, both of which have recently substantially increased.²³¹ In addition, between 20 and 40% of governmental food rations are given to single and divorced mothers.²³² Another study shows that about 40% of single women (including widowed, divorced, and separated women) live in hunger.²³³

In summary, the socio-economic struggle for women in Vietnam stands in stark contrast to the national pride in female heroines who founded the nation two thousand years ago. The Vietnam War (now called the "American War" in Vietnam) was over in 1975, but the socio-economic struggle has continued. The hardest hit victims are poor, uneducated female children and older Vietnamese women living in rural and mountainous areas.

²²⁶ See, e.g., PHU NU THU TU [WOMEN'S WEDNESDAY] Year No. XXIII No. 77, Oct. 7, 1998 (official communique of the VWU of Ho Chi Minh City reporting on drug rehabilitation for youth); PHU NU THU BAY [WOMEN'S SATURDAY], Year No. XXIII, No. 78, Oct. 10, 1998 (reporting on drug abuse by Vietnamese youngsters, including school children); PHU NU THU TU [WOMEN'S WEDNESDAY] Year XXIII No. 81, Oct. 21, 1998 (followup reporting on campaign against drug abuse); PHU NU THU BAY [WOMEN'S SATURDAY] Year XXIII No. 82, Oct. 24, 1998 (continued reporting on government's appeal to the mass for campaign against drug abuse).

²²⁷ PHU NU THU BAY [WOMEN'S SATURDAY], Year No. XXIII, No. 80, Oct. 17, 1998 (reporting on the sexual abuse of Vietnamese children and preventive measures).

²²⁸ *Id.* Year No. XXIII, No. 78, Oct. 10, 1998 (reporting on homeless children, quoting Prime Minister Phan Van Khai attributing the growing number of homeless children to root causes other than poverty).

²²⁹ Anh Hong, *Tham Khu Dieu Tri Benh Phong o Di Linh [A visit to the Leprosy Camp in Di Linh]*, PHU NU THU BAY [WOMEN'S SATURDAY], Year No. XXIII, No. 78, Oct. 10, 1998 (reporting on social work efforts to ease the sufferings of leprosy victims in Di Linh, central Vietnam).

²³⁰ GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 49-50, 155 (commenting on film portraying domestic violence as an accepted course of life, preferred by women over the prospect of not having a family or a man to love; recording the fact that several women did not consider domestic violence sufficient cause for divorce). Researchers have found that a significant proportion of Vietnamese women feel that domestic violence is a lesser evil than not having a family. *Id.*

²³¹ *Divorce on the Rise in Vietnam Along with Incomes, Living Standards*, AGENCE FRANCE PRESSE, Sept. 22, 1997, available at LEXIS, News Group File.

²³² Nguyen Huu Quynh Tram, *supra* note 171 (citing UNICEF, VIETNAM: CHILDREN AND WOMEN: A SITUATIONAL ANALYSIS (1994)).

²³³ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 96.

While the recent international attention that has been given to these women is encouraging, it is simply a beginning.²³⁴

However, the picture is not entirely hopeless, as there has emerged a wave of positive and articulate young Vietnamese women eager to learn and absorb the knowledge of the developed world.²³⁵ Without the haunting effect of war, the new women of Vietnam, those born after unification, are better nourished, healthier, more confident, more astute, and more direct. They represent hope, but only if their attention will promptly be turned to the development of the less fortunate strata of their country. The opportunities for women in this new era are best understood by examining the legal rights incorporated in Vietnam's laws and the international conventions it has adopted. The picture may appear brighter in theory than in practice.

D. Legal Rights for Women in Vietnam and Gender Justice

The legal rights of women in Vietnam are derived from three main sources: (1) international agreements, such as the Convention on the Elimination of All Forms of Discrimination Against Women ("Women's Convention"); (2) the Constitution of Vietnam; and (3) Vietnamese statutes, particularly the Family Law, the Labor Code and the Civil Code. Despite the lofty goals represented by these bodies of law, they all have inherent limitations, as discussed in the following sections.

1. Convention of the Elimination of Discrimination Against Women

Vietnam's decision to join the Women's Convention illustrates the country's acknowledgment of gender inequality. By signing the Women's Convention, Vietnam has pronounced to the world that its Constitution and laws currently comport with the spirit of the Women's Convention and demonstrate a commitment to gender equality and the protection of women and the family unit. Vietnam was the second country, and the first Asian country to sign the Women's Convention.²³⁶ The Conventions deals with specific forms of discrimination against women. For example, article 6 of

²³⁴ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 56.

²³⁵ These women may represent the new "elites" in terms of opportunities for better living conditions and education. For example, between 1995 and 1999, Harvard Law School graduated three LL.M. candidates from Vietnam, all of whom were women. See Interview with Adelaide Shallhope, Coordinator of the Graduate Program, Harvard Law School, in Cambridge, Mass. (Apr. 1999) (notes on file with author).

²³⁶ See Le Minh Thong, *supra* note 123 (inventorying international conventions to which Vietnam was a state party); TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 248.

the Women's Convention mandates that signatory parties take "all appropriate measures, including the enactment of legislation, to suppress all forms of traffic in women and . . . prostitution of women."²³⁷

The Women's Convention's standards have been criticized for failing to address the deeper issues that underly gender inequality. Although the Women's Convention discusses both equal opportunities and equal results (i.e., support of affirmative actions), a number of commentators have criticized the Women's Convention because it tries to achieve equality by "elevating" women to male standards.²³⁸ This method ignores differences and inequity between the sexes and some of the barriers to their removal,²³⁹ such as male dominance patterns and the imbalance of power in society. The Women's Convention, premised upon the notion of "progress made by goodwill,"²⁴⁰ does little to address these patterns. While it may have strengthened and complemented Vietnam's domestic legal rights for women, it has done little to change the everyday lives of women in Vietnam.

2. *Domestic Sources of Women's Rights*

Vietnam's gender equality scheme, as established in its Constitution and national codes, offers an example of how civil and political rights can be rendered ineffective unless social and economic rights have been secured and adequately enforced.

a. *Constitutional distinctions between men and women*

1) *Disadvantages for women*

On its face, the Constitution treats women and men as equals:²⁴¹ "[m]ale and female citizens have equal rights in all fields—political,

²³⁷ See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 6, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

²³⁸ See, e.g., Charlesworth et al., *supra* note 24, at 265-66.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ This constitutional feature is distinguishable from other Vietnamese laws addressing women. For example, the Labor Code applies only to women workers who enter into labor contracts and, therefore does not protect the entire universe of female workers. LABOR CODE, *supra* note 92, arts. 2, 6 (Code applies only to "laborers" defined as a person of at least fifteen years of age, having a "labor contract."). See also TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 198. In principle, the equal rights commitment of the 1992 Constitution is nothing new. It has been incorporated in earlier versions of the Constitution of North Vietnam. This supports the notion that the existence of law may not change society in the absence of socio-economic health.

economic, cultural, social, and family.”²⁴² It grants both sexes the right to vote and the opportunity to run for office.²⁴³ Despite this facially equal treatment of women and men, the constitutional scheme contains gender inequality in a number of areas, including employment, marriage and family, motherhood, affirmative action, and political participation.

i) Employment

The Constitution contains a vague “similar work/equal pay” provision, which states that “[m]en and women shall receive equal pay for similar work.”²⁴⁴ The term “equal work” poses a concern because it is undefined and ambiguous. It is unclear how a Vietnamese judge might interpret this term, especially in a judicial system that is still undergoing improvements. Second, a Vietnamese woman cannot reach the level where she can perform “similar work” and be entitled to equal pay unless social changes are first implemented to create more educational opportunities for women.

ii) Marriage and family

In addition, the Constitution is “paternal” in the sense that it provides that the state is responsible for “protection for mothers and children.”²⁴⁵ However, the protection of marriage and family can negatively affect women where there is abuse and domestic violence in the marriage. Further, the Constitution contains another vague provision that prohibits actions that amount to “discrimination against women[,]”²⁴⁶ leaving open for interpretation what constitutes such discrimination.

iii) Imposed duty of motherhood

The Constitution provides that there is a duty for every right granted²⁴⁷—one example is the duty of motherhood.²⁴⁸ Although the Constitution imposes a duty of affirmative action upon both the state and

²⁴² 1992 CONST., *supra* note 43, art. 63.

²⁴³ *Id.* art. 54.

²⁴⁴ *Id.* art. 63.

²⁴⁵ *Id.* art. 40.

²⁴⁶ *Id.* arts. 63, 52.

²⁴⁷ *Id.* art. 51 (“The citizen’s rights are inseparable from his duties. The State guarantees the rights of citizens; the citizen must fulfill his duties to the State and society.”).

²⁴⁸ *See id.* art. 63.

society to upgrade the status of women and to create favorable work conditions for women, this mandate also applies to women's performance of their duties as mothers, including their right to health and rest.²⁴⁹ Thus, the Constitution seems to violate its own gender equality provision because it does not impose an equivalent duty of fatherhood upon men. The emphasis on women as child-bearers can serve to restrict women to reproductive and household activities under the pretense of affirmative action to promote their motherhood duties.

iv) *Affirmative action for men*

Article 66 of the Constitution contains a linguistic ambiguity that may be construed as an inequity in favor of men. This potential "affirmative action for men" could undercut the Constitution's own commitment to gender equality. Article 66 provides that "young men" (a translation from the word "*thanh nien*") shall receive affirmative action from the state, the family, and society to be trained and educated, to work and play, and to develop their physique, intellect and ethics.²⁵⁰ Unless "young men" can be construed to mean the generic, unisex term "youth," this provision bestows benefits and affirmative action for men that are not extended to women. This provision stands in stark contrast to the affirmative action protection accorded women as mothers, highlighting their reproductive capacity and imposing restrictions on their freedom of choice as individuals, not just as mothers.

v) *Political participation*

The Constitution also contains gender inequity in its mechanism that enables citizens' lobbying and participation in the political process. The Constitution recognizes the "Fatherland Front" as the political base of the people's power. While the organization is theoretically open to both sexes,²⁵¹ in practice, the Fatherland Front is a structure of patriarchy, with no women in any leadership position. The Constitution does not mention the Vietnam Women's Union ("VWU"), which, in many ways, serves as the

²⁴⁹ 1992 CONST., *supra* note 43, art. 63.

²⁵⁰ *Id.* art. 66.

²⁵¹ *Id.* art. 9. Although "the Fatherland Front" is the internationally accepted translation, the Vietnamese name, "*Mat Tran To Quoc*," is a unisex phraseology and does not have the paternal connotation. The paternalism will be in the staffing and structure of the organization, rather than in the name.

“female” counterpart to the Fatherland Front. Although the VWU can theoretically become a member of the Fatherland Front and participate that way, the fact that the Constitution specifically mentions one and not the other creates, at a minimum, an appearance of unequal footing. Both entities are “mass organizations,” separate from the Party, and are constitutionally entitled to attend sessions of the government to discuss issues related to them.²⁵² In reality, women’s issues are addressed by the VWU, and not by the Fatherland Front.²⁵³

2) *Advantages for women*

The Constitution does include some provisions that are advantageous for Vietnamese women in areas such as marriage, child-rearing, family planning, and population control. For example, the Constitution mandates gender equality in marital relationships²⁵⁴ and imposes equal child-rearing duties on both parents.²⁵⁵ Specifically, the Constitution prohibits discriminatory treatment among children of the family, presumably prohibiting preference for boys over girls.²⁵⁶ In addition, to further socialist ideals, the Constitution provides for maternity leave, but limits the right to paid maternity leave to government workers and workers for hire, and further states that it must be “in accordance with law.” As a result, these protections do not aid women who have no labor contracts and, therefore, fall outside the protection of the Labor Code.²⁵⁷ However, the maternity leave provision is not restricted to married women and, therefore, it benefits single mothers.

In addition, family planning and population control are constitutional mandates, imposed upon the state as well as on citizens.²⁵⁸ The Constitution does not explicitly state that these mandates impose an equal amount of responsibility on both sexes. However, statutes have made the duty of family planning equally applicable to both sexes.

²⁵² *Id.* arts. 9, 111.

²⁵³ This oversight in the Constitution may be of intellectual interest only, because neither the Fatherland Front nor the VWU has any real policy decision-making power, but can provide only proposals. Instead, policy decision-making rests exclusively with the Politburo. Because women occupy only 26.2% of the National Assembly, counting solely on female members voting for women’s legislation will not produce the desired result.

²⁵⁴ *Id.* art. 63.

²⁵⁵ *Id.* art. 64.

²⁵⁶ *Id.*

²⁵⁷ The Labor Code establishes conditions for maternity benefits, but it applies only to employment relationships secured by labor contracts. LABOR CODE, *supra* note 92, arts. 2, 6.

²⁵⁸ 1992 CONST., *supra* note 43, art. 40.

b. *Statutory rights*

Under Vietnamese law, the cornerstone of women's rights and legal protection lies in the trio of (1) the Marriage and Family Law, enacted in 1986 ("Family Law"); (2) the Civil Code, enacted in 1995; and (3) the Labor Code, enacted in 1996.²⁵⁹

1) *The Family Law*

The Family Law imposes an affirmative duty upon the State to protect mothers and children.²⁶⁰ In addition, it guarantees gender equality to promote "democratic" family relationships,²⁶¹ and denounces the "feudal" and capitalist family system without defining these concepts.²⁶² However, the worth of such guarantees is not entirely clear. As Vietnam constitutionally endorses socialism and claims that it is a "single-party democracy," but at the same time it embraces a market economy, it is difficult enough to decipher the meaning of concepts such as "democratic," "feudal," and "capitalist" in the current social, macro-economic and political structure, let alone in family and personal relationships.

In addition, the Family Law protects family members from physical abuse, grants them property rights, and imposes legal family duties. Further, the Family Law forbids domestic violence in all family relationships (presumably including both wife beating and the physical abuse of the elderly).²⁶³ The law also forbids child abuse, forced marriages, doweries, bigamy, cohabitation with a third party while being married, incest, and marriage by those who are mentally incompetent or have venereal disease.²⁶⁴

The Family Law guarantees gender equality in the rights and obligations it enumerates.²⁶⁵ For example, wives have equal rights to the management and inheritance of community property²⁶⁶ and family planning is elevated into a legal duty binding upon husband and wife.²⁶⁷ In addition, gender equality is mandated in the treatment of children, reflecting the

²⁵⁹ Other laws applicable to citizens are, of course, applicable to women.

²⁶⁰ *Luat hon nhan va gua dinh* [Law on Marriage and Family] (Dec. 29, 1986) [hereinafter Family Law], art. 3 (Vietnam).

²⁶¹ *Id.* art. 1.

²⁶² *Id.* pmb1.

²⁶³ *Id.* arts. 4, 10-27.

²⁶⁴ *Id.* arts. 4, 6, 7, 26.

²⁶⁵ *Id.* art. 10.

²⁶⁶ *Id.* arts. 14-17.

²⁶⁷ *Id.* arts. 2, 11.

state's effort to eradicate the belief that boys should be favored over girls.²⁶⁸ Moreover, under the Family Law, parents have a legal obligation to raise and "teach" their children; children have a legal obligation to respect and take care of parents; and spouses have a mutual duty to respect, love, and care for each other, and to mutually practice family planning.²⁶⁹ The duty of support extends to grandparents, grandchildren, brothers and sisters where the parents are deceased.²⁷⁰

A few interesting features of the Family Law reflect today's Vietnamese life as well as the structure of the socialist regime. For example, the People's Organ of Control (a prosecutorial office), The Vietnam Women's Union, The Ho Chi Minh Communist Youth, and the Vietnam Labor Union can petition to annul and void an illegal marriage, or to determine parental relationships.²⁷¹ Another example is that an entire chapter of the Family Law is devoted to marriages between Vietnamese and foreigners.²⁷² This reflects a current trend: as a way to leave the country, young Vietnamese women are marrying foreigners (the majority of whom are Vietnamese living overseas bearing non-Vietnamese passports, known as "the Viet Kieu").²⁷³

The Family Law is a classic example of Asian values combined with socialism—a general statement on the morals of the ideal Vietnamese society protected by a socialist state allegedly representing the public good. The Law allows the State to intervene in the privacy sphere of the family, and imposes upon a citizen the legal duty to love his/her spouse, the legal duty to serve as a good role model, and the legal duty to listen to parental advice.²⁷⁴ One may wonder how these duties can be legally enforced. The risk of abuse lies in the boundless discretion, creativity (or lack thereof), conscience and personal bias, if any, of the presiding judge. Western eyes may view these provisions as the type of invasion of privacy and government intrusion found intolerable in a more pluralistic and individualistic society.

²⁶⁸ *Id.* arts. 19, 21.

²⁶⁹ *Id.* arts. 2, 11.

²⁷⁰ *Id.* arts. 27.

²⁷¹ *Id.* arts. 9, 31, 39.

²⁷² *Id.* arts. 52-54.

²⁷³ *Id.* ch. IX. In 1996, regulations were promulgated addressing marriages between Vietnamese nationals and foreigners, representing the government's efforts to deal with the realities of (i) wife trafficking; (ii) mail-order brides; and (iii) arrangements of young women to marry foreigners and *Viet Kieu's*, hoping for a better life and more personal freedom outside Vietnam, which, at times, can be an illusion or even a gateway to white slavery.

²⁷⁴ Family Law, *supra* note 260, arts. 11, 19, 21.

Similar to the Constitution, the Family Law projects a paradoxical paternal attitude that affixes a legal duty upon husbands to "create favorable conditions for his wife to perform the good capacity of a mother."²⁷⁵ This provision can be a double-edged sword: while it may oblige the husband to assist his wife with household duties, it can also entitle the husband to subjugate his wife.²⁷⁶ In response to the Beijing Conference, the government has announced that the Law will be amended to strengthen family men's obligations in child rearing.²⁷⁷ Whether this amendment will alter the paternal overlay remains to be seen.

Finally, the Family Law, when read together with the Civil Code, reflects a cultural attitude that favors the preservation of the family unit and frowns upon divorces. While this may protect women's interests, it may also hurt women who wish to get a divorce. The Family Law only allows divorce without fault if both parties mutually agree. When there is no such agreement, a court may conduct reconciliation. Only in dire circumstances that frustrate that purpose of the marriage will a court grant a divorce.²⁷⁸ On the other hand, the Civil Code recognizes the right to petition for a divorce as a "civil right" when there is a "legitimate reason."²⁷⁹ "Just cause" requires proof submitted by the petitioner, as well as the cultural and moral judgment of the judicial officer, as there is no legal definition of what is a "legitimate reason."

2) *The Labor Code*

The Labor Code is another example of socialist paternalism. As illustrated below, although the Labor Code establishes minimum work requirements for women in the workforce and recognizes some of their needs, it may also have the adverse effect of further restricting employment opportunities for women. It prohibits employment discrimination based on

²⁷⁵ *Id.* art. 11.

²⁷⁶ On the other hand, the Vietnamese government seems to assume that women are more mature in marital relationships, or that they need to get married sooner, since both the Family Law and the Civil Code allows women to marry at a younger age than men. See Bo Tu Phap [Ministry of Justice], *So Chuyen De Ve Bo Luat Dan Su Cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam [Special Issue on the Civil Code of the Socialist Republic of Vietnam]*, TAP CHI DAN CHU VA PHAP LUAT [PERIODICAL OF DEMOCRACY AND LAW] (1995) [hereinafter *Special Issue on the Civil Code*], 253-54, 261-62 (Civil Code, definitions, *dieu kien ket hon* [conditions for getting married] *ket hon* [getting married]).

²⁷⁷ Tran thi Trung Chien's Statement, *supra* note 51.

²⁷⁸ Family Law, *supra* note 260, art. 40.

²⁷⁹ THE CIVIL CODE OF THE SOCIALIST REPUBLIC OF VIETNAM (Baker et al. trans., 1996) [hereinafter CIVIL CODE], art. 38 (Vietnam).

gender,²⁸⁰ and devotes an entire chapter to the protection of women in the workplace, regulating, among other things, the work hours, rests and breaks, and mandatory maternity leaves.²⁸¹ The protective provisions may be construed as standardization of minimum work conditions for women in a labor market that is less than homogeneous. Conversely, they may have the adverse impact of restricting women's opportunities in unconventional careers or high levels of responsibility.²⁸²

On the other hand, the Labor Code achieves affirmative action goals in the workplace by imposing upon employers the duty to hire, accommodate and protect female workers.²⁸³ It requires employers to hire a woman over a man if both are qualified,²⁸⁴ and promises tax reduction for enterprises that employ a "good" number of women.²⁸⁵ The Labor Code mandates paid maternity leave, maternity pay for up to six months in addition to regular salary, segregated restrooms and child care facilities at the workplace. It also imposes a younger retirement/social security age for women.²⁸⁶ It prohibits (1) the hiring of women for mining or diving (a protection that may hinder the choices of those women who view themselves as capable of doing these jobs),²⁸⁷ (2) the hiring of women for occupations that may jeopardize reproductive capacity (or the health of the fetus in the case of a pregnant worker); and (3) the staffing of women who are over seven months pregnant or who are nursing infants for overtime work, night shifts, long distance travels, or other "heavy work."²⁸⁸ The paternal spirit of the Labor Code acknowledges the society's high regard for the family unit and motherhood. But, at the same time, it reflects the pervasive cultural view that defines women by their reproductive capacity and considers pregnancy a disability. Gender bias can turn these protective measures into restrictions of opportunities. The real issues in society are: (1) whether factory owners are hiring a lot of women because the labor is cheap, and (2) whether women can attain the same educational and professional qualifications to be considered for the same job as a man. These issues are not resolved by the Labor Code. In any event, enforcement problems alone

²⁸⁰ LABOR CODE, *supra* note 92, art. 5.

²⁸¹ *Id.* ch. X.

²⁸² The Code also contains protective provisions for minor workers (less than fifteen years of age) and senior citizen workers. *Id.* ch. XI.

²⁸³ *Id.* arts. 7, 109, 110.

²⁸⁴ *Id.* art. 111.

²⁸⁵ *Id.* art. 110.

²⁸⁶ *Id.* arts. 114, 116, 117, 123, 144, 145.

²⁸⁷ This protection seems to contradict the culture's pride in female warriors accustomed to doing "the man's job."

²⁸⁸ LABOR CODE, *supra* note 92, arts. 113, 115.

can turn the protective measures of the Labor Code into goals rather than reality; to date no study has established how these provisions might have helped reduce the maternal and infant mortality rate.

Furthermore, the Labor Code formulates protective measures with little concern or foresight for the feasibility of implementation or any adverse impact thereof. The Labor Code goes as far as allowing the female worker an automatic thirty-minute break with pay during her menstruation.²⁸⁹ Such a provision may lead to discriminatory treatment among women on the basis of age (pre- and post-menopause), and may be construed as drawing an irrational connection between the physiology of a woman and her work productivity, treating her as disabled. It may also raise privacy issues, single out the female worker in a co-ed work environment, subject her to embarrassing scrutiny, unnecessarily call attention to her gender, and leave room for abuse (although the Labor Code seems to suggest that employers must supply female "inspectors").²⁹⁰ These protective measures may be used to justify alleged disparity between the sexes and legitimize gender-based restrictions of opportunities.²⁹¹

A major flaw of the labor statutory scheme lies in the scope of the Labor Code itself, highlighting the disparity between law and reality. The Labor Code applies only to workers with labor contracts (who, by law, must be at least fifteen years of age),²⁹² leaving out the true victims of poverty: women doing manual labor for hire without contracts in rural and mountainous areas, and child laborers working without contracts or below fifteen years of age. Although the Labor Code does apply to domestic help

²⁸⁹ *Id.* art. 115.

²⁹⁰ *Id.* art. 118.

²⁹¹ The Code also asserts strict state control over the import of migrant workers for overseas employment. *Id.* at arts. 118, 134-35, 184. Perhaps this strict state control explains why there has been no government-endorsed program to supply Vietnamese women as domestic help in other countries. *See, e.g.*, Conference Report, International Conference on the Impact of the Crisis on Migration in Asia (Manila, May 1998) (organized by the Southeast Asia Regional Canada Fund, the U.N. Population Fund, and the Scalabrini Migration Center in cooperation with the International Organization for Migration and the International Labor Organization with the support of the Asia Foundation) (on file with author) (providing data on migrant workers from most Asian countries; no such data were presented for Vietnam.). At various times, Vietnamese workers were sent to Eastern European countries, but those programs were typically to implement bilateral agreements between Vietnam and the former Soviet Bloc. *See* UY BAN KE HOACH NHA NUOC [STATE COMMITTEE FOR PLANNING], KINH TE XA HOI VIET NAM NAM 2000: MUC TIEU, PHUONG HUONG VA GIAI PHAP CHU YEU [VIETNAMESE SOCIO-ECONOMICS FOR THE YEAR 2000, ESSENTIAL OBJECTIVES, DIRECTION AND SOLUTION] (Le Xuan Trinh et al. ed., 1990).

²⁹² LABOR CODE, *supra* note 92, arts. 2, 6.

working pursuant to an oral contract,²⁹³ in reality, enforcement problems also render this group vulnerable to unremedied violations.

3) *The Civil Code*

Consisting of 838 articles addressing all aspects of Vietnamese life and regulating all kinds of civil and contractual relations, the Civil Code affirms gender equality as a principle to interpret the law,²⁹⁴ as well as a principle governing societal and marital relationships.²⁹⁵ The state assumes the responsibility to protect marriage as an institution and the family unit as the nucleus of society.²⁹⁶ Because there is no codified husband-wife immunity in the Civil Code, presumably a spouse can sue the other for violation of any civil and inalienable personal rights (*quyen nhan than*) enumerated in the Civil Code,²⁹⁷ subject to the overall goodwill principle that “[husband and wife] shall mutually build a comfortable, durable/stable, harmonious and happy family.”²⁹⁸ It is implicit in the goodwill principle that civil litigation among spouses, other than divorce proceedings for “legitimate reason,”²⁹⁹ might be discouraged as undermining this principle. However, setting aside the goodwill principle, a victim of domestic violence technically can sue the spouse perpetrator for damages under the Civil Code.

In regulating husband-wife relationships, the Civil Code accomplishes the following:

1. Allows husband and wife to live apart by agreement;
2. Mandates the “registration” of marriages (i.e., only ceremonial marriages are legally recognized);
3. Recognizes community property and husband’s and wife’s equal rights therein;
4. Gives spouses the right to receive support from each other regardless of gender;
5. Affirms a citizen’s right to career and employment free from gender discrimination;

²⁹³ Drafter’s annotations show that the government gathered public comments from provinces and other local units—the participatory drafting feature adopted from Maoist China. *Special Issue on the Civil Code*, *supra* note 276, at 219.

²⁹⁴ CIVIL CODE, *supra* note 279, art. 8.

²⁹⁵ *Id.* art. 36.

²⁹⁶ 1992 CONST., *supra* note 43, art. 64.

²⁹⁷ *Id.* arts. 26, 27.

²⁹⁸ *Id.* art. 36.

²⁹⁹ *Id.* art. 38.

6. Allows husband and wife to make a joint will and to have equal say in will and inheritance matters over community property;
7. Disallows a spouse from changing the will of another spouse (the couple can by agreement provide for the case where one spouse dies leaving a joint will to the other spouse); and
8. Assures gender equality in inheritance matters.³⁰⁰

In summary, the combination of an international convention, the Constitution, and a statutory scheme of Law and Codes should theoretically serve to reaffirm the equal status of women in society. However, the reality is that the laws contribute to rampant gender inequality. As demonstrated below, Vietnam's commitment to gender equality is greatly undermined by ineffective enforcement of the laws and the lack of focus on women's issues at the policy-making level.

E. Impediments to Gender Equality Under the Vietnamese System

1. Lack of Influence of Women in Policy-Making and Real-Life Enforcement Issues

Researchers from Vietnam's Center for Family and Women's Studies conclude that the difficulty of bringing gender equality issues into policy making process stems from the frustratingly long political approval process, lack of effective enforcement, and plain oversight. They cite, as an example, the frustrating eighteen-month process of working out the implementation scheme for a Politburo policy with respect to only one issue concerning women, commenting:

The present policy-making process takes so long that it clearly does not meet the diverse requirements and the changing role of women in the new environment of overall renovation. The long delay in making a policy is hardly adapted to the very fast changes in the economic and social situation . . .³⁰¹

Researchers also used the administration of the Land Law to illustrate real-life enforcement problems that subjected women to disparate treatment when they tried to take title in land, notwithstanding the equal rights provisions of

³⁰⁰ *Id.* arts. 37, 45, 51, 57, 233, 237, 666, 667, 671.

³⁰¹ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 217.

the law.³⁰² As an example of policy-making oversight, in the government's ten-year socio-economic master plan targeted for the year 2000, there was no special chapter or discussion devoted to women's rights and living conditions, although at the top of the national priority list were two national issues that directly and heavily involved women—the utilization of labor and population control.³⁰³

Perhaps women's issues did not fully catch the government's attention until the Beijing Conference in 1995. In the aftermath of the Conference, Vietnam devised a national machinery and established a National Committee for the Advancement of Women ("the NPA 2000 Committee"). Its task was to formulate the National Plan of Action for the Advancement of Women by the Year 2000 ("NPA 2000"), translating the Conference's international "Platform for Action" into a Vietnamese product.³⁰⁴ On October 4, 1997, Vietnam's Prime Minister adopted the NPA 2000, based on a proposal tabled by Madame Truong My Hoa, VWU president, who chaired the NPA 2000 Committee. NPA 2000 acknowledges the various difficulties faced by Vietnamese women (i.e., insufficient education, training, health care, employment, and participation in leadership). The plan commits Vietnam to *eleven* ambitious and concrete objectives, such as increasing life expectancy for women to seventy years of age and reducing the number of under-employed women by fifty percent.³⁰⁵ Under each objective, the plan formulates specific tasks that were to be implemented by the year 2000. It is not clear whether implementation was to begin in the year 2000 or whether it was to be completed by then, but under either interpretation, the plan's time frame was ambitious, especially given that it took Vietnam two years after the Beijing Conference just to formulate the thirty-page plan. While Vietnam appears to be giving attention to women's issues under this plan, the unrealistic time frame may frustrate efforts to remedy gender equality problems, thereby causing the plan to look simply like "window-dressing."

³⁰² *Id.* at 240-42. See also John Gillespie, *The Role of the Bureaucracy in Managing Urban Land in Vietnam*, 5 PAC. RIM L. & POL'Y J., 59, 119 (1995) (local authority's discretion is not used to strengthen women's "cultural rights" in land). For a detailed discussion of the enforcement problems in the Vietnamese legal system, see discussion *infra* Part IV.E.

³⁰³ See, e.g., UY BAN KE HOACH NHA NUOC, *supra* note 291 (Le Xuan Trinh was Vice Minister of the State Committee for Planning, the state ministry-equivalent responsible for socio-economic planning).

³⁰⁴ See *NPA 2000*, *supra* note 52. Accord Tran Mai Huong, *supra* note 46.

³⁰⁵ *NPA 2000*, *supra* note 52.

2. *Limitation of the "Right" Rhetoric in Vietnam*

The gender equality commitment of Vietnam is further undermined by its own legal system, which grants only enumerated rights, and does not recognize implied rights. The notion of rights in the Vietnam is different from the Western notion in that equal rights under Vietnamese law may not promise gender equality beyond what has been statutorily provided. In non-socialist Western societies, individuals are allowed to act so long as their action is not illegal. In the Vietnamese concept of rights, any activity, particularly in the civil and commercial sphere, is presumably unlawful unless expressly articulated or authorized by law.³⁰⁶ Thus, the bundle of rights is whatever the law has declared, amounting to a presumption of unlawfulness that forces an actor to demonstrate that his or her action has been legally authorized.

Therefore, while Vietnamese women are not entitled to any implied rights, they are nevertheless bound by implied responsibilities. The Constitution specifically states that for every right endowed, there is a responsibility attached, owed from the individual to the State, in accordance with law.³⁰⁷ Every right that is secured potentially generates a corresponding responsibility. "Rights" granted in Vietnam thus may not secure freedom of choice. On the other hand, the rhetoric of implied responsibilities imposes substantial communal duties on the woman, and hence may restrict her sphere just as much as equal rights under the law may protect her. Although the Constitution assures equal rights, it gives no specific affirmation that the restriction caused by the inference of duties should be borne equally by both men and women. In reality, the duties usually are not divided equally.

Today, the appearance of gender equality is still largely an illusion. For example, women rights advocates in Vietnam acknowledge that "Vietnam has achieved *near gender equality* in terms of primary school enrollment, adult literacy, access to health care and labor force participation"³⁰⁸ (emphasis added). The women's leaders support the "near

³⁰⁶ See, e.g., *Special Issue on the Civil Code*, *supra* note 276, at 268, 274 (the definition of "a person with civil rights" is "A party to a civil relationship in accordance with law, which gives him/her a number of rights and because of this endowment of rights he/she is entitled to definite actions to realize and secure those rights;" the definition of "civil rights:" is "a person's capacity to act in a certain way or capacity to demand definite actions by others in order to secure such person's interest, such capacity to have the assurance and compulsory enforcement by the State") (emphasis added). *Accord* Gillespie, *supra* note 97, at 333; Rose, *supra* note 97, at 97-98.

³⁰⁷ 1992 CONST., *supra* note 43, art. 51.

³⁰⁸ Truong My Hoa, Statement at the U.N. Fourth World Conference on Women (Sept. 8, 1995) (notes on file with author). Madame Truong My Hoa, Chairwoman of the National Action Plan 2000

equality” statement with labor facts establishing that almost 95% of all adult women work outside the home and 27% of all households are headed by divorced, separated, or widowed women.³⁰⁹ But “*near equality*” is *not* equality, falling short of the vision of the law and ironically of Ho Chi Minh himself.³¹⁰ Labor statistics show only that women have to work to make ends meet, and a good number of them must perform a double parenting role while working—the classic burden of “the exhausted superwoman” in a developing economy having a GNP of U.S. \$220 per capita.³¹¹ In a developing economy, women and children occupy crucial economic roles because of their cheap labor,³¹² yet they are often victims of poverty and malnutrition.³¹³ Improvement in the employment rate of women may not mean life is better. As already described, women often occupy the lowest paid and lowest status jobs, without career paths, under insecure conditions, and are more susceptible to being fired.³¹⁴ As early as the 1950s, Simone de Beauvoir spoke of the sad truth that working is not liberation if women simply join the economically oppressed, filling up the assembly lines.³¹⁵ The high percentage of working women in developing economies can present an illusion of equality.³¹⁶

In summary, the promise and availability of women’s rights under Vietnamese law can, and is, being thwarted in practice by inequality in the economic, social and cultural realms.³¹⁷ In a legal system like Vietnam’s, the endowment of rights also creates the rhetoric of implied responsibilities owed to the state and society. These inherent limitations of the “right” model and its rhetoric must be considered, in addition to the disparity between law and reality, in the assessment of gender justice.

Committee and Head of the Vietnamese Delegation, is a member of the Communist Party Central Committee and was then president of the VWU, but she is not a member of the Politburo.

³⁰⁹ *Id.*

³¹⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 48-49, quoting HO CHI MINH, HO CHU TICH VOI VAN DE GIAI PHONG PHU NU [HO CHI MINH AND WOMEN’S LIBERATION] (Hanoi 1970) (collecting excerpts from Ho Chi Minh’s speeches) at 33.

³¹¹ *Id.* at 87.

³¹² Charlesworth et al., *supra* note 24, at 274.

³¹³ *Id.* at 273 (citing M. WARING, COUNTING FOR NOTHING 134 (1988)).

³¹⁴ Charlesworth et al., *supra* note 24, at 275. TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3.

³¹⁵ DE BEAUVOIR, *supra* note 38, at 756-57. For a revitalization of de Beauvoir’s work in America, see FEMINISM IN OUR TIME: THE ESSENTIAL WRITINGS, WWII TO THE PRESENT 3 (Miriam Schneider ed., 1994) (considering de Beauvoir’s THE SECOND SEX as establishing feminist basic canon).

³¹⁶ A spokesperson for India reported that in her country women in poor families are often equal partners of men in earning, yet health impairment affects their ability and widens the gap in development between the sexes. U.N. Press Release WOM/1105, Status of Women Commission Concludes Discussion of Women and Health, and Follow-up to Beijing Conference (March 3, 1999), available at <http://www.un.org>.

³¹⁷ Charlesworth et al., *supra* note 24, at 268-69.

IV. ADVOCATING GENDER EQUALITY IN VIETNAM: THE EIGHT RISK FACTORS

The lack of a feminist doctrine in Vietnam can be attributed, at least in part, to the Vietnamese culture, which prioritizes the good of the community before all other concerns, including gender issues. In Vietnam, women's issues have never reached the noble dimension of the fight for national independence. The Vietnamese woman, despite her vehement resistance to male supremacy, ultimately seeks consensus building³¹⁸ with her male counterpart, instead of adversarial competition for a place in society. She views her active participation in society as a duty³¹⁹ necessitated by circumstances or by a higher calling, rather than by the need to compete with men. Open confrontation of differences is considered bad taste, undermining mutual respect and dignity.³²⁰ Both Confucian and socialist ideals promote the martyr image of self-sacrificing individuals, subordinating their needs to the good of the community, placing hope in either Heaven's son (Confucianism) or the state (Marxism) as the ultimate guarantor of happiness. When Heaven's son or the state fails the guarantor role, seeds of dissatisfaction and disillusion begin to spread, characterizing the post-revolution Vietnamese society today, as portrayed by dissident Vietnamese fiction writers.³²¹

Other core philosophical and religious beliefs of the Vietnamese society, such as Buddhism and Taoism, likewise accept human suffering as part of the natural order of things.³²² Before the arrival of socialism, Vietnam had as its spiritual base the integration of the three religions (*Tam Giao*): Buddhist ontology, Confucian ethics, and Taoist epistemology. These religions linked together personal, family, social and biological levels of existence, thereby submitting the individual to the common good.³²³

³¹⁸ Scholars debating and studying "Asian values" have recognized this "consensus-building" as a universal or typical value of East and Southeast Asian cultures. See, e.g., Amitav Acharya, *Ideas, Identity, and Institution-Building: From the ASEAN Way to the Asia-Pacific Way*, 10 PAC. REV. 319, 329-36 (1997).

³¹⁹ Her active participation includes, for example, combat duties in war time.

³²⁰ See, e.g., Le Xuan Khoa and John Van Deusen, *Social and Cultural Customs: Their Contribution to Resettlement*, 1 J. REFUGEE RESETTLEMENT 49 (Mar. 1981).

³²¹ See, e.g., Tran Manh Hao, *Ly Than [Separation]*, in TRAM HOA VAN NO TREN QUE HUONG, *supra* note 400. DUONG THU HUONG, *NOVEL WITHOUT A NAME [TIEU THUYET VO DE]* (Phan Huy Duong & Nina McPherson trans., 1995). For a piece of fiction that treated the consequence of war from a humanistic standpoint with acceptance in Vietnam, see BAO NINH, *THE SORROW OF WAR [NOI BUON CHIEN TRANH]* (Phan Thanh Hao trans., Frank Palmos ed., 1995).

³²² See, e.g., THICH THIEN-AN, *BUDDHISM AND ZEN IN VIETNAM* (Carol Smith ed., 1975).

³²³ Le Xuan Khoa, *Indochinese Mutual Assistance Organizations as Mechanisms in Community Mental Health*, Paper presented at the National Conference on Social Welfare 107th Annual Forum,

Evolving from the integration of these three religions, the Vietnamese self is defined less in terms of individual characteristics than in terms of family roles and responsibilities to the state, promoting acceptance and interdependence over personal independence. The tendency to belittle individual needs pre-conditions women to think of family needs as superior to their own, and causes them to view the adoption of a gender-equality doctrine as a selfish act.

Specifically, advocacy for gender equality and the creation of a formal feminist doctrine in Vietnam are difficult due to “Eight Risk Factors”:

1. Contemporary feminist ideas can easily be rejected or belittled in Vietnam, based on the disingenuous proposition that Vietnam has no need for a feminist movement due to its strong matriarchal heritage that persisted through its early history;
2. Vietnam has suffered from repetitive, prolonged war and poverty, which together have overshadowed gender issues;
3. Women’s movements in Vietnam have not evolved into a independent feminist doctrine with a structured basis;
4. In Vietnam, gender equality has become entangled in what this Article describes as the “fallacy of a trio,” in which gender equality becomes synonymous with nationalism and socialism;
5. The rule of law in Vietnam has traditionally been considered secondary to customs derived from both the oppressive values of the Vietnamese Confucian family system and the autonomy of the Vietnamese agricultural villages;
6. Women’s rights advocacy has been caught up in the “universality versus cultural relativism” spiderweb, further complicated by the question of whether there should be “Asian-styled gender rights” in Vietnam;
7. Vietnam, despite its age, is a new nation with a wide variety of philosophical bases, legal traditions, and paradoxical values; and
8. The single-party political system of modern Vietnam renders any feminist movement susceptible to Party politics.

To assess the development of gender justice in Vietnam, it is important to understand the multi-fold reasons for the lack of a feminist doctrine despite the expressive and vocal nature of the Vietnamese female

Cleveland, Ohio (May 1980) at 3. NGUYEN DANG THUC, *supra* note 56, at 17, 27-29 (discussing the three religions of Vietnam and quoting Maurice Durand).

identity. The Eight Risk Factors discussed below are all reasons for the lack of a feminist doctrine in Vietnam. Even so, signs of Vietnamese feminism exist in less formal ways.

A. *First Factor: The Lack of a Gender Battle in Vietnam's Early History*

The battle between the sexes is as old as the history of *homo sapiens*, and one can usually find evidence of outspoken female assertiveness and the age-old gender tension dating back to the inception of any culture.³²⁴ Confucius Asian societies are not the only source of misogyny. For example, Christian traditions in Western societies also contain hierarchal, paternalistic gender relations by associating "God" with a fatherly image.³²⁵ Interestingly, however, the gender battle did not dominate the early history of Vietnam. The early evidence of Vietnamese women's proactive role in society occurred outside the context of the gender battle, and has evolved into a national image that lasts until today.

Vietnamese women think of themselves as descendants of the Trung Sisters who represented the heroic and active role of female leaders in ancient Vietnamese society. In A.D. 40, the Trung Sisters lead a revolt against the Han governor Su Ting and established the first period of independence for Vietnam (A.D. 40-43).³²⁶ The Trung government reflected the active role of Vietnamese women in ancient society. Trung Trac collaborated with her sister, Trung Nhi, and supervised a number of female generals³²⁷ to conduct the revolt, which took place after the Han governance

³²⁴ See, e.g., Interview with Julianne Lee, Graduate Student, Faculty of Arts, Harvard University (Feb. 1999) (notes on file with author) (Ms. Lee is of Korean descent and worked as a journalist in South Korea prior to her residence at Harvard). Ancient Korea had female heads of state, and Korean folk anecdotes show freedom in dating and egalitarian social interaction between the sexes. Even in Confucian China, where women's feet were once bound, the image of the female warrior Mu Lan, disguised as a man to fight in battles, had a special place in the ancient Chinese culture, finally reaching the American populace by way of a Disney production. Accord W. JIANG & C.A. JIANG, *THE LEGEND OF MU LAN: A HEROINE OF ANCIENT CHINA* (1992) (story taken from poem written during Sung Dynasty). See also MAXINE HONG KINGSTON, *THE WOMAN WARRIOR: MEMOIR OF A GIRLHOOD AMONG GHOSTS* (1976) (image of female warrior in Chinese American contemporary fiction).

³²⁵ See, e.g., MARY DALY, *BEYOND GOD THE FATHER: TOWARD A PHILOSOPHY OF WOMEN'S LIBERATION* 3 (1973).

³²⁶ LE NGO CAT VA PHAM DINH TOAI, *DAI NAM QUOC SU DIEN CA* [NATIONAL HISTORY OF DAI NAM TOLD IN POETRY] (Hoang Xuan Han trans., Truong Thi Publishing 1949); accord Nguyen Ngoc Huy & Ta Van Tai, *The Vietnamese Texts, in THE LAWS OF SOUTHEAST ASIA: VOLUME I, THE PRE-MODERN TEXTS* 435, 436 (M.B. Hooker ed., 1986).

³²⁷ According to one historical account, approximately ninety-four generals fought under the direction of the Trung Sisters, of whom approximately forty-three were women. Temples worshiping the female generals were found in the various villages of North Vietnam. See Ho Thi Anh Nguyet, *supra* note 61. At least one Vietnamese author has attempted to sketch the "mythical" biographies of the female generals who participated in the uprisings under the Trung Sisters' leadership. Le Xuan Giang, *Than Tich Doi Trung*

(and Confucianism) had been in place in Vietnam for more than a century.³²⁸ The Trung government demonstrated the survival of the matriarchal indigenous culture³²⁹ had survived after more than a hundred years of the new Confucian ideology.³³⁰

A matriarchal culture persisted throughout the second period of Chinese governance (A.D. 43-544),³³¹ due to Trieu Thi Trinh ("Lady Trieu"), another female leader that revolted against the Wu's of China (A.D. 222-280). In A.D. 248, she allegedly stated, "I'd like to ride storms, kill the sharks in the open sea, drive out [Wu] aggressors, reconquer the country, undo the ties of serfdom, and never bend my back to be the concubine of [any] man."³³² The notion of gender justice in Vietnam as it currently stands is due in part to the legacy of Lady Trieu.³³³

[*Legends of the Female Gods during the Trung Reign*], in THO THAN O VIET NAM, *supra* note 58, vol. 1, at 83-130. See also QUYNH CU & DO DUC HUNG, *supra* note 59, at 26-29.

³²⁸ The first period of Chinese governance was from 111 B.C to A.D. 40. See TRAN TRONG KIM, *supra* note 1.

³²⁹ See PHAM CON SON, PHU NU VA DOI SONG [WOMEN AND LIFE] 70-71 (Dai Nam Publishing House 1969) (describing a vestige of matriarchal culture in the various *montagnard* ethnic communities in Vietnam: husbands received directions from their wives, who were the heads of households). The author stressed, however, that a matriarchal structure does not necessarily mean women receive more benefits or privileges. It only means that women make household decisions. See also NGUYEN TAN LONG & PHAN CANH, THI CA BINH DAN VIET NAM: TOA LAU DAI VAN HOA DAN TOC II [VIETNAMESE FOLK LITERATURE: A CASTLE OF NATIONAL CULTURE II] 135 (Song Moi Publishing 1970), reprinted in America (Xuan Thu Publishing, publication year unknown) (folk portrayal of matriarchal society); NGUYEN DANG THUC, LICH SU TU TUONG VIET NAM TAP II [HISTORY OF VIETNAMESE THOUGHTS VOL. II] 323 (1992), (discussing matriarchal culture); NGUYEN DANG THUC, *supra* note 56, at 168-69, 347-48, 366-82 (commenting that the matriarchal tradition caused the indigenous culture to personify Buddhist enlightenment into the form of a woman through various tales explaining the life of the female Buddha). It should be noted that the Cham culture of the extinct Kingdom of Champa, incorporated into Vietnam during the 15th century, was also a matriarchal society. NGUYEN KHAC NGU, MAU HE CHAM [THE MATRIARCHAL CHAM] (Tu Sach Khoa Hoc Nhan Van 1967).

³³⁰ The Trung image is so ingrained in Vietnamese life that it has even worked its way into a culinary dish. Because the Trung Sisters committed suicide by drowning themselves in a river in north Vietnam, North Vietnamese women in the adjacent area developed a sweet soup, in which white rice flour dumplings floated in a dark sirup, as an offering to worship the heroines. The dish survives until today and is called the "floating rice cake" (*banh trôi nước*), which is also the title of Ho Xuan Huong's feminist poem composed during the 18th century. See THAI BACH, *supra* note 47, at 18.

³³¹ See TRAN TRONG KIM, *supra* note 1.

³³² NGUYEN KHAC VIEN, *supra* note 76, at 27 (one of the few chronologies of Vietnamese history written directly in English). See also QUYNH CU & DO DUC HUNG, *supra* note 59, at 33-35 (recounting the uprising led by Lady Trieu and reporting that she died in combat at twenty-three years of age). Preserved by oral traditions, Lady Trieu's statements vary slightly from one history book to another. For example, not all versions contain the reference to the "Wu aggressors." Compare QUYNH CU & DO DUC HUNG, *supra* note 59, at 34. The author translated a slightly different version, one without the reference to the "Wu aggressors," taken from TRAN TRONG KIM, *supra* note 1, and used it to preface this Article:

³³³ For a Western account of Lady Trieu's influence on the Vietnamese tradition, see DAVID MARR, VIETNAMESE TRADITION ON TRIAL, 1920-1945 198-99 (1981). Accord GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 27 (analogizing Lady Trieu's saying to contemporary women's desire to escape from household drudgery).

Only after Lady Trieu's revolt—after some 250 years of Confucian indoctrination was the matriarchal trend interrupted by the emergence of male heroes who continued the struggle for national independence. Vietnam underwent almost 800 years of Chinese governance before it was able to establish a monarchy.³³⁴ Since then, despite the heavy influence of Confucianism, virtually every dynasty produced at least one woman who took part in politics and state affairs, served as a military leader, or distinguished herself nationally in public office:

- *The Dinh and Tien Le Dynasties (968-1009)*: Queen Duong Van Nga took over state affairs and transferred power to the founder of the Tien Le Dynasty, Le Dai Hanh, because she believed Le Dai Hanh could resist the Sung army (as compared to her son, the six-year-old crowned prince). Her giving away the throne contradicted Confucius and feudal traditions. This Queen became the link between the Dinh and the Tien Le Dynasties.³³⁵
- *The Ly Dynasty (1010-1225)*: In 1069, Queen Y Lan ruled the country while her emperor husband commanded troops at the border.³³⁶ The last Ly emperor also gave the throne to a princess, Ly Chieu Hoang, because he had no son.³³⁷ This dynasty pronounced Buddhism as a state religion. The Ly kings entered decrees forbidding the killing of the Chams from the now extinct Kingdom of Champa, which up until the 15th century occupied part of the land between Vietnam

³³⁴ QUYNH CU & DO DUC HUNG, *supra* note 59.

³³⁵ *Id.* at 63, 68-69. The founder of the Dinh Dynasty, Dinh Bo Linh, was greatly influenced by the teaching of his widowed mother, and gave the title "Empress" to all five of his wives. NGUYEN DANG THUC, *supra* note 330, at 347, 368.

³³⁶ QUYNH CU & DO DUC HUNG, *supra* note 59, at 87-89. Queen Y Lan was a poor country woman working in a strawberry field when she met King Ly Thanh Tong, after he had dreamed of Quan Yin, the female Buddha. The people nicknamed her the "Vietnamese Quan Yin," representing the working class. See NGUYEN DANG THUC, LICH SU TU TUONG VIET NAM TAP III [HISTORY OF VIETNAMESE THOUGHTS VOL. III] 152, 213-15, 243-48, 263-64 (1992). According to Nguyen Dang Thuc, the Vietnamese folk "Cinderella" story, *Tam Cam*, was adapted from a Champa folk story, *Dalukal Mhu Gajaun et Mu Halock*, originating during the Ly Dynasty as a tribute to Queen Y Lan. *Id.* at 264-65. In the Vietnamese version of "Cinderella," the "fairy" was replaced with the Enlightened Buddha. *Id.* at 265-78.

³³⁷ NGUYEN KHAC THUAN, THE THU CAC TRIEU VUA VIET NAM [ANNALS OF VIETNAMESE DYNASTIES] 52-53 (2d ed. Nha Xuat Ban Giao Duc [Education Publishers] 1996); NGUYEN DANG THUC, LICH SU TU TUONG VIET NAM TAP IV [HISTORY OF VIETNAMESE THOUGHTS VOL. IV] 16, 63 (1992) (referencing the coronation of Ly Chieu Hoang).

and Cambodia.³³⁸ The Ly Kings' decrees allowed royal women to live a normal life outside the palace and, in 1103, the Queen Mother liberated slave girls.³³⁹

- *The Tran Dynasty (1225-1400)*: Queen Tran Thi Dung supervised the royal family's exodus from the capital city and organized the propaganda for manufacturing weapons during the Mongolian invasion.³⁴⁰ Vietnamese historians also mentioned Royal Concubine Nguyen Co Bich Chau, who presented a cabinet action plan to her husband, Emperor Tran Due Tong. The Emperor was impressed, but rejected her plan. Later, she drafted another essay opposing the instigation of war against Champa, which the emperor again rejected. These facts or anecdotes suggest the possibility that during the Tran Dynasty, at a minimum, women in the palace were given an education and access to the official affairs of the state, even if their input was ultimately disregarded.³⁴¹
- *The Le Dynasty (1428-1789)*: Starting in 1442, Queen Tuyen Tu (maiden name: Nguyen) ruled the country for ten years because her emperor son was only two years old.³⁴² A capable woman named Luong Minh Nguyet assisted the founder of the Le Dynasty, Le Loi, during his ten-year war against the Ming army. Le Loi built and dedicated the temple Kien Quoc to her memory.³⁴³ The Le Dynasty also

³³⁸ The Cham culture (of the extinct Kingdom of Champa) bore similarities to the Hindu culture. The Chams occupied part of what is now central Vietnam until the 15th century, when the Vietnam annexed Champa and ruled it under the *Le* Kings. Today, there are approximately one million Chams living all around the world. See, e.g., PROCEEDINGS OF THE SEMINAR ON CHAMPA, HELD AT THE UNIVERSITY OF COPENHAGEN ON MAY 23, 1987 (Huynh Dinh Te trans., 1994) [hereinafter SEMINAR ON CHAMPA].

³³⁹ NGUYEN DANG THUC, *supra* note 336, at 146, 147, 151.

³⁴⁰ NGUYEN KHAC THUAN, *supra* note 337, at 90.

³⁴¹ NGO QUY LINH, LICH SU TRIET LY GIAO DUC VIET NAM, [HISTORY OF VIETNAMESE PHILOSOPHY AND EDUCATION] 232 (Linh Publishing 1997) (Vietnamese exile vanity press); Minh Thao, Chuyen Cac Ba Hoang Trong Lich Su Viet Nam [Anecdotes regarding the Queens and Concubines of the Royal Palace in Vietnamese History], 161-63 (Nha Xuat Ban Van Hoc Thong Tin 1997); NGUYEN DANG THUC, *supra* note 56, at 33 (referencing the *ke minh thap sach*, the action plan written by the Royal Concubine Nguyen Co Bich Chau).

³⁴² QUYNH CU & DO DUC HUNG, *supra* note 59, at 158-59.

³⁴³ Le Xuan Giang, *Den Kien Quoc (Den Ruoi) va Kien Quoc Phu Nhan Luong Minh Nguyet, [The Temple of Nation Building (Temple Ruoi) and the Nation Building Lady Luong Minh Nguyet] in THO THAN O VIET NAM*, *supra* note 58, at 81.

promulgated the *Hong Duc* Code, which accorded improved status to women in property and inheritance matters, and recognized women's "personal rights."³⁴⁴

- *The Tay Son Government founded by Emperor Quang Trung (1778-1802)*:³⁴⁵ The Tay Son Government produced the female general Bui Thi Xuan, known in Vietnamese history for her courage while facing persecution by the founder of the Nguyen Dynasty.³⁴⁶ Quang Trung's second wife, Princess Le Ngoc Han, was nationally known for her poetry and occupied a prominent place in ancient Vietnamese literature.³⁴⁷
- *The Nguyen Dynasty (1802-1945)*: The Nguyen Dynasty produced no women acting in leadership capacity, but Emperor Tu Duc was notably subordinated to the teaching of his mother, the Empress Tu Du.³⁴⁸

The fact that Vietnamese women have been more politically active and pro-active than the Confucian female prototype can lead to paradoxical interpretations. On one hand, Vietnamese society as a whole has been more tolerant of female leadership and outspokenness. On the other hand, such outspokenness has deepened the gap between the Confucian male and the feminist Vietnamese female, presenting more conflicts and clashes. The proliferation of feminist ideas are proof of these clashes, demonstrating that Vietnamese women not only resisted domination by foreign rulers, but also by Vietnamese males.

³⁴⁴ See Ta Van Tai, *The Status of Women in Traditional Vietnam: A Comparison of the Code of the Le Dynasty (1428-1788) with the Chinese Codes*, 15 J. ASIAN HISTORY 97, 118 (1981). The *Hong Duc* Code comprises a number of codes and legal documents, the most substantial was the *Quoc Trieu Chinh Luat* [The National Criminal Code]. See also Nguyen Ngoc Huy & Ta Van Tai, *supra* note 326, at 443, 489.

³⁴⁵ Quang Trung was revered by Vietnamese Communists because he came from a peasant background. See, e.g., NGUYEN KHAC VIEN, *supra* note 76, 105-12; See NGUYEN KHAC THUAN, *supra* note 337, at 103. Quang Trung defeated the Manchus by attacking Ha Noi (then called *Thang Long Thanh* [Citadel of the Flying Dragon]) during the Lunar New Year's celebration. During the Tet Offensive of 1968, well broadcast in America, North Vietnam applied the same tactic. NGUYEN KHAC VIEN, *supra* note 76, at 335; KEITH WILLIAM NOLAN, *THE BATTLE FOR HUE: TET, 1968* (1983) (narrative of the brutal, month-long fight for ancient capital during the Tet Offensive).

³⁴⁶ For an account of Bui Thi Xuan's courage by a non-Vietnamese source, see MARR, *supra* note 333, at 211-12.

³⁴⁷ QUYNH CU & DO DUC HUNG, *supra* note 59, at 233.

³⁴⁸ *Id.* at 322; NGUYEN DAC XUAN, CHUYEN CAC BA TRONG CUNG NGUYEN [TALES OF THE WOMEN INSIDE THE NGUYEN ROYAL PALACE] 64-72 (Da Nang's People Publishing 1992); NGUYEN KHAC THUAN, *supra* note 337.

Examples of the clash between the Confucian male and the feminist Vietnamese female can also be found in the way Vietnamese history was recorded. During French colonialism, Vietnamese literature underwent a period of transition, from the Chinese-style written language called the *Nom*, which is a derivation of Chinese characters,³⁴⁹ to a Roman alphabet system of writing called the *Quoc Ngu*.³⁵⁰ During this period, a number of scholars emerged, well-versed in all three systems of writing: Chinese, *Nom*, and *Quoc Ngu*. They researched, wrote and translated voluminous material on the history, literature, and cultural studies of Vietnam. One such scholar, Phan Ke Binh (1875-1921), compiled a collection called “*Nam Hai Di Nhan*” (Extraordinary Persona of the South Sea), a biography of Vietnamese historical and mythical figures.³⁵¹ The collection began with the Trung Sisters. The Trung government lasted for only three years before the sisters were defeated by General Ma Yuan of the Han. Phan Ke Binh commented:

Alas, a pair of Vietnamese heroines, *unable to establish long-lasting, substantial achievements due to their willowy and peachy feminine nature*, at least were able to express their outrage . . . , started an uprising, attained eternal fame by setting an example for later generations. Quite complimentary, quite complimentary!³⁵²

Binh’s comments typified the Confucian mentality of Vietnamese historians, attributing the Trung Sisters’ short-term reign to their feminine nature,³⁵³ ignoring the obvious fact that Vietnam in A.D. 40—considered the *Chao Chi* District by China—was no military match for the organized army of the renowned Ma Yuan.

Further, it is possible that the recording and interpretation of early historical facts such as the Trung revolt might have been filtered by

³⁴⁹ See, e.g., VU VAN KHINH, *HOC CHU NOM [THE STUDY OF THE ANCIENT NOM]* (Dong Nai Publishing 1995) (methodology for studying *Nom*, pointing out the difference between *Nom* and written Chinese).

³⁵⁰ Thanh Lang, *Nhung Chang Duong Cua Chu Quoc Ngu [Various Developmental Stages of the Quoc Ngu]*, in *BANG LUOC DO VAN HOC VIET NAM: QUYEN THUONG NEN VAN HOC CO DIEN TU THE KY XIII DEN 1862*, *supra* note 73, at 344-89. This system was invented by Alexandre de Rhodes, a French Jesuit priest. *Id.*

³⁵¹ PHAN KE BINH, *supra* note 67.

³⁵² *Id.* (emphasis added).

³⁵³ *Accord* NGO SI LIEN, *DAI VIET SU KY TOAN THU [THE COMPLETE HISTORY OF THE DAI VIET]* (Cao Huy Giu trans., Dao Duy Anh ed., Khoa Hoc Xa Hoi 1967) (“Her army was only a gathering of undisciplined units . . . As they saw that their Queen was only a woman, her followers feared that she could not fight off the invaders; therefore, they dispersed in the spring of A.D. 43”).

Confucian historians who injected their chauvinistic attitude in other ways.³⁵⁴ Chinese history agreed with Vietnamese history on the following facts of the Trung uprising: the corruption of the Chinese Governor Su Ting, and General Ma Yuan's expedition that defeated the Trung Sisters. However, in Vietnamese history, the Trung resistance was known, not only as a fight for independence, but also because the older sister, Trung Trac,³⁵⁵ vowed revenge for the death of her husband, Thi Sach (Shih So in Chinese), who was allegedly killed by Su Ting. Trung Trac's revenge, therefore, was approved as a pious act under Confucius ethics. Chinese history, on the other hand, made no mention of Shih So's death. Since Chinese sources readily acknowledged the corruption of Su Ting, there was little motivation for Chinese historians to selectively leave out the alleged murder of Trung Trac's husband. In fact, one Chinese source recorded that Shih So was still alive at the time of Trung Trac's uprising, raising the possibility that Vietnamese male historians had added the death of her husband to conform her to the Confucian notion of a good wife and reinforce the precept of patriarchy.³⁵⁶

Historians such as Phan Ke Binh have also omitted Lady Trieu from their biographical collection,³⁵⁷ although she was so well-revered that her image was preserved in folk art, and her oral statement survives almost two thousand years.³⁵⁸ The reason for Binh's oversight can easily be deciphered.

³⁵⁴ See Cong Huyen Ton Nu Nha Trang, *supra* note 2.

³⁵⁵ Her name meant "a strong egg."

³⁵⁶ Bui Quang Tung, *Cuoc Khoi Nghia cua Hai Ba Trung Duoi Mat Su Gia* [The Trung Sisters' Rebellion in the Eyes of Historians], Lecture given at Hue University on the commemoration of the Trung Sisters in 1959, printed in *DAI HOC* 1 (July 1959), at 92-107; Dang Thanh Le, "Van Hoc Co voi Nu Anh Hung Trung Trac," [Classic Literature on the National Heroine Trung Trac] *TAP CHI VAN HOC* 5 (1969), at 42-57; Henri Maspero, *L'Expedition de Ma Yuan*, *BEFEO* 18:3, at 11-28; Stephen O'Harrow, *From Co Loa to the Trung Sisters' Revolt: Vietnam as Chinese Found it*, *ASIAN PERSPECTIVE*, XXII:2 (1979), at 140-64; Cong Huyen Ton Nu Nha Trang, *supra* note 2 (commenting on Chinese history recorded by Hou Han Shu and compiled by Fan Yeh (A.D.398-446), and Chinese history recorded by Shui-Ching-Chu and compiled by Li Tao Yuan (sixth century)).

³⁵⁷ See Tran The Phap, in *LINH NAM CHICH QUAI*, *supra* note 58; VU QUYNH & KIEU PHU, *LINH NAM CHICH QUAI—TRUYEN CO DAN GIAN VIETNAM* [LINH NAM CHICH QUAI—OLD TALES OF VIETNAMESE PEOPLE], (edited and translated by Dinh Gia Khanh & Nguyen Ngoc San, Hanoi: Van Hoa 1960); LY TE XUYEN, *VIET DIEN U LINH THI TAP* [A COLLECTION OF STORIES OF THE DEPARTING SPIRITS IN THE KINGDOM OF VIET], (translated by Trinh Dinh Ru & Dinh Gia Khanh, Van Hoc 1972). See also Cong Huyen Ton Nu Nha Trang, *supra* note 2, at 395-97.

³⁵⁸ See GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 67, 68 (discussing the history of Vietnamese female warriors, including photographs of an ancient temple and a contemporary statue of Lady Trieu); *KNOWLEDGE OF VIETNAM THROUGH 700 PICTURES* (Ministry of Culture, Information & Theory Publishing House 1992) (including a folk painting of Lady Trieu). Vietnamese folk songs have also immortalized the image of Lady Trieu: "*Ru con, con ngu cho lanh, cho me ganh nuoc, rua banh con voi, Muon coi len nui ma coi, Coi Ba Trieu tuong cuoi voi danh cong.*" ["A lullaby for my baby, sleep, my baby, sleep, as I must carry water up the mountains to wash the elephant's tusks. If you want to go to the

Reportedly fierce and immodest in combat,³⁵⁹ Lady Trieu expressed that she *made a choice* to be different, having no desire to serve as “the concubine of [any] man!”³⁶⁰

One thing about Lady Trieu remained consistent from all sources: her image and description contradicted the demure, modest, submissive Confucius female prototype. Here, Chinese and Vietnamese historians were in accord. Chinese sources gave her no name, calling her “the Trieu woman,” describing her as “a young woman, unmarried . . . whose breasts were three feet long . . . raid[ing] and ransack[ing] all the districts . . . Often wearing a yellow tunic and wooden clogs, she went into battle seated on the head of an elephant. When she died, she became a goddess . . .”³⁶¹ Subsequent Vietnamese records described her as being thirteen feet tall, combining feminine features like a “pretty” face, “lush hair,” “gem-like” eyes, “peach blossom” lips, with “male hero” features like “a tiger’s nose,” “a dragon’s head,” and a “voice that roared[.]”³⁶² Clearly, attempts were made to change her into an atypical woman, a male hero surrogate. In dramatic versions, the paternal filtering of the heroines’ uprisings was carried to the extreme, attributing their deeds to the instigation of Trung Trac’s husband and Lady Trieu’s brother, respectively, thereby subordinating their achievements to male mentors.³⁶³

In summary, strong female heroic figures dominated early Vietnamese history, but with time, gender tension suppressed the feminist voice, especially after the infiltration of Confucianism. The filtering does not necessarily mean that the feminist voice was feeble or without popular support. Quite to the contrary, strong, persistent, and effective voices tend

mountains with me, I will let you meet Lady Trieu, the female general, riding elephants and sounding her bell.” See also VU NGOC PHAN, *supra* note 33, at 34.

³⁵⁹ The myth of Lady Trieu (concurrent by Chinese history) depicted her as a fierce woman, with breasts that were three or four feet long, which she “threw over her shoulders” to conduct combat. One researcher has linked this abnormal feature to the folklore of the Bahnar (ethnic *montagnard*) myth of a goddess whose breasts were so long they reached her knees and she had to throw them over her shoulders or tie them together by the nipples. NGUYEN DONG CHI, LUOC KHAO VE THAN THOAI VIET NAM [SUMMARY OF VIETNAMESE MYTHOLOGY] 23 (Van Su Dia 1956); Cong Huyen Ton Nu Nha Trang, *supra* note 2, at 412.

³⁶⁰ NGUYEN KHAC VIEN, *supra* note 76 at 27.

³⁶¹ Cong Huyen Ton Nu Nha Trang, *supra* note 2, at 395 (citing and referring to Chiao Chih Chi compiled by Tseng Kun (ninth century)).

³⁶² *Id.* at 412 (citing Chu Cat Thi, *Tan Dinh Hieu Binh Viet Dien U Linh Tap* (1774), incorporating folk legend).

³⁶³ *Id.* at 416-22. By comparison, a socialist historian like Nguyen Khac Vien, although neutral in his recording of female historical figures, devoted only two short paragraphs of his 402-page book on Vietnam (VIETNAM: A LONG HISTORY) to the Trung-Trieu accomplishments. The bulk of Vien’s work is devoted to a description of the communist revolution and seeds thereof. Vien characterized the Trung-Trieu uprisings as “insurrections.” NGUYEN KHAC VIEN, *supra* note 76, at 26-27.

to provoke the most severe oppression by the opponents of an advocated position, demonstrated in Vietnam by suppression of the voices for gender equality.

B. Second Factor: The Overshadowing Experiences of Repetitive, Prolonged War and Poverty

A prolonged history of warfare in Vietnam has meant that gender issues have taken a back seat to hardships suffered by both sexes. Both sexes have had to struggle against economic deprivation, foreign intervention, political upheavals, and war. Ironically, while Vietnamese women have not achieved social equality, they certainly have received an equal share of suffering from warfare. The following summary traces how warfare has become a routine way of life for Vietnamese people and has thereby overshadowed gender issues throughout the history of Vietnam.

1. Ancient Civil Wars

The history of war in Vietnam long pre-dated the post-colonialism period. Further, the well-known Vietnam War (1954-1975) was not the only so-called civil war in Vietnamese history. The first civil war occurred in Vietnam around the 10th century, among the twelve principle landlords, and lasted over twenty years.³⁶⁴ The second civil conflict lasted, intermittently, almost 200 years (1545-1787).³⁶⁵ When the golden Le Dynasty began to deteriorate, Lord Trinh took over the administration of north Vietnam, and Lord Nguyen reigned in the south.³⁶⁶ The civil war between the Trinh and Nguyen lords ("Trinh-Nguyen Civil War") destroyed national unity and depleted human resources far exceeding the Vietnam War of modern days. During the Trinh-Nguyen Civil War, the last of the Le emperors remained on the throne as puppets. This long civil war encompassed other armed conflicts, such as the Le-Mac conflicts over the throne, and preceded the war between Nguyen Anh, descendant of Lord Nguyen, and the Tay Son government. All factions declared that they fought in aid of the throne.

This prolonged period of political conflict and warfare also marked the return of the Vietnamese people to womanhood as a spiritual motif,

³⁶⁴ See QUYNH CU & DO DUC HUNG, *supra* note 59, at 58-59; NGUYEN KHAC THUAN, *supra* note 337, at 41-42.

³⁶⁵ QUYNH CU & DO DUC HUNG, *supra* note 59; HUNG PHONG, NAM BAC TRANH HUNG (HUYET SU TUONG TAN) [THE NORTH-SOUTH POWER STRUGGLE (A BLOODY HISTORY OF CIVIL WAR)] (Yen Son Publishing 1953).

³⁶⁶ NGUYEN KHAC THUAN, *supra* note 337, at 93.

revitalizing the matriarchal cult of the indigenous “Female Goddess.”³⁶⁷ During this time of chaos, the legend of the Fairy-Goddess Lieu Hanh was either born or revived,³⁶⁸ probably representing the people’s despair with warfare and their search for renewed hope in the female spiritual motif. Folk stories explaining the Goddess’ origin were conflicting; no cultural anthropologists can be certain who she was supposed to be, except that to date, she has been associated with a superstitious cult religion, prevalent among lesser-educated Vietnamese women, coexisting with Buddhism, Taoism, Confucianism, and Christianity.³⁶⁹ The cult practice consisted of elaborate rituals and costumes, including spiritual dances and songs performed by female mediums, all in the images of the “holy mother” as a theme of worship.³⁷⁰ Today, there are many Lieu Hanh temples and shrines in north Vietnam.³⁷¹ In addition, a small segment of the exile community continues to follow her cult in the United States.³⁷² In short, feminist literature, including the Tale of Lady Kieu, flourished during the Trinh-Nguyen Civil War.³⁷³

This period of civil war did not end until 1802, when Nguyen Anh, a descendant of Lord Nguyen, unified the country and founded the Nguyen Dynasty, pronouncing the independent state of Vietnam. During the war, Nguyen Anh had befriended French missionaries, most notably the politically ambitious French Catholic priest Signeau De Behaine. Through De Behaine, Nguyen Anh requested military and economic aid from Louis XVI, paving the way for French colonialism.³⁷⁴

³⁶⁷ For an account of female deity worship in Vietnam, see Le Xuan Giang, in THO THAN O VIET NAM II [THE POLYTHEISTIC RELIGIONS OF VIETNAM II] 174-85 (Nha Xuat Ban Hai Phong 1996).

³⁶⁸ TO NGUYET DINH, CHUYEN CO TICH [FOLK STORIES] (no publication information available, on file with author).

³⁶⁹ For various accounts on the life of Lieu Hanh Tien Chua [Fairy-Goddess Lieu Hanh], see PHAN KE BINH, *supra* note 67, at 189; Kiem Them, *Co Do Hue [The Ancient Capital City of Hue]* (Thuan Hoa 1986) at 68 (describing and tracing the medium/seance practice of Vietnam and its connection to the mythical female lord Lieu Hanh); Le Xuan Quang, in THO THAN O VIET NAM, *supra* note 58, vol. II., at 178-79 (recounting the worshipping of “the Holy Mother Lieu Hanh”). See also NGUYEN DANG THUC, *supra* note 56, at 283-306.

³⁷⁰ NGUYEN DANG THUC, *supra* note 56, at 154-70, 310-46 (discussing the custom of the female medium, its philosophy, myth, tale, folk belief, and reality).

³⁷¹ *Id.* at 241-45.

³⁷² Interviews with various Vietnamese media outlets in Houston, Tex. and Orange County, Cal. (1999) (notes on file with author).

³⁷³ See NGUYEN DU, TRUYEN KIEU annot. (NXB Van Hoc 1979) (text in *Quoc Ngu* with commentaries). For English translation, see NGUYEN DU, THE TALE OF KIEU (Huynh Sanh Thong trans., 1973). For a discussion on the Tale of Lady Kieu, see *infra* Part IV.E.4.c.

³⁷⁴ TRAN TRONG KIM, *supra* note 1, at 390-99; LE THANH KHOI, HISTOIRE DU VIETNAM DES ORIGINES A 1858 (1987) (broader picture preceding French colonialism).

2. *Ancient Border Wars*

Vietnam was constantly at war with China over national territory. The five dynasties of ancient Vietnam (Dinh/Tien Le, Ly, Tran, Le, Nguyen) co-existed with the five dynasties of China (Han, Tang, Sung, Mongol, Ming, and Manchu), representing the five periods of self-governance by Vietnamese leaders who had successfully won border wars and established their respective dynasties.³⁷⁵ Vietnam was also periodically at war with Champa in the south, culminating in the annexation of the Champa Kingdom into Vietnam during the Le Dynasty (1479-1789).³⁷⁶

3. *Ancient and Modern Guerilla Wars and Nationalist Uprisings*

In between major wars, Vietnam constantly engaged in guerrilla wars and frequently faced political violence. In addition to frequent uprisings during approximately 1,000 cumulative years of periodic Chinese governance, militant bloodshed occurred during the French colonial period.³⁷⁷ From 1888 (when Emperor Ham Nghi was arrested after his advisers staged a military coup against the French) to 1945 (when Emperor Bao Dai abdicated and Ho Chi Minh's government took over), Vietnamese mandarins in the Emperor's Loyalist Movement (*Can Vuong*) and other freedom fighters carried on guerilla ambushes against the French, who mercilessly inflicted retaliation to deter uprisings in the colony. In 1930, the French guillotined the thirteen founding members of the newly established Vietnamese Nationalist Party, after the party's unsuccessful military coup in Tonkin.³⁷⁸ Similarly, around the time of the failed "southern farmers'

³⁷⁵ Nguyen Ngoc Huy & Ta Van Tai, *supra* note 326. Even when Vietnam claimed independence, China still considered it a subordinated state, giving the Vietnamese king the title *An Nam Quoc Vuong* (national leader of Annam). The name of the country, Vietnam, had to have the Manchu emperor's approval and blessing. See BUU CAM, QUOC HIEU NUOC TA TU AN NAM DEN DAI NAM [NAMES OF THE COUNTRY FROM ANNAM TO DAINAM] 110-11 (Tu Sach Su Hoc Phu Quoc Vu Khanh Dac Trach Van Hoa 1969).

³⁷⁶ NGUYEN KHAC VIEN, *supra* note 76, 70-73; SEMINAR ON CHAMPA, *supra* note 338, at 53.

³⁷⁷ See, e.g., DAVID G. MARR, VIETNAMESE ANTI-COLONIALISM: 1885-1925 (1971). MARK W. MCLEOD, THE VIETNAMESE RESPONSE TO FRENCH INTERVENTION 1862-1874 (1991).

³⁷⁸ HUE-TAM HO TAI, *supra* note 30, at 183, 222. French Indochina consisted of five states: Cambodia, Laos, Tonkin (North Vietnam, encompassing Hanoi), Annam (central Vietnam, encompassing Hue), and Cochinchina (South Vietnam, encompassing Saigon). Cochinchina belonged to France outright and after 1945 became the Republic of Cochinchina. Annam was ruled by the Emperor of Vietnam, under advice of the French *Resident Supérieur*, and Tonkin was placed under a similar French protectorate structure. PHAM VAN SON, VIET SU TOAN THU [COMPLETE COLLECTION OF VIETNAMESE HISTORY] 693-96 (Pham Van Son's Self-Publishing 1960); *Viet Nam Khang Phap Su Viet Su Tan Bien V* [*Vietnamese History of French Resistance Series of Modern Recording of Vietnamese History V*] (Pham Van Son's Self-

uprising” organized by Vietnamese Communists in 1941,³⁷⁹ French Governor Decoux arrested and tried approximately 3,474 Vietnamese, a larger number than the prison in Cochinchina (Saigon) could hold.³⁸⁰ As a result, many people were executed, including the execution of Nguyen Thi Minh Khai, the first Vietnamese woman to represent the Indochinese Communist Party at the Seventh Congress of the Communist International in 1935.³⁸¹ Oppression was so severe that Gaston Joseph, Director of Politics of the French Ministry of Colony, had to report, “[t]here were so many irremediable sentences that the Vietnamese must have thought we were condemning the entire race.”³⁸² This brutality preceded the Indochina War (1945-1954) between the French and Ho Chi Minh’s troops (the Viet Minh) and also marked the internal “bloodbath” and “strategic game” between the various political parties led by Vietnamese intellectuals and revolutionaries, covering the whole political spectrum.³⁸³ In the end, Ho Chi Minh’s Communist Party out-manuevered all other political parties.³⁸⁴ Around the Second World War, Vietnam also suffered from a brief period of Japanese occupation, which led to the largest famine in the history of the country.³⁸⁵ The final battle of Dien Bien Phu (known as “hell in a small place”) marked the Viet Minh’s victory over the French, bringing about Vietnam’s decolonization.³⁸⁶

Publishing 1962) (describing French governance in Vietnam and administrative changes in south Vietnam as a French colony).

³⁷⁹ See, e.g., NGUYEN KHAC VIEN, *supra* note 76, at 238.

³⁸⁰ CHINH DAO, HO CHI MINH: CON NGUOI VA HUYEN THOAI, TAP II (1925-1945) [HO CHI MINH: THE PERSON AND MYTH VOL. II (1925-1945)] 229, 229 (Van Hoa 1993).

³⁸¹ *Portrait: Nguyen Thi Minh Khai*, in VIETNAMESE STUDIES 10: VIETNAMESE WOMEN 241-47 (XUNHASABA 1966).

³⁸² CHINH DAO, *supra* note 380 (citing Secretariat d’Etat aux Colonies, “Note” par Gaston Joseph (May 10, 1941); AOM (Paris), Carton 121, Dossier 1096).

³⁸³ HUE-TAM HO TAI, *supra* note 30; NEIL JAMIESON, *supra* note 91, at 176-93.

³⁸⁴ NEIL JAMIESON, *supra* note 91, at 176-93;

³⁸⁵ NGUYEN KHAC VIEN, *supra* note 76, at 235-53.

³⁸⁶ See, e.g., VO NGUYEN GIAP, DIEN BIEN PHU (Hanoi: Foreign Languages Publishing House 1964); VO NGUYEN GIAP, THE PEOPLE’S WAR, THE PEOPLE’S ARMY: THE VIET CONG INSURRECTION MANUAL FOR UNDERDEVELOPED COUNTRIES (1962); BERNARD B. FALL, HELL IN A VERY SMALL PLACE, THE SIEGE OF DIEN BIEN PHU (1966). Compare PETER MACDONALD, GIAP: THE VICTOR IN VIETNAM (New York/London: W.W. Norton & Company 1993); PHILLIP B. DAVIDSON, VIETNAM AT WAR: THE HISTORY 1946-1975 (1988) (history of modern wars in Vietnam, focusing on General Vo Nguyen Giap, allegedly the mastermind behind *Dien Bien Phu*). Again, non-communist Vietnamese claim that *Dien Bien Phu* was fought by all Vietnamese nationalists, representing all anti-French political parties other than Ho Chi Minh’s Communist Party. See, e.g., HOANG VAN DAO, VIETNAM QUOC DAN DANG: LICH SU DAU TRANH CAN DAI 1927-1954 [THE VIETNAMESE NATIONALIST PARTY, MODERN HISTORY OF A POLITICAL STRUGGLE 1927-1954] (2d ed. Saigon 1970).

4. *The Vietnam War and Other Modern Wars*

Vietnam became internationally notorious at the end of French colonialism when the Geneva Convention of 1954 temporarily separated Vietnam into two “zones”: a communist North Vietnam relying on Chinese and Soviet aid, and a non-communist South Vietnam supported by the United States.³⁸⁷ The general election to unify Vietnam never took place because South Vietnam objected, claiming that the election would not be free in the communist north. War ensued.³⁸⁸ Known internationally as “the Vietnam War,” it is called the “American War” within Vietnam, reflecting the view that Americans stepped into the French aggressor role and had to be expelled. To non-communist Vietnamese (typified by a vocal segment of Vietnamese overseas³⁸⁹), the war represented the Vietnamese people’s fight against communism, which was most strongly supported by the United States (Australia, Japan, and South Korea also assisted in the process).³⁹⁰ Neither side considered the war a civil war, although a number of Vietnamese describe it that way.³⁹¹ The Paris cease-fire agreement of 1972 made official the U.S. withdrawal of its troops from Vietnam, bringing about Nobel Peace prizes for Henry Kissinger and Le Duc Tho. However, fighting

³⁸⁷ See, e.g., LOUIS HENKIN, *HOW NATIONS BEHAVE—LAW AND FOREIGN POLICY* 304-08 (2d ed. 1979); THOMAS .D. BOETTCHER, *VIETNAM: THE VALOR AND THE SORROW* (1985). See also JOSEPH BUTTINGER, *THE SMALLER DRAGON: A POLITICAL HISTORY OF VIETNAM* (1958) (account of pre-America era).

³⁸⁸ For a North Vietnamese perspective of the 1954 Geneva Convention, see NGUYEN ANH TUAN, *HIEP DINH GENEVE 1954 [THE 1954 GENEVA CONVENTION]* (Loai Sach Tim Hieu Chinh Tri 1964). For a South Vietnamese perspective, see, for example, BUI DIEM, *IN THE JAW OF HISTORY* (1987) (Bui Diem was South Vietnam’s ambassador to the United States and was present at the Geneva Convention).

³⁸⁹ Today, approximately 1.5 million Vietnamese live outside Vietnam, with more than half of that population concentrated in California. For a history of their resettlement, see, for example, CAROL DAGLISH, *REFUGEES FROM VIETNAM* (1989); PAUL J. RUTLEDGE, *THE VIETNAMESE EXPERIENCE IN AMERICA* (1992); Nguyen Thi Anh, *Occupational Adjustment of Vietnamese Refugees in Los Angeles and Orange County: Education and Jobs*, Ed.D. dissertation (University of California, Los Angeles 1982).

³⁹⁰ For a synopsis of various competing political and ideological claims regarding the legitimacy of the Vietnam War and the U.S. involvement, see Richard Falk, *Int’l Law and the United States Role in the Vietnam War*, 75 *YALE L.J.* 1122 (1966); John Norton Moore, *The Lawfulness of Military Assistance to the Republic of Vietnam*, 61 *A.J.I.L.* 1 (1967); Richard Falk, *Int’l Law and the United States Role in Vietnam: A Response to Professor Moore*, 76 *YALE L.J.* 1095 (1967); *THE VIETNAM WAR: OPPOSING VIEWPOINTS* (William Dudley & David Bender eds. 1990). See also RENNY CHRISTOPHER, *THE VIETNAM WAR/AMERICAN WAR: IMAGES AND REPRESENTATIONS IN EURO-AMERICAN AND VIETNAMESE EXILE NARRATIVES* (1995); Wolfgang Friedman, *United States Policy and the Crisis of Int’l Law*, 59 *AM.J.I.L.* 857, 865-66 (1965).

³⁹¹ “A thousand years of Chinese governance, a hundred years of French colonialism, followed by twenty years of *civil war* taking place every day . . .” (quote from popular song by Trinh Cong Son, “Inheritance of Mother Vietnam”) (emphasis added). See Interview with Trinh Cong Son in Singapore (1996) (notes on file with author) (Trinh Cong Son is a popular songwriter in Vietnam, considered the Vietnamese “John Lennon” by generations of Vietnamese youth).

continued in Vietnam until the last hour before North Vietnam's Russian tanks rolled into Saigon around noon on April 30, 1975, ending the U.S.-backed Saigon regime.³⁹²

During and after the Vietnam War, other wars continued. In 1975, a few months before South Vietnam became defunct, a short maritime war took place between China and South Vietnam, whereupon China took over the Paracels Islands, giving rise to the current dispute between the two countries over ownership of the islands.³⁹³ After the fall of Saigon, the China-Vietnam relationship deteriorated, culminating in another border war between the two countries in 1979. Both sides claimed victory. The new Vietnam also invaded Cambodia, occasioning another military mobilization.³⁹⁴

Vietnamese women have thus participated in and survived many wars. Off the battlefield, they have also fought non-military wars. First, always parallel to military warfare is the continuous war against poverty, aggravated by the labor-intensive demand of post-war reconstruction and the need to heal culturally.³⁹⁵ Second, the Vietnam War occasioned an exodus and created the largest Vietnamese exile community in history. Vietnamese women who immigrated to America and other countries faced the "internal war" of cultural assimilation and climbing the social ladders of host countries.³⁹⁶

³⁹² See HOANG VAN THAI, *supra* note 139; NGUYEN PHU HOANH VA PHAM HUY HUNG, SAIGON NHUNG NGAY CUOI CUNG CUA MY O DONG DUONG [SAIGON: THE LAST DAYS OF AMERICA IN INDOCHINA] (trans. of Harry Thurk, NXB Tong Hop Song Be 1985) (anti-American view of an East German author describing the fall of Saigon). Compare DAVID BUTLER, THE FALL OF SAIGON: SCENES FROM THE SUDDEN END OF A LONG WAR (1985); STANLEY KARNOW, VIETNAM: A HISTORY 676-84 (1984); LARRY ENGLEMAN, TEARS BEFORE THE RAIN: AN ORAL HISTORY OF THE LAST DAYS OF THE FALL OF VIETNAM (1990); OLIVER TODD, CRUEL APRIL: THE FALL OF SAIGON (1990); JOHN PILGER, THE LAST DAY (1976). For an account of the U.S. involvement in Vietnam from the standpoint of policy-makers, see ROBERT McNAMARA, IN RETROSPECT: THE TRAGEDY AND LESSONS OF VIETNAM (1995); FRANK SNEPP, DECENT INTERVAL: AN INSIDER'S ACCOUNT OF SAIGON'S INDECENT END TOLD BY THE CIA CHIEF STRATEGY ANALYST IN VIETNAM (1977).

³⁹³ Covington & Burling, *supra* note 103; *Saigon Says China Bombs Three Isles and Lands Troops*, N.Y. TIMES, Jan. 20, 1974; David K. Shieler, *Saigon Says Chinese Control Islands, But Refuses to Admit Complete Defeat*, N.Y. TIMES, Jan. 21, 1974.

³⁹⁴ See, e.g., MARILYN B. YOUNG, THE VIETNAM WARS 1945-1990 (1991); CHANDA, *supra* note 94; STEPHEN J. HOOD, DRAGONS ENTANGLED: INDO-CHINA AND THE CHINA-VIETNAM WAR (1992).

³⁹⁵ See NGUYEN VAN CANH, VIETNAM UNDER COMMUNISM 1975-1982 (1983); NGUYEN NGOC NGAN, THE WILL OF HEAVEN: THE STORY OF ONE CHINESE AND THE END OF HIS WORLD (1982).

³⁹⁶ TRAN KHANH TUYET, THE LITTLE WEAVER OF THAI-YEN VILLAGE (Christopher N.H. Jenkins & Tran Khanh Tuyet trans. 1987) (story of a Vietnamese girl struggling with her cultural identity in America); Lan Anh Tran, Acculturation of Vietnamese American Women Students in Higher Education (1989) (unpublished Master's thesis, California State University, Long Beach); B.R. Ferguson, Successful Refugee Settlement: Vietnamese Values, Beliefs and Strategies (1985) (unpublished D.S.W. dissertation, University of California, Berkeley); A.C. Bautista, The Traditional Vietnamese Family in Transition: An Ethnographic Study (1983) (unpublished Ed.D. dissertation, University of San Francisco); DARREL MONTERO,

In summary, war has devastated Vietnam. As of 1993, the year prior to the lifting of the U.S. trade embargo, Vietnam was considered one of the twenty poorest countries in the world, with an estimated Gross National Product ("GNP") per capita of U.S. \$164.³⁹⁷ The Vietnamese government, in planning its programs for the decade before the new millennium, acknowledged that the country was among the ten poorest in the world in terms of low GNP.³⁹⁸ Thus, prolonged war, poverty, political transition, and cultural uprooting together have overshadowed gender issues throughout Vietnamese history.

C. *Third Factor: Vietnam's Lack of A Feminist Doctrine Independent from Nationalist, Socialist, or Literary Movements*

The first half of the twentieth century marked the emergence of several short-lived Vietnamese women's movements, which eventually came to exist only as a part of nationalism, socialism, and literary works. During this time, Vietnam was struggling with anti-colonialist sentiments, a tension between Chinese literary traditions and the "nouveau" literary style that accompanied the Roman alphabet system of writing,³⁹⁹ and the import of communism. In fact, in those days, Western trained males vehemently opposed the incorporation of Western feminism into Vietnamese society. Nguyen Manh Tuong, a leading jurist, talked disdainfully and paternally of "foreign" imported feminism and the "Vietnamese feminists" under its banner:

VIETNAMESE AMERICANS: PATTERN OF RESETTLEMENT AND SOCIOECONOMICS ADAPTATION IN THE UNITED STATES (1979); GISELE L. BOUSQUET, BEHIND THE BAMBOO HEDGE: THE IMPACT OF HOMELAND POLITICS IN THE PARISIAN VIETNAMESE COMMUNITY (1991); NATHAN S. CAPLAN ET AL., THE BOAT PEOPLE AND ACHIEVEMENT IN AMERICA (1989); Mau-kuei M. Chang, The Patterns of Adaptation among Vietnamese Refugees in a Mid-Sized Community (1985) (unpublished Ph.D. dissertation, Purdue University); JAMES M. FREEMAN, HEARTS OF SORROW: VIETNAMESE—AMERICAN LIVES (1989); Harvey Arden, *Troubled Odyssey of Vietnamese Fishermen*, 160 NAT'L GEOGRAPHIC 378 (1981); PAUL J. STRAND & WOODROW JONES, JR., INDOCHINESE REFUGEES IN AMERICA: PROBLEMS OF ADAPTATION & ASSIMILATION (1985); NGUYEN THI THU-LAM, FALLEN LEAVES: MEMOIRS OF A VIETNAMESE WOMAN FROM 1940-1975 (1989). The challenge of becoming American, according to writer James Baldwin, is a "complex fate," involving the process of mainstream "assimilation," which, in Baldwin's words, was "frequently another name for the special brand of relations between human beings . . . imposed by colonialism." JAMES BALDWIN, NOBODY KNOWS MY NAME: MORE NOTES OF A NATIVE SON 3, 16 (1961). Accord AL SANTOLI, NEW AMERICANS: AN ORAL HISTORY, IMMIGRANTS AND REFUGEES IN THE U.S. TODAY (1988).

³⁹⁷ JONATHAN HAUGHTON, OVERVIEW OF ECONOMIC REFORM IN VIETNAM, (1993).

³⁹⁸ Le Xuan Trinh, *supra* note 291. This GNP has grown to U.S. \$220 per capita. Truong My Hoa, *supra* note 308.

³⁹⁹ See *infra* Part IV.E.2.

Surely one sees that at the present time, leavened by dangerous Western thoughts, *disheveled little females* are enlisting at random under the banner of feminism and proclaiming, at the instigation of their 'Western sisters,' their rights to a free and full life These *little fools* do not know that this very doctrine of feminism, which they adduce and go so far abroad to look for, is a product of the national soil, capable of being exported; that the genuine feminism must be searched for, not elsewhere but in their own country, by returning to the admirable and reasonable traditions of their race.⁴⁰⁰

As the result of this kind of opposition, women's issues did not develop into feminist movements. Instead, they were often buried within literary, nationalist, and socialist movement. Thus, Nguyen Manh Tuong's preferred style of feminism—that "product of the national soil"—never evolved into a separate doctrine. Only under the banners of literature, nationalism, and the newly arrived Marxism did Vietnamese women cease to appear as "disheveled little females" or "little fools." A look at the embryonic women's movements in the 1930s and 1960s helps trace the identity of Vietnamese women from this formative period to the present time. These movements were overshadowed, swallowed, and even contaminated by politics and ideologies.

1. *The Literary Movements*

The global trend of women's awakening in the World War I era forced a small circle of Vietnamese elites under French colonialism to perform a conscious review of the Vietnamese woman's status, initially using literature as their voice. A literary movement appeared as early as 1907, and continued until the 1930s.⁴⁰¹ Also, by 1920, female participation in schools had noticeably increased.⁴⁰² The Confucian-inclined newspaper, *Nam Phong* (South Wind), voiced early literary ideas on gender equality.

⁴⁰⁰ See Ta Van Tai, *supra* note 344, at 97-98 (emphasis added) (quoting Nguyen Manh Tuong, *L'Individu dans la Vieille Cité Annamité: Essai de Synthèse sur le Code de Le*, Thèse Pour Le Doctorat en Droit 106 (Montpellier 1932)). See also Pham Tran, *Hanh Ngo Cu Nguyen Manh Tuong: Hai The He, Mot Tam Tinh* [An Encounter with Nguyen Manh Tuong, Two Generations, One Heart], in TRAM HOA VAN'NO TREN QUE HUONG [ONE HUNDRED FLOWERS ON THE MOTHERLAND] 431-38 (Le Tran Publishing Company 1990).

⁴⁰¹ See, e.g., NEIL JAMIESON, *supra* note 91, at 100-75; NGO QUY LINH, *supra* note 341, vol. II, 233-35 (quoting from *Nam Phong*, Oct. 1917, Feb. 1918, Dec. 1920, and Jan. 1921).

⁴⁰² MARR, *supra* note 333, at 206.

While it advocated improved status for women, it nevertheless referred to the “weak and temperamental nature” of women. These comments generated literary debates, whereupon early Vietnamese female writers such as *Nu Si Dam Phuong* (Dam Phuong the Female Literati) defended the “emotions” and “sensitivity” of women.⁴⁰³ The first Vietnamese magazine edited for and by women, the *Nu Gioi Chuong* (Women’s Bell), was founded in Cochinchina in 1918.⁴⁰⁴ By 1926, Vietnam had women’s publishing groups and women’s organizations, all of which the French viewed with suspicion.

An outspoken literary magazine for women, the *Phu Nu Tan Van* (Women’s New Literature) was founded in 1929, but shut down by the French in 1934.⁴⁰⁵ The *Phu Nu Tan Van* discussed a wide range of topics, from nationalist uprisings against the French protectorate government, to literary debates on the development of the *Quoc Ngu* system of writing, to freedom of choice in marriage.⁴⁰⁶ Most notably, the *Phu Nu Tan Van* contributed instrumentally to a literary revolution called *Phong Trao Tho Moi* (the “Free Verse” Movement), which advocated a break-away from Tang poetry⁴⁰⁷ and promoted female *nouveau*-style poets. For example, in July 1933, the *Phu Nu Tan Van* supported a public appearance by the eighteen-year-old female poet, Manh Manh Nguyen thi Kiem, in July 1933, before an audience of Tang scholars.⁴⁰⁸ Kiem was severely criticized by

⁴⁰³ NGO QUY LINH, *supra* note 341, vol. II, 233-35 (quoting Dam Phuong Nu Si); accord HUE-TAM HO TAI, *supra* note 30.

⁴⁰⁴ The *Nu Gioi Chuong* was the work of a resourceful woman, “The Widower Nguyet Anh,” who served as a role model for Vietnamese women at the time, although she preferred to attach herself to the identity of her husband by adding “widow” to her pen name. See HUE-TAM HO TAI, *supra* note 30, at 94.

⁴⁰⁵ *Id.*

⁴⁰⁶ MUOI BA NAM TRANH LUAN VAN HOC 1932-1945 TAP II [THIRTEEN YEARS OF LITERARY DEBATES 1932-1945, VOL. II] (Thanh Lang ed., Ho Chi Minh City: Nha Xuat Ban Van Hoc, Hoi Nghien Cuu va Giang Day Van Hoc 1995); *Loi Tam Huyet Cung Chi Em Dong Bao*, [Heart to Heart Message for Fellow Countrywomen], PHU NU TAN VAN Editorial, No. 1, May 2, 1929, at 308; *Phong Trao Bien Dong O Ngoai Bac*, [The Revolutionary Movement in the North (Tonkin)], PHU NU TAN VAN No. 42, Mar. 6, 1930, at 7; *Vu An Cach Mang Da Xu o Yen Bai Ngay 27/3* [The Revolutionists’ Trial at Yen Bai on March 27] PHU NU TAN VAN No. 47, Apr. 10, 1930, at 42; *Van De Thong Nhat Tieng Viet Nam* [Issue of Standardization and Uniformity of the Vietnamese Language], PHU NU TAN VAN No. 37, Feb. 16, 1930, at 46; *Cac Danh Nhan Trong Nuoc Doi Voi Van De Phu Nu: Cuoc Trung Cau Y Kien cua Phu Nu Tan Van*, [Famous People and Women’s Issues: A Poll Conducted by Phu Nu Tan Van] in MUOI BA NAM TRANH LUAN VAN HOC 1932-1945, *supra*, at 55; Bang Tam Nu Si, *Ban Them Ve Tu Do Ket Hon*, [Editorial on the Freedom of Choice in Marriage], PHU NU TAN VAN No. 23, Oct. 3, 1929, at 119.

⁴⁰⁷ Tang poetry supposedly represents the best form and structure of ancient Chinese poetry. It was formed and flourished during the Tang Dynasty of ancient China, which produced several nationally renowned classical poets whose names were landmarks in ancient Chinese literature. The form and structure, however, is quite rigid compared to modern poetry and poetic prose.

⁴⁰⁸ See, e.g., Nguyen Thi Kiem, *Noi Ve Van De Nu Luu Va Van Hoc tap II* [On Women and Literature vol. II], PHU NU TAN VAN No. 131, May 26, 1932, at 182 (Kiem was French-educated, and discusses in her article, *inter alia*, the work and personal liberation of French writers such as Madame de Staël). Manh

conservative men, led by a teacher, Nguyen Van Hanh, who criticized not only Kiem, but also the double entendre poetry of the 18th century poetess Ho Xuan Huong.⁴⁰⁹ These attacks did not focus on Kiem's free verses, but instead on her status as a woman.⁴¹⁰

The feminist literary breakthrough did not fully develop until a new literary movement was formed in 1933, the *Tu Luc Van Doan* (Self Reliance Pen Club), consisting of male activist writers and members of either the Vietnamese Nationalist Party or its offshoot.⁴¹¹ Representing the *petit bourgeois*, this Pen Club used female protagonists in the new literary form—Western-influenced short stories and novels—to advocate the elimination of polygamy, arranged marriages, superstitious customs, and the smothering extended family system that viewed daughters in law as slaves.⁴¹² The trend of relying on female protagonists to push social reforms paralleled the native men's view that the plights of women were symbolic of, and mirrored their own, colonized status.⁴¹³ Although dominated by men, the Pen Club made an effort to admit female members who sparked the literary scene.

The Pen Club was unique because its work was not directly couched in the colonized male's sentiments of nationalism projected upon the native woman. Instead, it focused on individualism and embraced Western-styled personal freedom as the cornerstone of social reforms for Vietnamese life. The fiction written by this group depicted women from all walks of life—pedlars, flower merchants, shop owners, prostitutes, peasants, maids, teachers—portrayed under circumstances other than a traditional home life.⁴¹⁴ The Pen Club contributed substantially to the development of *Quoc Ngu* as the new method of writing, but was severely condemned by Vietnamese socialists.⁴¹⁵

Manh Nguyen Thi Kiem was arguably one of the first Western-influenced "feminists" in Vietnamese "non-communist" literature. Cf. Interview with Nhu Phong Le Van Tien, *supra* note 140.

⁴⁰⁹ NGUYEN SY TE, *supra* note 79.

⁴¹⁰ Cong Huyen Ton Nu Nha Trang, *supra* note 63 (relating the story of Manh Manh Nguyen Thi Kiem's public speech on the "free verses"); HUE-TAM HO TAI, *supra* note 30.

⁴¹¹ NHAT THINH, CHAN DUNG NHAT LINH [PORTRAIT OF NHAT LINH] (Dai Nam Publishing 1980) (Vietnamese exile ethnic press). See also HUE-TAM HO TAI, *supra* note 30.

⁴¹² See, e.g., NHAT LINH, DOAN TUYET [BREAKING AWAY] (Doi Nay Publishing 1967); NGUYEN CONG HOAN, CO GIAO MINH [MINH MADAME TEACHER] (Hop Luc Publishing 1967).

⁴¹³ See, e.g., Chinkin, *supra* note 25, at 281, citing ENLOE, *supra* note 42, at 65-92.

⁴¹⁴ See, e.g., KHAI HUNG, DOC DUONG GIO BUI [ON THE WINDY AND DUSTY ROAD] (Van Nghe Publishing 1968); KHAI HUNG & NHAT LINH, DOI MUA GIO [A LIFE OF WIND AND DUST] (Doi Nay Publishing 1966); KHAI HUNG & NHAT LINH, GANH HANG HOA [THE FLOWER SALES GIRL] (Doi Nay Publishing 1967); KHAI HUNG, HON BUOM MO TIEN [BUTTERFLY DREAMING OF FAIRY] (Doi Nay Publishing 1962); NGUYEN THI VINH, HAI CHI EM [THE TWO SISTERS] (Dong Phuong Publishing 1967).

⁴¹⁵ See, e.g., Mai Thi Tu, *supra* note 86, at 24-27.

Although the Pen Club did not directly address gender equality, its works nevertheless produced a profound impact and set the stage for gender advocacy. Its most significant impact on gender equality advocacy came through the controversial novel authored by its leader, Nguyen Tuong Tam, writing under the pen name *Nhat Linh* (*Single Orchid*). Titled *Doan Tuyet* (*Breaking Away*), the novel portrayed the life of Loan, a Western educated young woman who loved a revolutionary, but was forced to marry a traditional, uneducated male because of her family's debt. She endured conflicts between old and new values, and suffered from ill treatment by her husband's extended family. Her loveless marriage ended with the death of her infant child (due to her mother-in-law's superstitious beliefs) and the accidental death of her husband, who fell over a knife Loan held in her hand while trying to beat her. Throughout the novel, readers heard Loan's demand for "human rights," her lover's expression of patriotic ideals, his desire to serve the poor, and his appreciation of "how lucky he [was] to be born a man."⁴¹⁶ Readers also shared in Loan's sarcasm over the extended family's preference for boys over girls, and her repulsion at the value system that measured her worth based on her virginity and child-bearing capacity.

Other themes from the novel included: Loan's pondering of the suicides of several educated women who had to live in the extended family system and suffered from value conflicts; the tension between French education and Vietnamese tradition; the need to change the family system; and Loan's plea for independence in open court.⁴¹⁷ The feminist voice was heard most strongly and elaborately in the closing argument of Loan's defense lawyer, a "no-name" character called "the advocate." (Subsequent dramatic versions of the novel in south Vietnam cast the advocate as a woman.) The advocate explained Loan's action, pleaded for society's understanding, and suggested a new future for the oppressed modern woman—the "breaking away" from old values and customs through education and independence.⁴¹⁸ Despite what would be considered serious flaws in character development by today's literary standards, *Breaking Away* successfully created a stir and succeeded in getting a feminist message across without resorting to the familiar formula of using the female protagonist as the projection of the colonized male.

⁴¹⁶ NHAT LINH, *supra* note 412, at 80, 94. The novel also gave a glimpse of the justice system in Tonkin under French protectorates: Loan's arresting officer, the coroner, and other judicial officers involved in her case all spoke French. However, it was unclear whether the trial itself was conducted in French. *Id.* at 167-68.

⁴¹⁷ *Id.* at 189-90.

⁴¹⁸ *Id.* at 184-89.

The individualism of *Breaking Away* was further expanded by other members of the Pen Club. Members explored additional self-liberation issues such as freedom of choice, and even spiritual or idealistic love,⁴¹⁹ helping to expand the Vietnamese tradition of “fictional emancipation,” in which fiction was used to advocate women’s liberation among the educated.⁴²⁰ One fundamental flaw in the Pen Club’s themes, however, lies in their lop-sided view of the “liberation” issue, portraying it as a conflict between the old system’s matriarch and mother-in-law, and the young, Western-trained daughter-in-law,⁴²¹ lured by individualistic ideas and the romanticism of an unidentified revolution lurking in her horizon (symbolized by Loan’s platonic lover). The Pen Club failed to touch upon the gender battle and did not reach the uneducated peasants of agricultural Vietnam. The Pen Club’s biggest contribution to the feminist agenda was its voicing of freedom-of-choice issues and the middle class’ yearning for radical change, which directly clashed with Ho Chi Minh’s socialist movement.⁴²²

⁴¹⁹ See, e.g., KHAI HUNG, HON BUOM MO TIEN, *supra* note 414.

⁴²⁰ See HUE-TAM HO TAL, *supra* note 30.

⁴²¹ The conflicts between older and younger generations of women and among female members of the matriarchal family had plagued Vietnamese society for centuries, and were also well portrayed in folk literature. See NGUYEN TAN LONG & PHAN CANH, *supra* note 329, at 150-51; VU NGOC PHAN, *supra* note 33; Phan Khoi, *Mot Cai Hai cua Che Do Dai Gia Dinh Ba Gia voi Nang Dau* [The Harm of the Extended Family System: Mother and Daughter in Law], in MUOI BA NAM TRANH LUAN VAN HOC 1932-1945, *supra* note 406, at 72-80. This conflict—occurring among women—offered an interesting comparison to the phenomenon in which the genital mutilation practice of certain cultures was universally performed by women upon women. See, e.g., Engle, *supra* note 10.

⁴²² CHINH DAO, *supra* note 380, at 166. It should be noted that members of the Pen Club eventually turned to politics, transforming themselves into the ideological competitors of the Vietnamese communists. (Perhaps this is the reason why the lives and works of *Breaking Away*’s author and Pen Club leader, Nguyen Tuong Tam, and several of his fellow Pen Club writers are not recognized in Vietnam today. Having once served as Secretary of State in Ho Chi Minh’s provisional government formed in 1945, Tam “broke away” from Ho Chi Minh’s government and formed the *Dai Viet*, a political party that integrated the whole left-right spectrum of socialist democratic ideology. In the words of a French officer, Major Jean Sainteny, Tam was “the perfect model of a Vietnamese intellectual, but with something additional, a virility and directness which is rather rare.” *Id.* at 192. After the 1954 Geneva Convention was signed, Tam moved south and withdrew from politics. In the south, he devoted his time to writing fiction and growing orchids. Under the Ngo Dinh Diem’s regime of the early 1960s, he became linked to a group of anti-government intellectuals who often “café-sat” at the Caravelle Hotel in central Saigon. NEIL JAMIESON, *supra* note 91, at 239-40. The “Caravellists” were eventually arrested and jailed by the Diem government, and Tam was threatened with arrest and public trial. He killed himself, leaving a suicide note that “only history can judge [him],” and that he had followed the example of the Bonze Thich Quang Duc, who had burned himself in protest of the Diem regime. Thousands of Saigonese showed up at Tam’s funeral while Diem’s secret police lurked outside. In the words of American folklorist Neil Jamieson, at Tam’s funeral,

[a] group of well-groomed teenage girls marched in ranks behind a banner proclaiming them to be students of the Trung Vuong High School . . . named for the Trung Sisters . . . With slender bodies clad in immaculate white tunics, and glistening long black hair framing pale and delicate faces, these young women were incongruous as a warrior band

2. *The Nationalist Movements*

Unlike the early literary movements of the 1930s, women's participation in nationalist movements was immediately empowered with legitimacy. Before Ho Chi Minh's socialist movement came the work of two noted Vietnamese male mandarins: (1) Phan Boi Chau, who advocated the adoption of Japan's industrialized experience (the "Go East" Movement); and (2) Phan Chu Trinh, who advocated mass education and the abolishment of the monarchy as means to attain independence (the "Reform" Movement). Between 1907 and 1930, Phan Boi Chau wrote and gave inspirational speeches to women and students, taking remarkable stands on the status of women that contradicted his Confucian upbringing, and encouraging women to take an active role in society.⁴²³ Phan Boi Chau's "Go East" Movement included women's participation from the beginning,⁴²⁴ most notably that of Bach Yen (or Bach Lien, supposedly Ho Chi Minh's elder sister), and Le Thi Dan or Au Trieu,⁴²⁵ who was active in demanding the lowering of taxes in Annam in 1908.⁴²⁶ Similarly, in 1930, the failed

. . . Among the tough old politicians and grizzled veterans of combat . . . these wasp-waisted girls marched with unsurpassed authority. . . This was symbolic declaration of war upon those who had driven the author of *Breaking the Ties* to make his ultimate affirmation of his belief in individualism.

Id. at 242-43. The funeral progression and public mourning of Tam's death in the south, as described by Jamieson, demonstrated Tam's influential stature in Vietnamese intellectual life. *Id.* at 243. His feminist stand and sensitivity to women's psychology also made him the idol of young, educated Vietnamese women and students. This strata of the populace could have been mobilized for a motive other than communism. Yet, this possibility was overlooked. The American press focused on the suicide of the Bonze, but was oblivious to Tam's death. The United States became involved in a military war, but never understood the cultural war, the "coming together" or divergence of ideologies, and the various social strata of the Vietnamese society. See, e.g., WILLIAM COLBY, *LOST VICTORY: A FIRSTHAND ACCOUNT OF AMERICA'S SIXTEEN-YEAR INVOLVEMENT IN VIETNAM* (1989) (an analysis of mistakes made by America in South Vietnam).

⁴²³ NGO THI QUY LINH, LUOC SU TRIET LY, GIAO DUC VIET NAM [SUMMARY OF VIETNAMESE IDEOLOGIES AND EDUCATION] 231-45 (Y Linh 1997) (quoting Phan Boi Chau's speeches of March 17, 1926 at Dong Khanh Female High School, Hue; speech of March 31, 1926 at the Female Artisan Association, Hue). *Accord* HUE-TAM HO TAI, *supra* note 30, at 94-95.

⁴²⁴ The "Go East" School, opened in Tonkin, had classes for both male and female students. NGO THI QUY LINH, *supra* note 423.

⁴²⁵ *Au Trieu* (The Junior Trieu) was the *nom de guerre* of Le Thi Dan, who apparently used Lady Trieu's image as a role model. See Vinh Sinh & Nicholas Wickenden, *Phan Boi Chau and his Autobiography*, *VIETNAM REV.*, Autumn-Winter 1996, at 219. She eventually committed suicide in prison. *Id.*

⁴²⁶ See HA NOI BAO [HANOI JOURNAL] no. 6, Dec. 1936, *quoted in* NGUYEN QUANG TO, SAO NAM PHAN BOI CHAU (1867-1940) CON NGUOI VA THI VAN [BIOGRAPHY OF SAO NAM PHAN BOI CHAU (1867-1940): THE MAN AND HIS WRITINGS] 126-27 (BO VAN HOA GIAO DUC VA THANH NIEM 1974), *cited in* Vinh Sinh & Wickenden, *supra* note 425, at 218.

uprising at Yen Bai (organized by the Vietnamese Nationalist Party) also involved the participation of courageous and resourceful women.⁴²⁷

3. *The Socialist Movement*

The socialist women's movement began in the 1930s and still exists today.⁴²⁸ The "female soul" that symbolized the movement in its early days was Nguyen Thi Minh Khai. The daughter of a railroad worker, she was influenced very early in life by communist ideals through her teacher Tran Phu, and became the first and most celebrated Vietnamese communist woman.⁴²⁹ In colonial times, the socialist women's movement acknowledged the contributions and sacrifice made by women in earlier nationalist movements, but criticized them for ineffective ideology.⁴³⁰

For decades, the main focuses of the socialist women's movement were to mobilize women for battle and to maximize their civilian productivity to support the economy of war. For example, in addition to guerrilla war mobilization, the movement drove the *Nam Tot* ("Five Goods") campaign to instill instructions on how to become a "good" woman: (1) good unity, production and frugality; (2) good implementation of policies; (3) good contribution to management; (4) good political, cultural and technical learning; and (5) good child rearing. Women were inspired to

⁴²⁷ HOANG VAN DAO, *supra* note 386. Among these women was Co Giang, who was a member of the Vietnamese Nationalist Party together with her sister, Co Bac. Co Giang committed suicide following the execution of her party's leader.

⁴²⁸ The start of the movement paralleled the evolution of various predecessors of the Vietnamese Communist Party. See, e.g., TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 50-52; Duong Thi Thoa (Le Thi), *supra* note 3; PHONG TRAO PHU NU THANH PHO HO CHI MINH DUOI NGON CO VE VANG CUA DANG (1954-85) [WOMEN'S MOVEMENT OF HO CHI MINH CITY UNDER THE VICTORIOUS FLAG OF THE PARTY] (NXB Thanh Pho Ho Chi Minh 1988); LICH SU PHONG TRAO PHU NU VIET NAM TAP II [HISTORY OF THE VIETNAMESE WOMEN'S MOVEMENT VOL. II] (Women's Publishing 1981); accord TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 224-37 (summary of policy development on women's issues from 1945 to 1989).

⁴²⁹ See *Portrait: Nguyen Thi Minh Kha*, *supra* note 381, at 241-47.

⁴³⁰ A socialist feminist described the Vietnamese Nationalist Party's efforts as follows:

The revolutionary movement of the Vietnam Nationalist Party included many women militants who had given up their studies and left their homes to join the struggle. But this party of the Vietnamese petty bourgeoisie could not promote a radical revolution . . . In their manifesto, they did not even touch upon the worker and peasant questions . . . Unstable, impatient and inconstant, this party of the petty bourgeoisie quickly disintegrated following the abortive insurrection of Yen Bai (1930) . . . They failed to launch a nationwide women's movement and involve in the struggle the broad masses of women workers and peasants, who constitute the majority of the female population.

Mai Thi Tu, *supra* note 86, at 27-30.

achieve these "Five Goods" in the backdrop of war.⁴³¹ The literature describing the movement from 1954 to 1985 showed a total concentration on warfare, uprisings, and subsequently, the reconstruction of the country, representing the accomplishments of Vietnamese women.⁴³² There was no depiction of their living conditions or the structure of gender relations. If there was a notion of equality, it implicitly meant equality in the dosage of contribution to warfare and the ideals it represented.

The movement also took pride in legally emancipating women as a group.⁴³³ The movement equalized the agrarian woman's status by granting her land ownership under the Communist Land Reform (1953-1956).⁴³⁴ However, foreign observers have noted that the land revolution did not drastically change the division of labor in agricultural-based north Vietnam,⁴³⁵ although overall, the war mobilization of men did put more women into formerly patriarchal roles. Throughout the war and during pre-*Doi Moi* era, communist Vietnam remained an agriculture economy that overburdened the female labor force.⁴³⁶

The Communist Party embraces the socialist movement as the official voice of Vietnamese women. Today, the Party and the government take pride in their contribution to women's liberation in Vietnam. Socialism's contribution to gender relations in Vietnam lies in its systematic campaigning against old Confucian norms and the formalization of gender equality as a legal and social concept, one in which women and the proletariat became synonymous. On the other hand, Vietnamese moral values still require women to make sacrifices,⁴³⁷ and socialism has

⁴³¹ See LICH SU PHONG TRAO PHU NU VIET NAM TAP II, *supra* note 427, at 63 (commenting on the "Five Goods" campaign).

⁴³² See PHONG TRAO PHU NU THANH PHO HO CHI MINH DUOI NGON CO VE VANG CUA DANG (1954-85), *supra* note 428.

⁴³³ See, e.g., George Ginsburg, *The Role of Law in the Emancipation of Women in the Democratic Republic of Vietnam*, 23 AM. J. COMP. L. 613 (Fall 1995).

⁴³⁴ Christine Pelzer White, *Socialist Transformation of Agriculture and Gender Relations: the Vietnamese Case*, in 13(4) BULL. (Institute of Development Studies) 44 (1982) [hereinafter *Socialist Transformation of Agriculture*]; Christine Pelzer White, *Deux Modeles pour la Transformation Socialiste de L'Agriculture: Leurs Consequences sur Les Relations Entre Sexes*, REVUE TIERS MONDE, t. XXVII, No. 105, Jan.-Mar. 1986, at 143. The socialist movement also instituted changes in the family law structure. Nguyen Van Huong, *L'Egalité de la Femme: Relations de Famille et dans le Travail dans la République Democratique du Vietnam*, (1960) (unpublished paper) (on file with author). See also HO CHU TICH VOI VAN DE GIAI PHONG PHU NU, *supra* note 310 (excerpts from Ho Chi Minh's public speeches, commenting, *inter alia*, on the enactment of law equalizing status of women in North Vietnam).

⁴³⁵ *Chong Cay Vo Cay Con Trau di Bua* [Husband ploughs, wife harvests, and buffalo pulling the plough] (Vietnamese folk song).

⁴³⁶ *Socialist Transformation of Agriculture*, *supra* note 434.

⁴³⁷ Khuat Thu Hong, *Overview of Sociological Research on Family in Vietnam*, *Sociological Studies on the Vietnamese Family*, at 189 (1991) in NGUYEN HUU QUYNH TRAM, *supra* note 171, at 380. Accord GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 184.

demanded the same. Critics of Vietnamese socialism have accused the system of producing a “dream” notion of gender equality.⁴³⁸ In the words of a prominent Vietnamese journalist, the dream is that of “equality in poverty.”⁴³⁹

4. *Other Short-Term Movements During The 1960s and 1970s*

None of the earlier movements, including the long-lasting socialist movement, evolved into a formalized doctrine focusing solely and systematically on gender relations. The later half of the twentieth century was dominated with the escalation of the Vietnam War. North Vietnam single-mindedly focused on winning the war, undertaking periodic measures related to women’s issues in order to strengthen a war-driven society that required intensive labor contribution from both sexes.⁴⁴⁰ Meanwhile, a politically turmoiled South Vietnam gave birth to a breed of new female fiction writers who explored the complex emotions of women and continued the trend of individualism without exploring gender justice.⁴⁴¹ While this surge of fiction brought some fresh new ideas, it failed to constitute a movement that could mobilize South Vietnamese women for a social agenda.

Outside the literary arena, the only organized movement in non-communist south was associated with the failed Diem regime⁴⁴² and hence, was destined to be short-lived as a product of radicalism. In the early 1960s, Saigon was stirred by a women’s movement started by Madame Ngo Dinh

⁴³⁸ Nguyen Huu Quynh Tram, *supra* note 171, at 380.

⁴³⁹ Phan Thanh Hao, *supra* note 8.

⁴⁴⁰ See, e.g., Nguyen Ngoc Huy & Ta Van Tai, *supra* note 326, at 494 (discussing North Vietnam’s enactment of the Law on Marriage and Family of 1959); Nguyen Van Huong, *supra* note 434.

⁴⁴¹ UYEN THAO, *CAC NHA VAN NU VIET NAM 1900-1970* [Vietnamese Female Novelists 1900-1970] (Nhan Chu Publishing 1970). *Accord* Cong Huyen Ton Nu Nha Trang, *supra* note 63. Only one female writer addressed war themes and earned a national literary award with her novel depicting the Tet Offensive’s destruction of the ancient city of Hue. See NHA CA, GIAI KHAN SO CHO HUE [A MOURNING CLOTH FOR HUE] (Thuong Yeu 1969). After the fall of Saigon, she was sent to a re-education camp primarily on account of this work. She was finally released and allowed to immigrate to Sweden due to intervention by a Swedish international pen club. See NHA CA, “NHA CA HOI KY: MOT NGUOI MAT NGAY THANG” [THE MEMOIR OF NHA CA: A HUMAN WHO HAS LOST TIME] (Thuong Yeu Publishing 1990).

⁴⁴² The Diem regime was commenced by Ngo Dinh Diem, son of a Vietnamese mandarin. Diem, supported by the United States, returned to Vietnam from New York City and became President of South Vietnam—the counterpart to Ho Chi Minh in the North. Later, however, the Diem regime became internationally known for its oppressive measures against Vietnamese Buddhists, and its legitimacy was questioned by the Kennedy administration. The Diem regime was eventually struck down during a military *coup d’état*. Diem was murdered approximately one month before President Kennedy was shot in Dallas.

Nhu, known internationally as “the Dragon Lady.”⁴⁴³ Madame Nhu did not just advocate. She drove the movement with a vengeance, pushing for enactment of a new Family Law with extreme measures to protect the South Vietnamese woman against a philandering husband: punishing adultery as a crime, penalizing *giao du than mat* (close relationships) with a member of the opposite sex, and banning divorce unless authorized by the President of the Republic. The Family Law,⁴⁴⁴ sponsored by Madame Nhu, solidified the status of the South Vietnamese woman by abolishing polygamy, giving her full legal capacity, the right to choose marital domicile, to jointly own and manage marital properties, to garnish her husband’s salary, and to have her own career.⁴⁴⁵ This law, however, was abolished with the 1963 *coup d’état*. The new version did away with the extreme measures,⁴⁴⁶ but in general, continued the trend of equality.⁴⁴⁷

Madame Nhu’s movement was viewed as a personal crusade and a political campaign in support of Diem’s presidency. Called *Phong Trao Phu Nu Lien Doi* (Movement for the Solidarity of Women), it built Madame Nhu into the image of a radical feminist. The Saigonese had no generic word to refer to the pro-women, *avant garde*, radical image taken on by Madame Nhu, so they simply referred to her as *Ba Co Van* (Madame Advisor) incorporating into her image the official title of her husband as presidential advisor to Diem. The movement was symbolized by, *inter alia*, the “revolutionizing” of the *ao dai* (traditional female Vietnamese tunic),⁴⁴⁸ and the organizing of female soldiers for the fight against communism. Since Madame Nhu’s movement, the Saigonese have invented a new phraseology,

⁴⁴³ Madame Nhu was also the sister-in law of the subsequently assassinated Catholic President Ngo Dinh Diem. Madame Nhu’s husband was national advisor to President Diem before both brothers were killed in a military *coup d’état* in 1963.

⁴⁴⁴ See *supra* Part III.D.2.b.1.

⁴⁴⁵ Ta Van Tai, Continuity and Change in Vietnamese Women’s Role Through the Ages, Speech at East Asian Legal Studies Workshop on Gender & Law in Vietnam, Harvard Law School (Nov. 21, 1997); Ta Van Tai et al., Families, Households and Values in Transition: Vietnam, a Changing Culture, Comments at Worcester Consortium Colloquium on Memories, Markets and Militaries: Vietnam in the 1990s at Clark University, Worcester, Mass. (Nov. 7-8, 1996).

⁴⁴⁶ *Id.*

⁴⁴⁷ Interview with Truong Hoa Dien, Former South Vietnamese Businesswoman, in Boston, Mass. (Apr. 1999) (notes on file with author). See also VU VAN MAU, VIETNAM DAN LUAT LUOC KHAO, QUYEN I: GIA DINH [(REPUBLIC OF) VIETNAM’S CIVIL CODE, SUMMARIZED AND ANNOTATED, VOL. I: THE FAMILY LAW] (Bo Quoc Gia Giao Duc Xuat Ban 1959).

⁴⁴⁸ In Madame Nhu’s version of the *ao dai*, the high mandarin collar was removed. Madame Nhu wore the collarless tunic as a pioneer for the image of the new woman. See CAO THE DUNG, *supra* note 88, at 340. The *ao dai* represents the hybrid nature of the Vietnamese culture. The tunic combines the *chong sam* of China and the *sarong cabaya* of the Malay culture. At least one Vietnamese historian in exile attributed Madame Nhu’s “boat neck *ao dai*” to influence from the Cham culture, rather than Western import. CAO THE DUNG, *supra* note 88, at 340.

Phong Trao Phu Nu Doi Quyen Song (Movement of Women Demanding the Right to Live), perhaps referring to the 1960s feminist and women's liberation movement in the United States.⁴⁴⁹

5. *Today's Movement*

Today's "women's movement" in Vietnam, as represented by the Vietnamese Women's Union, is facing an emerging trend. The VWU has historically been characterized by its long association with socialism. Prior to the 1980s, the VWU admittedly came under the "flag of national liberation," "mobiliz[ing] women in war efforts, labor and production activities to meet common revolutionary goals."⁴⁵⁰ However, *Doi Moi* has allowed the VWU to shift its emphasis from class struggles and revolutionary mobilization to issues of "personal interests and aware[ness] of their rights." This effort has drawn a number of pioneering researchers⁴⁵¹ who are conducting scientific and anthropological studies of Vietnamese women's socio-economic issues as a discipline. This new focus was made

⁴⁴⁹ Despite the U.S. military and economic involvement in Vietnam, the height of the 1960s women's liberation movement had little impact on South Vietnamese urban life. This phenomenon was not limited to the case of the United States, but was also noticed in the lack of imported French ideas. Despite the popularity of French writers such as Sartre and Camus in South Vietnam, the feminist-inclined works of French writers (for example, Madame DeStael, Colette, George Sand and de Beauvoir) were not widely distributed among educated Vietnamese women. Only one romanticist female writer, Françoise Sagan, was popular in South Vietnam in the seventies, but Sagan's work did not set examples of the gender relations theme. See NEIL JAMIESON, *supra* note 91, at 362. In contrast, male French writers, such as Victor Hugo, and philosophers, such as Descartes, Rousseau, and Montesquieu, were admired by generations of Vietnamese males on both sides of the war (no such phenomenon existed for the Vietnamese woman.) Victor Hugo was even made a saint in the *Cao Dai* religious sect. See VICTOR OLIVIER, *CAO DAI SPIRITUALISM* 10 (1976); Jane Werner, *The Cao Dai: The Politics of Vietnamese Synthetic Religious Movement*, (1976) (unpublished Ph.D. dissertation, Cornell University). Hugo's *Les Misérables* was "Vietnamized" into a novel, taking on Vietnamese settings and characters. See Nguyen Van Trung, *Les Misérables de Victor Hugo et le Ngon Co Gio Dua de Ho Bieu Chanh Dans La Perspective Des Echanges Cultures*, *VIETNAM REV.*, Autumn-Winter 1996, at 241 (lecture delivered at Ho Chi Minh City University on May 23, 1995); Cao Thi Nhu Quynh & John Schafer, *Ho Bieu Chanh and the Early Development of the Vietnamese Novel*, 12 *VIETNAM FORUM* 100 (1988); Tran Hinh, *Victor Hugo va Cac Nha Van Vietnam [Victor Hugo and Vietnamese Writers]* in *HUGO O VIETNAM [HUGO IN VIETNAM]* 367 (Luu Lien ed., NXB Vien Van Hoc 1985); Dang Anh Dao, *Victor Hugo va Con Nguoi Vietnamese Hien Dai, [Victor Hugo and the Contemporary Vietnamese]* in *HUGO O VIETNAM [HUGO IN VIETNAM]* 418 (Luu Lien ed., NXB Vien Van Hoc 1985). See also BUI TIN, HOA XUYEN TUYET: HOI KY CHINH TRI CUA BUI TIN [BLOOMS OVER SNOW: THE POLITICAL MEMOIR OF BUI TIN] 8 (NXB Nhan Quyen 1991) ("The works of Alphonse Daudet, Victor Hugo, Anatole France as well as the political ideas of Voltaire, Montesquieu and J.J. Rousseau have been part of my intellectual baggage"). This inequity (in other words, the popularity of Victor Hugo versus the absence of translation of works of Madame DeStael, Colette, George Sand, and de Beauvoir) raises the possibility that the influx of French ideologies and literature into South Vietnam was also filtered with a chauvinistic stance.

⁴⁵⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 51-52.

⁴⁵¹ *Id.* at 52.

possible by the increasing level of international interest in Vietnamese women.⁴⁵² Legal review of women's rights has also been conducted by female jurists.⁴⁵³

Today, the advocacy and research of women's issues in Vietnam are undertaken by the following centers or higher educational institutions:

1. The Center for the Study of Families and Women (established in 1987);
2. The Center for Gender, Family and Environment in Development (established in 1992);
3. The Faculty of Women's Studies in Ho Chi Minh City (established in 1992);
4. The Center for Women's Research and Training (established in 1993);
5. The Center for the Study of Female Labor (established in 1994); and
6. The Central Office of the VWU.⁴⁵⁴

These centers and institutions sponsor the work of a number of female professors, writers, and researchers who, in the eyes of non-Vietnamese observers, constitute the "feminists" of Vietnam.⁴⁵⁵ In addition, women's issues have also become part of the curriculum of many sociology and psychology programs.⁴⁵⁶ Still strained to fit their work under the rubric of nationalism, socialism, the socio-economic theory of Karl Marx, and the various thoughts of Ho Chi Minh,⁴⁵⁷ the researchers also had to conform the focus and extent of their work to the availability of international and governmental funding, as well as the levels of interest expressed by student bodies and policy-makers. Although this research work is a good start, most studies are still struggling with the compilation, update, and interpretation of demographic and empirical data. The impact of the research depends

⁴⁵² As of 1994 (the year of the lifting of the U.S. trade embargo), 456 international delegations had come to study the VWU. *Id.* at 56 (citing statistics released by the VWU, 1994).

⁴⁵³ See, e.g., Ngo Ba Thanh, *Le Droit à l'Égalité des Femmes à la Lumière du Droit Positif de la République Socialiste du Vietnam et dans les Faits*, BULL. DE DROIT, Jan. 1985; TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 227-30, 239-44 (analyzing the Labor Code and the application of the Land Law).

⁴⁵⁴ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 56-60.

⁴⁵⁵ See Sidel, *supra* note 3. *Accord Some Features of the Center for Women's Studies* (Interview with Madame Le Thi Nham Tuyet, Professor of Ethnology), WOMEN OF VIETNAM, 1986, at 10.

⁴⁵⁶ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 58-59.

⁴⁵⁷ *Id.* at 31, 47-49.

principally on whether policy-makers are willing to listen to the results compiled and ready to translate them into socio-economic programs.

The new image of the women's movement in Vietnam is aided by the emerging emphasis on personal freedom and individual choice exhibited by a small number of women in Vietnamese society today. For example, some women are opting for single motherhood to fulfill their need for raising a family, bypassing conventional marriages.⁴⁵⁸ Although the number is marginal, this trend is attracting public awareness. However, the advocacy of single motherhood in Vietnam can be a double-edged sword.⁴⁵⁹ While the trend is clearly a statement of free choice, some see it as reinforcing women's cultural conditioning about the obligation to have a child, and rejecting the view that women can be happy without children.

Some scholars view the newly established discipline of Vietnamese women's studies as the result of the worldwide "feminist" movement.⁴⁶⁰ They reason that the discipline of women's studies, too, can be seen as a "movement" since it brings women's issues to light.⁴⁶¹ Accordingly, they suggest that it is important to "keep[] track of the practical branch of feminism and identify[] feminist activists' new and changing concerns."⁴⁶² The emergence and cognizance of women's studies as a discipline and possibly as a "movement" in Vietnam confirms that (1) Vietnamese women are awakening to renewed feminism as a universal objective devoted to gender justice (not just a twin movement of nationalism or socialism); and that (2) feminism can be the task of social activists, advocates, and researchers, rather than a function of government. In addition, female leaders in Vietnam today recognize the importance of "empowerment" in face of pressing national issues such as population control, reproductive health, the generation shift, and the social stereotypes against women that still plague Vietnamese society.⁴⁶³ Implicit in this recognition is the link between empowerment and the national agenda of issues that affect women. It is the understanding that gender justice, whether in its "bourgeois" or socialist version, is a political issue that can substantially impact the face of the nation.

⁴⁵⁸ GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3; Harriet Phinney, Reconfiguring Notions of Love, Marriage, and Motherhood: Unmarried Women's Reproductive Desire in Northern Vietnam, Lecture at Workshop on Gender and Law in Vietnam, East Asian Legal Studies, Harvard Law School (Nov. 21, 1997).

⁴⁵⁹ GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 23.

⁴⁶⁰ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 9, 15, 35.

⁴⁶¹ *Id.* at 33.

⁴⁶² *Id.* at 36.

⁴⁶³ See Truong My Hoa, *supra* note 308.

In sum, the movements of the 1930s and 1960s were overshadowed, swallowed, or even contaminated, by politics and ideologies. In the case of Madame Nhu's movement, it was associated with a single person and therefore collapsed with her downfall. Today, the emphasis of the women's movement in Vietnam has shifted from propaganda to the promotion of personal interests and rights awareness, finding support from research centers and educational institutions. In turn, this has created an emerging feminist voice separate from nationalism and socialism.

6. *Cultural Reasons for a Lack of Formal Feminist Doctrine*

Today, the use of "Western doctrine" lingo, including "feminism" in Vietnam may produce a "back-fire" effect. First, politically, the Constitution has endorsed only one doctrine—Marxist-Leninism. Second, Vietnam has become the depository of an extremely large number of imported ideological doctrines. This has caused many to view with skepticism imported doctrines that end with "ism." Indeed, "ism" may have become an unpopular buzz-word. The average Vietnamese person today may either be too preoccupied with economic survival or too saturated with doctrinal thoughts to welcome a new doctrinal label, unless it is grounded in a familiar, cultural, readily recognizable language. Where a doctrine is steeped in "cultural identity" lingo, it will not invoke the paranoia, fatigue or saturation that may have plagued the psychology of Vietnam.⁴⁶⁴

If the purpose of a formal feminist doctrine is empowerment, then the Vietnamese culture has compensated for the lack of formality by promoting the positive images of women in its own way. In the 1960s, Saigonese women were relatively tolerant of Madame Nhu's "Dragon Lady" outspoken image. South Vietnamese women did follow and copy her example, from

⁴⁶⁴ An extreme example of this "ism" explosion is the case of Nguyen Long, formerly a known actor and film maker in South Vietnam, whose self-published pamphlets were found in the Vietnamese Section of Harvard University's Yenching Library. Born in 1934, Long was exposed to all kinds of imported doctrines and, in his youth, participated in the national resistance movement against the French. After the fall of Saigon, he escaped Vietnam by foot (via Thailand) and eventually immigrated to America, leaving behind his wife and daughters. In 1987, he travelled to Southeast Asian refugee camps allegedly to help "boat people," and returned to America in 1989, when he claimed that "divine awakening" prompted him to find the doctrine of "populism," a doctrine dedicated to the "people" and "universal human rights." He declared himself to be a "pained and saddened" Vietnamese who had been victimized by too many foreign doctrines, such that it would be necessary for him to find his own. In 1990, he was able to secure the immigration of his wife and daughters to America, and began to translate and distribute 10,000 copies of his "Constitution" for "Populism" in preparation for the new millennium, after giving his "soul and body a beer baptism for three consecutive days." He sent copies of his pamphlet to the Yenching Library of Harvard University, and declared that copyright "belonged to mankind." See Nguyen Long, *Doctrine of Populism Constitution, Populist Regime* (Apr. 4, 1990) (pamphlet on file with author).

her fashion statement to her leadership role among military women, until the *Diem* regime and Madame Nhu fell out of grace, primarily due to the regime's oppression of Buddhists and political dissidents.⁴⁶⁵ The Trung Sisters' death anniversary became Women's Day, with its "elephant-riding" Trung Sisters' parade (at least in the old days of Saigon).⁴⁶⁶ Young girls learned very early in life the spellbinding image of the Trung Sisters and Lady Trieu, wearing gold armor-tunics and riding elephants, while pointing their swords to the sky, leading advancing female troops.⁴⁶⁷ It is therefore understandable why the culture has outright rejected the Chinese custom of feet-binding and other forms of body mutilation, preferring the forceful steps onto an elephant by a female warrior to the tiptoeing, helpless, victimized child-bearing female confined to her boudoir. Likewise, class-conscious interpretations of the Hindu culture or various gender-based interpretations of the Islamic faith have been reduced to small minorities in Vietnam. The image of a veiled woman covered up in cloth, or one who willingly subjects her body to mutilation to conform to a social norm shaped by men has never gained any dominant place in the Vietnamese culture.⁴⁶⁸

In summary, although the Vietnamese culture places more importance on the community than on gender issues, the culture recognizes the importance of women to its society, and has long used images of heroines to portray women's leadership and their societal contribution. Nationalists and socialists have capitalized on this identity to mobilize women successfully. The ideological battle between North and South did not cause divergence in the collective "female identity" heritage, which has taken the place of a structured feminist doctrine. The lack of a doctrinal base, and terminology, therefore, must be understood in context.

⁴⁶⁵ See LE TRONG VAN, HUNG BI AN LICH SU DUOI CHE DO NGO DINH DIEM [THE HISTORICAL SECRETS OF THE NGO DINH DIEM REGIME] (Me Viet Nam Publishing 1989).

⁴⁶⁶ No such "elephant-riding" fanfare or ritual was ever accorded the worshiping of numerous Vietnamese male historical figures.

⁴⁶⁷ *Id.*

⁴⁶⁸ For the most recent account of Vietnamese female warriors participating in the Vietnam War, told by a Western observer, see GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3. The female warrior image was not confined to the women of North Vietnam, the winners of the war. In a non-fiction work published by the Vietnamese exile community in America, the case of the female South Vietnamese combat lieutenant colonel Ho Thi Que was documented and a picture of Ms. Que in uniform was included, describing her as the "tigress of the Western Province." See PHAM PHONG DINH, QUAN LUC VIET NAM CONG HOA TRONG CON BAO LUA [THE ARMY OF THE REPUBLIC OF VIETNAM IN FIRE STORM] 240-41 (Tu Sach Vinh Danh Publishing 1998). Compare DOUGLAS PIKE, PEOPLE'S ARMY OF VIETNAM (1986).

D. *Fourth Factor: Nationalism, Socialism and Gender Equality—Fallacy of the “Trio”*

1. *The Tendency to Equate Feminism with Nationalism*

In colonial or post-colonial societies, nationalist-strategists (who were mostly men) commonly advocated women’s liberation to instill unity and conscript the female labor in the fight for national independence and reconstruction.⁴⁶⁹ Third World gender equality, therefore, easily becomes intertwined with the rhetoric of anti-colonialism and patriotism. In Vietnam, the “feminization of the revolution” was instilled by Phan Boi Chau⁴⁷⁰ and by Ho Chi Minh when he described colonialism as a “regime that rape[d] and violate[d] women and kill[ed] men.”⁴⁷¹

It is intellectually dangerous, however, to equate feminism to nationalism and conclude that the liberation of the country equates with women’s liberation. The need to rally for a national identity and against colonial forces places upon women the additional burden of becoming “the guardians of national culture, indigenous religion and family traditions.”⁴⁷² Quite often, these institutions are male-defined and intrinsically gender biased. As a result, women can find themselves dominated by foreign rules and economic exploitation as well as by locally entrenched patriarchies and traditional structures. Thus, they must choose between oppressing their individual needs or risk them being crushed by the weightier national struggle against colonial rules. This is not unique to Vietnam, but has been

⁴⁶⁹ See, e.g., SUE ELLEN CHARLTON, *WOMEN IN THIRD WORLD DEVELOPMENT* (1984); MIRIAM COOKE, *WOMEN AND THE WAR STORY* (1996); *BLOOD INTO INK: SOUTH ASIAN AND MIDDLE EASTERN WOMEN WRITE WAR* (Miriam Cooke & Roshni Rustomji-Kerns eds. 1994); Carol Hills & Daniel C. Silverman, *Nationalism and Feminism in Late Colonial India: The Rani of Jhansi Regiment, 1943-45* 27 *MODERN ASIAN STUDIES* 741-60 (1993); MACKINNON, *supra* note 37; Nora Benallegue, *Algerian Women in the Struggle for Independence and Reconstruction*, 35 *INT’L SOC. SCI. J.* 703-18 (1983); KUMARI JAYAWARDENA, *FEMINISM AND NATIONALISM IN THE THIRD WORLD* (1986); *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* (Chandra Talpade Mohanty et al. eds., 1991); MARGARET RANDALL, *SANDINO’S DAUGHTERS: TESTIMONIES OF NICARAGUAN WOMEN IN STRUGGLE* (Linda Yanz ed., 1981); MARGARET RANDALL, *Sandino’s Daughters Revisited: Feminism in Nicaragua* (1994).

⁴⁷⁰ See HUE-TAM HO TAI, *supra* note 30, at 198-99.

⁴⁷¹ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 48 (quoting Ho Chi Minh (1969)); Mai Thi Tu, *supra* note 86, at 26 (quoting Nguyen Ai Quoc, *Indictment of French Colonialism, (1925)*) (Nguyen Ai Quoc was allegedly another alias used by Ho Chi Minh). See also Ho Chi Minh, *Noi Kho Nhuc Cua Nguoi Dan Ba Ban Xu* [Pain and Humiliation of the Native Woman], in HO CHU TICH VOI VAN DE GIAI PHONG PHU NU, *supra* note 310; Ho Chi Minh, *Van Minh Tu Ban va Phu Nu Thuoc Dia* [Capitalist Civilization and the Colonized Woman], in HO CHU TICH VOI VAN DE GIAI PHONG PHU NU, *supra* note 310.

⁴⁷² Charlesworth et al., *supra* note 24, at 254.

found to be common in other developing countries, and even in the United States in its early days.⁴⁷³

Gender equality must mean more than equality in self-sacrifice for the name of the country. Feminism seeks to abolish gender-based injustice directed at women. If the State becomes part of, or aids in the scheme of gender injustice, then feminism directs its energy at the tension between the individual and the state. However, nationalism and patriotism appear to diffuse such tensions. For example, the female deputy commander-in-chief of the Vietnamese National Liberation Front stated that in aiding the cause of the country, there is, "no other road to take."⁴⁷⁴ Another example comes from Nguyen Thi Minh Khai, the first female Vietnamese Communist leader, who believed that if the man is imprisoned or dies for his country, the woman must do her equal share of dying and imprisonment, accepting "the prison as [her] school, its mate [her] friends, the sword [her] child, the gun [her] husband!"⁴⁷⁵ Thus, in a fervently nationalist state, "All the geniuses who are born women are lost to the public good."⁴⁷⁶

In turning the advocacy of women's rights into a nationalist movement and portraying feminists as female warriors or freedom fighters, one nobly legitimizes the sacrifice of women—the utilization of their labor and lives—and justifies ignoring their individual cries for freedom of choice. No Vietnamese male revolutionists have ever asked whether women were better off subsuming their fight for gender equality to the fight for national independence.⁴⁷⁷ Free choices and individualism dissolve in the fever and ferment of nationalism. It is difficult to turn down the noble call of patriotism in time of national crisis, and a woman's right to question the nationalist's method and the legitimacy of war is swallowed by such noble cause. Patriotism, like love or spiritual faith, is a noble force to which one must surrender. In the face of such forces, a woman denounces her right to live or to pursue personal happiness. The unambiguous international support for the objectives of nationalist movements makes the positions of women within such movements even more problematic. As members of a

⁴⁷³ KUMARI JAYAWARDENA, *supra* note 469; *cf.* JANET SALTZMAN CHAFETZ & ANTHONY GARY DWORKIN, *FEMALE REVOLT: WOMEN'S MOVEMENTS IN THE WORLD AND HISTORICAL PERSPECTIVE* (1986); ROBIN MORGAN, *GOING TOO FAR: THE PERSONAL CHRONICLE OF A FEMINIST* (1977) (describing attitudes toward women of revolutionary movements in the United States)

⁴⁷⁴ *See e.g.*, NGUYEN THI DINH, *NO OTHER ROAD TO TAKE: MEMOIR OF MRS. NGUYEN THI DINH [KHONG CON DUONG NAO KHAC]* (Mai Elliott trans., 1976); Ly Thi Chung, *Nguoi Phu Nu Dau Tien Tai Hoa Lo, [The First Female in the Hanoi Hilton Hoa Lo]*, in MUA THU CACH MENH [REVOLUTIONARY AUTUMN] (NXB Ha Noi, 1985).

⁴⁷⁵ Mai Thi Tu, *supra* note 86, at 10.

⁴⁷⁶ DE BEAUVOIR, *supra* note 38, at 149 (quoting Stendhal).

⁴⁷⁷ HUE-TAM HO TAI, *supra* note 30, at 212.

movement, they are entitled to cheers and support, but when their own objectives are articulated, they may be seen as undermining the unity of nationalism.⁴⁷⁸

Using nationalism to make women into self-sacrificing martyrs can be the ultimate destruction of womanhood, portraying women as slaves to their love for their country. Simone de Beauvoir once painted a gloomy picture: despite occupational, economic and political independence, the modern woman remains imprisoned by enslaving notions of "love."⁴⁷⁹ She stated, "Love represents in its most touching form the curse that lies heavily on woman . . . mutilated, insufficient unto herself. The innumerable martyrs to love bear witness against the injustice of a fate that offers a sterile hell as ultimate salvation . . ." ⁴⁸⁰ The anonymous Vietnamese woman in folk literature echoed the same sentiment by lamenting the hardship she had to undertake in the name of love: "In the name of my love for my husband, I must strain myself, but remember, my bone is not metal, nor my skin copper!"⁴⁸¹

In nationalism, the woman transfers her "love" for a mate or the family onto an intangible entity—the cause of the country. Patriotism, allegedly the noblest kind of love, turns free choice and individual rights into the immoral monster of selfishness, creating, after rhetoric has ceased, post-war heroines and martyrs that have lost their womanhood. Researchers of post-war Vietnamese women today have noted this poignant reality: author Karen Turner described the dilemma of Vietnamese female veterans and their post-war isolation and anxiety.⁴⁸² Having returned to their post-war

⁴⁷⁸ Chinkin, *supra* note 25.

⁴⁷⁹ Vietnamese female writers exposed to French romanticism in the early 1900s seemed to view "love" as the woman's job. Quoting Anatole France, "One creates the world with science and love" ("*Avec la science et l'amour on crée le monde*"), one Vietnamese female writer at the turn of the century concluded that women have completed half of the world by undertaking the mission of "love." See NGO QUY LINH, *supra* note 341, at 239 (quoting Van Han, *Thu Cho Con Gai Du Hoc Ben Tay*, [*Letter to a Daughter Studying in France*] (Nam Phong September 1929). A study conducted in 1994 showed that 41.4% of women believed that "love" was what made life meaningful. TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 187.

⁴⁸⁰ DE BEAUVOIR, *supra* note 38, at 743. De Beauvoir also illustrated her pessimistic, existentialist view on love, family, and womanhood in *THE WOMAN DESTROYED* [*FEMME ROMPUE*] (Patrick O'Brian trans., 1969).

⁴⁸¹ "*Thuong chong toi phai gang cong, nao ai xuong sat da dong chi day!*" (Vietnamese folk song). A number of Vietnamese historians attributed this folk song and its sentiment to the cultural legacy of Queen Trung Trac, who led the first struggle for independence against Chinese governance in A.D. 40, allegedly because she wanted to take revenge for the murder of her husband. Other Vietnamese scholars severely criticized this theory as belittling the noble patriotic motivation of the Trung Sisters. See VU NGOC PHAN, *supra* note 33, at 31.

⁴⁸² GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 57-64, 68, 132, 182 (community considered war heroine cult figure not fitted for daily life, judging war heroines in post-war time on womanly qualities). For an account of the Vietnamese ambivalence regarding war portrayed in fiction, see

communities, these women cope with their lost youth and inability to marry and bear children in a society that traditionally considers women's reproductive capacity a "holy" obligation and an inalienable right (*ngghia vu thieng lieng, quyen lam me*).⁴⁸³ The saddened veterans of today's Vietnam don't always have their community's tolerance. They have only the state to turn to for a sense of compensation, but the state is already saddled with an overloaded national agenda. The disillusioned, self-sacrificing female warriors of Vietnam become symbols of a ravaged culture unable to handle, in a timely fashion, all of its post-war problems.⁴⁸⁴

The sadness of the female martyr parallels the sentiment of the ancient folk culture, which has mourned the sacrifice of women in exchange for national territory since the 14th century. In 1306, Princess Huyen Tran went on an exodus to Champa, and married the King of Champa who exchanged two provinces of his kingdom for the Princess (now the city of Hue).⁴⁸⁵ The King of Champa died shortly thereafter, leaving Huyen Tran a widow. Worst of all, the custom of Champa required that the queen be burnt to death to accompany her husband. The Vietnamese people thanked the princess for having saved both races—the Chams and the Viets—from the bloodshed of border wars, and for having solved Vietnam's overpopulation and resettlement problems. They have since mourned Huyen Tran with numerous melancholy folk songs in the musical tradition of Hue—the *Nam Binh* tune (Peace for the South).⁴⁸⁶ The Vietnamese folk culture revered the female warriors and national saviors, but also cried for the martyrs and those sad women who sacrificed personal rights in politics.⁴⁸⁷

BAO NINH, *supra* note 321; DUONG THU HUONG, *supra* note 321 (fiction describing women losing femininity and humanity in war).

⁴⁸³ "*Cay doc khong trai, gai doc khong con*," [A poisonous tree bears no fruit, a poisonous woman has no child] (Vietnamese proverb). See also GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3 (discussing Vietnamese reverence for motherhood and cultural attitude disapproving of childless women).

⁴⁸⁴ The "female warrior" population encompasses a forgotten segment: the defeated female veterans of South Vietnam, including the disabled. They have had no platform from which to speak, nor state benefits or recognition, because they constituted the losers of war. There are no statistics about this small group of women. Under Vietnam's current law and policy, they are considered citizens of Vietnam, unless they immigrate to join their families outside Vietnam. If they do immigrate, the disillusioned "female warrior" syndrome is made more complex by additional problems associated with exile and culture shock.

⁴⁸⁵ QUYNH CU & DO DUC HUNG, *supra* note 59, at 117-18.

⁴⁸⁶ "*Nuoc non ngan dam ra di, cai tinh chi, muon mau son phan, den no O Ly, xoi thay vi, duong do xuan thi . . .*" ["A thousand miles her exodus, a heart full of sorrow, using cheek powder and lip color to pay the debts for *O Ly* provinces, oh pity her, in her spring days . . ."] (central Vietnam's *Nam Binh* folk song). See also PHUONG THUYET NGUYEN & PATRICIA SHEHAN CAMPBELL, FROM RICE PADDIES AND TEMPLE YARDS: TRADITIONAL MUSIC OF VIETNAM (1990).

⁴⁸⁷ QUYNH CU & DO DUC HUNG, *supra* note 59, at 117-18. Similarly, another Tran princess, An Tu, was allegedly "sacrificed" by her father, King Tran Thai Tong, who sent her to the Mongolian commander, Thoat Hoan (son of Khan), in a strategic move to slow down Mongolian troops. An Tu allegedly became Thoat Hoan's concubine. Official history did not discuss what happened to An Tu, although Chinese

In summary, when tracing feminist ideas in Vietnam, one must look beyond the voices of nationalists and martyrs to hear the voices of advocates for individual freedoms. Further, the experiences of other cultures have shown that despite playing important roles in nationalist struggles, women of the Third World are often forced back into minor roles in the post-revolutionary society, and are once again marginalized from positions of power.⁴⁸⁸ The bleak condition of Vietnamese women today and their marginal participation in policy-making confirms this observation.

Finally, in today's globalization, a revival of nationalism could have a destructive impact.⁴⁸⁹ Delving into the experiences with colonialism and territorial conquests of the past could re-instigate old hostilities and hinder regional or world-wide institution-building. Equating feminism to nationalism or finding proof of gender equality in nationalist achievements may "taint" the feminist cause, in an era where women need the support of the world community. Advocates for the advancement of women are better off seeking a global goal that transcends national barriers.

2. *The Alliance Between Socialism and Feminism*

The birth of contemporary feminism paralleled the development of socialism, as both doctrines strive for equality and freedom for the oppressed. Thus, the fate of Vietnamese women and that of socialism in Vietnam are intimately bound together. The history of women's socially inferior status, according to Fredrick Engels,⁴⁹⁰ can be traced back to the discovery of labor techniques. The discovery of bronze and iron allowed men to resort to the labor of other men, giving birth to slavery and the concept of private property. Once master of slaves and earth, man became proprietor of woman, as woman's housework became insignificant when compared to man's labor. Engels called this "the great historical defeat of the female sex," whereupon maternal authority gave way to paternal authority as property was passed down from father to son. Under the Engels-Marx view, a woman can be emancipated only when she takes part in production on a large social scale and reduces the amount of domestic work

history did mention a Vietnamese woman who was married to the son of Khan. See QUYNH CU & DO DUC HUNG, *supra* note 59, at 112-13.

⁴⁸⁸ See, e.g., Chinkin, *supra* note 25, at 284-93 (discussing the work of Sri Lankan feminist Kumari Jayawardena and making observations on Iranian and Afghanistan women).

⁴⁸⁹ Norman D. Palmer, *Asia-Pacific Regionalism: An Overview*, in THE NEW REGIONALISM IN ASIA AND THE PACIFIC 21 (1991).

⁴⁹⁰ Fredrick Engels (1820-1895), a socialist philosopher and Karl Marx's philosophical comrade in arms, was considered the scholar and teacher of the proletariat.

she performs. In the utopian socialist society, there would no longer be man and woman, but only workers on equal footing. Only the anti-feminist middle-class woman clung to her chains because of the privileges of her class; if freed from her man, she would have to work for a living.⁴⁹¹

In Vietnam today, the only gender justice battle considered legitimate is said to have been fought, not just as a "duet" between women's liberation and nationalism, but in fact as a "trio," culminating in the merger of nationalism, socialism, and feminism.⁴⁹² Until recently, women's liberation in Vietnam was synonymous with socialism, which belittled independent feminist views. Under the rubric of the international womanhood of socialism, Ho Chi Minh "Vietnamized" the gender issues to the concrete, condemning the "brutality of wife beating," questioning "how the Vietnamese man could raise hand on his endeared partner,"⁴⁹³ and calling Vietnamese women "master of the State" (*ngươi chủ nước nhà*). The Vietnamese socialist woman considered the gender equality advocate a species of the bourgeois and petty bourgeois, pursuing "economic independence," "academic degrees," and the "liberal professions," all of which were hopeless endeavors under colonialism, leading to nowhere but social vices like dance halls, gambling, and suicides.⁴⁹⁴ Then, the term "feminist" did not have a good connotation, nor was it politically correct because of its *bourgeois* affiliation.⁴⁹⁵ Associating socialism with decolonization and fighting a gender battle under the banner of the working class, Vietnamese socialist women clearly announced that any legitimate "[w]omen's [m]ovement should be based on the revolutionary Marxist-Leninist theory of women's liberation."⁴⁹⁶ Such an attitude wholeheartedly erased any distinction between women and workers, because Marxism de-emphasized femininity.⁴⁹⁷ Therefore, the only legitimate outcome to

⁴⁹¹ DE BEAUVOIR, *supra* note 38, at 58-67, 124-28 (critique of Engels-Marx theory, historical materialism, and socialism in the context of gender issues).

⁴⁹² See, e.g., Ho Chi Minh, *Phu Nu Quoc Te [International Womanhood]*, in HO CHU TICH VOI VAN DE GIAI PHONG PHU NU, *supra* note 310 (Ho Chi Minh advocated women's liberation; advising Vietnamese women to "listen to the advice of international woman community [under the rubric of third world communism]").

⁴⁹³ Ho Chi Minh, *Phai That Su Bao Dam Loi Quyen cua Phu Nu [The MUST in Protecting Women's Rights]*, NHAN DAN NEWSPAPER No. 3199, Dec. 28, 1962.

⁴⁹⁴ See Mai Thi Tu, *supra* note 86, at 24-27. The socialist writer did have a point. French romanticism might not produce a positive effect. The Self Reliance Pen Club's fiction was preceded by a controversial novel modeled after Alexandre Dumas' style, portraying the sorrow of failed romance. The novel triggered a number of suicides by Vietnamese youth. See Cong Huyen Ton Nu Nha Trang, *supra* note 63.

⁴⁹⁵ Mai Thi Tu, *supra* note 86, at 25.

⁴⁹⁶ *Id.* at 26-35.

⁴⁹⁷ *Sexual Difference*, *supra* note 36, at 545. See also THE UYEN, SAIGON SAU MUOI HAI NAM [SAIGON AFTER TWELVE YEARS] 169-239 (Xuan Thu Publishing 1989) (South Vietnamese writer critiquing

promote gender justice was the merger of nationalism, socialism, and feminism. In such "trio" formula, the goal of restructuring gender relations was disparaged as an idle concern held only by the elite or *bourgeois* woman.⁴⁹⁸

Fighting for gender justice under this banner of socialism, feminism, and nationalism is a fallacy. Today, while staying loyal to Ho Chi Minh's socialist goals,⁴⁹⁹ many Vietnamese women's advocates have shifted their interest from the struggle of the working class to full recognition of women as individuals,⁵⁰⁰ including those "personal rights" recognized under Vietnam's Civil Code.⁵⁰¹ From this point of view, the "trio" formula swallows gender issues and stifles the attempts of women to achieve personal freedoms.⁵⁰² In other words, such a point of view rejects the idea that a woman is simply a worker or freedom fighter. Instead, a woman's productive capacity is considered just as important as her reproductive ability (culturally considered a holy right and obligation). This perspective is not at odds with contemporary feminist movements, which have taken a divergent course from socialism,⁵⁰³ focusing instead on the vindication of individual rights. Earlier concepts that initially brought feminism and socialism closely together have shifted to contemporary issues such as freedom of choice, whether that means the end of conventional marriages, or better education and creative self-expression as the tool for emancipation and independence. In short, the current Vietnamese women's movement rejects the "fallacy of the trio," and instead argues that women's "worth comes from the freedom they express."⁵⁰⁴

communist Saigon twelve years after unification of Vietnam). The writer acknowledged the feminist features of socialism but argued that socialism as implemented by the party had turned into rigid puritanism that defeminizes Vietnamese women. The writer himself used puritan standards to criticize the newly found sexual freedom of Vietnamese under communism, concluding that the moral fabric of south Vietnamese society had eroded after twelve years of the new regime. *Id.*

⁴⁹⁸ HUE-TAM HO TAI, *supra* note 30, at 244 (quoting Nguyen Thi Minh Khai).

⁴⁹⁹ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 47-50.

⁵⁰⁰ *Id.* at 52.

⁵⁰¹ Vietnam recognizes, under its Civil Code, the individual's "personal rights" (*quyen nhan than*), or "civil rights inalienable from the individual's person." CIVIL CODE, *supra* note 279, arts. 5, 26, 27.

⁵⁰² See, e.g., NGUYEN TAN LONG & PHAN CANH, *supra* note 329 (citing examples of folk songs expressing freedom of mating choices and the rich expressions of open romanticism among young couples in folk life).

⁵⁰³ Hartmann, Heidi, *The Unhappy Marriage of Marxism and Feminism: Toward a More Progressive Union, in WOMEN AND REVOLUTION 1* (Lydia Sargent ed., 1981).

⁵⁰⁴ DE BEAUVOIR, *supra* note 38, at 280.

E. *Fifth Factor: Rule of Law versus Communal Custom*

The rule of law in Vietnam has been considered secondary to custom. Thus, any attempt to create gender equality through laws can be futile if such laws do not reflect cultural norms. The cultural norms of Vietnam include a long, firmly established literary tradition that has been sustained through the communist revolution—even senior communist leaders still write poetry.⁵⁰⁵ Although the braveness and capabilities of women were historically proven under the torch of nationalism, the quest for individual rights has been sought through another avenue—the literary art. Accordingly, as illustrated below, the Vietnamese feminist has at times been a warrior and at times a poet, but never a jurist. The following examines the Vietnamese cultural attitude toward the rule of law and its place in Vietnamese society.

1. *The Rule of Law and Society*

The roots of Vietnamese custom can be found in the village communities, which developed unwritten codes of conduct to regulate behaviors and relationships in the villages. At the root of the Vietnamese culture is the structure of life in a village community, formed by those who live there, and by those who originated there and return only once or twice in a lifetime.⁵⁰⁶ In pre-urban days, the village served as a source of myths, songs, folklore, embracing ancestral tombs, kinship, and cultural origin, and thus became the “library” of oral literature and history. From this “library” sprang unwritten conduct codes passing insights, interpersonal skills, and collective wisdom from one generation to the next, including the manipulative skills necessary to make exceptions to rules.⁵⁰⁷ Beginning as a product of the agricultural society, this communal sense has evolved into a spiritual base and, hence, survives industrialization and urbanization. The sanctity of the Vietnamese communal independence was once poetically described by a French author at the turn of the century—the author observed

⁵⁰⁵ Phan Thanh Hao, *supra* note 8.

⁵⁰⁶ See NGUYEN VAN HUYEN, *THE ANCIENT CIVILIZATION OF VIETNAM* 70-114 (The Gioi 1995). This cultural sentiment accounts for the poignant longing and attachment to the homeland common in the first-generation exile community.

⁵⁰⁷ Phung thi Hanh, *The Family in Vietnam and its Social Life*, in *AN INTRODUCTION TO INDOCHINESE HISTORY, CULTURE LANGUAGE, AND LIFE* 77-84 (John Whitmore eds., 1979); John Van Deusen et al., *Southeast Asian Social and Cultural Customs: Similarities and Differences, Part I*, 1 J. OF REFUGEE RESETTLEMENT, Nov. 1980, at 42-48.

the elusive characteristic of the village gate, a symbol of cultural origin and kinship rather than physical boundary:

Inside noises recede at the bamboo hedge. Nothing comes to break the solemn calm of the fields. A small lane runs along the winding small levee bank and leads to the hedge. The opening, or the gate, of the village must be guessed. It is made of bamboo and forms, in general, a kind of herse porticullis set up in the evening. A small tower sometimes crowns it to serve as a place for the night watchers.⁵⁰⁸

Vietnamese folklore is inundated with expressions subordinating the rule of law to norms of the “village” or “commune” culture. For example, in the village’s unwritten code, “the king’s rule is secondary to the village’s norms,”⁵⁰⁹ and “although the mandarin has an urgent need, the people do not. So if the mandarin is in a hurry, he can swim to make his trip alone.”⁵¹⁰ In the traditional society, the rule of law was thus viewed as the emperor’s tool to stabilize his kingdom “elsewhere,” rather than the people’s tool to conduct their daily lives in the villages.

To this day, Vietnamese society still functions according to this “village” structure. Urban Vietnamese life is organized according to alley communities and small neighborhoods.⁵¹¹ The current political system reinforces this communal nature of life in which the *cong an* (neighborhood police) have more direct power over daily lives than the Ministry of Interior, and in commercial provinces and municipalities, the local People’s Committee is perceived as more powerful than the central government in Hanoi.

It follows, therefore, that the rule of law tends to become a *post facto* recording of culture, reflecting what has already been part of society, rather than pioneering a new legal concept. Like history, the rule of law becomes evidence of culture. As to social engineering, at best, the law represents inspirational goals. As a guideline for interpreting statutory civil rights, the current Civil Code provides a general statement of aspiration:

⁵⁰⁸ NGUYEN VAN HUYEN, *supra* note 506, at 114 (citing P. Pasquier). For a description of the Vietnamese communal way of life as found in the villages, see NEIL JAMIESON, *supra* note 91, at 28; NGUYEN DANG THUC, *supra* note 56, at 219-27.

⁵⁰⁹ “*Phep vua thua le lang*” (proverb). See Nguyen Ngoc Huy & Ta Van Tai, *supra* note 326, at 493.

⁵¹⁰ “*Quan co can nhung dan chua voi, quan co voi quan loi qua song*” (proverb).

⁵¹¹ Elizabeth M. Timberlake & Kim Oanh Cook, *Social Work and the Vietnamese Refugee* 29 SOC. WORK 108 (1984). The only exception is the rare lifestyle of a very small segment of the population living in secluded villas or mansions.

The establishment and exercise of civil rights and the performance of civil obligations must ensure the preservation of national identity and pay respect and give full play to good customs, practices, and traditions, solidarity, mutual support, [the principle of] every individual for the community and the community for the individual and the noble moral values of all ethnic groups living on Vietnamese soil.⁵¹²

An advocate of gender equality, therefore, should not assess gender relations in the society or make judgments on the conditions of women based purely on an analysis of the society's laws. In "non-legalistic cultures," such as Vietnam, where the rule of law yields to custom,⁵¹³ formulating written laws that do not first develop from custom may not necessarily lead to progress, especially if the laws do not reflect the rules that originated from and are reinforced in the "village" community. Advocacy for well-drafted law, however, is still needed to create public awareness and force policy-makers to focus on women's issues, so long as the advocates are mindful that the law may not reflect reality.

2. *The Hong Duc Code: A Historical Example of the Gap Between Law and Custom*

Even ancient Vietnam's proud legal product, the *Hong Duc* Code of the Le Dynasty, illustrated the gap between law and reality. The *Hong Duc* Code, which governed Vietnamese society from 1460 until 1788,⁵¹⁴ was viewed by legal historians as more representative of the Vietnamese culture than any other ancient Vietnamese law (many of which were essentially

⁵¹² CIVIL CODE, *supra* note 279, art. 4.

⁵¹³ Gillespie, *supra* note 302, at 109 (noting that in Vietnam, the prevalence of custom and cultural factors accounts for "private non-compliance" with law). The yielding of the rule of law to custom is not unique to Vietnam, but is also shared by Latin and other Asian cultures, where women are subject more to the severity of custom than to the rigor of law. DE BEAUVOIR, *supra* note 38. See also WILLIAM P. ALFORD, TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION 1995) (exploring, *inter alia*, the relationship between law and cultural attitude in China in the context of intellectual property law).

⁵¹⁴ For the ancient *Nom* text of a historical account of the Le Dynasty written contemporaneously, see LE QUY DON, DAI VIET THONG SU [THE GENERAL HISTORY OF THE DAI VIET EMPIRE] (Le Manh Lieu trans. & Nguyen Khac Thuan, ed. & annot., Tong Hop Dong Thap Publishing 1993). Although the Le Dynasty pronounced Confucianism a state religion, in matters of daily lives, the *Hong Duc* Code yielded to the Vietnamese culture rather than to rigid Confucian precepts. For example, it allowed women to assume ancestral worshiping duties for the family in the absence of a male heir, reflecting the more egalitarian role of Vietnamese women compared to other Confucian societies. See NGUYEN VAN HUYEN, *supra* note 506.

Chinese laws).⁵¹⁵ Article 709 of the *Hong Duc* Code recognized the existence of “female officials” and “mandarins” during the Le Dynasty, perhaps suggesting that women could hold government offices. The recognition of “female officials” also conformed to the vision of Emperor Le Thanh Ton, the drafter of the *Hong Duc* Code, who viewed law as a way to provide equal opportunity in education to all citizens of his kingdom.⁵¹⁶ In reality, however, the brief reference to “female officials” in the *Hong Duc* Code might have instead been a reference to female public servants assigned to the royal palace.⁵¹⁷ In addition, there is little proof that the Le Dynasty produced any “female officials” or “female mandarins”—no folk literature appears to discuss these “female mandarins.”⁵¹⁸ The only known “female officials” during the Le Dynasty were (1) Nguyen Thi Lo, in charge of “protocol” for the palace,⁵¹⁹ and (2) Nguyen Thi Diem, a nationally known poetess and scholar who was invited to teach royal women in the palace, and who translated the “Song of the Warrior’s Wife,” from Chinese into *Nom* (Vietnamese deviation of Chinese characters).⁵²⁰

To the extent “female officials” might have referred to the Le Dynasty’s vision of equal opportunity in education, the country lacked the social infrastructure to make that vision a widespread reality.⁵²¹ Emperor Le Thanh Ton’s Kingdom of *Dai Viet* (1428-1789), in its golden era, was still an agricultural society where manual labor was the most common type of

⁵¹⁵ TA VAN TAI, *THE VIETNAMESE TRADITION OF HUMAN RIGHTS* (1988); Ta Van Tai, *supra* note 344.

⁵¹⁶ TA VAN TAI, *supra* note 515, at 220. Accord Hoang Xuan Hao, *Nhan Quyen Trong Luat Hong Duc: Niem Tu Hao Dan Toc [Human Rights in the Hong Duc Code: a Point of National Pride]*, in *THE KY 21 [THE 21ST CENTURY]* 30-31, Year No. 10, No 113, Sept. 1998 (Vietnamese ethnic literary and social sciences periodical).

⁵¹⁷ Article 709 mentioned “female officials” in passing. The provision established the protocol for criminal proceedings, and stipulated that “women who were granted titles according to the positions of their husbands or descendants and ‘female officials’ (*mang phu nu quan*) are similarly treated depending on their ranks.” See NGUYEN NGOC HUY & TA VAN TAI, *THE LE CODE: LAW IN TRADITIONAL VIETNAM, A COMPARATIVE SINO-VIETNAMESE LEGAL STUDY WITH HISTORICAL AND JURIDICAL ANALYSIS AND ANNOTATIONS*, vol.I (1987).

⁵¹⁸ The vision of a “female mandarin” existed in Vietnamese folk literature, first told in the tale of *Nu Tu Tai* (The Female Scholar). Because the author was anonymous, literary historians have not been able to ascertain whether this work originated during the Le Dynasty. See ANONYMOUS, *NU TU TAI VA BAN NU THAN [THE FEMALE SCHOLAR AND LAMENT OF A POOR WOMAN]* (Thi Nham annot., Tan Viet Publishing, year unknown). Its anonymity places the work in the nature of folk literature, but the work was written in the style of learned literature, and did not belong in the oral literary tradition of Vietnam.

⁵¹⁹ See TA VAN TAI, *supra* note 515, at 117.

⁵²⁰ See *supra* Part IV.C.

⁵²¹ In the case of Nguyen Thi Diem, she was born into an aristocratic family with a literary tradition, and did not marry until after age twenty. See PHAN KE BINH, *supra* note 67, at 242. Nguyen Thi Lo was the concubine of Nguyen Trai, senior advisor to the Le emperor. She was recommended to the palace not because she had passed any examination, but because she was known for her intelligence and self-taught literary skills. Ta Van Tai, *supra* note 344, at 110 n.43.

work. Then, living until fifty was considered longevity. Most women gave birth to dozens of children, many of whom did not live past age three. Rice production and small artisan industries were the backbone of the economy. In addition, Confucian examinations were rigorous—in order to be appointed mandarin, one had to master Confucius' *Tu Thu* (Four Books) and *Ngũ Kinh* (Five Testaments) in Chinese, a written language that did not correspond to the Vietnamese spoken language. Exams were given in the capital city, which meant that some examinees had to travel for months by foot just to sit for the exam.⁵²² Economic realities and the division of labor at that time likely prevented women from obtaining their own career path, leaving them with no choice but to invest their ambition in the careers of their husbands.⁵²³

3. *Obstacles to Building a Social Infrastructure Conducive to the Rule of Law*

Five hundred years have passed since the enactment of the *Hong Duc* Code, and the same disparity between law and reality exists today,⁵²⁴ due primarily to obstacles that prevent building an infrastructure to support the rule of law. One such obstacle is the perception held by many Vietnamese that the law is ineffective and inadequate.⁵²⁵ The inadequate dissemination of the law,⁵²⁶ the slow-moving, multi-layered bureaucracy, and ineffective

⁵²² See, e.g., NGO TAT TO, LEU CHONG [PACKING] (publication information unknown); PHAM THE NGU, VIET NAM VAN HOC SU GIAN UOC TAN BIEN [MODERN RECORDING AND SUMMARIZED ANNOTATION OF VIETNAMESE LITERARY HISTORY] 74-89 (1st ed. Quoc Hoc Tung Thu Publishing 1961). See also NGUYEN DANG THUC, LICH SU TU TUONG VIET NAM TAP VI [HISTORY OF VIETNAMESE THOUGHTS VOL. VI] 67, 117-79 (1992) (criticizing the examination procedure of the Le/Hong Duc Dynasty as emphasizing protocol and material reward over the fostering of creativity or integrity; acknowledging, however, that the *Hong Duc* Code bore traces of the Vietnamese indigenous culture's respect for femininity, and arguing further that because the Le imperial court endorsed Confucianism, the populace turned to the worship of Goddess Quan Am as a reaction to the paternalism of the aristocracy).

⁵²³ This "vicarious" ambition was portrayed in 20th century's famous poem, "*Trang Sang Vuon Tra*" [*Moonlight over the Tea Field*] by pre-revolution poet Nguyen Binh (describing an ancient Vietnamese woman's ambition to obtain public office vicariously through the study of her husband, viewing herself as the nurturer of his career). NGUYEN BINH, LO BUOC SANG NGANG [THE PATH OVER THE RIVER] (Hoa Tien 1970).

⁵²⁴ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 240-42. See also Gillespie, *supra* note 302, at 119. Compare VIETNAM AND THE RULE OF LAW (Carlyle Thayer & David Marr, eds., 1993).

⁵²⁵ The lack of respect for the rule of law in society is not unique to Vietnam, but also is characteristic of China. Cf. *Nation Has Million Rules—and 1.2 Billion Rule Breakers*, USA TODAY, June 28, 1998, at 10A. Compare also Alford, *supra* note 102 (describing the tendency in China, until recently, to rely on morality, custom, kinship, or politics rather than formal legality); ALFORD, *supra* note 513; ALEXANDER BARTON WOODSIDE, VIETNAM AND THE CHINESE MODEL, (2d ed. 1988). In general, it also reflects the reality of the rest of developing Asia.

⁵²⁶ The official government law reporter, *Cong Bao* (the Gazette), has a circulation of only 3,000 for a nation of over seventy million people. Rose, *supra* note 97, at 103 n.28.

law enforcement all foster the disregard of law. The "law inflation" of Vietnam during *Doi Moi* goes hand in hand with the lack of predictability and uniformity in enforcement, inconsistent applications and interpretations,⁵²⁷ and abuse of discretionary authority.⁵²⁸ In everyday discourse, Vietnamese use metaphors such as "*luat rung*" (the jungle's law) and "*ngghi gat*" (the sleeping lawmaker) to mock the ineffectiveness of the law. Disregard of the law is reinforced by pervasive corruption (similar to the widely publicized problems in China) in a society plagued with poverty.⁵²⁹ During the first decade of *Doi Moi*, Vietnam launched anti-corruption campaigns and tightened disciplinary actions. For instance, the Deputy Minister of Water Resources and the chairmen of two provincial People's Committees, were suspended from office and seven other state officials were arrested and convicted under the Criminal Code.⁵³⁰ Recently, several officials involved in drug trafficking received death sentences. The question, however, remains whether these were simply token disciplinary measures directed at a few scapegoats.

Despite these efforts, the pervasive nature of the corruption together with low government salaries (an average of U.S. \$30-\$50 per month)⁵³¹ have prevented Vietnam from solving the problem. In addition, the frequent

⁵²⁷ *Id.* In many cases, the law pronounces a vague statement of policy reiterating principles of morality, Vietnamese values and the supremacy of the state. *Cf.* discussion *supra* Part III. *See, e.g.*, Family Law, *supra* note 260, art. 21 ("A child has the obligation to respect, care for, support his/her parents, and listen to their advice."); CIVIL CODE, *supra* note 279, art. 9 ("In civil relations, the parties must [act] with goodwill and honesty and shall not only be concerned with and care about their own legal rights and interests, but must also respect and be concerned with the interests of the State, the interests of the public . . .").

⁵²⁸ *See, e.g.*, Gillespie, *supra* note 302, at 113-15 (criticizing enforcement and administration of the Vietnamese Land Law).

⁵²⁹ This kind of corruption generates negative international publicity for both Vietnam and China. *See, e.g.*, ECONOMIST INTELLIGENCE UNIT, *supra* note 116, at 13 (citing Do Muoi, the Vietnamese Communist Party leader, as acknowledging corruption and mismanagement, which caused the Vietnamese people to lose faith in unions, government, and the Party); *compare Nation Has Million Rules—and 1.2 Billion Rule Breakers*, *supra* note 525; The World, Foreign Policy, *Making China a Nation of Laws, Not Whims* L.A. TIMES, Sept. 6, 1998, at 2. Corruption as a social ill should be distinguished from the "gift-giving" culture of the East. Gifts express affection, trust, and friendship. Business is better conducted with friends, and the line between business and personal relationships is legitimately blurred. A gift in expression of friendship may be the precursor of a business relationship, innocent and acceptable, yet can be viewed by an American lawyer suspiciously as a possible violation of the U.S. Foreign Corrupt Practices Act.

⁵³⁰ VIETNAM INVESTMENT MANUAL, *supra* note 54, at 42-43. *See also* ECONOMIST INTELLIGENCE UNIT, *supra* note 116, at 15-16 (reporting on the sentencing of Ho Chi Minh City's Customs chief, Phan Anh Tuan; Ho Chi Minh City's Housing and Land Department chief, Le Thanh Hai; Hanoi's Commercial Crime Office chief, Le Van Luu; and the general director of the Vietnam United Enterprises for Maritime Transport, Ngo Dinh Quy).

⁵³¹ VIETNAM INVESTMENT MANUAL, *supra* note 54, at 43.

political upheavals have eroded expectations that the government will champion justice and social welfare.⁵³²

A second obstacle to building an infrastructure that respects the rule of law is the public's view that lawyers are instruments of the socialist state. For the rule of law to be respected, lawyers must be viewed as having high standards of competency and ethics,⁵³³ and the legal profession must be accessible to the general public. While some consider a career as a lawyer prestigious, others view lawyers as a "privileged few" and as agents of the state. This is primarily because of limited law school enrollment, the Communist Party affiliation of judges, and the heavily Marxist curriculum in Vietnamese law schools. The situation is similar to that found in China, where "lawyers were to be state legal workers (*falü guwenchu*) whose obligation to protect socialism and the state took priority over duties to their individual clients."⁵³⁴ For example, Bar associations are viewed as state instruments, reporting monthly to the Ministry of Justice and the People's Committee in each locality.⁵³⁵ In addition, illegal payments are often an accepted part of the legal process.⁵³⁶

The final obstacle to building a social infrastructure conducive to the rule of law is that policy-makers in Vietnam emphasize the rule of law primarily for economic and political stability. Therefore, they work towards developing commercial law that first serves the immediate economic goals of the government and the foreign investment community, and not necessarily the people of Vietnam. Here, again, Vietnam's experience has been akin to that of China: in dealing with the chaos of greed and the by-product of the free enterprise, leaders of both countries have been eager to seek order through law. During the peak of *Doi Moi* (1994-1996), Vietnam's former Prime Minister, Vo Van Kiet, stated that Vietnam needed "a complete change from bureaucratic management to running the nation by law."⁵³⁷ However, Kiet's legal reforms have focused more on economic

⁵³² The sentiment is expressed in dissident fiction. See, e.g., DUONG THU HUONG, *PARADISE OF THE BLIND* (Phan Huy Duong & Nina McPherson trans., 1993); Pham Thi Hoai, *Nguoi Doan Mong Gioi Nhat The Gian [The Best Dream Teller in the Universe]*, reprinted in TRAM HOA VAN NO TREN QUE HUONG, *supra* note 400.

⁵³³ ANWAR IBRAHIM, *THE ASIAN RENAISSANCE* 67 (1996).

⁵³⁴ Alford, *supra* note 102, at 28.

⁵³⁵ Rose, *supra* note 97, at 129 n.50.

⁵³⁶ *Id.* at 134; Alford, *supra* note 102, at 33.

⁵³⁷ Barry Metzger, *An Asian Perspective on Legal Modernization*, Remarks at the 1997 Wolfgang Friedman Memorial Conference (Mar. 7, 1997) (on file with author) (quoting Vo Van Kiet and advocating revamping legal systems to effect transitions from state-planned central economies to market-oriented economies). Accord, Rose, *supra* note 97. Compare *Abroad at Home; The Engine of Law*, N.Y. TIMES, July 6, 1998, at A11 (describing the U.S.-China legal exchange in connection with President Clinton's 1998

development and effective governance than at working towards broader political change in the society at large.⁵³⁸ At the same time, the government has tended to view foreign public interest lawyers and non-government organization (“NGO”) workers with apprehension, mindful that legal reforms may facilitate political changes. The foreign press has observed that Vietnamese leadership may even view the rapid influx of foreign funds and the international urge for legal reforms as erosive to its power base.⁵³⁹

In summary, international legal assistance and the globalization of law, while important to the government’s agenda, are remote to the daily lives of most Vietnamese people. These people must deal instead with local judges and tribunals, and the common aspects of the bureaucracy. When in need of advocacy or conflict resolution, the people tend to go to their immediate community for results.⁵⁴⁰ In such a climate, the “transnational activism” of liberal democracy envisioned by U.S. Supreme Court Justice Douglas hardly has a chance to serve the women of Vietnam.⁵⁴¹

4. *The “Glass Bottle”: The Vietnamese Tradition of Using Creative Literature to Seek Freedom and Social Justice*

In ancient Vietnam, the oppressive aspects of Confucian society rendered the rule of law ineffective in the quest for social justice. The oppressed literati became painfully aware of their lack of choice in society, as illustrated by Vietnam’s lack of leverage in diplomacy; the blind supremacy of the throne; and the one-dimensional, non-creative scholastic environment (*van hoc tu chuong*)⁵⁴² that discouraged counter-argument and intellectual freedom. Realizing these limitations, authors were able to use creative literature to explore their artistic expressions, including their views about feminism.

China visit, commenting on China’s need for more meaningful legal institutions to attain stability); *see also Clinton Bathes Chinese in Praise* U.P.I., July 3, available at LEXIS, News group file.

⁵³⁸ Metzger, *supra* note 537. Liberal democracy advocates have criticized Asian leaders for using the rule of law to achieve “effective governance” of their people, building a “revolution from above” and justifying “Asian-styled democracy.” Kanishka Jayasuriya, *The Rule of Law: Authoritarian Governance in East Asia*, 31 HARV. ASIA PAC. REV. 110 (Winter 1997-98); Thomas Carothers, *The Rule of Law Revival*, 77 FOREIGN AFFAIRS 95 (1998), available at 1998 WL 12052522. Vietnam’s socialist orientation, expressly giving supreme status to the Party and the state, exemplifies the “effective governance” objective.

⁵³⁹ *See, e.g.*, Fuminori Murata, *supra* note 140.

⁵⁴⁰ *See supra* note 146 (describing women’s community involvement in solving a murder case and a stall fee dispute at Ben Thanh market).

⁵⁴¹ Rose, *supra* note 97, at 121 n.44, 125 n.47; WILLIAM O. DOUGLAS, AN ALMANAC OF LIBERTY (1954), WILLIAM O. DOUGLAS, GO EAST YOUNG MAN (1974).

⁵⁴² HUE-TAM HO TAI, *supra* note 30, at 13.

Literature has always been highly valued by the Vietnamese and a favorite avenue for expression of the desire for freedom.⁵⁴³ This pattern is abundantly clear in folk literature⁵⁴⁴ as well as in classical literature.⁵⁴⁵ The method by which authors use literature to fight against social injustice and oppression can be described as the “glass bottle” approach. When an author uses fictional literature to express controversial ideas, it is as if the idea is in a glass bottle. The reader is able to see and understand the controversial idea, but the author is more or less insulated from government interference because the idea is only “fiction.”

One of the earliest feminist works in Vietnamese classical literature was *Ban Nu Than* (The Lament of a Poor Woman), attributed to an anonymous author.⁵⁴⁶ The work was likely the protest of a talented woman that had few opportunities to escape because she lived in poverty.⁵⁴⁷ Despite the impact of *Ban Nu Than*, such a complex feminist story did not appear again until the 18th century. At that time, three giants of Vietnamese classical literature were published: the Lament of the Royal Concubine (*Cung Oan Ngam Khuc*), the Song of the Warrior’s Wife (*Chinh Phu Ngam*), and the Tale of Lady Kieu (*Truyen Kieu*). In all three, the suffering woman’s tear of sorrow became the tears of subtle protest.

a. *The lament of the royal concubine (Cung Oan)*

The Lament of the Royal Concubine (“*Royal Concubine*”) was written by Nguyen Gia Thieu (1741-1798), a male mandarin-philosopher of aristocratic descent who lived during the decline of the Le Dynasty.⁵⁴⁸ *Royal Concubine* portrayed the plight of women inside the royal palace and represented the voice of the aristocratic woman who were subject to the emperor’s whims. Substantively, *Royal Concubine* was much more than a “suffering woman” story; the author also expressed his own personal pessimistic metaphysical viewpoints.⁵⁴⁹ The son of a Trinh princess and

⁵⁴³ HUE-TAM HO TAI, *supra* note 30 (stating literature was the “core of Vietnamese cultural activity”).

⁵⁴⁴ PHAM THE NGU, *supra* note 522, at 13-45.

⁵⁴⁵ NGUYEN TAN LONG & PHAN CANH, *supra* note 329, at 521-33.

⁵⁴⁶ Thanh Lang, *supra* note 73, vol. 1, at 586.

⁵⁴⁷ Vietnamese contemporary critics view her voice as that of a dissatisfied man in disguise. *Id.* at 588-89.

⁵⁴⁸ Today, *Royal Concubine* is known among students of Vietnamese classics as an outdated scholarly piece of work, due to its ornate style that incorporated endless metaphors, figures of speech, and anecdotes borrowed from Chinese literature.

⁵⁴⁹ CUNG OAN NGAM KHUC DAN GIAI VA CHU THICH [CUNG OAN NGAM KHUC WITH COMMENTARIES AND ANNOTATIONS] (Ton That Luong annot., 5th ed. Tan Viet 1950).

grandson of a Trinh concubine, Thieu lived in a time of chaos. The Vietnamese aristocrats not only fought amongst themselves for power, they also had to deal with Chinese oppression. As a result of this history, Thieu easily identified with the oppressed and emotionally imprisoned woman, a transference phenomenon quite common in colonized societies, where the native men became “enlightened male feminists,” taking up women’s causes.⁵⁵⁰ Philosophically, Thieu offered Buddhist and Taoist tenets as an escape from social injustice. His feminist ideas and compassion for the subordinated woman, however, were not well explored, and Confucian male scholars failed to see Thieu’s correlation between feminist advancements and the plight of the intellectually imprisoned.

Royal Concubine expressed the tragic fate of a dependent aristocratic female who derived her identity from a male ruler, seeking status and security in his affections. Once nationally known for her beauty and adored by the emperor, she gradually became a prisoner of the royal palace as the emperor grew tired of her. In her younger days, and prior to her entry into the palace, the woman expressed her will to “manipulate life and escape destined womanhood, determined to reverse the circle of [the] husband-wife relationship.” Later, she sadly concluded that “[h]eaven did not allow me the choice to do so, and the red silk threads of marriage became the dainty flower’s bondage.”⁵⁵¹ Her fleeting, daring “revolutionary” idea was not strong enough to overcome her fatalism—she viewed life as a predestined, cause and effect circle from which she could not escape.⁵⁵² Thus, Thieu was using the gender relations theme as a subterfuge for his lament against the unquestioned subordination of intellectuals by the royal court.

At the conclusion of *Royal Concubine*, the author explores the status quo, lamenting the fact that society provided no solution for the oppressed male intellectual or his counterpart, the dependent, aristocratic woman. In her frustration about this status quo, the concubine once again contemplated a “revolution”:⁵⁵³

Heaven had not protected me. The fabric [of this marriage] woven by Heaven was of a poor quality. My hands want to

⁵⁵⁰ See, e.g., Chinkin, *supra* note 25, at 281.

⁵⁵¹ “*Y cung rap ra ngoai dao chu, Quyet lon vong phu phu cho cam, Ai ngo troi chang cho lam, quyet dem day tham ma giam bong dao.*” CUNG OAN NGAM KHUC, *supra* note 549, at 35.

⁵⁵² “*Co am duong, co vo chong, dau tu thien dia, cung vong phu the.*” *Id.* at 36.

⁵⁵³ “*Phong tieu lanh ngat nhu dong, guong loan be nua, gia dong xe doi . . . Tinh rau ri khon khuay nhi muc, chon phong khong nhu duc may mua, giac chiem bao nhung dem xua, giot mua cuu han, con mo den ray.*” *Id.* at 67, 82-83.

destroy the pink thread of [of marriage]. My frustration is strong enough that I want to demolish this chamber to escape.⁵⁵⁴

In the end, Thieu's royal concubine seeks solace in her naive hope that her lament would eventually travel up the nine steps to reach the throne, and in the meantime, "I would manage to hold on to my rosy cheeks while continuing to wait."⁵⁵⁵ At the time Thieu wrote this, the government would have found such statements unacceptable, were they not couched in fiction.⁵⁵⁶ Thus, the Vietnamese male feminist was able to express his revolutionary ideas about individual freedom through creative literature.

b. *The song of the warrior's wife (Chinh Phu)*

The Song of the Warrior's Wife ("*Warrior's Wife*") uniquely portrayed the complex interplay between a Vietnamese woman's emotional needs in her private sphere and the patriotic call for personal sacrifice when her husband leaves for war. The suffering of the warrior's wife occurred because of patriotism, the highest call of duty and the performance of "heaven's mandate" in time of national crises.⁵⁵⁷ At least one contemporary Vietnamese philosopher has explored this theme further, arguing that the wife's suffering in *Warrior's Wife* represented the fate of the exiled, haunted by the human longing for universal peace.⁵⁵⁸ Another contemporary Vietnamese critic considered it an "appeal to universal justice" or "an indictment" of the lack of choices (*Ban Cao Trang*) available to women.⁵⁵⁹ Under any of these views, the lament in *Warrior's Wife* was undeniably the lament of those without the freedom to make choices for their lives.⁵⁶⁰

Written in Chinese by Dang Tran Con (1710-1745) during the decline of the Le Dynasty, *Warrior's Wife* was translated into *Nom* and made popular among commoners by the poetess Nguyen Thi Diem (1704-1748).

⁵⁵⁴ "Tay Nguyet Lao chang xe thi cho, xe the nay co do dang khong, Dang tay muon dut to hong, buc minh muon dap tieu phong ma ra." *Id.* at 68.

⁵⁵⁵ "Phong khi dong den cuu trung, giu sao cho duoc ma hong nhu xua." *Id.* at 92.

⁵⁵⁶ At least one Vietnamese historian has opined that *Cung Oan* was the precursor of the forthcoming feminist poetry of Ho Xuan Huong. See NGUYEN KHAC VIEN, *supra* note 76, at 135.

⁵⁵⁷ "In moonlight shattered by drum sounds, and cannon smoke clouding heaven's gate, passing the royal sword, handing down that royal decree, at midnight he went about mobilizing our troops . . ." [translation]. HOANG XUAN HAN, CHINH PHU NGAM BI KHAO [SONG OF THE WARRIOR'S WIFE RESEARCHED AND ANNOTATED] (Minh Tan Publishing House 1953).

⁵⁵⁸ LE TUYEN, CHINH PHU NGAM VA TAM THUC LANG MAN CUA KE LUU DAY [SONG OF THE WARRIOR WIFE AND THE ROMANTIC PSYCHE OF THE EXILED] (Van Nghe Publishing 1988).

⁵⁵⁹ THANH LANG, *supra* note 73, at 514.

⁵⁶⁰ LE TUYEN, *supra* note 558, at 39.

Diem's translation from Chinese to *Nom* had a transformative effect on the Chinese text, giving a new life to the work.⁵⁶¹ By virtue of her unconventional life, Diem could arguably qualify as Vietnam's earliest non-radical, "sentimental feminist."⁵⁶² Oral histories describe that in her youth, Diem rejected marriage and successfully evaded a recommendation to enter the palace as one of Lord Trinh's⁵⁶³ concubines. Diem moved to the countryside, ran a school, and practiced herbal medicine, perhaps becoming Vietnam's first and only woman to teach from Chinese and Confucian books. To avoid the Trinh clan, she disguised herself as a farmer working on the rice field while soldiers gathered at her house, ready to "take the bride."⁵⁶⁴ Later in her life, she entered the palace not as a concubine but as the highest ranking female mandarin, the teacher of Lord Trinh's women.⁵⁶⁵

Receiving little attention from contemporary Vietnamese literary critics is the fact that *Warrior's Wife* subtly questioned the legitimacy of sacrifice and expressed the woman's desire for personal happiness. Just as *Royal Concubine*, *Warrior's Wife* involves a female protagonist who associates her suffering with womanhood, or Heaven's will: "[w]hen Heaven and Earth were filled with dust, it was time for the rosy-cheeked to suffer. Whose making was it? Had to be that endless blue sky representing Heaven above me."⁵⁶⁶ She goes on to question her place in society as well as the legitimacy of war, "Behind the door of my boudoir, I suffer from my fate. Why then are you, my dear husband, out there in the open clouds,

⁵⁶¹ Literary historian Hoang Xuan Han argued that the popular *Warrior's Wife* was in fact the translation by another male mandarin, Phan Huy Ich. See HOANG XUAN HAN, *supra* note 547, at 7-68. The translation done by Diem, argued Hoang Xuan Han, was circulated among the literati and was not the same text loved by commoners for centuries. This theory contradicts the common understanding of contemporary Vietnamese critics who widely attribute the *Warrior's Wife* translation text to Diem. The version is so popular that Diem is commonly regarded as the author, while Con's Chinese text has largely been forgotten and is rarely discussed (perhaps partly because it was in Chinese).

⁵⁶² "Sentimental feminist" is Simone de Beauvoir's terminology describing pioneering female writers who did not belong to any movement, yet set feminist examples by virtue of their life, writing, and personal quest. DE BEAUVOIR, *supra* note 38, at 141.

⁵⁶³ Lord Trinh governed North Vietnam as advisor to King Le.

⁵⁶⁴ HOANG XUAN HAN, *supra* note 547, at 33, citing DOAN THI THAT LUC [THE BIOGRAPHY OF DOAN] (original text in *Nom* or Chinese).

⁵⁶⁵ One story relates that she was sent to the border to greet the Chinese envoy to impress him with her literary skills. PHAN KE BINH, *supra* note 67, at 242-45. Like most women of her time, she ended up living the diplomat's mission vicariously through a husband. At age forty, she married a widower-mandarin, Nguyen Kieu, and helped run his household during his diplomatic mission to China. Her husband left for China within a month of the wedding. The trip to and from Peking took him three years to complete. She died at age forty-four, having lived with her husband for only a year after his return from China. HOANG XUAN HAN, *supra* note 547, citing DOAN THI THAT LUC [THE BIOGRAPHY OF DOAN], LE SU TUC BIEN [HISTORY OF THE LE DYNASTY], and SU HOA TUNG VINH [HISTORY OF DIPLOMATIC MISSION TO CHINA] (all are ancient texts written presumably in either Chinese or *Nom*).

⁵⁶⁶ "Thuoi troi dat noi con gio bui, khach ma hong nhieu noi truan chuyen, xanh kia tham tham tung tren, vi ai gay dung cho nen noi nay?" *Id.* at 87. Accord CUNG OAN NGAM KHUC, *supra* note 549.

suffering the same? Have you incurred any debts of your own?"⁵⁶⁷ In her despair, she views animals and vegetation as having better luck than a woman in war time.⁵⁶⁸ She also regrets not opposing her husband's promotion to general.⁵⁶⁹ The warrior's wife explicitly blames Heaven,⁵⁷⁰ but in the end she clings to a misguided hope of a reunion with her husband.⁵⁷¹ In short, no real solution is offered. Thus, *Warrior's Wife* used a lamenting, suffering woman of ancient Vietnam to introduce controversial ideas. Disguised in the Eastern notion of fatalism, and cloaked as "fiction," the author was able to question the status of women and the legitimacy of war.

c. *The tale of Lady Kieu (Kieu)*⁵⁷²

The Vietnamese almost universally view their favorite classical literary work, the *Tale of Lady Kieu*, as depicting the suffering and struggle of the helpless against fatalism. In this tale, fatalism is the philosophical mask—the "glass bottle"—disguising the quest for gender and social injustice. In the end, the *Tale of Lady Kieu* gave the audience "Vietnamese-style" hopes: fate was conquered by virtue, and only in virtue would peace of mind be attained.

Writing in the form of a long poem, the author, Nguyen Du, derived the *Tale of Lady Kieu* from a Chinese paperback. A mandarin poet, Du picked up a copy of the paperback during one of his trips to China. Du was a learned man appointed several times as envoy to China, where he saw for himself the inequity of China's domination of Vietnam and the limit of his own voice as a citizen of a subordinated state. He was born and raised during the prolonged civil war between Lord Trinh and Lord Nguyen, a time when the purported supremacy of the Le throne was threatened. Confucian

⁵⁶⁷ "Trong của nay da danh phan thiep, ngoai may kia ha kiep chang vay?" *Id.* at 87.

⁵⁶⁸ "Kia loai cung doi dau cung sanh, No loai kiem chap canh cung bay, lieu, sen la thuc co cay, doi hoa cung dinh, doi cay cung lien, ai loai vat tinh duyen con the, sao kiep nguoi no de day day?" ["Birds can fly together; animals can be together; Willows and lotuses grow in pairs, why does a human life suffer from so much constraint?"] *Id.* at 129.

⁵⁶⁹ "Luc ngoanh lai ngoanh mau duong lieu, Tha khuyen chang dung chiu tuoc phong." ["When I looked back at the changing colors of the willows, I regretted not asking you to refrain from being ordained into the king's court."] *Id.* at 119.

⁵⁷⁰ "Trach Troi sao de lo-lang, Thiep rau thiep, lai rau chang, chang quen." ["I blame Heaven for this separation. I suffer my sorrow, I suffer for my husband, I cannot escape my suffering."] *Id.* at 340.

⁵⁷¹ "Ngam nga mong gui chu tinh, duong nay au han tai lanh truong phu." ["I will not cry, we will meet again, I will have only this to say: Born a man, this is how you must act."] (translation based on the original Chinese text).

⁵⁷² LE XUAN THUY, KIM VAN KIEU: ENGLISH TRANSLATION, FOOTNOTES AND COMMENTARIES (Ho Chi Minh City Publishing 1992); THUY KIEU TRUYEN TUONG CHU QUYEN THUONG [THE TALE OF THUY KIEU] (Chiem Van Thi & Le Manh Lieu annot., 2d ed. Bo Van Hoa Giao Duc va Thanh Nien 1973) (publication with original Nom text). See also *supra* note 373.

ideology was shaken to its roots, self-interested factions competed for the throne, and the country could not break free of a thousand years of Chinese cultural indoctrination. As an intellectual, Du was ambivalent about traditions, values, and the legitimacy of the system. Thus he rewrote the Chinese paperback, developing the storyline and turning it into a Vietnamese masterpiece.⁵⁷³ He became the gentleman's version of the Vietnamese poetess Ho Xuan Huong,⁵⁷⁴ a supporter and sympathizer of the female plight. In essence, he became another of Simone de Beauvoir's "sentimental feminists."⁵⁷⁵

The *Tale of Lady Kieu* recounted the tragic life of a beautiful woman who was the victim of bribery and injustice. Unlike the characters in *Royal Concubine* and *Warrior's Wife*, however, Lady Kieu was able to conquer fatalism. Lady Kieu "piously" sold herself to secure the release of her father who had been arrested for no reason. This turned her into a courtesan, a prostitute associated with men of rank or wealth. For fifteen years, she tried to escape fate, suffering at the hands of men as well as women who competed for the attention of the men. She was passed from one owner to another, becoming a rich man's concubine, a maid, and even a Buddhist nun. She was then sold back to a brothel, escaping only to marry a rebel ruler. Finally, at thirty-five, she was sold to a barbarian. She chose to escape her suffering by drowning herself. When she did so, the suicide became a "baptism" for the birth of a new spiritual being: her virtues "shook heaven" and reversed her fate. As her husband, the rebel leader, died on the battlefield, Lady Kieu was miraculously saved from drowning and emerged as a new woman, one who found her strength and peace in spirituality and harmony with the universe. Fatalism was conquered, and "heaven's curse" was dissolved.

The feminist features in *the Tale of Lady Kieu* were both subtle and distinctive. Although Lady Kieu was portrayed as a feminine, conforming woman, she also constituted the antithesis of the Confucian norm. She had no permanent husband, was a courtesan, many times occupied the bottom rung of society, lived a long distance from home, and was the partner in crime of a self-made rebel who opposed the imperial court. As a teenager she even sought and chose her first love, but couldn't marry him. As the wife of the rebel, she gave her husband bad political advice, which caused

⁵⁷³ THANH LANG, *supra* note 73, at 567, 682. For an English translation of *Kieu*, see *supra* note 373. Because both French and English translations are available to the West, the author will not translate verses from *Kieu* and will omit footnotes accordingly.

⁵⁷⁴ See *supra* Part III.

⁵⁷⁵ DE BEAUVOIR, *supra* note 38, at 141.

him to die in battle. So, despite her best intentions, she committed the ultimate Confucian taboo—she contributed to her husband's murder.

Lady Kieu represented the unusual and the oppressed. She was multifaceted, highly emotional, with a complex, self-absorbed psyche, the opposite of the demure, obeying, non-communicative, one-dimensional Confucian prototype. Despite her frailty, she always took action, even if her choices proved wrong. In all of her flaws and sadness, she had a good heart. Lady Kieu also stood for the gifted. She possessed literary talent and intelligence, played chess, talked eloquently, drank good wine, painted, composed poetry and performed music "like a thunderstorm." Thus, she possessed all characteristics of the male literati rather than those of a Confucian female.⁵⁷⁶

The Tale of Lady Kieu portrayed the classic scenario of a male-dominated society that used the hands of women to vilify other women. With the exception of the rebel leader, the men in the story were all weak, unethical, scheming, or incompetent—prototypical scoundrels, pimps, corrupt officials, bigamists, and cheating husbands. The women who helped Lady Kieu were either oppressed fellow courtesans, Buddhist nuns, or Taoist philosophers. The only woman who equaled Lady Kieu in intelligence was her enemy Hoan Thu, as both of them were rivals for the attention of a bigamous man. Hoan Thu was the only character who ultimately dominated her man by making him eliminate his "second bedroom."⁵⁷⁷ Thus, the *Tale of Lady Kieu* illustrated the classic scenario of women being used to disparage other women in a male-dominated society.

The *Tale of Lady Kieu* became the cornerstone of the Vietnamese literary heritage. In fact, Du became the equivalent of Shakespeare in Vietnam. This is because most Vietnamese "commoners" identify with the sufferings of Lady Kieu, and the literati identify with the ambivalence and sadness of the author. In addition, the Vietnamese people love the beautiful, sensual poetry, which represents the Vietnamese language at its best. (In that sense, Nguyen Du's "glass bottle" has become a "crystal vase"!) The tale's philosophy that the heart could conquer mirrors the centuries-old

⁵⁷⁶ More controversially, Du also gave her the appearance of Venus to emphasize her femininity. The "Venus" appearance was atypical for the modest woman in ancient Confucian society, illustrating the author's avant garde artistic choice, despite his Confucian upbringing. For a literary theory regarding the "artistic mandarin" of ancient Vietnam, see TRAN NGOC VUONG, *NHA NHO TAI TU VA VAN HOC VIET NAM [THE TALENTED CONFUCIAN SCHOLAR AND VIETNAMESE LITERATURE]* 107-93 (NXB Giao Duc 1995) (socialist view of *The Tale of Lady Kieu* in context of Vietnamese Confucian creativity).

⁵⁷⁷ The name Hoan Thu meant a "castrated female," the same meaning as the title of the acclaimed book, *THE FEMALE EUNUCH*, written by contemporary feminist Germaine Greer. See GERMAINE GREER, *THE FEMALE EUNUCH* (1971).

subconscious defense mechanism of the Vietnamese against collective and individual sufferings. The Vietnamese people's love for the tale was so strong that a nationally known Vietnamese scholar once exclaimed, when speaking of French colonialism, that if Lady Kieu could survive, the country would survive.⁵⁷⁸ In Vietnam, which considers and proudly declares literature to be its "collective soul," *The Tale of Lady Kieu* illustrates how a timeless artistic creation can be an effective tool to advocate for social justice.

In summary, because Vietnamese Confucian society was oppressive and did not value social justice, the literati created for themselves "glass bottles" in which to plant their "controversial" ideas about individual freedom. Thus, the three Vietnamese classics—*Royal Concubine*, *Warrior's Wife*, and the *Tale of Lady Kieu*—all contain feminist ideas hidden as fictional literature. Because literature lies at the heart of Vietnamese culture, it can be a tool of advocacy for social justice. Vietnamese women's advocates recognize that "social justice and gender equality will not be realized only by good intentions, nor by lip service," and that "social justice . . . should be the core of social policy and economic development" at the highest level.⁵⁷⁹ Hopefully, the strong social justice-oriented concepts presented in Vietnamese creative literature can be used as a starting point⁵⁸⁰ for strengthening individual rights under a true "rule of law."

F. *Sixth Factor: The Entanglement of Women's Rights in the Spiderweb of the "Universal Human Rights Versus Asian Values" Debate*

Another factor that may have stifled the advocacy of gender equality in Vietnam is the "universal human rights versus cultural relativism" debate. Some scholars believe that women's rights are absolute rights, unbending to individual cultures and circumstances. Conversely, in the "cultural relativism" school of thought, women's rights, although part of human rights, are subject to cultural relativism and hence, are less than universal.

⁵⁷⁸ HUE-TAM HO TAI, *supra* note 30, at 105, 109-11 (quoting Pham Quynh).

⁵⁷⁹ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 21, 216-17.

⁵⁸⁰ The secondary nature of the rule of law in Vietnamese society has caused concerns in the foreign investor community, creating doubt as to whether the government will honor long-term international investment commitments. Scholars have observed that even in Western cultural traditions, there are no guarantees of adherence to the "rule of law" in either domestic or international affairs. For example, the greatest challenge to the traditional principles of law and morality of the twentieth century came from the highly developed and educated legal community, right in the heart of Europe—Nazi Germany. Oliver J. Lissitzyn, *Int'l Law in a Divided World*, INT'L CONCILIATION, No. 542, Mar. 1963, at 3, 37; Anand, R.P., *Role of the New Asian African States in the Present Int'l Legal Order*, 56 AM. J.I.L. 395 (1962).

Proponents of “Asian-style democracy,”⁵⁸¹ or “Asian values,”⁵⁸² have likewise associated human rights with multi-culturalism. They argue that because there exists a distinct set of Asian values separate from values held by other cultures, Asian countries should define human rights in accordance with those cultural values, rather than accept a bundle of universal rights proposed by the West.

However, if the “Asian values” view is accepted, then the “Asian” category of human rights should be further subdivided because each of the various cultures within Asia is culturally unique. For example, the common generalization that all Asians are more likely to accept authority⁵⁸³ is contradicted by Vietnam’s history of relentless resistance to Chinese and French domination, as well as by resistance movements and political unrest in South Korea in the 1970s and Indonesia in the 1980s.⁵⁸⁴ Another generalization regarding the impact of Confucian emphasis on meritorious education is contradicted by Asia’s polyglot of religions, some with deep Islamic and Hindu roots.⁵⁸⁵ The only particular values that hold true across all Asian cultures are perhaps that the family is highly valued and that education and hard work receive much emphasis and respect.⁵⁸⁶ In addition, there may be a hierarchy of priorities within the Asian psyche, together with the tendency for self-sacrifice, the internalizing of pain, and acceptance of fate without outward expression of emotion. But these constitute generally

⁵⁸¹ See, e.g., Lee Kuan Yew, *Democracy, Human Rights and the Realities*, Speech to the Create 21 Asahi Forum, Tokyo (Nov. 10, 1992), printed in 16 SINGAPORE MINISTERIAL SPEECHES (1993). See also Vichai Phuphatana, *Thailand: Asia Rejects Pressure on Human Rights*, JAPAN ECON. J., Apr. 12, 1993, at 20; Tyler Marshal, *Idea of Human Rights for All Under Attack*, L.A. TIMES, June 17, 1993, at A6; Anil Noel Netto, *Human Rights: New Calls for Review of U.N. Human Rights Charter*, INTER PRESS SERVICE, Sept. 19, 1997, available at 1997 WL 13256669; Frank Ching, *Eye on Asia: Is UN Declaration Universal?* FAR E. ECON. REV., Aug. 28, 1997, available at 1997 WL-FEER 11441604

⁵⁸² See, e.g., Bilahari Kausikan, *Asia’s Different Standard*, FOREIGN POL’Y, Fall 1993, at 24; HAQ Interview: Amb. Bilahari Kausikan, HARV. ASIA Q., Summer 1998, at 4. See also Simon Tay, *Human Rights in ASEAN: Universal or Asian?*, Remarks to the ASEAN forum at the East Asian Legal Studies, Harvard Law School (1994); ANWAR IBRAHIM, *supra* note 533, at 100. For a different view—that Asian values are the subterfuge for Asia autocracy, see Aryeh Neier, *Asia’s Unacceptable Standard*, FOREIGN POL’Y, Fall 1993, at 42. See also Daniel A. Bell & Kanishka Jayasuriya, *Understanding Illiberal Democracy: A Framework*, in TOWARDS ILLIBERAL DEMOCRACY IN PACIFIC ASIA 1, 12 (Daniel Bell & Kanishka Jayasuriya eds., 1995); Theodore de Bary, *Constructive Engagement with Asian Values*, HARV. ASIA Q., Summer 1998, at 135; Kanishka Jayasuriya, *supra* note 538; Yash Ghai, *Human Rights and Governance: The Asia Debate*, 15 AUSTRAL. Y. BK. INT. L. 1, 5 (1994); JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 118 (1989).

⁵⁸³ See *supra* note 582.

⁵⁸⁴ See, e.g., Sidney Jones, *The Impact of Asian Economic Growth on Human Right* (Sept. 22, 1994) (unpublished paper) (on file with author).

⁵⁸⁵ *Id.*

⁵⁸⁶ Nguyen The Anh, *Education In Asia: Features and Prospects*, VIETNAM REV., Autumn-Winter 1996, at 514 (Professor Nguyen The Anh is Director of High Studies at the Ecole Pratique des Hautes Etudes at Sorbonne University). See also Montgomery, *supra* note 122, at 41.

accepted cultural traits, or personal attitudes, more than “values” translatable into a larger socio-economic or political context. In the ultimate form, applying multi-culturalism to the notion of rights can create as many versions of human rights as there are cultures.⁵⁸⁷

The universal objective of feminism to further gender equality within cultures should make the doctrine immune from this “universality versus cultural relativism” debate. Feminism (as illustrated, for example, by the Western liberal agenda)⁵⁸⁸ often seeks to reshape culture by abolishing cultural norms that are unfavorable and counterproductive to the goal of gender equality. In this sense, feminism objectives cannot be culture-bound. To say that feminism as a doctrine should be shaped by culture is to defeat the very objective of the doctrine itself.

Culture, by definition, is subject to change and can be reshaped. Culture can be viewed as a malleable process in which all ways of living such as customs, politics, education, beliefs, and language are continuously presented, challenged, and eventually synthesized.⁵⁸⁹ The essence of culture is diversity, in that no one culture is exactly like another, although a group of cultures may share similarities. If one endorses cultural relativism, one may accept that in some cultures, women are inherently not entitled to the same rights, treatment, or status as men. In those cultures, gender inequality has evolved into a cultural trait or way of life sanctioned by religion, faith, codes of conduct, or shared beliefs.

A feminist movement, therefore, should move forward separately from the “Asian value” debate. It is the gender inequality ingredient of her culture that the feminist seeks to eliminate, a goal shared across national and cultural boundaries. Multi-culturalism, if applicable, should govern only the *method* of advocacy, or the *construct* of the social movement to achieve the goal. Whatever human rights are legitimately endowed upon men and women as human beings in a society, either in a universal form or as “Asian values,” the feminist advocates that the bundle of rights should be distributed and applied free of gender bias. Cultural pluralism is only relevant in the sense that a meaningful feminist movement must be

⁵⁸⁷ Even a leading proponent of Asian-style democracy, Senior Prime Minister Lee Kuan Yew of Singapore, has acknowledged that there is no such thing as a single Asian value system. See Geraldine Yeo, *No single Asian Value System: SM*, STRAITS TIMES (Singapore), Oct. 3, 1998, at 5.

⁵⁸⁸ See *supra* Part II.C.

⁵⁸⁹ A.L. KROEBER AND CLYDE KLUCKHOHN, *CULTURE: A CRITICAL REVIEW OF CONCEPT AND DEFINITION* (1963); JOHN DEWEY, *FREEDOM AND CULTURE* (1939); WILLIAM A. HAVILAND, *CULTURAL ANTHROPOLOGY* (6th ed. 1990); AUGUSTIN GIRARD, *CULTURAL DEVELOPMENT: EXPERIENCES AND POLICIES* (2d ed. 1983); C.A. VAN PEURSEN, *THE STRATEGY OF CULTURE* (H.H. Hoskins trans., 1974); F.S.C. NORTHROP, *THE MEETING OF EAST AND WEST: AN ENQUIRY CONCERNING WORLD UNDERSTANDING* (1950).

conducted by the constituents of the culture itself, so there should be no issue of the West imposing its standards or values upon the East, as the women within the culture will choose the appropriate means or construct for advocacy. Gender equality is neither a Western nor an Eastern concept but, rather a notion of humanity. In this sense, feminism is analogous to nationalism during the anti-colonial period; although the movement is unique to a culture and must come from within the culture, it is indeed a global force.⁵⁹⁰

Furthermore, although the construct of feminism may differ from one society to another, the progress and improved living conditions of women based on a universal standard can be objectively measured free from cultural values. Among the goals of feminism is the improvement of the status and living conditions of women, regardless of gender conflicts. Local cultural standards should not be used to manipulate the agenda of women's issues. Otherwise, a woman's health and life would always be measured by her passport.

The issue of the sterilization and birth-control agent Quinacrine illustrates how issues of women's health and living conditions should be measured by universal standards. Quinacrine has long been banned in developed nations because of its proven link to cancer and gene mutation. Two medical doctors, Stephen D. Mumford and Elton Kessell, supplied Quinacrine free of charge to some twenty developing countries in an effort to curtail world overpopulation and allegedly to solve immigration problems in the United States.⁵⁹¹ The agent was approved for use in Vietnam by health officials as early as 1986 because of its low cost. It costs only U.S. \$0.15 to administer the agent to one woman, compared to the cost of alternative family planning methods, which cost about U.S. \$2.50 per person. As of 1997, approximately 104,000 women worldwide had used the drug, with Vietnamese women constituting the largest number of users, followed by 26,000 women in India, and 15,000 women in Pakistan. The press reported that the agent was administered to a community of female rubber plantation workers outside Ho Chi Minh City, because pregnancies interrupted production and presented a labor problem there. A number of VWU members in Vietnam supported the use of Quinacrine because they believed it would better women's lives.⁵⁹² Vietnamese women reportedly

⁵⁹⁰ See THE INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE, *supra* note 32.

⁵⁹¹ Freedman, *supra* note 208. The media charged that the two doctors were substantially financed by the Federation for American Immigration Reform ("FAIR") and by very wealthy donors and private individuals who supported FAIR's agenda. *Id.*

⁵⁹² *Id.*

chose this method over surgical birth control procedures at a ratio of eleven to one, and in Vietnam, Kessell and Mumford were reportedly received a hero's welcome.⁵⁹³

In 1993, the World Health Organization ("WHO") officially banned Quinacrine because of its health risks.⁵⁹⁴ This ban, however, was imposed only after Quinacrine had been administered to approximately 54,000 Vietnamese women. The media reported deaths, complications, and side effects. When the health risk became known, the Vietnamese women interviewed expressed their outrage. A female worker reported she was beaten by her husband because she had taken Quinacrine to prevent pregnancy without his approval. The Wall Street Journal added that the same woman who was beaten was thrown out of her house and ended up begging for food on the street.⁵⁹⁵ The women, despite their lack of education, expressed their desire for freedom to make a meaningful, informed choice regarding their health.

The Kessell-Mumford team told their side of the story, defending their action as an effort to improve the lives and protect the health of Third World women, citing that almost 600,000 of those women die annually from pregnancy-related complications.⁵⁹⁶ They defended their actions noting that they did not seek financial gain, that they had passionately pursued the research and the sterilization policy almost all of their professional careers, and that they had operated on a tight budget.⁵⁹⁷ If the women died from childbirth or pregnancy complications, reasoned the doctors' defenders, there would be no human rights issue. Finally, the doctors questioned the truthfulness of the accounts attributed to the Vietnamese women, and added that the procedure was performed voluntarily in most cases, although admitting that a small number of women were involuntarily subjected to the procedure at the rubber plantation.⁵⁹⁸

⁵⁹³ Joe Wheelan, *Two Americans Want to Stem Immigration, Newspaper Reports*, ASSOCIATED PRESS, June 19, 1998, available at <http://cda.net/stories/1998/Jun/19/S408906.asp>; Freedman, *supra* note 208.

⁵⁹⁴ Alix M. Freedman, *A Mission to Sterilize the Poor—Quinacrine: Campaign Offers a Painful, Possibly Dangerous Drug to the World*, WALL ST. J., July 3, 1998, available at <http://www.vinsight.org/1998news/0703b.htm>; Cam Van, *Triet San Vinh Vien 50 Ngan Phu Nu Bang Thuoc Quinacrine co the Gay Ung Thu*, [The Permanent Sterilization of some 50,000 Women by Quinacrine, a Possibly Cancer-Causing Agent], THE KY 21 [THE 21ST CENTURY MAGAZINE], 10th year, No. 111, July 1998, at 70-73.

⁵⁹⁵ Freedman, *supra* note 208. Overall, the Vietnamese women interviewed appeared articulate and knowledgeable about the details of the drug compared to women in India, who reportedly had to be told of the sterilization procedure in very simplistic terms (for example, that the agent would reduce births). *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.*

⁵⁹⁸ Freedman, *supra* note 208.

Without universality in feminism, global attention and debate over incidents such as that involving Quinacrine would not be possible. The various disputed facts and angles of the incident acknowledge a universal threshold when the health and lives of women are at issue. Without universality at the global level, issues such as Quinacrine use would remain subject to local policies and standards, and the poor women of developing countries would never be heard. No philosophical distinction between universal human rights and Asian values is required to perceive the injustice behind incidents such as the Quinacrine case, where poverty sets the standard of health. Left to the local standards of culture, the "Asian value" distinction can become a convenient means to subordinate to the state the health of poor women and their right to be informed.

G. *Seventh Factor: An Unsettled Mixture of Ideologies, Legal Traditions, and Paradoxical Values in Vietnam*

The challenges faced by Vietnam in its transition from a socialist economy to a market economy implemented by a single-party police state have further impeded women's rights advocacy.⁵⁹⁹ The Vietnamese economy has lagged behind the economies of the rest of the world, however it had made some progress under *Doi Moi*.⁶⁰⁰ In this economic evolution, Vietnam had other obstacles to overcome, including the aftermath of successive wars, the massive North-South conflict, and the U.S. trade embargo. The transition has been complicated by the hybrid nature of Vietnamese society, in particular the mixture of ideologies, legal traditions, and human resources, and paradoxical values.

I. *The Mixture of Ideologies*

Despite Vietnam's strong sense of nationalism, its modern society is burdened with mixed ideologies and paradoxical political values. In one century, Vietnam has made several major political transitions and has been exposed to numerous foreign political doctrines:

⁵⁹⁹ The transition from a centralized economy to a market economy, implemented by a single-party police state, bears traces of the experiences of Eastern Europe, China, and even Singapore in its early days. DWIGHT PERKINS, IN SEARCH OF THE DRAGON'S TAIL: ECONOMIC REFORM IN VIETNAM (1993).

⁶⁰⁰ THE CHALLENGES OF VIETNAM'S RECONSTRUCTION (Neil Jamieson et al. eds., 1993); MICHAEL C. WILLIAMS, VIETNAM AT THE CROSSROADS (1992); VIETNAM'S DILEMMA AND OPTIONS: THE CHALLENGE OF ECONOMIC TRANSITION IN THE 1990S (Mya Than & Joseph L.H.Tan eds., 1993). See also KEITH WELLER TAYLOR, THE BIRTH OF VIETNAM (1983).

1. The transition from a thousand years of Confucianism to a hundred years of French influence,⁶⁰¹
2. During the first half of the twentieth century, (1) the industrialization lessons of Japan, adapted and advocated by mandarin revolutionaries who preceded the generation of Ho Chi Minh,⁶⁰² (2) the thoughts of Chinese patriots and non-communist political philosophers, such as Liang Ch'i Ch'ao and Sun Yat Sen, adapted by nationalist parties organized after the Keomingtang,⁶⁰³ and (3) international Trotskyism,⁶⁰⁴ which spread through a small group of radical Vietnamese elites living in exile during the early 1900s,⁶⁰⁵
3. Marxist-Leninism and the Vietnamization of Chairman Mao's China model. This included the implementation of Mao's "Land Revolution" (*Cai Cach Dien Dia*) and later, a mild version of the Chinese cultural revolution called the "One Hundred Blooming Flowers Movement" (*Tram Hoa Dua No*) in North Vietnam;⁶⁰⁶
4. The relentless indoctrination of Ho Chi Minh's thoughts, including the pursuit of independence and the concentration of human resources in warfare,⁶⁰⁷

⁶⁰¹ The French influence, although much shorter in length than the influence of Confucianism, was critical because it occurred during industrialization and the abolishment of the monarch.

⁶⁰² See TON QUANG PHIET, PHAN BOI CHAU VA PHAN CHU TRINH (*Ban Nghien Cuu Van Su Dia 1956*); THE NGUYEN, *supra* note 140.

⁶⁰³ The segregation of Vietnamese nationalist parties from Ho Chi Minh's Communist Party in Vietnam is analogous to the segregation of the Chinese Nationalist Party led by Chiang Kai-shek from Mao Tze-Tung's Communist Party in China. Kai-shek's Nationalist Party retreated to Taiwan after the Great Wall/Long March communist victory in China, analogous to the massive immigration of Vietnamese political refugees into the United States after the fall of Saigon in 1975. See CO NHI TAN, TIEU TRUYEN DANH NHAN: NGUYEN THAI HOC [STORIES OF THE LEGENDARY: NGUYEN THAI HOC] (*Tu Sach Tien Bo Co So Xuat Ban Pham Quang Khai 1969*) (Nguyen Thai Hoc founded the Vietnamese Nationalist Party and was guillotined in 1930). See also HOANG VAN DAO, *supra* note 386.

⁶⁰⁴ Trotskyism refers to the radical theory and practice of communism as developed by Leon Trotsky (a deviation from Marxist-Leninism), which includes among other things, adherence to the concept of worldwide revolution, rather than socialism in any particular country.

⁶⁰⁵ HUE-TAM HO TAI, *supra* note 30, at 205.

⁶⁰⁶ See, e.g., Le Luu, CHUYEN LANG CUOI [THE STORY OF CUOI VILLAGE] (NXB Hoi Nha Van 1993) (description of the Land Reform movement by way of fiction; banned from publication until 1993); TRAM HOA DUA NO TREN DAT BAC [A HUNDRED FLOWERS BLOOMING IN THE NORTH], Mat Tran Bao Ve Tu Do Van Hoa [Freedom and Culture Protection Front] (Saigon 1959). For an account of the modern history of communist North Vietnam, see TRUNG TAM KHOA HOC XA HOI VA NHAN VAN QUOC GIA [CENTER OF SOCIAL SCIENCES AND NATIONAL HUMANITY], LICH SU VIET NAM 1954-1965 [VIETNAMESE HISTORY 1954-1965] (NXB Khoa Hoc Xa Hoi 1995).

⁶⁰⁷ See, e.g., HO CHI MINH, NOI VE DAN CHU, KY LUAT VA DAO DUC CACH MANG [ON THE SUBJECT OF DEMOCRACY, DISCIPLINE, AND ETHICS OF THE REVOLUTION] (NXB Su That 1967); HO CHI MINH, VI

5. The influence of American consumerism and the entrepreneurial *laissez-faire* enterprise of capitalism through the United States' involvement in the Vietnam War;⁶⁰⁸ and
6. Globalization of politics through information technology and the culture of the internet has been introduced to Vietnam through current foreign investment.

In sum, the numerous ideologies inflicted upon Vietnam have undoubtedly changed the fabric of Vietnamese culture. While the extent of such changes is not fully understood, it is clear that shifting ideologies have made advocacy of women's rights more difficult.

2. *The Mixture of Legal Traditions and Human Resources*

Vietnam also has a variety of legal traditions. Most codified ancient laws were Chinese imports.⁶⁰⁹ The only distinctively Vietnamese statutory scheme was the *Hong Duc Code*.⁶¹⁰ The *Hong Duc Code* was ultimately replaced during the Nguyen Dynasty (1802-1945) by the *Gia Long Code*. The *Gia Long Code*, which was modeled after the Chinese Imperial Code, included a heavy Confucian emphasis on penal issues. As a result, the progress that was made for women under the more social justice-oriented *Hong Duc Code* suffered a serious setback.⁶¹¹

Another influence on Vietnamese law was France. French colonials used law to facilitate their objective of exploiting the colony's resources.⁶¹²

DOC LAP TU DO VI CHU NGHIA XA HOI [FOR INDEPENDENCE, FREEDOM, AND SOCIALISM] (NXB Su That 1975). See also 1922 CONST., *supra* note 43, pmbl. (attributing two national victories: namely those against colonialism and imperialism—from the 1945 Declaration of Independence to the 1976 unification—to the leadership of Ho Chi Minh).

⁶⁰⁸ In addition to the American model of separation of powers implemented in South Vietnam, Ho Chi Minh's 1945 Declaration of Independence mirrored the American ideals. "All men are created equal, endowed by the creator with inalienable rights, among these are life, liberty and the pursuit of happiness." See HUE-TAM HO TAI, *supra* note 30, at 256 (quoting Ho Chi Minh's 1945 speech); UY BAN KHOA HOC XA HOI, *supra* note 57 (quoting Ho Chi Minh's Declaration of Independence speech of September 2, 1945 delivered at Ba Dinh). For a historical account of the first Vietnamese diplomat sent by the Hue imperial court to America during the time of Abraham Lincoln, see PHAN TRAN CHUC, BUI VIEN VOI CHINH PHU MY LICH SU NGOAI GIAO TRIEU TU DUC [BUI VIEN AND THE AMERICAN GOVERNMENT: HISTORY OF DIPLOMATIC RELATIONS UNDER THE REIGN OF EMPEROR TU DUC] (NXB Chinh Ky, year unknown).

⁶⁰⁹ TA VAN TAI, *supra* note 515; Gillespie, *supra* note 97, at 325-37.

⁶¹⁰ See *supra* Part IV.E.2.

⁶¹¹ TA VAN TAI, *supra* note 515. See also TA VAN TAI & NGUYEN NGOC HUY, *supra* note 517.

⁶¹² Duong Duc Nhu, Education in Vietnam under French Domination, 1862-1945 (1978) (unpublished Ph.D. dissertation, Southern Illinois University at Carbondale, IL, excerpted in Duong Duc Nhu, *Parameters of French Colonial Education in Vietnam, 1862-1945*, in A COLLECTION OF PAPERS IN VIETNAMESE CULTURE (1981)) (on file with author).

In the region of Cochinchina, the French imposed a parallel, two-tracked legal system—French civil law applied to French citizens, while the *Gia Long* Code and customary practice governed native Vietnamese.⁶¹³ In 1883, French administrators promulgated an abbreviated civil code governing personal status and family relationships, while applying traditional Vietnamese laws to matters such as matrimonial estates, contracts, and inheritance. In criminal matters, the French initially applied the Napoleonic Code, then promulgated a French-style criminal code in 1912. In the protectorate states of Tonkin and Annam, the French installed criminal codes in 1918 and 1933, respectively.⁶¹⁴ In civil matters, the *Gia Long* Code continued to apply until the introduction of a civil code for Tonkin in 1931 and a civil code for Annam in 1936-1939.⁶¹⁵

Despite the exploitive objective of French colonialism in Vietnam,⁶¹⁶ certain French governors, most notably a socialist named Albert Sarraut,⁶¹⁷ believed in liberal governance and pioneered the policy of *liberte dans la modernisation*, or *mission civilisatrice* in Vietnam. This approach was meant to “modernize” Vietnam and temper the economic needs of the colonial administrator by “spreading French civilization to the colony needing enlightenment.”⁶¹⁸ This, together with the French need to train collaborators and native technocrats,⁶¹⁹ injected French democratic, humanistic, and romantic concepts into Vietnamese intellectual life through the works of Jean Jacques Rousseau, Charles Louis de Secondat Montesquieu, Victor Marie Hugo, and other French socialists and romanticists.⁶²⁰ The influence of the 1804 French Civil Code remained until

⁶¹³ Gillespie, *supra* note 97, at 325-37 (recounting history).

⁶¹⁴ Ta Van Tai, *The Legal Systems and Trade Laws of Thailand and Vietnam: The Legal Systems of Vietnam*, Paper presented at the annual meeting of American Association of Law Librarians (July 13, 1993) (on file with author).

⁶¹⁵ Gillespie, *supra* note 302, at 64-66.

⁶¹⁶ See generally NGUYEN VAN TRUNG, CHU NGHIA THUC DAN PHAP O VIET NAM: THUC CHAT VA HUYEN THOAI [FRENCH COLONIALISM IN VIETNAM: TRUTHS AND MYTHS] (Saigon: Nam Son Publishing 1963).

⁶¹⁷ See Vinh Sinh & Nicholas Wickenden, *supra* note 425, at 206. Sarraut served in the Ministry of Colony until 1924. See HUE-TAM HO TAI, *supra* note 30, at 114.

⁶¹⁸ HUE-TAM HO TAI, *supra* note 30.

⁶¹⁹ Duong Duc Nhu, *supra* note 612. Between 1920 and 1950, the French trained a small number of Vietnamese lawyers in the French language and legal system at a law school in Hanoi.

⁶²⁰ See, e.g., BUI TIN, *supra* note 449 (comment by the former editor of the *Nhan Dan* newspaper, official communique of the Vietnamese Communist Party, that “[t]he works of Alphonse Daudet, Victor Hugh, Anatole France as well as the political ideas of Voltaire, Montesquieu, and J.J.Rousseau have been part of my intellectual baggage”). Interview with Nguyen Van Linh, former Secretary of the Vietnamese Communist Party, discussed in Peter Zinoman, *Beyond The Revolutionary Prison Memoir*, VIETNAM REV., Autumn-Winter 1996, at 266 (Linh stated that Victor Hugo’s *Les Miserables* instilled his tendency toward communism). Accord NEIL SHEEHAN, AFTER THE WAR WAS OVER 75 (1992) (Vietnamese Communist Party General Secretary Nguyen Van Linh described his admiration for French romanticist Hector Malot);

the mid-20th century, and was incorporated into the laws of the former South Vietnam, one of which required a husband's consent on decisions and commercial transactions made by his wife.⁶²¹ The treatment of women's rights under the current Civil Code and Family Law reflects a blend of socialist principles and Vietnamese traditions.⁶²²

After French colonialism, the North incorporated Soviet legal traditions and the South incorporated an American legal structure. In the North, the Communist Party controlled the executive bodies of the government and promulgated laws by executive decrees rather than by legislation.⁶²³ In the South, the French civil system remained intact, however, the South adopted an American presidential system⁶²⁴ and established an American-style "separation of powers" doctrine between the executive, legislative, and judicial branches.

In addition, France, China, the United States, and the Soviet Union have all attempted to educate Vietnamese citizens about their respective political, economic and social doctrines. Between 1954 and 1975, students from South Vietnam, including a small number of women, studied law, political sciences, and business administration in either France or the United States, with the goal of returning to South Vietnam for active participation in business, law, or government. After the fall of Saigon, a number of these students immigrated either to France or the United States.⁶²⁵ Others stayed home and later contributed to *Doi Moi's* legal reforms.⁶²⁶ Similarly, in North Vietnam, outstanding students were sent to China and the Soviet

PHAN VAN HUM, NGOI TU KHAM LON [IN THE DEATH CELL] 129 (1929, reprinted Saigon: NXB Dan Toc [Nationalist Publishing] 1957) (imprisoned Trotskyist likened his situation to Hugo's and Dumas' protagonists).

⁶²¹ *Accord Mot So Van De Ve Du Thao Bo Luat Dan su Chuan Bi Trinh Quoc Hoi Khoa IX, Ky Hop Thu Tam Xem Xet, Thong Qua* [Several Issues Presented in the Draft of the Civil Code Submitted to the National Assembly, Session No. IX, Meeting No. 8, to be Considered and Approved] in *Special Issue on the Civil Code*, *supra* note 276, at 222-23; see also VU VAN MAU, *supra* note 447, at 326-27.

⁶²² See discussion *supra* Part III.D.2.b. For example, a unique feature of both codes is the concept that children are required by law to care for their parents in old age, reflecting Confucian ethics, while marriage is set forth as a partnership of equals, based on both socialist and civil law principles. Ta Van Tai, *supra* note 614.

⁶²³ Of some 1,747 legal documents promulgated between 1945 and 1954 in North Vietnam, only one was an actual law enacted by the National Assembly. See Hoang The Lien, *supra* note 108, at 34; Rose, *supra* note 97, at 97.

⁶²⁴ Although Ho Chi Minh's title in North Vietnam was translated as "president," the actual Vietnamese word, "*chu tich*," has the meaning of "chairperson," rather than the term "*tong thong*" ("president"), which was used in the presidential system of the South.

⁶²⁵ See Interviews with Western-trained South Vietnamese women of the 1950s and 1960s who pioneered in business and law (on file with author).

⁶²⁶ Madame Ngo Ba Thanh, LL.M., Columbia University, facilitated the legal transformation of *Doi Moi* and, through her writings, helped link the new Vietnam to the West. See, e.g., Ngo Ba Thanh, *supra* note 453.

Union and taught communist economic, political and legal models. This accounts for communist Chinese and Soviet influences on Vietnamese law today.⁶²⁷

After the fall of Saigon, a modest number of refugees went on to graduate from American law schools. Of those young attorneys, many were women.⁶²⁸ The number of Vietnamese-American lawyers in the United States substantially increased in the 1980s and 1990s, coinciding with the implementation of *Doi Moi* in Vietnam. Accordingly, many of them returned to Vietnam to advance their legal careers, seek career opportunities in the "new frontier," or contribute to the country's reconstruction. Only a small number of these young lawyers were able to participate directly in reshaping their homeland's legal system. The vast majority of legal reform assistance was done by non-Vietnamese lawyers.⁶²⁹

Since the inception of *Doi Moi*, Vietnam has sent a small number of Vietnamese to study commercial law at American institutions, hoping to fill the needs of the changing Vietnam.⁶³⁰ The State has made a conscious effort to produce more lawyers and to upgrade legal education in Vietnam. The legal curriculum at Vietnamese law schools, however, remains heavily influenced by socialist doctrines. For example, at one school, nearly one-third of the units required for an undergraduate law degree must be completed in Leninist political philosophy courses.⁶³¹ In addition, enrollment in law schools remains comparatively low—around 200 to 500 new students per year nationally as of 1998.⁶³² However, this number is a tenfold increase over the last decade.⁶³³

In short, Vietnam has seen and will continue to see legal influence from Paris, Moscow, Beijing, the United States, Hanoi, and Saigon.⁶³⁴ This

⁶²⁷ Ta Van Tai, *supra* note 614, at 7-8.

⁶²⁸ For example, in Texas, the jurisdiction with the second largest concentration of Vietnamese Americans, most of the first Vietnamese American lawyers and judges were women. See Interviews with Vietnamese American woman lawyers, in Houston, Tex. (Apr. 1999) (notes on file with author).

⁶²⁹ Rose, *supra* note 97.

⁶³⁰ Between 1995 and 1999, there were three LL.M. candidates from Vietnam at Harvard, all of whom were women. See Interview with Adelaide Shalhope, Graduate Office, Harvard Law School, in Cambridge, Mass. (Apr. 1999) (notes on file with author).

⁶³¹ Rose, *supra* note 97, at 101.

⁶³² *Id.* at 98.

⁶³³ *Id.* at 101.

⁶³⁴ The current legal system reflects these varied traditions. For example, a unique feature of both the Family Law and the Civil Code is the duty of support, care, and respect imposed upon children for the benefit of parents. Marriage, on the other hand, is set forth as a partnership based on gender equality. This blend combines Confucian ethics, the Vietnamese tradition, and socialist and civil law principles. Family Law, *supra* note 260, arts. 2, 11, 19, 21; CIVIL CODE, *supra* note 279, arts. 37, 51, 57, 233, 237, 666, 667, 671.

variety in legal thought influences ideologies and may pose obstacles for women's rights advocates.

3. *Paradoxical Values*

When exploring gender issues in Vietnam, "cultural paradoxes" quickly become evident.⁶³⁵ For example, in the Vietnamese agricultural society that preceded industrialization, women were healthy, productive individuals who rejected foot-binding and revered assertive elephant-riding heroines. At the same time, however, one finds sobbing women succumbing to the demeaning custom of *Tuc Tao Hon* (the practice of obtaining a dowry by marrying adult females to young boys) prevalent in North Vietnam.⁶³⁶

Another example is the tension between the prevailing cultural view of reproductive capacity and the government population control policy. On one hand, the socialist government has vigorously legislated population control, as illustrated by Vietnam's rigid two-child policy and constitutionally-mandated family planning. On the other hand, generations of Vietnamese women have been taught, and still abide by the notion that a childless woman is a "poisonous tree,"⁶³⁷ that it is better to be beaten than to be husbandless,⁶³⁸ and that family planning is of secondary importance to the need for a male child.⁶³⁹ Folk literature defending female children and frowning on favoritism shown to male children adds another wrinkle to the paradox.⁶⁴⁰

The role of women in Vietnamese families is also riddled with contradictions. One such contradiction is the discrepancy between attitudes toward "folk-hero" wives and attitudes toward "every-day" wives. For instance, Queen Trung Trac⁶⁴¹ and Lady Trieu⁶⁴² were revered as elephant-riding commanders of the army, and Ho Xuan Huong was admired as an

⁶³⁵ JAMIESON, *supra* note 91, at 18, 27.

⁶³⁶ *Tuc Tao Hon* was the practice of marrying adult females to little boys so that the groom's family could gain a farm hand and domestic help. The new bride thus became a slave-worker serving her child-husband's family. By the time the child-husband reached adulthood, he was free to take on concubines. This custom was eventually outlawed by the communist government in North Vietnam. CAO THE DUNG, *supra* note 88, at 236; *Socialist Transformation of Agriculture*, *supra* note 434.

⁶³⁷ GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 185.

⁶³⁸ *Id.* at 50, 155.

⁶³⁹ See, e.g., TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3.

⁶⁴⁰ "*Trai ma chi, gai ma chi, con nao co nghia co nghi thi hon*" ["It does not matter, boy or girl; what matters is which one is the pious child"]; "*ruong sau, trau nai, khong bang con gai dau long*" ["no deep rice field nor breeding water buffalo can equal a first-born girl"]. See Ho Thi Anh Nguyet, *supra* note 61, at 366.

⁶⁴¹ See *supra* Part IV.A.

⁶⁴² *Id.*

advocate of women's causes. In contrast, gender equality in today's families, however, leaves much to be desired.⁶⁴³ Bigamy is still practiced by men and tolerated by women.⁶⁴⁴ Social prejudices against single mothers are still prevalent.⁶⁴⁵ Domestic violence is an issue in one-third of divorce cases.⁶⁴⁶ Women are still being disproportionately blamed for family troubles.⁶⁴⁷ They have less leisure time and bear household burdens in addition to their jobs, often suffering from chronic fatigue. Although many manage financial affairs for daily family life, important decisions are still predominantly made by men.⁶⁴⁸ For women who have to juggle responsibilities inside and outside the home, community help, such as day care facilities, is still a vision for the future, and child-care continues to be the job of aging grandmothers.⁶⁴⁹ A number of women feel they have been judged by double standards, both as heroines (*nu anh hung, anh thu nu kiet*) and as "womanly creatures" (*con dan ba*). Others feel that during both war and peace, they have been treated as second-class citizens.⁶⁵⁰

Even younger, educated women may experience a sense of "powerlessness,"⁶⁵¹ and they may practice conscious ignorance rather than face the harsh realities of gender inequity. Author Karen Turner recorded interviews with young women who viewed studying abroad as the only alternative for betterment, yet who did not want to be exposed to Western feminism because "[i]t would make [their lives] back home harder." These young women "harbor[] little hope of working within the system at home."⁶⁵² The historical tension in ideology adds to the paradox. On one hand, socialist feminists are accustomed to looking down on freedom in the

⁶⁴³ Tran Thi Que, *supra* note 639, at 191-93.

⁶⁴⁴ See, e.g., Nguyen Thien, [*Confession of a Bigamist*] PHU NU THU BAY [WOMEN'S SATURDAY] Year No. XXIII, No. 98, Dec. 19, 1998.

⁶⁴⁵ Nguyen Thi Khoa, [*The Single Mother*], in VIETNAMESE STUDIES SERIES 44, No. 3, New Series No. 39 (Hanoi: XUNHASABA:1993).

⁶⁴⁶ Lan Thanh & Nguyen Thien, [*That Brutal Husband*], in PHU NU THU BAY [WOMEN'S SATURDAY] Year XXIII No. 82, Oct. 24, 1998.

⁶⁴⁷ VIEN KHOA HOC XA HOI VIET NAM, VIEN XA HOI HOC & TRUONG DAI HOC GOTHENBURG, THUY DIEN, KHOA XA HOI HOC [VIETNAMESE SOCIAL SCIENCES INSTITUTE & THE UNIVERSITY OF GOTHENBURG], NHUNG NGHIEN CUU XA HOI HOC VE GIA DINH VIET NAM 21 [SOCIOLOGICAL RESEARCH ON THE VIETNAMESE FAMILY] (Hanoi: Nha Xuat Ban Khoa Hoc Xa Hoi 1991).

⁶⁴⁸ Khuat Thu Hong, *Nghien Cuu Xa Hoi Hoc Gia Dinh o Vietnam*, [*Sociological Studies on the Vietnamese Family*] in NHUNG NGHIEN CUU XA HOI HOC VE GIA DINH VIET NAM *supra* note 647, at 174-80 (identifying the burdens of Vietnamese women in the family).

⁶⁴⁹ PHU NU THU TU [WOMEN'S WEDNESDAY] Year XXIII No. 81, Oct. 21, 1998 (reporting on burdens of small businesswomen having to handle household responsibilities in addition to their businesses).

⁶⁵⁰ GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 125-26, 185, 188 (recounting stories of women subjected to discrimination in society).

⁶⁵¹ *Id.* at 186.

⁶⁵² *Id.*

private sphere, associating it with bourgeois values, colonial vestiges or imperialist behaviors. The current legal framework still reinforces the moral notion of self-sacrifice for the community and public good. On the other hand, *Doi Moi* has condoned *laissez-faire* opportunities that foster individual competition, allowing the type of Western exposure and education that highlight personal freedom.⁶⁵³

Fortunately, contradictions in values are not in themselves particular to Vietnam. A challenge for all developing economies has been to address stark contradictions within their societies and emphasize the commonalities of all citizen's belief systems.⁶⁵⁴

H. *Eighth Factor: NPA 2000 as an Example of the Constraints of Party Politics*

Party politics delineates the contours of women's rights advocacy in Vietnam. Currently, advocacy is conducted in a single-party political system in which female participation is marginal. Advocacy should refocus on building social infrastructures to maximize the female potential, and should remain apolitical. This means advocates should first concentrate on solidifying less controversial rights in an effort to avoid what could quickly deteriorate into a gender battle. This means avoiding radicalism, overt conflicts with the Party, and efforts that can be construed as undermining solidarity. This also means refraining from any direct or indirect references to the advantages or disadvantages of a multi-party political system.⁶⁵⁵

However, even if advocates for women's rights stay within these constraints, political tension may be unavoidable, as the line between an "apolitical" agenda and criticism of the Party is a fine one.⁶⁵⁶ The distinction can be blurred or outright artificial. An analysis of the National Plan of

⁶⁵³ Charlesworth et al., *supra* note 24, at 254; KUMARI JAYAWARDENA, *supra* note 469, at 6.

⁶⁵⁴ For an affirmation of the fluctuating nature of culture, see ANWAR IBRAHIM, *supra* note 533; Richard Madsen, *An East-West Dialogue for the Next Century: New Myths for a New World*, in CHINA AND THE AMERICAN DREAM 209 (1995); compare ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 27 (1985).

⁶⁵⁵ See, e.g., GARETH PORTER, *VIETNAM: THE POLITICS OF BUREAUCRATIC SOCIALISM* (1993).

⁶⁵⁶ For exposure to political oppression aimed at feminists in Asia, see, for example, WOMEN, STATE AND IDEOLOGY: STUDIES FROM AFRICA AND ASIA (Haleh Afshar ed., 1987) (describing the oppression of feminists in Singapore and Malaysia in 1987); ASIA WATCH, *SILENCING ALL CRITICS* (1989) (Singapore); AMNESTY INTERNATIONAL, "OPERATION LALLANG": DETENTION WITHOUT TRIAL UNDER THE INTERNAL SECURITY ACT (1988).

Action for the Advancement of Women by the Year 2000 will illustrate this risk.⁶⁵⁷

1. *The Structure and Overall Goals of NPA 2000*

NPA 2000 is a plan drafted by the Vietnamese National Committee for the Advancement of Women for the purpose of furthering gender justice.⁶⁵⁸ In its eleven objectives, NPA 2000 specifically sets performance targets.⁶⁵⁹ For example, it sets out to reduce the unemployment rate for women in urban areas to below 5%, reduce the number of unemployed laborers by 50%, and reduce the number of poor households to 10%. NPA 2000 also aims to increase the number of female students in junior high schools from 47.3% to 50%, increase the number of female university students by 2%, increase the average height of boys and girls to one meter, sixty-five centimeters (approximately 5'4"), and reduce malnutrition from 42% to 30% in children under five years of age.⁶⁶⁰ Furthermore, NPA 2000 hopes to reduce population growth to below 1.8%, increase the number of pre-natal checkups for pregnant women to at least three per pregnancy, reduce the number of women with gynecological diseases by 50%, and enforce compulsory primary education for female children between six and fourteen years of age.⁶⁶¹

In order to implement NPA 2000, a number of government agencies sponsor research projects, provide services, conduct programs, train personnel, and enforce policies to achieve these goals. This involves, *inter alia*, the establishment of several incentive and affirmative action programs. General budget mandates are given, but no program budgets are specifically provided.

In certain instances, NPA 2000 omits obvious remedial steps. For example, one immediate way to improve education is to raise teacher's salaries, increasing the desirability of teaching jobs. One way to improve public health in the countryside is to encourage doctors to meet rural health care needs by, again, increasing their salaries. These concrete steps are not included in NPA 2000, perhaps because of practical budget and political considerations.

⁶⁵⁷ The NPA 2000 was presented by the NPA 2000 Committee, the apparatus set up to represent the women of Vietnam in response to the Beijing Conference. The NPA 2000 Committee is not a policy-maker. At best, it is a liaison between policy-makers and women.

⁶⁵⁸ See *supra* Part III.E.1

⁶⁵⁹ NPA 2000, *supra* note 52, pt. III.

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.*

A major drawback to NPA 2000 is its lack of specifics. NPA 2000 does not suggest or authorize specific programs to better the conditions of the most vulnerable and needy strata of the populace. This group includes female children, uneducated women, disabled persons, poor women in rural areas, and ethnic women of various *montagnard* groups and minorities in Vietnam. Where NPA 2000 gives attention to a particular group, program directives are still not specific enough. For example, Objective Eleven encourages changes in media coverage and public opinion to combat the social vices and crimes affecting the female child. Changes in media coverage and public opinion can certainly improve conditions for female children to some extent, but legally mandated preventive measures and remedies provide greater protection for this vulnerable group. Further, media coverage is already part of Vietnamese women's "self-help" strategy.⁶⁶²

Additionally, the ambitious NPA 2000 is expensive and imposes a heavy administrative burden on the government. Although the plan directs the Ministry of Finance to implement a budget, including funding for the NPA 2000 Committee and the VWU, the plan delegates responsibility without setting forth budgetary guidance or projections to provide for realistic implementation. The plan also (1) directs the various Ministries to contribute a budget to the NPA 2000 (Ministry policy-makers, according to statistics, are usually men); and (2) imposes on the NPA 2000 Committee and the VWU the responsibility of fundraising and a goal of self-sufficiency.⁶⁶³

NPA 2000 also fails to provide specific budgets or mandates to improve the capabilities of universities and women's studies research centers to facilitate their work. Overall, the availability of resources and budgets to implement NPA 2000 remains uncertain, leaving program design to ministry and local officials. Without a well-developed, well-administered implementing budget, NPA 2000 is reduced to a hollow promise with little real-world impact. Moreover, as Vietnam took years to formulate NPA 2000, its target dates are unrealistic.

⁶⁶² See *supra* note 146 (observation by non-Vietnamese researchers regarding *Ben Thanh* incident and the trial of Nguyen Tung Duong); *supra* notes 44, 45 (women-operated media coverage of trafficking). See GOTTSCHEG TURNER & PHAN THANH HAO, *supra* note 3, at 188.

⁶⁶³ See *NPA 2000*, *supra* note 52, pt. IV.

2. *Inherent Problems With Specific Objectives of NPA 2000*

In addition to the above-mentioned drawbacks, the specific objectives of NPA 2000 are inherently problematic. First, NPA 2000 calls for an increase in work efficiency of rural women without first allowing for improvements in their living and working conditions. Under Objective One, NPA 2000 calls for a 72-75% increase in work efficiency for rural women. Rural women are among the most disadvantaged and most exhausted members of the workforce. To implement this misguided objective, NPA 2000 calls for the development of more exports in the processing industries that employ a predominantly female workforce. Unless wages are raised and social infrastructures implemented to alleviate their burdens and improve the conditions under which they live and work, this objective will only benefit industries.

Second, NPA 2000 mandates that elected bodies shall have a certain percentage of women, but such statistical goals may have the effect of imposing limitations on female political participation. Under Objective Four, 20-30% of the representatives of elected bodies must be women, and other government body employees must be 15-20% women. While these goals are concrete, they do not reflect the actual ratio of females in the workforce, which is more than 50%. Moreover, there is no reason why there should be a maximum limit set for the number of women who can hold office. NPA 2000 also provides that those ministries and branches with a female majority must have female leaders, and that "agencies in which thirty percent or more of the workers are women must have a woman as a head or the *second head*" (emphasis added). One may wonder why women should be chosen as leaders only when the work unit has more women than men, and why they should be the "second head," even if they are capable and qualified enough to be the leader. In effect, these goals create a workplace where women are leaders of women, and not of men. Finally, even if these goals are accomplished, the reality they create still presents women as the minority in leadership, although they are not the minority in the population.

Third, Objective Five calls for the dissemination of "law" as a means of creating awareness. This will probably not have a great impact on gender equality. Objective Five requires distribution of copies of the Women's Convention, apparently to local policy-makers. The dissemination of this document and the accompanying training may reinforce the principle of gender equality, but unless vast systematic training is conducted, recipients may not be able to comprehend the international legal framework. Further,

the Women's Convention may not alter the Vietnamese cultural structure, which does not generally yield to rule of law.

Likewise, Objective Five's goal of eliminating "all backward customs and bad practices that violate women's rights" within three years is unrealistic, because such a goal requires gradual social and cultural changes. The goal also presents an obvious enforcement and measurability problem since it is unclear how government inspectors would know whether all bad customs and practices have been eliminated. This type of goal is indicative of the tendency of policy-makers to implement the false "rhetoric of goals." For example, definite goals such as the reduction of domestic violence by a specific percentage, are attainable where supported by social and community programs to monitor domestic violence incidents.

Part of the incentive program to achieve Objective Five is to create the "family of culture" award that helps promote the advancement of women. The mass appeal of such an award is questionable. The Vietnamese "superwoman" is already inundated with existing responsibilities. Now she is encouraged to strive for community awards and acquire "fame" for her family unit.

Fourth, the environmental issues raised under NPA 2000 fail to address what remedial steps are needed. Under Objective Seven, environmental issues are raised, but the root causes of their existence, the lack of a budget⁶⁶⁴ and remedial programs, are not addressed. The education of women on environment and health issues will not by itself provide the improvement needed.

3. *Potential Political Volatility in an Evaluation of NPA 2000*

NPA 2000 encompasses noble goals but in some ways is only another depository of policy statements that can never be realized under the current budget and administrative structure. As such, it duplicates the propaganda tools commonly used in communist regimes. NPA 2000 also raises a list of disturbing questions. For example, is there any real hope that the objectives stated in NPA 2000 can be quickly implemented and developed into social welfare programs? More importantly, who will be accountable if the plan does not accomplish its goals? Who will be in a position to critically review the shortcomings in the implementation of these goals, and how will these critical evaluations be received by the Party? Additionally, there is no

⁶⁶⁴ Environmental projects may qualify as infrastructure-building, eligible for international and multi-lateral project financing.

system in place to make changes if policy-makers fail to achieve their own goals. If these changes mean new leadership, how can this be accomplished in a single-party state? If an honest evaluation of NPA 2000 is pursued in earnest, it could potentially produce a battlefield of ideas and criticisms disturbing to Party politics. Thus, women's development and gender equality, already brought into focus by NPA 2000 and the exposure generated by the Beijing Conference, have the potential to ignite conflicts within Vietnam's political system. If NPA 2000 turns out to exist purely for psychological comfort, the partnership between government and women's rights advocates may break down. This tension increases the complexity of the advocate's challenge.

Even before the passage of NPA 2000, women's researchers of Vietnam recognized the potential for fallacy, stating:

[T]he orders and resolutions of the [P]arty often set big targets, even tough possibilities, [yet] resources for their implementation are limited . . . Policy makers . . . may feel satisfied and consider the making of a policy as the successful fulfillment of a duty. Managers monitoring the implementation often lack faith in the feasibility of a policy and neglect to search for potentials and resources (both financial and human aspects) for implementing that policy. As a result, many policies may be made and these policies may be good ones, but the possibilities of institutionalizing and implementing them may be very limited.⁶⁶⁵

The government of Vietnam is under pressure from the United Nations and the international community to improve the status of Vietnamese women. An internal formal evaluation of Vietnam's NPA 2000 initiative and results is overdue. This evaluation will reflect on the implementers and policy-makers. As a call for a leadership change is obviously a sensitive issue for the die-hard single-party loyalist, such an evaluation could create dissension and turn women's issues into a battle of Party politics. On the other hand, if NPA 2000 serves only as "window-dressing" before the international community, true gender equality and the full development of Vietnamese women's rights will remain only an unfulfilled promise.

⁶⁶⁵ TRAN THI VAN ANH & LE NGOC HUNG, *supra* note 3, at 217.

V. CONCLUSION: THE RHETORIC OF EMPOWERMENT AND THE INSPIRATIONAL ROLE OF AN ADVOCATE

It remains to be seen how feminism will fare in Vietnam, with its variety of ideologies. Meanwhile, the contemporary Vietnamese woman must cope with a developing economy and the paradoxical values within her culture. This conflict was well described by Cong Huyen Ton Nu Nha Trang, who wrote:

I bear the joy and the burden of the collective experience shared by Vietnamese women of all ages. Both a joy and a burden because, while the myriad un-foldings of our own unique circumstances have so enriched our lives and made them more significant, there stubbornly remain warped perceptions which distort and cloud our vision of our own identity and destiny.⁶⁶⁶

The “joyful burden” conflict and fragmented vision may make the task of the Vietnamese feminist appear hopeless. However, as Cong Huyen Ton Nu Nha Trang stated, “at times, immortality can only result when the human spirit is measured by the hopelessness of its endeavor.”⁶⁶⁷ A major part of the collective identity of Vietnamese women has always been their resilience and ability to make sacrifices for the family and national causes.⁶⁶⁸ This was once necessary for the sake of survival and decolonization. Must the Vietnamese female identity always be marked by self-sacrificing martyrdom or immortality, as in the cases of Trung-Trieu, Le Thi Dan, Co Giang, and Nguyen Thi Minh Khai? Was it their deaths, or their deeds, that made them the cornerstone of the Vietnamese female identity?

The contemporary world has evolved such that international institutions and diplomatic relations increasingly play important roles in dispute resolutions for the collective advancement of the world community. Conquest, the basis for the expansion of colonialism in earlier decades and once an acceptable mode of territory annexation, is today illegal under customary public international law. Information technology increasingly brings cultures together, enabling a global sharing of resources. Computer technology and free trade have made a world community possible. The self-

⁶⁶⁶ Cong Huyen Ton Nu Nha Trang, *supra* note 2, at 388.

⁶⁶⁷ Wendy Duong, *From Madam Butterfly to the Statute of the Awaiting Wife in North Vietnam: Femininity Between Two Worlds*, THE KY 21 [THE 21ST CENTURY] No. 57, Jan. 1994, at 47, 52.

⁶⁶⁸ GOTTSCHANG TURNER & PHAN THANH HAO, *supra* note 3, at 184 (observing that in Vietnam, “sacrifice is associated with womanhood in war and in peace”).

sacrifice that once helped attain national independence is counter-productive in today's environment, where political agendas do not always serve the public good. Self-sacrifice by women only perpetuates the "slave-master" formula. The substantial energies earlier devoted to nationalism should today be devoted to raising the status of Vietnamese women to that enjoyed by women in developed countries. Having been an integral part of the struggle for independence and unification, Vietnamese women deserve the full attention of policy-makers.

At the same time, there is an increasing effort in the world community to research and cultivate the existence of indigenous cultures. This means a return to cultural roots, fostering that which has accounted for cultural features that have survived the test of time and attempted destruction. "To seek cultural empowerment is to bring ourselves up to a level parity . . . It involves rediscovery of what has been forgotten through ages of weakness and decay; it involves renewal and re-flowering."⁶⁶⁹ This effort at a cultural renaissance should be made in conjunction with rigorous and progressive economic development, and is needed for empowerment as well as to supply the economic transition with the necessary humanistic values that help maintain a vibrant social fabric.

With respect to the examination of cultural roots, a note of caution must be made. As author and professor Trinh T. Minh-Ha has warned, "words empty out with age." The reminder of the past poses the semantic trap of "urging you to keep your way of life and ethnic values within the borders of your homeland."⁶⁷⁰ Questions of roots and authenticity should not overburden a woman's respect for her cultural history, as this may lead to empty ethnocentrism. It diverts her attention from today's inequity (the circumstances in which she finds herself), to her past uniqueness (the circumstances that no longer exist). It revives an identity too elusive to be of tangible value, because the variables that produced it no longer apply. As Minh Ha has cautioned, the demand placed on the third world feminist to assert her authenticity causes a diversion of energies and a tragic repetition of patriarchal dominance: to keep her busy proving her past, means that she need not strive for equality today, as she was already liberated in her past. Cultural renaissance is only meaningful to the extent that it does not cause her to fall under this semantic trap.⁶⁷¹

⁶⁶⁹ ANWAR IBRAHIM, *supra* note 533, at 22.

⁶⁷⁰ TRINH T. MINH-HA, *WOMAN, NATIVE, OTHER: WRITING POSTCOLONIALITY AND FEMINISM* (1989).

⁶⁷¹ *Id.*

It is without a doubt that *Doi Moi* has given Vietnam a facelift, but that facelift must be extended below the surface. The real *Doi Moi* or renovation will have taken root only after a strong, healthy, and borderless middle class emerges and bridges the gap between the “have”s and the “have not”s, with all citizens pursuing, as Ho Chi Minh himself said, “independence, liberty, and happiness” (*doc lap, tu do, hanh phuc*).

Since unification, it is unfortunate that when stripped of Chinese, French, and Marxist influences, Vietnam has often been mistaken for the culture of poverty. In such a culture, human dignity is seriously undermined because moral choices are made in the restraint and backwardness of economic deprivation. Gender equality in Vietnam, and the force and voice of Vietnamese women, sails the same course as the essence of the culture—both are being tested in a sea of challenges.

As cultural renaissance goes hand in hand with economic development, the sea of challenges can be sailed only through the wisdom and flexibility of Vietnamese leadership. There is absolutely no reason why the contemporary Vietnamese woman should not strive to become a more integral part of that leadership, even if she has to deal with the difficult task of consensus building and clever social activism. If she succeeds, she becomes not only a leader at home, but an international leader as well. She has her past to lean on to chart the course of her future and society. The challenge of the Vietnamese woman in the 21st century, therefore, is to combine international feminist objectives with the authenticity of her diversity in advocacy for the goal of gender equality in Vietnam.