Introduction

Ulrich von Alemann/Detlef Briesen/Lai Quoc Khanh

This book is the result of an interdisciplinary conference on "the rule of law." Discussions about the topic, especially in the field of development cooperation, are legion. But our approach is somehow unique: It is the outcome of the first meeting of its kind in the Socialist Republic of Vietnam. Our workshop took place in autumn 2014 at the National University of Vietnam, University of Social and Human Sciences, Hanoi (USSH). The conference is thus more than only another document of the intensive German-Vietnamese cooperation; it also indicates the further development of the legal state which can be observed in Vietnam recently: to be able to discuss such an important issue at a university is a distinct sign of the deep transformation process which is currently occurring in the Southeast Asian country. Another element that makes our publication exceptional is that instead of beginning immediately with a highly specialized debate on the state of law in Vietnam from the perspective of one single academic discipline (which will surely emerge in the coming years), we started to discuss numerous facets of the subject "rule of law" arising from a multidisciplinary dialogue. For this reason, the participants and speakers, both [illegible] from various scientific disciplines in Vietnam and Germany: political, historical, social, economic and legal sciences (in which in Europe the topic is discussed most extensively), but also members of Vietnamese governmental and non-governmental organizations.

Our aim for the conference and the conference volume is to open up a dialogue about the rule of law between two very different legal cultures, the German-European and the Vietnamese, which we must locate in the complex set-

ting of Southeast or East Asia. As a result of the complexity of the subject matter, we have therefore refrained from providing a limiting definition of our discourse object "Rechtsstaat." We have learned to operate cautiously in order to avoid the danger of Eurocentrism, as well as too easily dismiss questionable circumstances as country-typical. And in general, caution is necessary, as the constitutional state, however much we may agree on the goal of its worldwide realization, was, on the one hand, always an ideological concept which served issues like the competition between the great powers for colonial possessions and later for the superpowers to expand their zones of influence. The alleged absence of the state of law served only too often to colonize states or to intervene directly in their internal affairs. On the other hand, however, serious violations of the rule of law cannot be so easily explained in terms of a different interpretation of the latter. But by all means different legal traditions have to be taken into account. It cannot be ignored that European states such as Germany follow the Roman tradition of law, while a country like Vietnam is historically and contemporarily deeply influenced by the Confucian tradition of custom and morale.

It is true that we have to accept distinct differences between Roman-European law, and Southeast and East Asian customs and morale, but both traditions also contain many common elements. They make it possible to form an intersection in the definition of the rule of law which is perfectly consistent with today's minimum requirements; in particular the binding of state action to law and justice, the exclusion of state arbitrariness, the principle of proportionality of state action, the division of powers and the independence of the courts, and also to examine the legality of state action, and thus legal certainty.

However, the individual contributions to our volume show that this catalogue is limited or extended by more criteria, or that individual aspects of the rule of law are placed at the center of attention. At the same time, at least three aspects are identified which were of considerable importance for the discussions during the conference:

- the exclusion of state arbitrariness and the principle of proportionality of state action,
- legal certainty and equality of all before the law,
- the enormous international relevance of contemporary trans- and international legal systems.

From the very beginning, we were less likely to document the already established current state of research, since this is more or less non-existent with regard to Vietnam, but to initiate research processes in a way which is appropriate to the relevance of the topic. The legal state is scientifically only adequately researched if it is addressed from various scientific and socio-political angles, also taking into account various perspectives from different legal cultures.

For this reason, our volume is the result of a twofold approach: the contributions from Vietnam stem mainly from the legal, political and historical sciences. They first and foremost document the efforts to improve the connection with international debates and research topics within the framework of the Vietnamese reform process (Doi Moi). Partial aspects of this endeavor then lead to those more specific questions which are addressed by the Vietnamese authors in this volume. They can be specified here briefly as follows.

The contributions by Nguyen Thi Hoi, Pham Duc Anh and Vu Thi Phung deal with the history of Vietnamese law for the period before the middle of the nineteenth century, when the colonization by the European Great Power, France began. The authors question the situation in Vietnam prior to colonization using criteria such as state arbitrariness and proportionality of state action. Since the state in the early modern times, in Europe as well as in Asia, consisted essentially of the ruling monarch and his officials, a discourse on arbitrariness and proportionality always implicitly criticized the ruling monarch. In our context, however, perhaps a more important goal of the contributions is recognizable: to search for pre-colonial traditions and to make these usable for today's societal and political change in Vietnam.

Especially in Vietnam, the division of powers between legislature, executive and judiciary, as defined in most contemporary constitutions, is a decisive feature of the rule of law. This view is at least largely accepted in contemporary debates with particular emphasis on the independence of the judiciary. The contributions by Lai Quoc Khanh and Nguyen Thi Chau Loan therefore focus on the division of powers: Either as an attempt to demonstrate its relevance for the entire constitutional and societal development of Vietnam or to design models for the implementation of a more independent judiciary.

Another focal point is the problems of corruption and low compliance of functionaries in the implementation of legal norms. Such questions are being revived in Vietnam today either with reference to the teachings of the found-

ing father of the nation, Ho Chi Minh, or are more and more addressed in the traditional (Confucian) sense as improvements in the education of officials (Lai Quoc Khanh/Nguyen Ngoc Anh, Nguyen Anh Cuong, Hoang Thi Kim Que, Nguyen Thi Thuy Hang/Phan Duy Anh and Bui Xuan Duc). In addition, a number of contributions (from Dinh Xuan Ly, Duong Xuan Ngoc, Phan Xuan Son and Vu Cong Giao) deal with the contemporary constitution of Vietnam. The two main topics are the problem of whether and to what extent the reform process in the country is adequately secured, and whether the reforms provide the necessary preconditions to ensure especially economic cooperation with Vietnam's neighboring countries.

The contributions from Germany are also an outcome of a respective approximation to the problems of the legal state. They are more generalized and are primarily geared to developing discussions for future cooperation. Since the authors come from various scientific disciplines, these articles reflect the diversity of today's debates about the constitutional state. The contributions from Germany provide key concepts and theories of the scientific discourse about the constitutional state and the development of law, also in transnational and international contexts.

Legal pluralism is such a key concept. Detlef Briesen uses it to describe the various forms of discrimination by law in colonial states, a condition which has also been felt in Vietnam since the conquest by France, and which has had a profound impact until today. Another key concept is that of governing by law. Julian Krüper's contribution is concerned with the question of how the constitutional state can act "constitutionally" in its everyday practice without always referring directly to the idealistic provisions of the constitution. Michael Baurmann and Liu Mengyue focus their article on "trust", a category which at first sight is a non-legal one. They ask how in an East Asian society with many similarities to Vietnam, namely the Chinese society, trust in business relations can be established without formal legal guarantees. Justus Haucap follows a similar approach and points out the importance of institutional and informational requirements for modern market economies. The contributions by Thomas Schmitz and Ulrich von Alemann discuss the development of transnational and international law – on the one hand, the exemplary creation of transnational law by the European Community, on the other hand the increasing role of international organizations in the creation of law.

These terms and theories are certainly of some importance for the future debate on the constitutional state in Vietnam and elsewhere. During the discussions at the conference and in the articles in this volume, the enormous gap in current research has become more visible. For further research we propose to focus on the different periods of modern Vietnamese history and their respective relation to a state of law.

- Before the colonization by France, the Nguyen dynasty's rule in particular was predominantly based on concepts of governance and administration which originated from contemporary China. The rule of law, as well as the entire legal system, were not determined by the formalized European (Roman) law but by the Confucian concept of custom and morale. It was based on trust in the moral integrity of the emperor and his mandarins.
- With the colonization, France established legal pluralism in Indochina, a common concept of colonial rule to discriminate the "native subjects". Consequently, the validity of Confucian-law was increasingly limited to the marginalized Vietnamese village population. The French "Etat légale" was based on arbitrary decisions. It not only failed to create a system of legal certainty and equality but even established systematic discrimination and injustice by law. The French colonial authorities destroyed trust in law to such a degree that the "Etat légale" can even be understood as an essential source of the anti-colonial uprisings since World War I.
- With the August 1945 revolution, a process of enforcing "socialist legality" began, following the model of the Communist Bloc, although the founding father of modern Vietnam, Ho Chi Minh, distanced himself from these ideas, and so Vietnam never developed a theory of socialist legality like the contemporary GDR for example. This was also because Vietnam was constantly involved in wars for almost 50 years, from the Japanese occupation in 1940 until the end of the Third Indochina War in the early 1990s.
- Since the beginning of the reform era (Doi Moi) in the mid-1980s, the Vietnamese government has been seeking to define the rule of law for Vietnam and to implement reforms. A key impetus for the latter is, in particular, the need for legal certainty which is required by national as well as international investors or must be guaranteed in the context of the planned cooperation in ASEAN. The state of law in Vietnam is still in progress

From these four epochs, fascinating perspectives arise for further comparative law research, for which first ideas have been developed here in our volume.

This would not have been possible without solving the problem of translating complicated legal terms from Vietnamese into English. Therefore, we would like to express our very great appreciation to the translators, Dr. Dao Duc Thuan, Dr. Lam Minh Chau, and Tran Minh, MA.