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LEGAL EDUCATION IN VIETNAM: THE HISTORY, CURRENT SITUATION AND CHALLENGES

AI NHAN HO*

I INTRODUCTION

This article discusses the history and current state of Vietnamese legal education and examines the various challenges remaining. The current socialist legal education system in Vietnam is relatively new¹ with no connection to the previous non-socialist systems.² Legal education was introduced into Vietnam during the French colonisation in the late 19th century and continued through the Vietnam War. During the period from 1955 to 1975, a few law schools were established throughout the country. After the Vietnam War, there was no legal education in Vietnam as all of the pre-1975 law schools had been closed. It was not until 1976 that the Hanoi University Faculty of Law was established. This was one of the institutions combined to form Hanoi Law University, the biggest law school in Vietnam today. At present, with more than 40 institutions offering legal education programs at different levels, the Vietnamese system still remains underdeveloped.

In part one, a brief history of Vietnamese legal education is presented. It focuses mainly on legal education in the country after the end of French colonisation in 1954 up to the present. It is followed by an analysis of the current state of legal education in Vietnam. In this second part of the article, an emphasis is placed on issues such as legal education institutions, teaching curriculum and training structure.

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¹ See, eg, Cheng Han Tan et al, 'Legal Education in Asia' (2006) 1 *Asian Journal of Comparative Law* 184, 184-6 (regarding Asian legal education as a 'young creature'). Although there had been legal education programs offered in most Asian jurisdictions during the colonisation period, these countries built their new legal education systems after gaining independence.

² See, eg, Bui Thi Bich Lien, 'Legal Education in Transitional Vietnam' in John Gillespie and Pip Nicholson (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (ANU Press, 2005) 135, 136.

Finally, the article turns to various challenges facing Vietnamese legal education. Too much focus on the teaching of legal doctrine, principles, and basic codes at the cost of professional skills is identified as a major limitation of the current system. In addition, educated in a passive learning environment, Vietnamese law graduates lack the ability to think independently, creatively and critically and this is one of the reasons for their lack of readiness for practising law. Further, lack of training in professional responsibility and legal ethics is discussed in the article as a result of the two-stage legal education in Vietnam. Under this model, law schools focus solely on doctrinal legal education (stage 1) whereas professional skills are delivered by the Judicial Academy (stage 2). Vietnamese law schools' limited autonomy and the disconnect between legal education and the profession can be partly blamed for these challenges. Consequently, in many cases, further training has to be given to Vietnamese law graduates before they can actually start their work.³

The article's objective is to present a general picture of the history and the current state of Vietnamese legal education. Challenges are identified and analysed as reasons for the ineffectiveness of the Vietnamese system that has resulted in calls for reform. Additionally, this article aims to establish the context for future discussions on the possibilities for the reform of Vietnamese legal education.

II A BRIEF HISTORY OF VIETNAMESE LEGAL EDUCATION

There was no formal legal education in Vietnam before 1858, which was when the French arrived and started to build their own system for ruling the country. Prior to this date, Vietnam, led by a long-standing feudal regime of the Nguyen dynasty, was underdeveloped, unstable and weak in national defense. During the period of French colonisation (from 1858 to 1954), a law school was established in 1931 in Hanoi.⁴ However, little has been recorded about this law school or its graduates. This article, therefore, focuses more on the development of Vietnamese legal education after French colonisation. The Vietnam War from 1955 to 1975 witnessed the separation between the North and the South of Vietnam. In the North, the Democratic Republic of Vietnam (DRV) took the war 'for the reunification' or 'to liberate the South' (as claimed by DRV) as their first priority and concentrated all of their resources on the fighting. During the 1960s, the DRV Ministry of Justice had to be closed due to the war.⁵ In order to meet the demand for judicial officials

³ See, eg, Mark Sidel and Nghia Duy Pham, 'Reforming and Strengthening Legal Education in Vietnam' (Final Report, UNDP Vietnam, 2010) 7; Bui Thi Bich Lien, 'Legal Education and Legal Profession in Contemporary Vietnam: Tradition and Modification' in John Gillespie and Albert H Y Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge, 2010) 299, 306-12.

⁴ See, eg, Mark Sidel, 'Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training' (1993) 11 *Pacific Basin Law Journal* 221, 224.

⁵ *Ibid.*

at this time, a Judicial Training School was established in 1960 under the Vietnam People's Supreme Court (VPSC).⁶ This institution was missioned to train and provide human resources for Vietnamese courts. After the Vietnam War, a faculty of law was established in 1976 at Hanoi University (under the Ministry of Education and Training — the MOET), named Hanoi University Faculty of Law.⁷ In 1979, the Judicial Training School was upgraded and renamed Hanoi College of Law. Its mission was to train judicial officials for the Vietnamese court system. In 1982, this College was brought under the administration of the Ministry of Justice (MOJ), and in the same year, it was merged with Hanoi University Faculty of Law to form Hanoi Law University (HLU).⁸ This is known as the first and biggest law school in Vietnam to date. In 1994, as required by judicial reform in Vietnam, another Judicial Training School was established under the VPSC to deliver training to court officials.⁹ After more than 20 years of operation, this school was upgraded and renamed the Court Academy in July 2015. Its mission is to provide professional training for court officials throughout the nation.¹⁰ At present, the Court Academy is one among several professional training institutions operating alongside law schools in Vietnam, including the Judicial Academy (JA)¹¹ and Hanoi

⁶ Director of the Court Academy, *The Historical Development of the Court Academy Vietnam* Court Academy <<http://hvta.toaan.gov.vn/portal/page/portal/hvta/27676661/27677412>>.

⁷ Vietnam National University, Hanoi – School of Law, *Introduction to Faculty of Law* (30 November 2014) <<http://law.vnu.edu.vn/article-Gioi-thieu-Khoa-Luat-12609-1103.html>>.

⁸ Hanoi Law University, *Thirty five years old celebration of Hanoi Law University* (15 December 2014) <<http://hlu.edu.vn/tintuc/2976/LE-KY-NIEM-35-NAM-NGAY-THANH-LAP-TRUONG-DAI-HOC-LUAT-HA-NOI-VA-DON-NHAN-HUAN-CHUONG-DOC-LAP-HANG-NHI.html>>.

⁹ Director of the Court Academy, above n 6.

¹⁰ The Vietnamese Prime Minister signed a Decision on 30 July of 2015 to officially establish the Court Academy on the foundation of the existing Judicial Training School. See Vietnamese Central Government, *Decision by the Prime Minister to establish the Vietnam Court Academy* <http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?mode=detail&document_id=180814>.

¹¹ The Vietnamese Judicial Academy (JA) was established in 2004 under the administration of the Ministry of Justice. It has the mission to provide professional training to law graduates to take part in various positions in the judicial system, including judges, procurators, lawyers, and others. For more details about this institution, see Vietnamese Judicial Academy, *The Functions and Missions of the Judicial Academy* <<http://www.hocvientuphap.edu.vn/chuc-nang-nhiem-vu.aspx>>. To some extent, the JA has a similar function to the Leo Cussen Institute in Victoria, Australia, in providing professional training to would-be lawyers. For more details about the Leo Cussen Institute, see Leo Cussen Centre for Law, *Practical Legal Training* <http://www.leocussen.edu.au/cb_pages/ptc.php>. The JA is also similar to the Legal Training and Research Institute in Japan (missioned to train people to become judges, public prosecutors, and lawyers) and the Judicial Training Institute in Taiwan (missioned to train judges and public prosecutors). See, eg, Annelise Riles and Takashi Uchida, 'Reforming Knowledge? A Socio-Legal Critique of the Legal Education Reforms in Japan' (2009) 1 *Drexel Law Review* 3, 10; Chang-fa Lo, 'Driving an Ox Cart to Catch up with the Space Shuttle: The Need for and Prospects of Legal Education Reform in Taiwan' (2007) 24 *Wisconsin International Law Journal* 41, 42.

Procuratorate University (HPU).¹² Hanoi University re-opened a faculty of law in 1986. In 1995, Hanoi University was divided into two universities, the University of Natural Sciences and the University of Social Sciences and Humanities. The faculty of law was then under the administration of the University of Social Sciences and Humanities. After Hanoi University was upgraded and renamed Hanoi National University in 2000, this faculty of law became Hanoi National University Faculty of Law (HNUFL).¹³

In the South, under the administration of the Republic of Vietnam (RV), three law schools were established during the Vietnam War: Saigon Faculty of Law, Can Tho Faculty of Law and Hue Faculty of Law. However, there is no evidence that these early institutions have had an impact on the establishment and operation of the current law schools which have been established since the end of the Vietnam War in 1975.

In 1976, Ho Chi Minh City (HCMC) University of Economics was established and Saigon Faculty of Law was merged with this university. In 1996 HCMC University of Economics established a Department of Law missioned to teach Fundamental Law and Commercial Law for non-law students. It was then upgraded and renamed the Faculty of Law in 2001, and started to deliver legal education at the undergraduate level in 2005.¹⁴ In 1981, HLU opened another campus in HCMC named Hanoi Law University's campus in Ho Chi Minh City. In the late 1980s, HCMC University formed a faculty of law with its pre-1975-trained lawyers.¹⁵ In 1996, it was merged with Hanoi Law University's campus in Ho Chi Minh City to form HCMC Law University (HCMCLU) under HCMC University. After HCMC University was upgraded and renamed HCMC National University (HCMCNU) in 2000, HCMCLU separated and came under the administration of the MOET.¹⁶ At present, HCMCLU is one of the two major Vietnamese law schools, along with HLU. Also in 2000, another faculty of law was established at HCMCNU. This faculty of law was later merged with the Faculty of

¹² Hanoi Procuratorate University (HPU) used to be the Procuracy Training School, which was established in 1964 to deliver professional training to procurators. To some extent, 'procurators' are similar to 'prosecutors' in other countries. Vietnam has been using this name following the experience of the former Soviet Union. In May 2013, this school was upgraded and renamed Hanoi Procuratorate University. Under the administration of the People's Supreme Procuracy, HPU has the mission to provide professional training for procurators and to deliver general academic legal education. For more details about this institution, see Hanoi Procuratorate University, *The Historical Development of Hanoi Procuratorate University* <<http://tks.edu.vn/bai-viet/chi-tiet/34/lich-su-hinh-thanh-phat-trien-cua-truong-dai-hoc-kiem-sat-ha-noi>>.

¹³ Vietnam National University, Hanoi – School of Law, above n 7.

¹⁴ See HCMC University of Economics Faculty of Law, *Introduction to Faculty of Law* (24 September 2014) <<http://law.ueh.edu.vn/gioi-thieu-ve-khoa>>.

¹⁵ Sidel, above n 4, 224-5.

¹⁶ See Ho Chi Minh City Law University, *The Historical Development* <<http://www.hcmulaw.edu.vn/>>.

Economics to form the School of Economics and Law in 2010 under the administration of HCMCNU (HCMCNU SEL).¹⁷

In central Vietnam, the Hue University Faculty of Law was established in 1957 in the Republic of Vietnam.¹⁸ It was closed after reunification in 1975. There is no evidence of a connection between this faculty of law and the current Hue University School of Law (HUSL).¹⁹ In fact, HUSL was established in 1995 as the Department of Law under Hue University of Sciences. In 2009, it separated from Hue University of Sciences and became Hue University Faculty of Law. In early 2015, under a decision by the Vietnamese Prime Minister, it was upgraded and renamed Hue University School of Law.²⁰

Additionally, many other legal education institutions have been established throughout the nation such as Can Tho University Faculty of Law (CUFL), Vinh University Faculty of Law (VUFL), Trade Union University Faculty of Law (TUUFL), Saigon University Faculty of Law (SUFL), Da Lat University Faculty of Law (DUFL), and others. Most of these law schools, however, are new and small in size.

In summary, as there is no connection between pre- and post-1975 law schools, Vietnamese legal education can be seen as a new system. The last forty years have witnessed the birth, separation, and merging of Vietnamese law schools in the early stages of development. The discussion in the next part of the article will provide more details about this system.

III THE CURRENT STATE OF THE VIETNAMESE LEGAL EDUCATION SYSTEM

A *The Objectives of Vietnamese Legal Education*

As standardised by the national education policy, bachelor degrees in Vietnam, including the Bachelor of Law, are four-year programs that are studied on a full-time basis. In 2001, Vietnam adopted the *Education Development Strategy for 2001–2010*, in which the objective of education was generally identified as being ‘...to provide qualified human resources for the country’s industrialization and modernization process’.²¹

The objective of higher education was then affirmed and elaborated by the *2012 Vietnamese Higher Education Act*:

¹⁷ See Ho Chi Minh City National University School of Economics and Law, *History and development* <<http://www.uel.edu.vn/ArticleId/098e3942-d9c0-4d71-9e45-1436ad2a6538/lich-su-hinh-thanh-va-phat-trien>>.

¹⁸ During the Vietnam War, Hue city belonged to the RV in the South.

¹⁹ See Hue University School of Law, *Introduction to The Historical Development of Hue University School of Law* <http://www.hul.edu.vn/gioi-thieu/gioi-thieu-ve-lich-su-phat-trien-truong-dai-hoc-luat-dai-hoc-hue_41.html>.

²⁰ Ibid.

²¹ See Phan Van Khai, ‘Education Development Strategy 2001-2010’ (Decision of the Prime Minister, No 201/2001/QĐ-TTg, 28 December 2001) (providing an overview of the assessment, development directions, objectives, and solutions for improvement of the Vietnamese education system).

Training human resources, improving literacy of the citizens, and strengthening the talented; conducting scientific research, producing new knowledge and products in order to serve the social-economic development and ensure national defense, security and international integration; training the learners with good political characteristics, morality, knowledge, professional skills, scientific research capacity and ability to develop and apply science and technology; training the learners with good health, creativity capacity, professional responsibility, adaptation capability to working environment, and awareness to serve the community.²²

Resolution 08/NQ-TW, issued in 2002 by the Central Committee of the Vietnamese Communist party, was the first to state the objectives of Vietnamese legal education as being ‘...to provide the government with legally-qualified human resources...’.²³

In 2005 the *Judicial Reform Strategy*, adopted by the Central Committee of the Vietnamese Communist party under *Resolution 49/NQ-TW*, identified that ‘[h]igher legal education aims at training officials as a source for judiciary sector positions and bodies; training judiciary sector officials ...’.²⁴ *Resolution 48/NQ-TW on Legal Reform Strategy*, also issued in 2005 by the Vietnamese Central Committee of the Communist party, identified the purpose of higher legal education as being to ‘...ensure the quantity and quality of human resources working as public officials and civil servants in the legal profession...’.²⁵

From these documents, the principal objective of Vietnamese legal education is to provide ‘human resources’ to serve the country’s social and economic development. In Vietnam, legal education is regarded by the central government as a State concern and it has to be strictly managed.²⁶ From the State’s perspective, therefore, ‘producing lawyers’ is not seen as the priority of legal education. Rather, as mentioned in *Resolution 08/NQ-TW*, ‘legally-qualified human resources’ are what the State expects from the legal education system. This, in turn, influences the design of curricula and teaching methodology among Vietnamese law schools. For example, while in many other jurisdictions professional training is an important component of law curricula,²⁷ it is not an objective of Vietnamese legal education. Even though the *2012 Vietnamese Higher Education Act* identifies ‘professional skills’ as an important objective of higher

²² See *Higher Education Law* (Socialist Republic of Vietnam) 2012 art 5.1.

²³ See Central Committee of the Vietnamese Communist Party, ‘Fundamental Judicial Missions in the Upcoming Time’ (Resolution 08/NQ-TW, 1 January 2002).

²⁴ See Central Committee of the Vietnamese Communist Party, ‘Judicial Reform Strategy’ (Resolution 49/NQ-TW, 2 June 2005).

²⁵ See Central Committee of the Vietnamese Communist Party, ‘Legal Reform Strategy’ (Resolution 48/NQ-TW, 24 May 2005).

²⁶ Bui, above n 3, 303.

²⁷ See, eg, Barry B Boyer and Roger C Cramton, ‘American Legal Education: An Agenda for Research and Reform’ (1974) 59 *Cornell Law Review* 221, 270; James R Maxeiner and Keiichi Yamanaka, ‘The New Japanese Law Schools: Putting the Professional into Legal Education’ (2004) 13 *Pacific Rim Law and Policy Journal* 303, 305.

education, professional training has not been included in most Vietnamese law schools' curricula.

Further, since 1995, 'international integration' has been repeatedly mentioned as an objective of Vietnamese education. Especially since 2006, when the country became a member of the World Trade Organization (WTO), promoting 'international integration' has become a mission of Vietnamese public agencies. Vietnamese higher education has accordingly been missioned to train students to meet the requirements of the country's international integration.²⁸ In legal education, this mission is often interpreted as meaning that law graduates are knowledgeable not only in domestic laws but also in international law and laws of other countries. In addition, they are expected to be fluent in foreign languages, mainly English, so that they can work in foreign law firms, participate in international litigation, or continue their education abroad at higher levels. Similar objectives are found in the training of judicial public officials such as judges and procurators to ensure they can effectively handle not only domestic cases but also cases with foreign-related factors.

B *Legal Education Institutions*

At present, Vietnamese legal institutions can be classified into four categories: law universities, law schools, law faculties, and institutes of state and law.²⁹ At the undergraduate level, by April 2016, there were more than 40 institutions in Vietnam offering legal education.³⁰ They are producing approximately 20 000 law graduates annually.³¹ HLU and HCMCLU are two major law schools in Vietnam. These universities are commonly known as 'specialised'³² or 'stand-alone' law schools established under the direct administration of the MOJ and the MOET.³³ Currently, they are also two of five Vietnamese law

²⁸ The 'international integration' objective had been identified in different State's documents before it was reaffirmed in the 2012 Higher Education Act. See *Higher Education Law* (Socialist Republic of Vietnam) 2012 art 5.1.a.

²⁹ In Vietnam, legal education institutions are relatively diverse in size, name and structure. For the purpose of this research and within this paper, however, all of these legal education institutions are hereinafter referred to as law schools in Vietnam, Vietnamese law schools or Vietnamese legal education institutions.

³⁰ This data comes from interviews with Vietnamese law school leaders and managers, law teachers, practising lawyers, judicial officials and students in the cities of Hanoi, Vinh, Dong Hoi, Dong Ha, Hue, Danang, Pleiku, Ho Chi Minh and Cantho. The interviews were conducted in 2014 and 2016 as a part of the author's PhD empirical research in Vietnam.

³¹ Interviews conducted by author. These 20 000 law graduates are from the full-time on-campus form of training only. In Vietnam, legal education embraces different forms, including full-time on-campus, distance learning, in-service and second-degree. All of these forms of training combined produce approximately 45 000 law graduates annually.

³² Bui, above n 2, 137.

³³ In Vietnam, HLU is the only one established under the MOJ's administration. The rest of law schools are under the MOET's administration, whereas a few others are administered by both the MOET and relevant ministries. For example, TUUFL is administered by the MOET and the Ministry of Labour – Invalids and Social Affairs;

schools³⁴ offering legal education at all three levels: bachelor, masters, and doctoral.

Other Vietnamese legal education institutions named schools of law and faculties of law have been established under a multidisciplinary university in which legal education is offered along with other professional education. This group includes HCMCNU SEL, HNUFL, HUSL, CUFL, VUFL, and others. Most of these law schools, however, are recently-established and concentrate mostly on legal education at the bachelor's level.³⁵ Under the Vietnamese system, there are distinctions between a school of law and a faculty of law. A school of law tends to be more independent as it has its own bank account, campus, and more autonomy in finance, human resources, and training issues. Meanwhile, in a faculty of law, these issues are decided by the university to which it belongs.

Institutes of state and law are another type of Vietnamese law school. Established mainly for research activities, institutes of state and law are also authorised to provide legal education at the graduate level only. In Vietnam, institutes of state and law have been established within the Ho Chi Minh National Political Academy (NPA),³⁶ the Vietnam Academy of Social Sciences (VASS)³⁷ and the National Academy of Public Administration (NAPA).³⁸ As the demand for graduate-level legal education increases, these institutions have become significant education providers alongside other Vietnamese law schools. Particularly, the Graduate Academy of Social Sciences — established under the administration of the VASS — is one of the

Foreign Trade University Faculty of Law is administered by the MOET and the Ministry of Industry and Trade.

³⁴ Currently, HLU, HCMCLU, HNUFL, HCMCNU SEL, and HUSL are five Vietnamese institutions delivering legal education at all three levels: bachelors, masters and doctoral.

³⁵ Among these institutions, CUFL and VUFL are currently offering law degrees at bachelor and master levels; HCMCNU SEL, HNUFL and HUSL are delivering legal education at three levels: bachelor, master and doctoral.

³⁶ The Ho Chi Minh National Political Academy (NPA) is a political-academic ministerial-level agency established under the Vietnamese central government. The Academy's major missions are conducting research and delivering training to communist party members to take part in various positions in the Vietnamese system. Institute of State and Law was established within the Academy among others such as Institutes of Religions, Institute of Philosophy, and Institute of Sociology. See Ho Chi Minh National Political Academy, *General Introduction* <<http://hcma.vn/Home/Gioi-thieu-chung>>.

³⁷ The Vietnamese Academy for Social Sciences (VASS) is a national research agency. Various institutes have been established under the Academy such as Institute of State and Law, Institute of Literature, Institute of History, etc. In addition to research mission, these institutes deliver education at master and doctoral levels. See Vietnam Academy of Social Sciences, *General Introduction to Vietnam Academy of Social Sciences* <<http://en.vass.gov.vn/noidung/gioithieu/Pages/gioi-thieu.aspx>>.

³⁸ The Vietnamese National Academy of Public Administration (NAPA) was established under the Ministry of Interior Affairs to conduct research and deliver training. NAPA is also delivering legal education at graduate levels. See National Academy of Public Administration, *About NAPA* (31 May 2016) <<http://www1.napa.vn/en/>>.

institutions in Vietnam having a relatively large number of graduate students.³⁹

There are similarities in the organisational structures of Vietnamese law schools. One of the important factors influencing the organisation of Vietnamese law schools is the division of law into different branches. Learning from the former Soviet Union, Vietnam has built a legal system based on thirteen fundamental branches of law. These include Constitutional Law, Administrative Law, Criminal Law, Criminal Procedure Law, Civil Law, Civil Procedure Law, Economic Law, Finance Law, Labour Law, Family Law, Land Law, Public International Law and Private International Law.⁴⁰ Within a law school, some of the branches that are connected to each other are grouped to form an academic unit named faculty, department, or section. In most cases, Vietnamese law teachers are teaching and conducting research within a certain academic unit. A law school usually has a few academic units. In HUSL, for example, there are five academic units, namely the Department of Civil Law, the Department of Criminal Law, the Department of Economics Law, the Department of Constitutional and Administrative Law and the Department of International Law.⁴¹ Similarly, five academic departments established under HCMCLU include Civil Law, Criminal Law, Administrative Law, Trade Law and International Law.⁴²

The institutes of state and law have relatively similar organisational structures from which various academic departments are formed. For example, VASS Institute of State and Law has formed nine departments, namely Civil Law, Criminal Law, Constitutional Law, Administrative Law, Legal Theory and Sociology, History of State and Law, Theory about State and Public Administration and International Law.⁴³

In smaller Vietnamese law schools, academic units are named 'divisions'. Generally, there is not much difference between a department and a division as they both combine some branches of law and include a number of law teachers. These teachers often teach law and conduct research within the academic unit. For example, CUFL has

³⁹ Since 2010, when the Graduate Academy of Social Sciences (GASS) was established as a training unit within VASS, various VASS institutes have no longer provided education but focused on research. GASS now offers master and doctoral degrees in all professions under the VASS including law. See Graduate Academy of Social Sciences, *General Introduction* (28 December 2010) <<http://www.gass.edu.vn/Detail.aspx?ArticleID=70&CatID=79&CatIDParent=73>>.

⁴⁰ See, eg, Minh Tam Le, *Textbook on Theory of State and Law* (People's Police Publisher, 2004) 250-2.

⁴¹ See Hue University School of Law, *The Introduction to the Historical Development of Hue University School of Law* <http://www.hul.edu.vn/introduction/introduction-to-the-historical-development-of-the-college-of-law-hue-university_1427.html>.

⁴² See Ho Chi Minh City Law University, above n 16.

⁴³ See Vietnam Academy of Social Sciences, *The Historical Development of Vietnam Academy of Social Sciences* (25 October 2010) <http://isl.vass.gov.vn/noidung/gioithieu/Lists/LichSuPhatTrien/View_Detail.aspx?ItemID=16>.

three academic divisions, namely Administrative Law, Trade Law and Judicial Law.⁴⁴ VUFL has formed four academic divisions: Civil Law, Criminal Law, Economic-International Law and Administrative Law.⁴⁵ A common distinction between a department and a division is their size and autonomy. In Vietnam, an academic department is bigger than an academic division in terms of the number of teachers and in-depth teaching and research. In addition, a department may be more independent from a law school than a division.

C Teaching Curriculum and Training Structure

1 Teaching Curriculum

In Vietnam, legal education at an undergraduate level is provided in three forms: full-time on-campus with students directly from high schools; distance learning where students mainly study by themselves with limited law teacher instruction; and in-service designed for working people and taught during evenings or on weekends. Some law schools also offer a second-degree bachelor of law. Legal education as a second-degree is delivered to people who have already graduated from university and hold a bachelor degree. These forms of legal education vary in objective, teaching approach, curriculum, motivation, evaluation methodology and quality. In this article the author focuses only on the undergraduate full-time legal education delivered by Vietnamese law school on campus ('full-time on-campus').

A full-time on-campus law degree, standardised as a four-year program throughout the country, is the most common and important pathway for a student to enter into the legal profession. Since 2003, the MOET has developed a general basic curriculum known as the 'framework curriculum' and has imposed it on all Vietnamese law schools. Applied specifically to full-time on-campus legal education, this framework curriculum commonly sets out 70–80 per cent of the required courses that all undergraduate students must take and the number of credits of each course. These include non-law and law courses. Based on this basic curriculum, law schools are able to develop their own curriculum taking into account their capacities, strengths, and local demand. At present, different undergraduate law degrees are offered in Vietnam, namely the Bachelor of Law, the Bachelor of Commercial Law, the Bachelor of International Law, and the Bachelor of International Trade Law. These degrees are based on three framework curricula standardised by the MOET.

Since 2010, however, these framework curricula have no longer been mandatory for Vietnamese law schools. This means that legal education institutions in Vietnam can now design law curricula in their

⁴⁴ See Can Tho University Faculty of Law, *General Introduction* (3 October 2014) <<http://sl.ctu.edu.vn/?params=thong-tin-chung/gioi-thieu/gioi-thieu/n1363>>.

⁴⁵ See Vinh University Faculty of Law, *The Introduction to Vinh University Faculty of Law* (17 May 2016) <<http://khoaluat.vinhuni.edu.vn/gioi-thieu/lich-su-phat-trien/seo/gioi-thieu-khoa-luat-truong-dai-hoc-vinh-65930>>.

own way. The only compulsory component law schools have to include in the curriculum is political and ideological subjects such as Marxist-Leninist Philosophy, Political Economy, Socialist Science and History of Vietnamese Communist Party, Ho Chi Minh Thought.⁴⁶

Under the Vietnamese system, there is a distinction between a Bachelor of Law and a law degree specialising in commercial law, international law or international trade law. In the Bachelor of Law, students will study law on a general basis in the first three years followed by limited specialised courses in their final year. Students studying this degree tend to study all the areas of law but there is limited opportunity for them to study any of these areas in depth. In contrast, the commercial law, international law, and international trade law degrees are designed to provide students with in-depth knowledge of these areas. While the former is the traditional form of Vietnamese legal education, the three latter forms have only been introduced in some Vietnamese law schools in the last ten years.

The introduction of these new law degrees is a positive response by Vietnamese legal education to the legal profession's demands. A growing international-integration-oriented Vietnamese economy is demanding more commercial and international lawyers. In particular, since Vietnam's access to the WTO in 2006,⁴⁷ the increase in international transactions between Vietnamese and foreign companies has challenged the country's legal profession. These new law degrees have made Vietnamese legal education more diverse and students now have options to study law on either a general or a specialised basis. To some extent, these education options are also helpful for students to plan for their future career. Additionally, the general Bachelor of Law and specialised bachelors law degrees can all lead to the admission to the profession.

2 *Training Structure*

The Vietnamese undergraduate law curriculum consists of three parts of knowledge, namely general, fundamental and specialised knowledge. Although it may vary school by school, the total number of credits required for law students often ranges from 123 to 170, which amounts to approximately 52–57 courses (subjects). Quite often, an undergraduate law student takes seven to ten courses per semester. This means that on average, a student may spend approximately 24 to 30 hours weekly participating in class activities with law teachers. This is not to mention time students have to spend on group assignments, self-study and teachers' consultation.

The general knowledge component, often introduced to first-year students, includes mainly non-law courses such as Marxist-Leninist

⁴⁶ Interviews conducted by author.

⁴⁷ Vietnam started to negotiate for its access to WTO in 1995 and officially became a member of this multinational trade organisation in 2006. See World Trade Organization, *General Council approves Viet Nam's membership* (7 November 2006) <https://www.wto.org/english/news_e/pres06_e/pr455_e.htm>.

Philosophy, Political Economy, Socialist Science and History of Vietnamese Communist Party, Ho Chi Minh Thought,⁴⁸ Foreign Languages, Psychology, Sociology, Vietnamese Culture, History of the Vietnamese State and Law, International History of State and Law, and more. These courses are designed to provide students with a general understanding of the state, law, society, and other relevant disciplines and create a foundation for studying law in later years. Many of these courses, however, are about ideology, which some scholars believe is intended to create a socialist orientation in the learners and to build up their socialist awareness.⁴⁹

There are various compulsory courses in the fundamental knowledge component typically offered by all Vietnamese law schools. These courses include General Theory of State and Law, Constitutional Law, Administrative Law, Administrative Procedure, Criminal Law, Criminal Procedure Law, Civil Law, Civil Procedure Law, Economic Law, Labour Law, Land Law, Public International Law, Private International Law, Family Law, Law on Finance, Environmental Law, and Banking Law.⁵⁰ In Vietnam, this component of knowledge is considered to be 'fundamental elements' in the Bachelor of Law degree and consequently required for all undergraduate law students.

The issue of required fundamental knowledge is not unique to Vietnamese legal education. In the Japanese system, for example, there are six fundamental law areas (the Civil Code, the Commercial Code, the Criminal Code, the Constitution of Japan, the Code of Criminal Procedure, and the Code of Civil Procedure) required for all undergraduate law students.⁵¹ These areas of law also constitute a significant part of the Bar Examination that most Japanese law students will take. Similarly in Australia, the Priestley 11⁵² identifies 11 core learning areas in legal education as the 'academic requirement' for admission to practise law. Accordingly, Australian law schools have included these areas of knowledge into their curricula as required courses. In Victoria, for example, the compulsory Priestley 11 subjects include Criminal Law and Procedure, Torts, Contracts, Property (both

⁴⁸ Bui, above n 2, 139.

⁴⁹ Ibid.

⁵⁰ Tan, above n 1, 192.

⁵¹ See, eg, Riles and Uchida, above n 11, 10-11. See also Constance O'Keefe, 'Legal Education in Japan' (1993) 72 *Oregon Law Review* 1009, 1010-12.

⁵² See, eg, Vivienne Brand, 'Decline in the Reform of Law Teaching? The impact of policy reforms in tertiary education' (1999) 10 *Legal Education Review* 109, 125-7. Brand explains that due to the problems generated by different admission rules in the Australian States and Territories, a Consultative Committee of State and Territory Law Admitting Authorities was established in early of the 1990s. Chaired by Justice LJ Priestley, the Committee released a Discussion Paper on Uniform Admission Requirements in 1992. Generally, the Discussion Paper supported the specification of broad core academic learning areas in which applicants for admission to the legal profession would need to demonstrate basic knowledge and competence. These include Criminal Law and Procedure, Torts, Contract, Property (including Torrens System Land), Equity (including Trusts), Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence, Company Law, Professional Conduct (including basic Trust Accounting). These are commonly known as the Priestley 11.

Real and Personal), Equity (including Trusts), Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence, Company Law, and Ethics and Professional Responsibility.⁵³ To some extent, the required fundamental academic knowledge for admission is necessary to 'standardise' legal education and the legal profession of a country.

Similar to those in other civil law jurisdictions, Vietnamese legal education places considerably strong emphasis on the teaching of legal doctrine, principles, and basic codes. This is premised on a common perception that students should have a fundamental understanding of legal theories and principles in order to better study legal codes and be able to effectively participate in skills training courses.⁵⁴ The fundamental knowledge, therefore, should be introduced to students at early stages of the legal education process. The emphasis on the teaching of legal doctrines and rules has in turn made lectures the most popular teaching methodology in civil law countries' law schools.⁵⁵ In Vietnam, lectures appear to be the most common way for law teachers to address the pressure of delivering a large volume of legal knowledge.

In the specialised knowledge part, Vietnamese law schools design their own courses based on their strengths, the availability of human resources, and practical demands. The specialised knowledge is often delivered to final-year students. Given that these students have already studied fundamental courses, a specialised course is designed to provide them with in-depth knowledge of one law area. For example, fourth-year HUSL students can study specialised courses such as The Protection of Human Rights in Civil Law, Law on Labour Market, Law on Enterprise, Law on Land Use Planning, and more. Although it varies school by school, a specialised course is often designed and offered within an academic unit. Since most Vietnamese law schools have adopted the credit-based system, students now have the opportunity to choose elective courses in their interest. These elective courses often fall within the specialised knowledge component.

⁵³ For detail on the requirements for admission to the legal profession in Victoria, Australia, see Victorian Legal Admissions Board, *Qualifications and Training* (8 November 2016) <<https://www.lawadmissions.vic.gov.au/qualifications-and-training>>.

⁵⁴ See Charles R Irish, 'Reflections of an Observer: The International Conference on Legal Education Reform' (2006) 24 *Wisconsin International Law Journal* 5, 8-9.

⁵⁵ *Ibid.*, 8.

IV THE CHALLENGES OF VIETNAMESE LEGAL EDUCATION

A Law Graduates Lack Professional Knowledge and Skills

Globally, legal education has been criticised⁵⁶ for not effectively preparing students for the profession.⁵⁷ A similar problem is happening with the Vietnamese system where lack of professional knowledge and skills has been identified as a long-standing limitation. Sidel and Pham have described Vietnamese legal education as a system in which ‘students rarely learn practical skills, and have limited opportunities to contribute either to society or to the promotion of social justice and the rule of law’.⁵⁸ Many others maintain that the current teaching system is too theoretical and does not provide students with practical skills necessary to function effectively as lawyers.⁵⁹ While professional skills such as negotiation, consultation, fact investigation, client interviewing, mediation and communication are commonly taught at many law schools around the world,⁶⁰ they are absent from Vietnamese law

⁵⁶ See, eg, American Bar Association Section of Legal Education and Admission to the Bar, ‘Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and The Profession: Narrowing the Gap’ (Report, 1992) 4-5; Roy Stuckey et al, ‘Best Practices for Legal Education: A Vision and Roadmap’ (Clinical Legal Education Association, 2007) 1-2; William M Sullivan et al, *Educating Lawyers: Preparation for The Profession of Law* (Jossey-Bass, 2007) 4.

⁵⁷ See, eg, Margaret Martin Barry, ‘Practice Ready: Are We There Yet?’ (2012) 32 *Boston College Journal of Law and Social Justice* 247, 247.

⁵⁸ See Sidel and Pham, above n 3, 7.

⁵⁹ Interviews conducted by author. ‘Although Vietnamese legal education has improved and developed considerably in the last more than 20 years, the current system still focuses heavily on the teaching of legal theories and principles and lack practical and skills training. This has been seen as a principal reason that make Vietnamese law graduates not ‘employment-ready’ (From an interview with the dean of a Vietnamese law school.) ‘I think Vietnamese law school have not taught their students many necessary practical skills required by the legal profession. As a lawyer working for a business group, I have recruited many law graduates to work in our Department of Legal Affairs but in most cases, we have to provide them further training before we can actually have them to work for us. I completely think the current system need to be reformed and more attention should be paid to practical and skills training’ (From an interview with a lawyer working for a business group in Da Nang city, Vietnam.) See also Bui, above n 2, 136-7.

⁶⁰ For examples of professional skills courses offered at American law schools, see, eg, Lyman Johnson, Robert Danforth and David Millon, ‘Washington and Lee University School of Law: Reforming the Third Year of Law School’ in David M Moss and Debra Moss Curtis (eds), *Reforming Legal Education: Law Schools at the Crossroads* (Information Age Publishing, 2012) 11, 14-24; Michael Hunter Schwartz and Jeremiah A Ho, ‘Curriculum Reforms at Washburn University School of Law’ in David M Moss and Debra Moss Curtis (eds), *Reforming Legal Education: Law Schools at the Crossroads* (Information Age Publishing, 2012) 41, 41. In Australia, courses teaching professional skills are offered by almost all law schools. See Monash University, *Undergraduate – Area of study* (8 November 2015) <<http://www.monash.edu.au/pubs/2015handbooks/aos/law-electives/>>; University of New South Wales, *Undergraduate Courses* (31 October 2016) <<http://www.law.unsw.edu.au/courses/undergraduate/5>>; University of Melbourne, *MC-JURISD Juris Doctor* (22 January 2009) <<https://handbook.unimelb.edu.au/view/current/MC-JURISD> >. In Canada, the teaching of professional skills is also commonly seen. See Dalhousie University,

school curricula. This can be seen as a major gap in the Vietnamese system.

Professional training is not an objective of Vietnamese legal education. Vietnamese law schools provide students with a general education that emphasises the teaching of legal doctrines, rules, and various basic codes. Professional knowledge and skills training is the business of the Vietnamese Judicial Academy. Consequently, law graduates in Vietnam often lack professional skills, the capacity to apply legal knowledge to resolve practical problems, and the ability to think creatively. From the legal profession's perspective, the 'products' of Vietnamese law schools are not yet professionally 'practice-ready'.⁶¹

This is not to mention the demand created by the globalisation and international integration for the production of 'global lawyers'. Under the pressure of globalisation, lawyers have to be able to function more effectively in an increasingly global legal marketplace.⁶² Global lawyers, as defined by Wenzler and Kwietniewska, are legal practitioners knowledgeable in not only the law of one country but also foreign law and international law.⁶³ A global lawyer is able to effectively handle transnational and international legal matters and address the complexity of a legal profession created by globalisation, and is expected to efficiently use at least one foreign language in their professional activities.⁶⁴ Vietnam is still far from training this type of lawyer.

B *Vietnamese Legal Education is Disconnected from the Legal Profession*

As can be seen from the above discussion and unlike the situation in many other countries,⁶⁵ Vietnamese legal education is disconnected

Course Information <<http://www.dal.ca/faculty/law/current-students/jd-students/course-information.html>>; University of Toronto, *Course List (2016-2017)* <<http://www.law.utoronto.ca/academic-programs/course-calendar>>.

⁶¹ See, eg, Nguyen Van Tuan, 'To Chuc va Hoat Dong Luat Su: Thuc Trang va Phuong Huong Doi Moi' ['Organization and Operation of Lawyers: Reality and Orientation for Renewal'] (1997) 2 *Jurisprudence Journal* 38, 41.

⁶² See, eg, Frank S Bloch, 'Access to Justice and the Global Clinical Movement' (2008) 28 *Washington University Journal of Law & Policy* 111, 114.

⁶³ See Hariolf Wenzler and Kasia Kwietniewska, 'Educating the Global Lawyer: The German Experience' (2012) 61 *Journal of Legal Education* 462, 462-6.

⁶⁴ Ibid.

⁶⁵ The United States, England, Australia, and India are examples of this relationship. In the United States, for example, the American Bar Association – missioned to oversee the American legal profession - has a relatively major influence on the content, teaching methods and accreditation of legal education. See, eg, A Kenneth Pye, 'Legal Education in an Era of Change: The Challenge' [1987] *Duke Law Journal* 191, 201-2. In England, legal education is heavily influenced by the Law Society and Bar Council. See, eg, Robin Handley and Damien Considine, 'Introducing a Client-Centered Focus into the Law School Curriculum' (1996) 7 *Legal Education Review* 193, cited in Jeff Giddings, 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10 *Legal Education Review* 33, 52. In Australia, there is a close link between legal education and the legal profession, and this is believed to be an important factor affecting the development of Australian scholarship. See, eg, Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987)

from the legal profession.⁶⁶ In Bui's opinion, although there is an increasing demand by the legal profession for commercial lawyers, Vietnamese law school curricula are still designed with a heavy emphasis on litigation practice.⁶⁷ In addition, as Vietnam becomes increasingly involved in international business transactions, there is a growing demand for lawyers knowledgeable in international trade and efficient in foreign languages.⁶⁸ Vietnamese legal education, however, places relatively limited emphasis on either of these.

At a national level, there is some recognition of the training limitations. *Resolution 48/NQ-TW* states: 'The training and improving of legally-qualified officials and conducting legal research projects have not yet caught up with the demands of reality'.⁶⁹ In fact, the legal profession's demand for practical skills training is obvious in Vietnam. However, Vietnamese legal education, a long-standing knowledge-based system shaped by 'socialist orientation' theories,⁷⁰ is insufficiently accountable to the longer-term interests of the State or the profession and has been failing to respond to this demand. As Bui argues, the current legal education system has responded only marginally to the legal profession's requirements.⁷¹ Problematically, Vietnamese law schools are seen to be caught in the tension between a 'state ideology that insists on training students to become loyal state officials and a growing social demand for professional skills and globally relevant knowledge'.⁷² In this regard, it seems that training independent thinking law graduates is not the priority of the current Vietnamese legal education system.⁷³

50 *Modern Law Review* 709, 710-13. India is also a country where legal education and legal practice are closely connected to each other. The Bar Council of India, established as a regulatory body to oversee Indian legal education system and legal profession, is a key driver ensuring the training of Indian lawyers in line with lawyering career in India. See, eg, Jane E Schukoske, 'Legal Education Reform in India: Dialogue Among Indian Law Teachers' (2009) 1 *Jindal Global Law Review* 251, 259.

⁶⁶ Interviews conducted by author. 'Under the current legal education system in Vietnam, each of law schools accommodates a big number of students and this has made it challenging to build and maintain a close link between legal education and the profession. The fact that law teachers are not allowed to practise law and participate in litigation has limited opportunities for them to learn practical legal knowledge and professional skills so that they could transfer to their students. Consequently, what law schools teach their students may be something not required by the profession, and vice versa' (From an interview with the dean of a law school in Vietnam.)

⁶⁷ Bui, above n 3, 306.

⁶⁸ See, eg, Luu Tien Dung, 'Nhan Viac Viet Nam Gia Nhap WTO – Nghi Ve Dao Dao Phap Luat O Viet Nam' ['On the Occasion of Vietnam Joining the WTO, Think About Legal Education in Vietnam]' (2007) 7 *Journal of People's Courts* 10, 10-16; Mark Sidel and Duy Nghia Pham, 'Building Clinical Legal Education in Vietnam' (Final Report, UNDP Vietnam, 2010) 6.

⁶⁹ Central Committee of the Vietnamese Communist Party, above n 25.

⁷⁰ Bui, above n 3, 303-6.

⁷¹ *Ibid*, 299.

⁷² *Ibid*, 300.

⁷³ See section III A above for a discussion on the objectives of Vietnamese legal education.

The disconnect between legal education and the legal profession has been exacerbated by Vietnamese legislation forbidding teachers to participate in litigation. Vietnamese law teachers — classified as public officials — are not allowed to be involved in litigation. This regulatory barrier has constrained law teachers in teaching students. It has limited opportunities for law teachers to learn ‘law in context’ and build up practical knowledge and professional skills. In the Vietnamese context, this deficiency is damaging their credibility in front of their students. In the dynamic and complex legal profession, an understanding of black-letter law only is never enough for law teachers to prepare students to be ‘practice-ready’. In the light of a growing demand for professional knowledge and skills, the author argues that Vietnamese law teachers should be permitted to practise law. This is an important reform Vietnam should consider in the near future.

C Vietnamese Law Schools Lack Autonomy and Flexibility

Lack of autonomy and flexibility is identified as another problem facing Vietnamese law schools and legal education. Sidel and Pham, for example, maintain that ‘[I]legal education in Vietnam remains relatively inflexible and still over-dominated by central policy making, in need of new and original thinking if it is to improve quality as well as increase autonomy and institutional authority in training law students’.⁷⁴

Similarly, Nguyen believes that because of Vietnamese law schools’ limited self-determination, their curricula tend to be rigid and unlikely to meet the legal profession’s requirements.⁷⁵ At present, Vietnamese law schools have relatively limited authority in designing what and how to teach their students; in hiring, promoting or terminating faculty members; or in introducing new curricula. In most cases, the influence of the MOET, the MOJ and their affiliated universities on the operation and development of Vietnamese law schools remains significant. In a single-party-ruling and highly centralised country like Vietnam, it is not surprising that the government imposes close supervision on the education system in order to ‘shape’ students’ ways of thinking. Particularly, the mandatory ideological courses mentioned above⁷⁶ are considered as one of the instruments for the Vietnamese Communist Party to educate and produce the so-called Vietnamese ‘socialist’ people.

Universities’ lack of self-determination was recognised by Chirof and Wilkinson as a major weakness of the Vietnamese education system. In their view, universities’ limited autonomy is a principal challenge that pulls back the development of Vietnamese higher education. In reforming Vietnamese higher education, therefore, they

⁷⁴ Sidel and Pham, above n 3, 7.

⁷⁵ See Nguyen Van Quang, ‘Legal Education in Australian Law Schools: Some Analysis and Experience for Vietnam Legal Education in the Context of International Integration’ (2012) 11 *Journal of Jurisprudence* 59, 67.

⁷⁶ Interviews conducted by author, above n 46.

argue that '[w]ithout a fundamental reordering of the relationship between academic institutions and the state, no level of financial resource will be enough'.⁷⁷ Similarly, the 2009 *US-Vietnam Education Task Force Report* noted that 'Vietnamese education institutions must be able to operate with greater autonomy as well as greater accountability ...'.⁷⁸

Limited autonomy is not unique to Vietnamese law schools. For example, in Japan, the legal education system is heavily influenced by the Bar Examination. Designed and controlled by the government, the Japanese Bar Examination is obvious evidence of the government's involvement in legal education.⁷⁹ In Europe, Germany is another civil-law jurisdiction experiencing significant governmental engagement in legal education through the state-governed bar examinations.⁸⁰ Each of the German bar examinations concentrate on the 75 per cent of required law curriculum subjects, leaving approximately 25 per cent of flexibility for law schools. Due to the importance of these examinations to pathways into the legal profession (for lawyers, prosecutors, judges or civil servants), German law students tend to consider the bar examinations more important than the reputation of the law schools they attended.⁸¹

Global practice reveals that self-determination is an important factor for law schools to develop and improve their delivery of legal education. Unlike those in Vietnam, Japan and Germany, Australian law schools enjoy relatively 'light-handed' government regulations.⁸² As Coper argued, thanks to the autonomy given by the government, Australian law schools can 'largely design their own future, constrained only by core curriculum coverage requirements and limited resources'.⁸³ Obviously, a large degree of autonomy will help law schools become more flexible in designing their curricula, hiring and promoting faculty members and introducing new teaching methodologies and law courses. When combined, these factors all help to improve the quality of legal education.

⁷⁷ See Laura Chirot and Ben Wilkinson, 'The Intangibles of Excellence: Governance and the Quest to Build a Vietnamese Apex Research University' (Research Paper, New School, Harvard Kennedy School and Fulbright Economics Teaching Program, January 2010) 4, cited in Sidel and Pham, above n 3, 25.

⁷⁸ See Department of State, United States of America and Ministry of Education and Training, Socialist Republic of Vietnam, 'US-Vietnam Education Task Force Final Report' (Final Report, US-Vietnam Education Task Force, 30 September 2009), cited in Sidel and Pham, above n 3, 26.

⁷⁹ See, eg, Stacey Steele and Anesti Petridis, 'Japanese legal education reform: A lost opportunity to end the cult(ure) of the national bar examination and internationalise curricula?' in William Van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education* (Edward Elgar Publishing, 2014) 92, 107-11.

⁸⁰ Wenzler and Kwietniewska, above n 63, 463.

⁸¹ Ibid.

⁸² See, eg, Michael Coper, 'Recent Developments in Australian Legal Education' (Research Paper No 10-85, ANU College of Law, 6 November 2010) 5, cited in Steele and Petridis, above n 79, 108.

⁸³ Ibid.

In the Vietnamese context, the author argues that giving law schools more autonomy is a necessary step in the reform of Vietnamese legal education.

*D Law Graduates Lack the Capacity to Think Independently,
Creatively and Critically*

One of the most important missions of legal education is to teach students how to ‘think like a lawyer’.⁸⁴ To some extent, ‘thinking like a lawyer’ can be understood as being the ability to think independently, creatively and critically. Under current globalisation and competition pressure and, in order to cope with the complexity of legal problems, it is obvious that lawyers are required to have not only a broad base of knowledge but also a good thinking ability.⁸⁵ In addition to professional skills and values, it is important, therefore, to teach students how to think critically, to argue persuasively and to write effectively.⁸⁶

In the Vietnamese system, however, law graduates’ lack of capacity to think creatively, independently and critically remains a problem. This deficiency appears to result from the combined effect of the structural issues discussed above and the ‘teacher-centred’ training style commonly employed in the education system. Known as a ‘one-way-communication’ approach, this primitive education approach allows teachers to deliver lectures while students passively listen and take notes.⁸⁷ Analytical and problem-solving skills have seldom been introduced, developed or practised. Communication and interaction is also hardly found partly because teachers and students are accustomed to this passive ‘one way’ of teaching and learning.⁸⁸

Sometimes, teachers desiring interactive education encourage students to raise questions, participate in class discussion, and criticise legal matters. However, the pressure created by the teaching of a large volume of legal doctrine, principles, and basic codes, does not allow them to have much interaction and communication. Consequently, during a typical four-year legal education period, students are not given much opportunity to practise and sharpen their thinking ability by critiquing, questioning, reflecting, or debating. More often, students are required to memorise various legal theories, rules, and provisions. The

⁸⁴ See, eg, Anthony G Amsterdam, ‘Clinical Legal Education - A 21st Century Perspective’ (1984) 34 *Journal of Legal Education* 612, 612.

⁸⁵ Lo, above n 11, 76.

⁸⁶ See, eg, Rodney J Uphoff, ‘Why in-House Live Client Clinics Won’t Work in Romania: Confessions of a Clinician Educator’ (1999) 6 *Clinical Law Review* 315, 325.

⁸⁷ Bui, above n 2, 145-147.

⁸⁸ Interviews conducted by author. ‘The one-way communication education style in Vietnamese law schools has limited greatly the interaction between students and teachers and among students’ (From interview with a practising lawyer.) ‘As a law teacher, I am aware that class interaction is important for students to learn the law and practice skills. However, under the current system, we are having the pressure of delivering a large volume of legal knowledge, principles and codes to students, leaving no time for interactive activities. It is a shame, but nothing we can do’ (From interviews with a law teacher.)

fact that students' performance evaluation is based mainly on 'memory ability' has forced and motivated students to try their best to 'learn by heart' what law teachers present in the lectures.

Perhaps another factor affecting the development of Vietnamese law students' thinking ability, is their relative youth when they begin law school. Similar to those in other civil-law jurisdictions, Vietnamese legal education is an undergraduate system admitting students directly from high schools. Unfortunately, during their education at primary, secondary, and high schools, Vietnamese students are also trained in the teacher-centred education style and accustomed to a passive learning environment. It is difficult, therefore, to require them to be independent and creative when they are at university.⁸⁹

In countries with a graduate legal education system, students enter law school when they are generally 22 or 23 years old. United States students may be even older because many of them choose to work for some time before starting their legal education.⁹⁰ In Vietnam, 18 is the common student age when they commence their higher legal education. Due to their limited social knowledge and work experience, students often struggle to understand complicated legal issues and the abstract concepts of justice and fairness.⁹¹ Additionally, limited living and working experience is a barrier that prevents law students from practising and improving their thinking ability. Over time, the problem of students' youth, combined with the teacher-centred education style, has contributed to the production of generations of passive Vietnamese law graduates with limited capacity to think independently, creatively and critically.

E Lack of Training in Legal Ethics and Professional Responsibility

The absence of professional responsibility and legal ethics knowledge from the existing curricula is another limitation of the current system of legal education in Vietnam. One possible reason for this situation is the two-stage legal education system, in which professional responsibility and legal ethics training is delivered by the JA. In the view of many scholars, however, the teaching of professional

⁸⁹ Interviews conducted by author. 'In my view, it is not fair to only blame Vietnamese law schools for this limitation. If you look more broadly, you can see that the problem lies with the whole education system from kindergarten to university. How can we expect our students to be active and interact with others during class if they have been educated in a system where one way communication education dominates?' (From an interview with a law teacher.)

⁹⁰ Uphoff, above n 86, 323.

⁹¹ Lo, above n 11, 53; Interviews conducted by author. 'From my observation, Vietnamese law students are quite young and lack social knowledge and life experience as most of them enter law schools directly from high schools. In my view, this is not good for legal education as studying law sometimes require students to deal with complicated legal issues and even political problems. I think it is time for Vietnam to think about the model of graduate legal education admitting only those graduated from one degree like some countries in the world. For example, in the United States or Australia the JD degree is a very good model to attract mature students to study law' (From an interview with a practising lawyer)

responsibility and legal ethics at these professional schools is ineffective.⁹² While ‘experiential learning’ is widely accepted⁹³ as an effective environment for teaching and learning professional responsibility and legal ethics, Vietnamese professional schools still witness the domination of lecture-based teaching methodology.⁹⁴ It is hard to believe a limited-interactive and non-reflective environment can effectively teach students professional responsibility and legal ethics.

Another factor contributing to the lack of professional responsibility and legal ethics at Vietnamese law schools may be the small proportion of law graduates intending to follow a career in law.⁹⁵ To some extent, this situation has made many people believe that professional responsibility and legal ethics knowledge is necessary only for those practising law. For this reason, Vietnamese law schools have not included these skills and knowledge in their curricula. To many Vietnamese scholars and practising lawyers,⁹⁶ however, this does not

⁹² G Khang, *Dao Tao Nghe Luat Su: Thi Hai Mon Ba Diem Van Dau* [‘Lawyer Training: Passing Examination with Three Marks for Two Subjects?’] (3 August 2006) Vietnamnet <www.vnn.vn/xahoi/lao_dong/2006/08/598255/>, cited in Bui, above n 3, 306.

⁹³ See, eg, James E Moliterno, ‘On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010’ (1996) 46 *Journal of Legal Education* 67 (arguing that the teaching of legal ethics in the experiential learning environment is effective and should be encouraged; and believing that the connections between skills training and ethics education will improve the teaching of both professional skills and professional responsibility); Richard A Posner, ‘The Deprofessionalization of Legal Teaching and Scholarship’ (1993) 91 *Michigan Law Review* 1921, 1924, cited in Deborah L Rhode, ‘Legal Ethics in Legal Education’ (2009) 16 *Clinical Law Review* 43, 48 (maintaining that interactive education, such as client representation, simulations and problem-solving, can help individuals enhance skills in moral analysis and build awareness of the situational pressures that can skew judgment); Robert Dinerstein et al, ‘Legal Interviewing and Counseling: An Introduction’ (2003) 10 *Clinical Law Review* 281, cited in Elliott Milstein, ‘Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China’ (2009) 22 *Global Business and Development Law Journal* 55, 60 (arguing that an experiential learning experience is powerful and very distinct from what can be learned in the classroom).

⁹⁴ Khang, above n 92; see also, Bui, above n 3, 306-307.

⁹⁵ Bui, above n 3, 303 (identifying research in 2008 that revealed that by the end of 2007, Hanoi Law University alone has produced approximately 53 000 bachelors of law, while the number of practising lawyers nationwide only reached just over 4 000). In addition, surveys carried out in some Vietnamese law schools in 2010 revealed that less than 20% of law graduates became practising lawyers even though there is a growing number of students studying law. This figure was reinforced by the interviews conducted by the author. For example, the interviews conducted in Cantho city with Vietnamese law teachers and lawyers revealed that less than 5% of CUFL graduates follow a lawyering career. In some other law schools, such as HUSL, VUFL and DEUFL, the interviews revealed that the number of graduates practising law fell below 10%.

⁹⁶ Interviews conducted by author. ‘In my view, Vietnamese law schools need to teach their students about legal ethics and professional responsibility whether or not their graduates will go out and practise law. I still believe that this knowledge are beneficial to both law graduates following lawyering career and those working in other professions, therefore, it is a mistake not to include this knowledge in law curricula’ (From the interview with a practising lawyer.) ‘In general, the mission of law school is to train students to be legally knowledgeable, practical, responsible and ethical. Therefore, I cannot see any reason not to include courses teaching

satisfactorily explain the absence of professional responsibility and legal ethics knowledge from Vietnamese law schools' curricula.

Learning to be responsible and ethical is something that is necessary for any employment pathway. As Cownie maintained, law schools should teach students how to think about a wide range of values whether they follow the lawyering career.⁹⁷ In fact, skills and values students obtain at law school are beneficial to occupations and professions other than law. From the clinical pedagogy perspective, Grimes argued that professional skills delivered by clinical legal education (CLE) 'may better equip a student to practise law or other chosen career now or at some later stage'.⁹⁸ Similarly, Rice argues that CLE is not only a method of teaching professional skills but also 'a means for conveying a sense of professional responsibility, personal morality, and the reconciliation of personal and structural notion of justice'.⁹⁹ In most cases, the professional skills delivered by law schools not only help students become more employable and competitive in the employment market, but also enable them to develop the so-called social or 'soft' skills.

In society generally, so-called 'soft' skills are critical for human functioning, for example, how to empathise with others' difficulties and recognition of social responsibility for others. Law schools should be not only a place to teach legal knowledge and practical skills, but also a school of life where students can learn the values and benefits of being human. As Matasar has pointed out, greater skills and values training would produce not only a better lawyer but also a better human being.¹⁰⁰ Consequently, many law schools around the world have included this aspect of knowledge in their curricula.¹⁰¹ It is reasonable and important for Vietnamese law schools, therefore, to teach their students about professional responsibility and legal ethics. The author argues that inclusion of professional responsibility and legal ethics courses in law curricula is an important reform that Vietnamese law schools should consider.

In summary, various challenges have been identified as reasons for the ineffectiveness of Vietnamese legal education. This state of affairs has led to a growing dissatisfaction with the quality of Vietnamese legal education among relevant stakeholders.¹⁰² Since the Vietnamese

professional responsibility and legal ethics in law curricula of law schools' (From an interview with a law teacher.)

⁹⁷ See Fiona Cownie, 'Alternative Values in Legal Education' (2003) 6 *Legal Ethics* 159, 171

⁹⁸ See Richard Grimes, 'Reflections on clinical legal education' (1995) 29 *Law Teacher* 169, 172.

⁹⁹ See Simon Rice, *A guide to implementing clinical teaching method in the law school curriculum* (Centre for Legal Education, 1996) 13.

¹⁰⁰ See Richard A Matasar, 'The Maccrate Report from the Dean's Perspective' (1994) 1 *Clinical Law Review* 457, 474.

¹⁰¹ See above n 60.

¹⁰² Interviews conducted by author. Most opinions in the interviews agreed that the current legal education system has failed in producing employment-ready law graduates and there is an urgent need for reform. 'The current legal education system focuses too much on the teaching of legal knowledge, principles and codes and lack

government has committed to building a society based on the rule of law, training generations of lawyers who are not only knowledgeable and ethical but also professionally responsible, becomes crucial. To that end, there is an urgency to reforming Vietnamese legal education.

V CONCLUSION: THE WAY FORWARD

This article has discussed the history, current state and challenges of Vietnamese legal education. Vietnamese legal education is a relatively new and underdeveloped system with less than 40 years of history. Although as many as 20 000 law graduates are produced every year, in most cases, they have to be re-trained or given further training before they can start to work. This situation mainly results from a system that over-emphasises the teaching of legal doctrine, rules, and basic codes and lacks professional training.

Many other challenges have been discussed in the article as barriers to the development of Vietnamese legal education. While the disconnect between legal education and the profession is a challenge for law schools in designing a suitable curriculum, law schools' lack of autonomy has also contributed to the problem. Due to limited autonomy, Vietnamese law schools cannot design their curricula in alignment with the legal profession's requirements. Further, law graduates' limited ability to think critically was identified as a challenge that results in law graduates not being practice-ready. A few reasons have been identified for this situation, notably the one-way-communication education style, the theoretical legal education system and the relative youth of law students in Vietnam.

Finally, lack of training in legal ethics and professional responsibility is a limitation of the current system that makes law graduates unprepared for practice. This situation is believed to be a result of the two-stage approach, in which general legal education is delivered by law schools but professional training, including legal ethics and professional responsibility, is the business of the JA.

The state of Vietnamese legal education presented and analysed in this article is a partial explanation for the ineffectiveness of the country's legal profession. Consequently, the reform of legal education and the training of qualified lawyers has been called for in Vietnam. Fortunately, the need for reform is widely accepted by all stakeholders — law teachers, law students, lawyers, governments, and national public agencies. The central objective of this article, therefore, is to establish the context for future discussions on the possibilities of this

professional training. Consequently in most cases, law graduates have to be given further training before they can start their job' (From an interview with a lawyer working for a business group.) 'As an employer, our firm has recruited law graduates from different Vietnamese law schools. However, we have to train them further before have them to work. This may be due to the current legal education system in Vietnam or may be the problem of law graduates themselves' (From an interview with a practising lawyer in Mekong delta region.); See also Central Committee of the Vietnamese Communist Party, above n 23-5.

reform. Various possibilities have been recently discussed as potential options for the reform of Vietnamese legal education.¹⁰³

First, one way to reform the Vietnamese legal education system might be adopting a graduate-level legal education such as the JD degree. Countries like the United States, Canada or Australia¹⁰⁴ have offered this type of legal education for quite a long time, while other countries such as Japan,¹⁰⁵ South Korea¹⁰⁶ or China¹⁰⁷ have recently adopted the JD or JM model as part of legal education reform. Given that there are similarities between Vietnam and China, Japan or South Korea in term of challenges facing the legal education system, a graduate-level legal education model might be a realistic option in the Vietnamese setting.

Second, curriculum reform is another possibility in the context of Vietnam. As mentioned earlier in this article, the current system in Vietnam is very theoretical and lacks practical and professional training. Therefore, it might be helpful if law curricula are redesigned to include courses teaching practical legal knowledge and skills.¹⁰⁸ Additionally, it is worth thinking about reducing non-law courses in the existing law curricula of Vietnamese law schools.

Third, it is also important to innovate teaching methodologies at Vietnamese law schools. In the current system, the lecture is seen as a reasonable method for law teachers to deliver a large volume of legal knowledge, principles and codes. However, this dominant teaching methodology has constrained the development of students' thinking and limited their opportunities for practical activities. Therefore, it is essential for Vietnamese law schools to move to interactive teaching methodologies in order to increase students' interaction in the legal education process.¹⁰⁹

Finally, clinical legal education should be considered as the potential for the future of Vietnamese legal education. Given its benefits and values, clinical legal education appears to be one the most promising options for Vietnam to address various challenges facing the legal education system.¹¹⁰ In particular, clinical legal education is expected to supplement the current theoretical legal education approach and prepare law graduates to be more employable by adding a practical

¹⁰³ See, eg, Ai Nhan Ho, 'Reforming the Vietnamese Legal Education System: Possibilities and Perspective' (2016) 23(2) *International Journal of Clinical Legal Education* 48 (discussing the demand and various possibilities for the reform of Vietnamese legal education).

¹⁰⁴ See, eg, Donna Cooper et al, 'The Emergence of the JD in the Australian Legal Education Marketplace and Its Impact on Academic Standards' (2011) 21 *Legal Education Review* 23, 32.

¹⁰⁵ See, eg, Shigenori Matsui, 'Turbulence Ahead: The Future of Law Schools in Japan' (2012) 62 *Journal of Legal Education* 3, 7-30.

¹⁰⁶ See, eg, Rosa Kim, 'The 'Americanization' of Legal Education in South Korea: Challenges and Opportunities' (2012) 38 *Brooklyn Journal of International Law* 49.

¹⁰⁷ See, eg, Matthew S Erie, 'Legal Education Reform in China Through U.S.-Inspired Transplants' (2009) 59 *Journal of Legal Education* 60, 64.

¹⁰⁸ Ai, above n 103, 60-2.

¹⁰⁹ Ibid, 63-4.

¹¹⁰ Ibid, 64-76.

and skills training component to the education process. As Sidel and Pham have concluded:

Law clinics and clinical legal education are a crucially important means toward achieving important goals in Vietnamese legal education and legal and judicial reform, including a focus on practical skills; strengthening of legal education; strengthening of free legal consultancy work for the poor and those seeking access to justice; working with key target groups, including the poorer and the more vulnerable, among Vietnam's population; and strengthen access to justice in Vietnam.¹¹¹

The fact that clinical legal education has been successful in many countries leads many people to believe that it can work in the Vietnamese setting.¹¹²

¹¹¹ See, Sidel and Pham, above n 68, 20.

¹¹² Interviews conducted by author. 'Clinical legal education is something the current Vietnamese legal education system needs. If properly designed and delivered, clinical legal education will help students study law in context in a very effective manner and assist them in preparing for future career' (From an interview with a law student in Vietnam.) 'Introduced into Vietnam not long ago, clinical legal education has proved to be a productive approach for teaching law. If finance and human resources secured, I believe that clinical legal education will have a very bright future in the Vietnamese legal education system' (From an interview with a law teacher in Vietnam.) 'In my view, clinical legal education can supplement theoretical legal education delivered among Vietnamese law schools. I believe that clinical legal education will develop further in Vietnam given that law school leaders are very supportive and that its values to legal education are huge' (From an interview with a judge in Vietnam.)