



Law for What? Ideas and Social Control in China and Vietnam

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ABSTRACT

What explains varying legislative outcomes in authoritarian regimes? On issues related to regime legitimacy or political stability, legislative outcomes have been attributed to power division or social threat. The article complements the literature by examining two single-party regimes, China and Vietnam. China promulgated an assembly law in 1989 and Vietnam has not to date. Primarily based on original materials, including political memoirs, historical archives, and materials published by the legislature and public security organs, we show how contested ideas held by political elites about the function of law define the discursive premises of legislative deliberation and thereby shaping legislative outcomes.

Collective protests are a major threat for authoritarian regimes. However, not all authoritarian regimes promulgate legislation to address this problem. Consider the cases of China and Vietnam. Both countries are single-party Communist regimes that recognize the freedom of assembly as a constitutional right.¹ Both have confronted problems with rising social protests. Both have strengthened their legal institutions in the name of law-based governance. Yet, China in 1989 adopted the Law on Assemblies, Processions, and Demonstrations (hereafter the Assembly Law) to regulate mass protests and assembly, while Vietnam to date has not adopted such a law.

Scholarship on Asian law and legislative studies of authoritarian regimes suggest that bureaucratic politics, interactions between state and non-state actors, and elite power divisions are the determinants of regulatory policy development and legislative outcomes. Building on the recent literature that addresses the different levels of constitutional openness to public debate in China and Vietnam, we contend that ideas significantly influence the legislative process by delineating the discursive parameters that orient and shape legislative outcomes. A growing literature has noted the importance of ideas in policymaking (Abdelal, Blyth, and Parsons 2010). Ideas can vary widely, providing overarching cognitive paradigms (Hall 1989) and worldviews (Goldstein and Keohane 1993), normative frames of appropriateness, and programmatic roadmaps for substantive policies. Comparative studies also show how ideational differences affect policymaking across countries (Bleich 2002; Blyth 2002; Sikkink 1991). As stated in Max Weber's (1946) famous dictum, "ideas' have, like switchmen, determined the tracks along which action has been pushed by the dynamics of interests."

In this article, we show how ideas influence legislative outcomes by delimiting the discursive boundaries of

legislative deliberation. Against the backdrop of broad historical and international contexts, the meaning of an assembly law in the two countries was very different, and this substantively shaped contestations during legislative discussions over the interests at stake given the varied implications of the law. In China, the preeminent leader Deng Xiaoping strongly believed in the beneficial relationship between law and stability, and oriented legislative debates to revolve around an order-maintenance assembly law. By contrast, in Vietnam, a discursive shift in the meaning of the law effectively reframed legislative discussions from how to enhance political order to protecting citizens' rights. Party political elites were thus cautious of the potential implications of the law for regime political stability, and sustained the existing legislative impasse.

In the following sections, we review the existing literature and alternative explanations for the different legislative outcomes in China and Vietnam. Next, we introduce our research methods and discuss our empirical findings. Specifically, we closely trace and analyze the contrasting interpretations about the function of law that undergird the politics of lawmaking in the two countries. Lastly, we conclude and consider the implications that this variance has for subsequent political developments and social protests in China and Vietnam.

Literature Review

What explains the divergent legislative outcomes in China and Vietnam? In this section, we consult three groups of literature. Studies of regulatory policies are instructive for understanding the variation. For example, state and non-state actors could interact and influence regulatory policy development in Asia, including China and Vietnam

(Gillespie and Peerenboom 2009). Case studies have also confirmed that bureaucratic politics and social actors shape various socioeconomic laws and policies (Truex 2018), such as environment (Mertha 2008; Wang and Liang 2019) and labor issues (Fu 2017; Howell 2015; Potter 2003).

However, policy or legislative negotiations and even deliberations involving social actors (He and Warren 2011) are subject to the procedural boundaries dictated by political elites (Kornreich, Vertinsky, and Potter 2012). In fact, it is difficult to “determine the causes and consequences of legal change in the ‘ping pong’ model of dialogue that deliberative authoritarianism affords” (Nicholson 2016, 204). Rather, when legislation has important implications for regime stability and legitimacy, we expect political elites to dominate the legislative trajectory, as in the case of religious regulations in China (Potter 2003).

Legislative studies of authoritarian and socialist regimes are also pertinent to the case of China and Vietnam. Functionalist explanations for the use of law in authoritarian regimes suggest that laws and legal institutions improve the longevity of authoritarian regimes by providing various social, economic, and political benefits for the regime (Ginsburg and Moustafa 2008; Moustafa 2014; Wang 2014). Similarly, Communist regimes such as the Soviet Union under Stalin and China under Mao apply an “authoritarian approach to law” (Solomon 1996, 447) that subjects legal and judicial actors to the command of political leaders. Laws, including civil laws, are similarly considered instruments for social control and economic growth (Krygier 1990; Markovits 1989; Molyneux 1985; Savelsberg 2000). Despite these functions, legislation is not always readily adopted. Legislative gridlock in authoritarian regimes has been explained by opposition within the ruling coalition (Truex 2018), opposition from increasingly independent legislators (Malesky and Schuler 2010), and autocrats’ strategic choice of checks and balances of government officials (Schuler 2018).

Based on this scholarship, the diverging legislative outcomes in China and Vietnam may be explained by either the greater extent to which the Chinese regime could benefit from the law, or by the fact that there has been greater opposition to the law among political elites in Vietnam. In the former explanation, the Chinese regime had stronger incentives to exercise legislative instruments of social control because social protests were more threatening in China. Differences in legislative outcomes, in other words, are conditional on the varying levels of threats. We call this the “threat” thesis. In the latter, political power is more fragmented in Vietnam than in China (Abrami, Malesky, and Zheng 2013; Malesky, Abrami, and Zheng 2011), and this has prevented the promulgation of an assembly law in Vietnam. We refer to this as the “structure” thesis. We contend that the validity of both the “threat” and “structure” theses ultimately hinges on power divisions, but their causal logics may be mutually contradictory. A study on the impact of social movements on legislative outcomes necessarily involves an examination of institutional power structures. The focus on the levels of threat from social movements in China and Vietnam implicitly treats regime collapse as a function of the scale of protests. However, scholars have shown that the impact of

mass mobilization is contingent on previously existing structural weakness and cleavages among ruling elites (Goodwin and Skocpol 1989). If we follow the “threat” thesis, then the passage of an assembly law in China implied a higher level of elite cleavage that permitted a more threatening social movement. In other words, a relatively more fragmented elite group in China conditioned the adoption of an assembly law. According to the “structure” thesis, however, a more fragmented power configuration would have prevented the legislative passage in China. This discussion aims not at discrediting these alternative theses. Rather, it reveals that a discussion on the impact of power structure on legislative outcomes also needs to take other significant factors into account. The “structure” thesis, for instance, cannot fully explain why a fragmented Politburo reached a consensus on the Law on Demonstration in 2005 but not in 2011 in Vietnam.

Our analytical focus on the role of ideas builds on the existing literature that compares the degree of “constitutional openness” between China and Vietnam. Scholars have noted that since 2011, the two countries have pursued diverging paths toward constitutional development (Fu and Buhi 2018). While there is potential for constitutionalism in China (Balme and Dowdle 2009), constitutional debates have been limited. For example, “Charter 08” of 2008 that challenged conditional protection of human rights in the Chinese Constitution was signed by over 300 prominent Chinese intellectuals, but was ignored by the party-state (Potter 2011). The intellectual debates about a particular “socialist constitutionalism” in China have otherwise centered on the constitutional role of civil society (He 2017). By contrast, Vietnam has allowed greater constitutional debate since 2011 (Nicholson 2016). The 2013 constitutional debate lasted between May 2011 and December 2013. Even though the debate might have been to strengthen the party’s procedural legitimacy instead of accommodating public demands for limited government (Gillespie 2016), it nevertheless enabled “the liveliest discussion on human rights” in Vietnam (Vu and Tran 2016, 235). Given that this 2011–2012 shift in Vietnam corresponded to the second legislative debate on the Law on Demonstration in Vietnam, it could have effectively injected the legislative agenda with rigorous public debates on human rights.

In this article, we show that ideas affect legislative outcomes by determining the discursive premises among political elites at the discussion stage in the legislative process. China and Vietnam exemplify two particular pathways—through powerful bearers of ideas, and through dominant discourses of the time. In China, the belief of prominent leader Deng Xiaoping directly established the discursive frames that bounded legislative deliberation. Debates thus centered on the imperative for a law aimed at curbing citizens’ rights to assemble and demonstrate in order to improve social stability, and on ways of ensuring rhetorical consistency between the assembly law and the constitutional provisions on citizens’ rights of assembly. In Vietnam, an assembly law was first understood as an instrument for enhancing political order, but was later viewed as a legislative safeguard of citizens’ constitutional rights. An emergent dominant discourse of

human rights amidst the constitutional debate in 2011 foregrounded this discursive shift and effectively framed the substantive contestation among political elites, which instead revolved around the implications of a rights-enhancing law for regime stability. Without a consensus about the potential impact of the law for regime stability, there is an absence of an assembly law in Vietnam, which may reflect deliberate ambiguity between reformists and non-reformists (Nicholson 2016) or structural gridlock.

Research Method

With a particular focus on the significance of ideas, we closely analyze the discourse of political elites who were involved in the legislative process. More specifically, in the case of China, to show how ideas gained influence, we demonstrate and explain the origin of the worldviews that the paramount leader Deng Xiaoping subscribed to *prior to* legislative discussions. Then, we follow the legislative process in 1989. In the case of Vietnam, we demonstrate the *shifting* interpretations of an assembly law in 2005 and 2011, when the Government proposed the law. We further situate these interpretations in the broader political context and the development of the rule of law in Vietnam.

There are a number of methodological challenges in demonstrating the influence of ideas on policymaking (Campbell 2002; Parsons 2016), most notably the entangled effect of ideational factors and non-ideational variables, and the absence of counterfactuals. To mitigate and overcome these challenges, we employ process-tracing methods to chart and document the sequence (Bennett 2010; Collier 2011) that led to the passage of the law in the case of China, and the legislative gridlock in the case of Vietnam. We rely primarily on first-hand materials in our analysis. In the case of China, to demonstrate Deng Xiaoping's worldviews, we primarily consult Deng's speeches. To trace the legislative process, our analysis is based on: (1) memoirs and diaries from top party leaders, including Zhao Ziyang (Chinese Communist Party general secretary between January 1987 and June 1989) and Li Peng (premier in 1989); (2) memoirs and diaries of, and reports from, key administrative and legislative leaders, including Wang Fang (minister of public security in 1989), Peng Zhen (chairman of the National People's Congress between June 1983 and April 1988), and Zhang Youyu (deputy chairman of the Law Committee of the 6th Standing Committee for the National People's Congress, or NPC); and (3) documents from administrative and legislative bodies, including all NPC discussions related to assemblies (*jihui*) between 1982 (when the new constitution that guaranteed citizens' rights of assembly was adopted) and 1989 (when the Assembly Law was passed), and annual reports from the Ministry of Public Security (MPS) to the NPC (coded as NPC-year-month-date).

In the case of Vietnam, we contend that the current legislative gridlock is conditioned by a discursive shift about the meaning of an assembly law from regulating mass movements to enabling collective protests. In tracing this shift, first, we analyze all publicly available transcriptions of legislative debates from 2005 (when the Government, the executive branch of the state, first proposed an assembly law to the legislature) to the present (when the law remains in impasse under the 14th Vietnamese

National Assembly, or the VNA). Second, we systematically examine all public documents and reports starting from the 9th National Party Congress (2001–2006, during which the Government first proposed an assembly law) to the current 12th National Party Congress (2016–present), as well as annual government reports since 2005. Third, we search for news reports by Vietnam's mainstream outlets using iterations in Vietnamese of the following keywords: Law on Demonstration (*Luật biểu tình*); protests or demonstrations (*biểu tình*); the right to demonstrate (*quyền biểu tình*); assembly (*hội họp*); and the right to assemble (*quyền hội họp*). These provide supplemental sources for reported statements by political elites.

In our comparative analysis, structural differences between China and Vietnam, namely, the greater power concentration in China and fragmentation in Vietnam, co-exist with the ideational differences highlighted in the analysis. To further clarify the influence of ideas on policymaking, we show that, despite the availability of alternative paths, the path taken was congruent with the ideas at the time. More specifically, in the case of China, we show that administrative regulations to cope with social disorder or collective protests were suggested but were considered inadequate as compared to law. In the case of Vietnam, we show that the division of power remained the same between 2005 and 2011, when the Government twice proposed an assembly law, but the discourse surrounding the law changed substantively. Although the Politburo reached a consensus in 2005 about the need for a stability-enhancing law, concerns among political elites have shifted since 2011 toward caution concerning the potential of the law to challenge the regime.

China: Paramount Leader and Law as an Instrument of Control

Drawing from the lessons of the Cultural Revolution that political mobilization could be destabilizing and detrimental for party leadership, Deng Xiaoping held unyielding views about the value of stability for development and the use of law to achieve it. Deng was the paramount leader in China at the time although he exercised his power outside of the highest-level formal institution, the Politburo Standing Committee (Pye 1993; Shambaugh 1993). Following the student movement in 1989, his attitude resulted in the drafting of an assembly law by the MPS and its passage in the legislature, the National People's Congress. Within the discursive boundary of an assembly law as an instrument of social control, the legislative discussion in 1989 was only to ensure rhetorical consistency between the Assembly Law and the 1982 Constitution, which guarantees citizens' constitutional rights.

The Cultural Revolution, Stability, and Law

The Cultural Revolution (1966–1976) was a time of mass movements and chaos. Throughout Deng's political career, he was purged three times, twice by Mao Zedong during the Cultural Revolution in 1966 and then again in 1976 (Vogel 2011). As a result, Deng considered stability and discipline more important than individual freedom, and the use of law

a superior alternative to the wishes of individual leaders or political movements for economic and political recovery. We illustrate this worldview through his speeches and two constitutional changes in 1980 and 1982.

For Deng, legislation, as opposed to commands from individual leaders, could improve policy stability. According to his remarks on December 31, 1978, “democracy has to be institutionalized and written into law, so as to make sure that institutions and laws do not change *whenever the leadership changes or whenever the leaders change their views or shift the focus of their attention*” (Deng 1978; emphasis added). Implicitly referring to the political and social turbulence precipitated by Mao Zedong and the Cultural Revolution, Deng advocated the use of law for policy stability. Following Deng’s speech, legal reforms began with the recovery or re-creation of judicial institutions and legal professionals (Peerenboom 2002; Wang and Liu 2019).

As early as 1980, Deng had suggested the importance of containing the freedom of speech and doing so through legislative changes instead of administrative regulations. The 1978 Constitution permitted the rights of the “big four” (article 45)—speaking out freely, airing one’s views fully, writing big-character posters (*dazi bao*), and holding great debates—a product of the Cultural Revolution. When *dazi bao* mushroomed on the streets in Beijing in 1979, Peng Zhen suggested imposing administrative regulations limiting their use (Wang 2011). However, Deng preferred to revise the Constitution. At the Central Committee meeting on January 16, 1980, Deng concluded that, “*when we sum up our historical experience, ... these practices have never played a positive role. The masses should have the full right and opportunity to express responsible criticisms to their leaders and to make constructive suggestions, but ‘speaking out freely and airing one’s views fully’ is evidently not the proper way to do that*” (Deng 1980; emphasis added).

One month later, during the 15th plenary session, the Central Committee proposed to the Standing Committee of the NPC to delete the “big four” from the Constitution. In September 1980, the third plenum of the fifth NPC passed the revision (NPC-1980-Sept-11).

Deng’s view on the importance of the legislative instrument to buttress political stability and unity (*anding tuanjie*) through regulating mass movements was most clearly stated at the Central Committee work meeting on December 25, 1980. At this meeting, Deng explicitly criticized the movement-style governance in the past and called for decrees to regulate mass movements and collective action. He suggested:

If stability and unity are disrupted, readjustment will be out of the question. ... It is the universal desire of our people to consolidate and develop political stability and unity. Sound ideological and political work is needed to mobilize and organize the masses to carry out, energetically and voluntarily, an effective struggle against all forces hostile to political stability and unity. *We should not mount a political movement to accomplish this, as we have done in the past. We should abide by the principles of socialist legality.* To this end, I suggest that in addition to the relevant inner-Party instruction, the Standing Committee of the National People’s Congress and the State Council should formulate and promulgate appropriate regulations and decrees. ... *To ensure stability and unity, I suggest that state organizations adopt*

appropriate laws and decrees calling for mediation in order to avoid strikes by workers and students. These documents should also rule out marches and demonstrations unless they are held by permission and at a designated time and place, forbid different units and localities from clubbing together for harmful purposes, and proscribe the activities of illegal organizations and the printing and distribution of illegal publications. This is a political struggle, but it must be carried out within the framework of the law. (Deng 1980; emphasis added)

As shown in this speech, Deng had advocated legislative measures to ensure stability, and more specifically, regulations and decrees limiting the freedom of marches and demonstrations. This belief in the stabilizing function of law through limiting individual freedom was informed by the lessons learned from the Cultural Revolution. In fact, specific articles in the 1982 Constitution guaranteeing citizens’ rights also reflected lessons from the Cultural Revolution, such as article 37 related to citizens’ freedom of person and article 38 related to the personal dignity of citizens.² They were to avoid the sort of arbitrary and unlawful detention and humiliation of persons by other individuals that had surged during the Cultural Revolution (Editors 1998, 33).

Whereas the 1982 Constitution guaranteed citizens’ rights and freedom of assembly and demonstration (article 35), this freedom was established within the broader framework of “socialist spiritual civilization” (*shehui zhuyi jingshen wenming*), which emphasized stability and discipline. Following the blueprint of the 1954 provisional constitution (*gongtong gangling*), the 1982 Constitution included article 35 for citizens’ rights of assembly. However, unlike the situation in 1954, when the People’s Republic was just built, following the chaotic Cultural Revolution a new theme for the regime was to construct “socialist civilization.” “Socialist civilization” first appeared in the party document “Resolution on Some Historical Questions of the Party since the Establishment of the Country,” in 1981, during the 6th Plenum of the party’s Central Committee. According to the document, the party was to:

Make greater efforts to build a socialist civilization, criticize the erroneous ideological trends running counter to the four fundamental principles, and strike at the counter-revolutionary activities *disrupting the cause of socialism.* This exerted a most salutary countrywide influence in fostering a *political situation characterized by stability, unity, and liveliness.*³ (emphasis added)

Deng Xiaoping clarified the meaning of “socialist spiritual civilization” in July 1982 when he addressed the Military Commission of the Central Committee. A socialist civilization is one “with a high cultural and ideological level, so as to inculcate ideals, morality, knowledge, and *discipline* in all our people” (Deng 1982; emphasis added). Soon after, building the “socialist spiritual civilization” was written into the party constitution in September 1982 and the state constitution in December 1982 (article 24). According to the general program of the party constitution, the party aimed at “building a high level of socialist spiritual civilization. Major efforts should be made to promote education, science and culture ... encourage the Chinese people to have lofty ideals, moral integrity, education and a *sense of discipline*” (emphasis added). Similarly, article 24 of the state constitution read:

The state strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education, and *education in discipline and the legal system*, and through promoting the formulation and observance of *rules of conduct* and common pledges by different sections of the people in urban and rural areas. (emphasis added)

With regard to the relationship between citizens' constitutional rights and the state's call for self-discipline, Peng Zhen's interpretation of the Constitution when he reported to the NPC in 1982 clarified the emphasis on self-discipline:

The draft for constitutional amendment included many articles related to citizen rights and responsibilities. It in fact also included the requirement of building socialist spiritual civilization. ... Protecting one's own rights and respecting others' rights are inseparable. ... *More importantly*, (the constitution) requires citizens to improve their sense of responsibility toward our nation, society, and other citizens. ... Establishing awareness for both rights and discipline that are consistent with socialist political system ... is an important part of building socialist spiritual civilization in the whole society. (NPC-1982-Nov-26; emphasis added)

To sum up, the constitutional changes and Deng's speeches show that, following the Cultural Revolution, Deng believed that political stability should trump individual freedom, and that laws, as opposed to administrative regulations or individual leaders' directives, were the appropriate instruments to regulate individual freedom and ensure stability. Even though the 1982 Constitution established citizens' rights of assembly and demonstration, it was understood as secondary to self-discipline and responsibility toward the overall goal of the party.

1989 and the Assembly Law

Deng's worldview about the importance of legislation for social and political stability had been expressed since the late 1970s, but the Assembly Law was only promulgated in 1989. The escalating protests and student movements in the late 1980s determined this timing. In fact, the NPC's law committee had considered an assembly law as early as 1979 (Wang 1989), when the amendment of the Constitution was being considered. Yet, it was not in motion until ten years later when the MPS submitted the bill. The MPS began the drafting process as early as 1982, but only submitted its first draft to the State Council in June 1988 (Wang 1989). After the slow process, however, the legislative progress was expedited between June and October 1989.

Deng's view about the function of law for social stability determined the discursive boundaries of legislative discussion. The substantive discussion between the MPS and the NPC ensured rhetorical consistency between the Assembly Law and the 1982 Constitution's guarantee of citizens' constitutional right of assembly.

Deng Xiaoping and the 1989 Assembly Law

By the late 1980s, two considerations prompted Deng to put an assembly law on the immediate legislative agenda. First, China's economic reform entered a crisis of inflation and corruption that was accompanied by small-scale but widespread demonstrations and protests from 1988 into 1989

(Zhao 2004). Second, given its open-door policy in economic development, China was now subject to the judgment of international observers and their investment decisions. Despite the availability of region-specific regulations on demonstration and assembly, law-based social control was considered most appropriate.

Deng was cautious about the dilemma he faced between suppressing domestic protests and appealing to foreign governments. When Deng met then new president George Bush on February 26, 1989, he emphasized the "overwhelming need" for China to maintain stability and hoped "our friends abroad can understand this point" (Deng 1989b). This comment came in the context of strained Sino-U.S. relations over Tibet (Vause 1989) and China's concern about "human rights-related" criticism from the United States (Kristof 1989). When Deng met with leading members of the Central Committee on March 4, he highlighted that China needed to signal to the world that chaos was not to be tolerated, and that the ends of maintaining stability and ensuring reform should justify the means of social control.

We should be careful about the means we use to control the situation. In particular, we should lose no time in drawing up laws and statutes, including ones to regulate assembly, association, demonstration, and the press and publishing. Anything that violates the law must be suppressed. China cannot allow people to demonstrate whenever they please, because if there were a demonstration 365 days a year, nothing could be accomplished, and no foreign investment would come into the country. ... We should make it clear at home and abroad that the purpose of tightening control is to maintain stability and to facilitate the reform, the opening to the outside and the drive for modernization." (Deng 1989a; emphasis added)

As shown above, to resume stability and to justify the means of social control, Deng made it clear that law-based repression was most appropriate. He was cautious about the negative impact on China's international image if repression had no legal bases in the form of codified law. After all, by the late 1980s, 17 provinces and municipalities had passed separate administrative regulations with respect to mass movements (Wong 2006; NPC-1989-July-03).

Deng's clear preference for cracking down on the protests and the use of law for social control was soon followed by developments on two fronts. First, a hardline stand was taken on student protests in 1989. Second, there was a rapid legislative process to promulgate an assembly law. Shortly after the speech in March, Deng decided at a small meeting on April 25 that the turmoil had to be stopped (Peng 2010a). The next day, the well-known editorial in the *People's Daily* laid out a hardline stand on the student protests. Following the students' hunger strike and occupation of Tiananmen Square, which disrupted Deng's plan for Mikhail Gorbachev's visit, Deng decided on the use of martial law at a meeting on May 17 attended by all Politburo Standing Committee members (Peng 2010a). The student movements were decisively repressed on June 4.

At the same time, the NPC resumed the discussion of an assembly law in May (more details later). The State Council quickly approved the MPS bill on assembly in June 1989, and the NPC Standing Committee passed it in October. In fact,

before the State Council Standing Committee meeting passed the bill on June 27, Wan Li, the chairman of the NPC Standing Committee, had already scheduled on June 26 a plenary session of the NPC Standing Committee for June 29 to discuss the draft. Between June 29 and July 5, the NPC Standing Committee reviewed the bill and agreed to invite further discussion. Between October 26 and 31, the NPC Standing Committee continued discussions on the revised draft, proposed a few more modifications of technical details on October 30 (Song 1989b), and passed the law the next day, effective immediately. The timing and rationale of the Assembly Law in 1989 can be summarized by a comment from Zhang Youyu, the deputy chairman of the Law Committee of the 6th NPC Standing Committee. When the NPC legal committee considered an assembly law in 1979, it was to be an executable statute for the upcoming 1982 Constitution. The 1989 assembly law, however, was to “deal with the current situation of turmoil, or even counterrevolutionary riot” (Zhang 1989, 38).

Substantive Discussion during the Legislative Process

Two institutions were heavily involved in the legislative process for the assembly law: the MPS, under the leadership of Wang Fang (in office April 1987–December 1990), and the NPC, under the leadership of Wan Li (in office April 1989–March 1993). Whereas the MPS explicitly called for the limitation of freedom of assembly and demonstration, the NPC labored to strike a substantive balance between social control and the constitutional framework.

Wang was a strong advocate for suppressing student movements. When the protests intensified in May 1989, Wang submitted a report on May 18 to Premier Li Peng, urging a unified front from the party center and the state council, and suggesting the use of martial law in some areas in Beijing (Gao 2003, 740). This suggestion was independent of the decision made by Deng Xiaoping. Upon receiving Wang’s report, Li confirmed with him that his proposal was consistent with the party center (Wang 2006). When Wang submitted the bill for an assembly law to the NPC Standing Committee in June 1989, improving social order was the main rationale he voiced. Based on his report to the NPC Standing Committee on July 3, 1989, the guiding idea behind the law was to ensure a stable and harmonious political climate to facilitate modernization and reforms. According to Wang’s report, the counterrevolutionary riot in June had its international context and social bases, but a particular method used by “a few bad people” (*jishaoshu huairen*) was to manipulate the masses and take advantage of the constitutional freedom of “assembly, procession, and demonstration” to spread capitalist liberalism, anti-party and anti-socialist sentiments, and to impose pressure on the party and government. Therefore, citizens’ constitutional rights of assembly, procession, and demonstration needed to be “conditioned on maintaining public order and social stability” (Wang 1989).

The NPC began discussions about an assembly law in May 1989. The NPC chairman Wan Li at first advocated a law to protect citizens’ constitutional rights and later complied with Deng’s decision for legislative social control.

Against a broader political debate about the relationship between the party and the NPC, Zhao Ziyang, then general party secretary, supported the empowerment of the NPC and, according to his memoir, the promulgation of an assembly law to protect citizens’ constitutional rights (Zhao 2009, 33). At the Politburo meeting on May 10, 1989, when Zhao explicitly invited the NPC Standing Committee to rule on the student movements (Peng 2010b), Wan spoke about the importance of democracy and listening to the students (Zhao 2009, 33–34). On May 22, two days after martial law became effective in Beijing, the NPC Chairmen’s Council was held in the absence of Wan, who was visiting Canada and the United States. Insisting on its constitutional position as the highest power organ of the state, the NPC Chairmen’s Council requested explanations from the State Council about the decision on martial law. Between May 22 and May 26, Deng’s position on martial law was communicated individually to provincial leaders and various national ministries (Peng 2010b). Peng Zhen (1991, 655–58), former chairman of the NPC Standing Committee, spoke to the NPC Chairmen’s Council on May 26, confirming the illegality of the riots and the legality of martial law. By May 27 when Wan returned to Shanghai from his overseas trip, he was immediately briefed on Deng’s decision and presented a speech prepared by the party’s central propaganda team on his behalf. Wan then officially declared his support for the party’s stance on the student protests (Peng 2010b).

During the substantive discussion of the legislative process, the NPC attempted to achieve rhetorical consistency between an assembly law and the 1982 Constitution (Zhang 1989). The NPC strived, at the stage of deliberation, to reduce the instrumental language in the bill by rephrasing various articles. Three days after the report made by Minister Wang of the MPS, the NPC Standing Committee General Office (*ban gong ting*) sent a notice on July 6, 1989, to its local branches at the provincial and municipal levels to solicit opinions from relevant government bureaus and mass organizations. After receiving feedback, the NPC Law Committee met for three days between October 19 and 21 to discuss the draft. The proposed changes not only specified certain articles, but in its wording prioritized citizens’ rights over the temporal condition, and depoliticized the law by eliminating mentions of the Communist Party. For example, article 1 of the 1989 Assembly Law was changed from “to maintain public order and social stability, continue the construction of socialist modernization, and safeguard citizens’ exercise of their rights to assembly, procession, and demonstration according to law” (drafted by the MPS), to “to safeguard citizens’ exercise of their rights to assembly, procession, and demonstration according to law and to maintain social stability and public order.” Article 2 of the MPS draft stated, “assembly, procession, and demonstration should not violate the basic principles of the constitution, or oppose the leadership of the Chinese Communist Party or the socialist system.” The revised version by the NPC removed the political condition (i.e. the party leadership and the socialist system) from the draft (Song 1989a).

As shown above, historical lessons had convinced China’s paramount leader Deng Xiaoping of the primary goal of

stability and the essential role of legislation to achieve it. Given his dominance among political elites, the discursive boundary of the legislative discussion was set. The substantive legislative discussion in 1989 was not about the limiting effect of the law on assembly, but about the formal consistency between the law and the Constitution.

Vietnam: Divided Power and Shifting Conceptions of Law

While China's Assembly Law bears the distinctive imprint of Deng's instrumentalist view of law, in Vietnam, the legislative impasse over the Law on Demonstration (*Luật Biểu Tình*) is indicative of a changing discourse on the primary function of the law. There was a notable shift in the conception of the law from a regulatory tool for social control to rights-enhancing legislation to safeguard citizens' rights to assemble and protest. Furthermore, the distribution of power within the Vietnamese Communist Party (VCP) and Politburo has been more diffuse than the distribution of power in China. Political elites sharply disagreed on the law's potential implications for regime political order and stability, which effectively contributed to the legislative impasse in Vietnam.

The First Legislative Proposal and Politburo Consensus in 2005

In April 2004, a major uprising broke out in Dak Lak province in the Central Highlands. Twenty to thirty thousand Montagnards protested government repression of religion and land expropriation. The protests ended with violent crackdowns and a lockdown of the area by police and military forces dispatched to restore order to the region.⁴ Hundreds of demonstrators were reportedly wounded and ten were killed during clashes with government forces.⁵ The Vietnamese government blamed the insurgency on a "conspiracy of domestic anti-regime factions" backed by "overseas instigation."⁶

Against a backdrop of social unrest, the Vietnamese Government (*Chính phủ*)⁷ first reported to the Standing Committee of the VNA, and proposed a legislative agenda for a law on demonstration in 2005. In response, the VNA Standing Committee instructed the Government to issue administrative decrees in the interim.⁸ Shortly after, in March 2005, the Government enacted Decree No. 38/2005/ND-CP (hereafter Decree No. 38) on "measures to ensure public order" (*một số biện pháp bảo đảm trật tự công cộng*). In September 2005, the MPS issued Circular No. 9/2005/TT-BCA (hereafter Circular No. 9) to provide detailed explanations and guidelines on select clauses and articles of the decree.⁹ Decree No. 38 and Circular No. 9 establish the only legal basis to date for the government to regulate and restrict mass protests and assemblies.¹⁰ Under this regulatory framework, public security agencies are granted broad discretionary authority for social control. Advance registration is required for mass assemblies and subject to review by the MPS.¹¹ Stipulations in the regulations also forewarn individuals from "abusing democratic freedoms to carry out or induce, incite, buy off, force others to gather en masse to

disrupt public order or to carry out other illegal acts" (Decree No. 38, article 5). Specifically, individuals are prohibited from "carrying banners, flags, or slogans in any form to mass rallies at public places in order to oppose the party's lines and policies and the state's laws" (Circular No. 9, article 2). Local governments and public security branches also possess the executive authority to further prescribe any other necessary measures. In cases where protestors do not comply, the regulations permit governmental officials to resort to coercion and other "supporting tools" or required means to "ensure public order" (Decree No. 38, article 9; Circular No. 9, article 9). As evidenced by the provisions in Decree No. 38 and Circular No. 9, the Government and the MPS principally created the regulatory framework for the purposes of managing and containing social mobilization and contention.

Two months after Decree No. 38 was adopted in 2005, the Politburo passed Resolution No.48-NQ/TW (hereafter Resolution No. 48) to signal its support for a legislative channel of social control. The resolution outlined the Politburo's vision of a "socialist law-based state," and the imperative for Vietnam to "promote the role and effectiveness of law in contributing to the management of society, the maintenance of political stability, economic development, international integration, the construction of a transparent and strong state, [and] the implementation of human rights, and the rights to freedom and democracy of citizens" (Resolution No. 48, 2005). Among these objectives, societal management and political stability were considered most important. As Nguyen Phu Trong, a long-standing Politburo member since 1997 and chairman of the VNA from 2006 to 2011, elaborated, "Being a law-based state, the state obviously needs to manage society by law and according to law" (1994, 60). It was this conception of the need for rule by law that led the Politburo to decide that a law on demonstration should be placed on the legislative agenda. As Resolution 48 simply states, among other objectives, a "legal system" (*hệ thống pháp luật*) and a "legal framework" (*khung khổ pháp lý*) are required to "clearly determine the rights and responsibilities of citizens in exercising [their] democratic rights, and the responsibilities of the state in maintaining and ensuring discipline, [and] public order" (Resolution No. 48, 2005).

The Second Legislative Proposal and Legislative Gridlock since 2011

In 2011, the Government again proposed to the VNA the need for a law on demonstration. Despite steps taken by executive agencies to prepare drafts of the law for legislative deliberation and review, the law continues to face a long-standing impasse. While the power division within the Politburo remained the same during this period, the discursive focus surrounding the law reflects a stronger emphasis on the protection of human rights in Vietnam. Legislative debates thus centered on a popular view of the law as a tool to protect and strengthen citizens' constitutional rights that could potentially threaten regime stability rather than

improving the regime's domestic and international legitimacy.

Discursive Shift: Law for Protecting Citizens' Constitutional Rights

Greater pressures for Vietnam to develop a legal regime consistent with international norms and standards on human rights generated important shifts in the emergent discourse and legislative debates on the right of assembly in Vietnam. The renewed pressures may have been a result of Vietnam's strengthened relations with Western countries and increased engagement with international organizations, including the World Bank, the International Monetary Fund, and the World Trade Organization (Bui 2014, 89). As stated by then minister of foreign affairs and vice prime minister Pham Binh Minh (2010),¹² "the process of improving Vietnam's legal system, including building, amending, and promulgating important legal documents related to human rights," was integral to Vietnam's dialogue on human rights with "countries of the West" in order to "emphasize the achievements and developments of Vietnamese society in all aspects."

In fact, human rights were one of the top items discussed in the revision of the Constitution between 2011 and 2013. The constitutional revision was characterized by an unprecedented participatory process with rigorous national debates on substantive questions pertaining to the constitutive elements and the fundamental architecture of the communist regime (Bui 2016). A group of 72 prominent intellectuals and retired officials, including former minister of justice and constitutional scholar Nguyen Dinh Loc, went as far as putting forth their own draft constitution. Among other changes advocated by the group, Petition 72 called for Vietnam to institute a human rights regime in accordance with the 1984 Universal Declaration of Human Rights and other international human rights treaties (Bui and Nicholson 2017).

Despite its limitations, the 2013 Constitution was recognized for its progress on human rights. Nguyen Dang Dung and Vu Cong Giao, two prominent legal scholars from the Vietnam National University–Hanoi School of Law who were also advocates of Petition 72, noted the important changes in the Constitution in this respect:

The largest changes [in the 2013 constitutional revision], which are simultaneously also the brightest points in the new Constitution, are those provisions on human rights and citizens' rights. In the constitutional history of Vietnam, human rights and citizens' rights in the Constitution have never been weighed so heavily by lawmakers as this time. From the fifth place, the chapter on Citizens' Rights in the 1992 Constitution was moved up to second place in the new constitution, illustrating the unprecedented attention as well as the consciousness of the makers of Vietnam's constitution about the degree of importance of human rights and citizens' rights. One can say that, every chapter, every article of the new constitution, all directly or indirectly address the issue of human rights. (Nguyen and Vu 2014)

Consistent with the emergent discourse and thinking embodied in the new constitutional framework, there was a strong push among civil society actors for Vietnam to adopt and amend laws on individual rights that are recognized by the constitution, including the right to freedom of assembly and protest (Bui and Nicholson 2017). This corresponding shift

effectively framed and conditioned the discursive terms of the legislative debates on the Law on Demonstration during this period in Vietnam.

Legislative Discussions within the VNA

From June to August 2011, anti-China protests continuously flared up in Hanoi and Ho Chi Minh City amid maritime tensions in the South China Sea between Vietnam and China.¹³ Against this backdrop, in November 2011, the Government again reported to the VNA and proposed that the Law on Demonstration should officially be added to the legislative agenda (Nguyen 2011). Individual opinions voiced by VNA members suggest a consensus that the passage of a law on demonstration would provide clearer legal grounds for citizens to exercise their constitutional right to assemble and protest.

The crucial contention among the lawmakers, however, was centered on the potential implications and consequences of such a law for regime political order and stability. At the 2nd plenary session of the 13th VNA on November 17, 2011, Deputy Duong Trung Quoc argued, "The Law on Demonstration is a tool for us to adjust, ensure the positive aspects of [demonstrations] and the rights of citizens" (Văn phòng Quốc hội [Office of the National Assembly] 2011). Mass demonstrations were cast as non-threatening to the regime. Referring to the anti-China protests and condemning the government's crackdown on protestors, Quoc further elaborated, "Those who demonstrate are those who are patriotic. Their way of expression is not appropriate in this situation because we do not yet have a law" (Văn phòng Quốc hội [Office of the National Assembly] 2011). Quoc cited the 1997 Thai Binh uprising as an instance where grievances expressed by citizens through mass assemblies and demonstrations could benefit the Vietnamese state by "contributing to the discovery of mistakes and weaknesses in the apparatus of local governments" (Tiến 2011).¹⁴ Here, the law was discussed not as a regulatory tool, but rather as a necessary legal framework to protect and enable citizens to exercise their constitutional rights.

On November 26, 2011, the VNA adopted Resolution No. 20/2011/QH13 and formally added the Law on Demonstration as one of the 38 draft laws in the preparation program (*chương trình chuẩn bị*) of the Law and Ordinance-Making Program of the 13th VNA (2011–2016).¹⁵ To implement the law-making program prescribed by Resolution No. 20, Prime Minister Nguyen then issued Decision No. 207/QĐ-TTg on February 2, 2012, and delegated the preparation of the draft of the Law on Demonstration to the MPS.¹⁶

During this period, anti-China protests again flared up in multiple cities.¹⁷ Referring to mass demonstrations by dispossessed villagers and the recurring waves of anti-China protests, VNA deputy Le Nam stated, "[Demonstration] is a basic citizen right that people make demands for and is frequently happening in real life" (Văn phòng Quốc hội [Office of the National Assembly] 2013). Without a rights-enhancing law, VNA deputy Truong Trong Nghia argued, "when extreme things [*những chuyện quá khích*] happened, government agencies were bewildered [*lúng túng*] in their handling" (Văn phòng Quốc hội [Office of the National Assembly] 2014). Nghia continued to

bemoan the sluggish pace at which the legislative agenda for the Law on Demonstration had progressed, and the evident demand for the law: “Demonstrations are not only about resistance and opposition. Millions of people want to protest to support the state, support the Government in opposing China’s infringement on [Vietnam’s] sovereignty. ... In Vietnam in many cities, from every profession, at every level ... these protests express sentiments of support, but there is still no legal framework” (Văn phòng Quốc hội [Office of the National Assembly] 2014).

Subscribing to the idea of a rights-enhancing law on demonstration, some deputies voiced concerns about the potential consequences of a law that, in their view, would foment more protests and social instability. Contrary to the case made by Quoc on the “favorable” character of mass demonstrations, VNA deputy Hoang Huu Phuoc argued:

Since the time when the first demonstration in human history took place in 1913 organized by Gandhi to protest against the government of Great Britain ... to the 60s when the word “demonstrations” appeared at the United Nations against the Kennedy administration’s push to escalate the war in Vietnam, ... the most important thing to assert here is that from the beginning to now, demonstrations are to fight against the government of a country or a policy of the government. (Văn phòng Quốc hội [Office of the National Assembly] 2011)

For this very reason, Phuoc asserted, “It is not that there cannot be a law on demonstrations ... but there is no reason to be hasty to demand for the Law on Demonstration” (Văn phòng Quốc hội [Office of the National Assembly] 2013). VNA deputy Nguyen Huu Quang similarly expressed reservations that the Law on Demonstration would “generally invisibly become anti-regime” (*vô hình chung có thể thành chống chế độ*) (Văn phòng Quốc hội [Office of the National Assembly] 2011).

Nonetheless, on May 30, 2014, an overwhelming majority of 424 out of 436 VNA members voted in favor of Resolution No. 70/2014/QH13 on Adjustments of the Program on Building Laws and Ordinances in 2014 and Laws and Ordinances in 2015 of the 13th VNA in order to speed up the Government’s preparation of the draft Law on Demonstration.¹⁸ In effect, for the first time, the VNA moved the Law on Demonstration from the preparatory agenda to the official law-making agenda, and specified a concrete timeline by which the Government was expected to submit a draft of the law. According to this timeline, the draft Law on Demonstration was expected to be presented to the VNA for review and deliberation at the 9th plenary session, and then to be passed at the 10th session of the 13th VNA.

Disagreements within the Politburo

The power structure of the Politburo had remained the same since 2005. As elucidated in greater detail elsewhere, party leadership in Vietnam is relatively more diffuse across the central positions—the general secretary of the Vietnamese Communist Party, the president, and the prime minister—while in China, power is concentrated in one person who concurrently holds the positions of general secretary of the Chinese Communist Party, president, and chairman of the Central Military Commission (Abrami, Malesky, and Zheng

2013; Malesky, Abrami, and Zheng 2011).¹⁹ Furthermore, between 2005 and 2016, the Politburo in Vietnam was dominated by many of the same political elites, including Nguyen Phu Trong, Nguyen Tan Dung, and Truong Tan Sang. The personnel, in other words, had not changed dramatically. Yet, although the Politburo signaled a consensus on the legislative agenda for the Law on Demonstration in Resolution No. 48, it has not indicated any position on the law since 2005. A systematic review of party congress documents shows that the Vietnamese Communist Party has not issued any guidelines or resolutions relating to the Law on Demonstration since 2005. This suggests that the Politburo has not yet reached any consensus on the law. The change, as we contend, was shaped by the shifting of the discourse from the law as an instrument of social control to a rights-enhancing legislation. Those on the Politburo may not personally subscribe to the idea of human rights, but many were conflicted by the dominant discourse. Here, we principally rely on public statements made by Politburo members reported in the news related to the law as evidence of their conflicting views and positions.

The party’s top leadership structure, consisting of the party general secretary, the prime minister, and the president, is often described as a “diffused troika” (Abrami, Malesky, and Zheng 2013, 254). In 2011, Prime Minister Nguyen Tan Dung vocally advocated for the Law on Demonstration but was ambiguous about the exact intent of the law. In his televised speech on the Government’s proposal for the Law on Demonstration, Prime Minister Dung (2011) stated:

There have been accumulated incidents of mass gatherings and demonstrations ... but there is no law to rectify these expressions; therefore, it makes it difficult for people exercising the right stipulated by the Constitution, and also makes it difficult for state authorities to manage, causing perplexity, and has henceforth given rise to symptomatic loss of security and order as well as acts of abuse to slander and incite to cause harm to society.

On the one hand, Dung appeared sympathetic toward protesters and recognized the need for the law to “legalize” protests for people to exercise their constitutional right. On the other hand, Dung also stressed the use of law to strengthen government authority to curtail protests. When the second wave of anti-China protests erupted in May 2014, Dung sent a text message to people’s mobile phones via state-owned telecom operators:

The prime minister requests and calls on every Vietnamese to not make any action that violates the law, *to not listen to bad elements*, together *maintain security and order*, help one another in solidarity to develop production business, advance quality of life, and together contribute to the defense of the Fatherland’s sacred sovereignty in accordance with the law of our country and international law. (Đức 2014; emphasis added)

Dung’s emphasis on the maintenance of security and order by law suggests that the Law on Demonstration in his vision would be unlikely to support and strengthen social protests at the cost of regime stability.

Similarly, given the emergent dominant discourse, President Truong Tan Sang and Party General Secretary Nguyen Phu Trong expressed their own reservations about a rights-oriented law that could escalate protests and social

instability. At a meeting with constituents in Ho Chi Minh City in 2011, Sang responded to questions about the status of the Law on Demonstration:

We need to listen to different opinions on the Law on Demonstration. To institutionalize [the right of demonstration] into a law in one aspect is to protect basic citizens' rights. On the other hand, to comply with the conditions of the country, it is necessary to have a road map and to *implement it extremely cautiously*. (Tá 2011; emphasis added)

In Trong's view, the imperative for the use of law is to manage social contention and maintain political stability. In reference to the Law on Cybersecurity adopted in June 2018 to tighten state monitoring and control, Trong observed, "During this time period of 4.0 industrial revolution, there are many benefits but, on the other hand, management is very difficult. From this come instigations, protests, disruptions, regime overthrows. Therefore, there needs to be law to protect this regime."²⁰ Trong's draconian view thus directly clashed with the emphasis on individual political rights in the dominant discourse that framed legislative deliberation and popular support for the Law on Demonstration.

Continuing Legislative Impasse

Given the lack of consensus among lawmakers and Politburo members on the primary function and the potential consequences of the Law on Demonstration, the Government had delayed its submission of the draft law to the VNA twice, first in 2015 and again in 2016. Initially, the VNA accommodated the Government's request for more time to prepare the draft law. On June 9, 2015, the VNA adopted Resolution No. 89/2015/QH13 on Adjustments of the Program on Building Laws and Ordinances in 2015 and on Laws and Ordinances in 2016 of the 13th VNA. The resolution postponed the deadline for the submission of the draft Law on Demonstration from the 9th to the 11th plenary session in March 2016.²¹ The VNA would then expect to pass the law during the 2nd plenary session of the 14th VNA in October 2016.

Three months before the submission deadline, the Government once again requested a postponement of the scheduled review, from March 2016 to October 2016 of the next legislative term. On December 11, 2015, MPS vice minister Bui Van Nam reported to the VNA that the MPS had already completed and circulated a draft of the Law on Demonstration among the ministries and related agencies to collect their opinions (Quyết 2015). However, the Ministry of Defense and the Ministry of Justice had yet to comment on "a number of issues of sensitive nature" (*một số vấn đề có tính chất nhạy cảm*) (Thành 2015). In front of the legislature on February 17, 2016, Minister of Justice Ha Hung Cuong also offered an explanation in which he attributed the delay to the fact that there were still many different opinions among members of the Government (Lê 2016). Therefore, the Government required more time to review and modify the draft law before it could be presented to the VNA for deliberation.

This time, the VNA Standing Committee refused to extend the submission deadline for the draft law (Vo 2016). Although the Government did not obtain legislative approval for its request, in the end, it failed to present a complete draft of the law to the legislature by July 2016 according to the

legislative agenda. The VNA Standing Committee thus had no choice but to postpone the review and deliberation of the law as originally scheduled for the session. As VNA vice chairman Uong Chu Luu explained, due to "incomplete preparation," there was no basis for the legislature to keep the Law on Demonstration on the meeting agenda for the 11th session of the 13th VNA as planned (Văn phòng Quốc hội [Office of the National Assembly] 2016). To date, as of the 7th plenary session of the 14th VNA (2016–2021), the buck still stops with the Government and the MPS at the drafting process, and no draft of the Law on Demonstration has yet been submitted to the legislature for review and deliberation.

Conclusion

China and Vietnam share many similarities. Both have experienced precipitating incidents of societal unrest. Both have sought to cultivate domestic and international legitimacy by strengthening their legal and judicial institutions. However, China passed a law on assembly in 1989, while proposals for a law in Vietnam have remained in legislative gridlock since 2011. In tracing the process of lawmaking in China and Vietnam to explain this puzzle, we highlight the importance of ideas for understanding the variation in legislative outcomes and autocratic choices concerning the use of law.

We contend that contrasting understandings about the immediate purpose of an assembly law in the two countries set the discursive premises that shaped their divergent outcomes. In China, the paramount leader, Deng Xiaoping, having learned from his past experiences, favored laws over other methods of maintaining social order. Conditional on such an instrumentalist view of law for social control, the legislative discussion was hence limited to rhetorical consistency between the constitution and the law. In contrast, the legislative gridlock in Vietnam reflects a different discursive premise, whereby an assembly law is expected to enhance citizens' right to demonstrate. Given the implications of such a law for regime stability, elites have therefore taken a cautious view and maintained the status quo. Whereas ideas gained decisive influence through Deng in the case of China, the discursive premise of legislative debates in Vietnam was oriented by the dominant discourse at the time, with an emphasis on human rights. In conclusion, to understand the variation in legislative outcomes and choices of law-based governance by authoritarian regimes, it is important to pay greater attention to the subjective interpretation of law held by political elites, which determines the discursive boundaries of legislative deliberation and subsequent legislative pathways.

What does the future hold, then, for China and Vietnam? Since the 1989 Law on Assembly, China has continued on the path of party supremacy and closeness of constitutional debate, which means continuous suppression of social protests unless they are strategically permitted by the regime (Weiss 2013). In Vietnam, on the one hand, there has been greater attention to human rights, as evidenced by the legislative process since 2011. On the other hand, the Vietnamese Communist regime has selectively strengthened management of various spheres of social contention, particularly cyberspace

(Nguyen 2019). In this changing context, insofar as the Law on Demonstration is still perceived as a rights-enhancing law, the law may be kept on the legislative back burner. Whether constitutional openness will continue to progress and social protests will be protected by a rights-enhancing assembly law in Vietnam, is thus not a foregone conclusion.

Notes

- Article 35, Chapter II of China's Constitution states, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." The current Constitution of the People's Republic of China was adopted by the 5th National People's Congress on December 4, 1982, amended in 1988, 1993, 1999, and 2004. In Vietnam, the 1946 Constitution (Article 10) stipulated that citizens may have the right to the "freedom of organization and assembly" (*tự do tổ chức và hội họp*). Since 1946, Vietnam has undergone four constitutional revisions, in 1959, 1980, 1992, and 2013, all of which have consistently upheld this fundamental principle. The 2013 Constitution (Article 25) reasserts that, "Citizens have the rights to freedom of opinion and speech, freedom of the press, access to information, assemble, form associations, and hold demonstrations" (*công dân có quyền tự do ngôn luận, tự do báo chí, tiếp cận thông tin, hội họp, lập hội, biểu tình*). It further states, "The exercise of these rights is stipulated by law" (*việc thực hiện các quyền này do pháp luật quy định*). The current Constitution of the Socialist Republic of Vietnam was adopted by the 8th National Assembly at its 11th session on April 15, 1992, and was later amended in 2001 and in 2013. A close reading of the 1992 Constitution amended in 2001 and of the Constitution most recently amended on November 28, 2013 indicates that the wording of this article has stayed the same in both versions.
- Article 37: "The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited." Article 38: "The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited."
- For an English version of the document, see <https://www.marxists.org/subject/china/documents/cpc/history/01.htm>.
- See "Vietnam Central Highlands in Lockdown After Protests" (2004).
- See Humans Right Watch World Report on Vietnam (2005).
- See "Vụ gây rối ở Tây Nguyên là do âm mưu thâm độc của các thế lực phản động trong và ngoài nước [The Disturbance in the Central Highland is Due to the Venomous Conspiracy of Domestic and International Reactionary Forces]" (2004).
- The central state of Vietnam comprises of (a) the legislature, (b) the executive body, and (c) the judiciary. For purposes of our analysis, in this article, we are primarily concerned with the first two, and not the latter. The legislature is referred to as the Vietnamese National Assembly (*Quốc hội*). The executive organ is termed the Government (*Chính phủ*). The term "Government" in the context of Vietnam is therefore the equivalent of the State Council in China, which similarly includes the line of ministries subordinate to the Government.
- Prime Minister Nguyen Tan Dung (2011) recounted in an explanatory report in response to legislative queries about the Government's proposal for a law on demonstration during the 13th VNA.
- While the terms demonstrations or protests (*biểu tình*) and assemblies (*hội họp*) do not appear in either documents, both still fall under the broad scope of these regulations.
- The first regulation on assemblies and demonstrations, Decree No. 31-SL, was adopted in 1945 in the context of Vietnam's struggle for independence from French colonial rule. Decree No. 31-SL (*Sắc lệnh số 31*) was issued by Ho Chi Minh while he was chairman of the Provisional Revolutionary Government of the Democratic Republic of Vietnam. Consisting of only two articles, Decree No. 31-SL required that all demonstrations or protests (*biểu tình*) must be declared 24 hours in advance at the local office of the People's Committee. Amid wartime uncertainties, the provisional government regarded the maintenance of public order as a paramount task in its early efforts to establish governance and wield diplomacy effectively on multiple fronts. As stated in Decree No. 31-SL (1945), "The freedom of assembly is one of the principles of the democratic republic regime; but under special present circumstances, [one] must examine, control demonstrations in order to avoid contingencies that might regrettably affect domestic rule or foreign affairs." The decree hence resembled a provisional order rather than a programmatic attempt at rule by law or social control by the Communist-led regime during its early formation.
- Registration must be completed prior to the actual rally. Individuals registering or representing organizations registering a mass rally must meet the stipulated criteria and are held responsible for both the content of the registration as well as the process of conducting a mass rally in a public place (Circular No. 9, article 5). Registration dossiers submitted to the district or provincial People's Committee of the localities where the rally is expected to take place must fully list personal identifications of all participants, the purpose of the rally, the content and format of the activities, time, location, as well as all tools and means such as transportation, loudspeakers, banners, images, pamphlets, and so on to be used at the rally.
- During 2007 to 2011, Pham Binh Minh was vice minister of foreign affairs. He later became a deputy in the 13th VNA during 2011 to 2016, minister of foreign affairs since 2011, and vice prime minister from 2013 to date.
- People took to the streets when Chinese boats cut the cables of Vietnam's seismic survey ship Binh Minh 2 on May 26, rammed a PetroVietnam ship on June 9, and expelled Vietnamese fishermen from the waters of the Paracel Islands on July 5 (2011a, 2011b). Even though protests were patriotic and directed at China, not at the Vietnamese government itself, territorial disputes with China provided a rallying point for social mobilization that the government worried could spill over to other issue areas and spiral out of control. The government then forcefully cracked down on these protests.
- Villagers across 36 communes in Quynh Phu district of Thai Binh province revolted over several months from May to November 1997 against government land management, arbitrary fees and taxes, and misallocation of public funds by local authorities. It was considered one of the largest rural uprisings since Renovation (*Doi Moi*), provoking grave concerns at the central level. Several Politburo members were sent down to investigate the cause of the protests and actions to be taken by the central government in response.
- For a full version of Resolution No. 20/2011/QH13 in Vietnamese, see: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-20-2011-QH13-chuong-trinh-xay-dung-luat-phap-lenh-cua-Quoc-hoi-nh-133693.aspx>.
- For a full version of Decision No. 207/QĐ-TTg in Vietnamese, see: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Quyết-dinh-207-QĐ-TTg-phan-cong-co-quan-chu-tri-soan-thao-du-an-luat-134949.aspx>.
- After China reportedly cut the cables of the Binh Minh 2 for the second time in December 2012 (2012). In May 2014, social unrest escalated when China deployed the Haiyang Shiyou 981 oil rigs and rammed ships in water claimed by Vietnam near the Paracel Islands (Keck 2014). Not only were anti-China protests widespread in provinces outside of Hanoi and Ho Chi Minh City this time, nearly 20,000 workers rioted in Binh Duong province and set fire to 15 or more Taiwanese factories that were mistaken as belonging to China (2014).

18. For a full version of Resolution No. 70/2014/QH13 in Vietnamese, see: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-70-2014-QH13-dieu-chinh-Chuong-trinh-xay-dung-luat-phap-lenh-2014-Chuong-trinh-2015-238014.aspx>.
19. It was only recently that the two positions of president and Communist Party general secretary had been merged, in October 2018. In September 2018, Tran Dai Quang, elected as president for the term of 2016–2021, passed away unexpectedly. Nguyen Phu Trong, Communist Party general secretary, was then confirmed by the Vietnamese National Assembly to fill the position of president and became the first party leader to hold both titles since Ho Chi Minh. Trong has claimed that the merging of the two titles is only temporary, due to unexpected circumstances; whether that is the case remains to be seen.
20. See “Tổng Bí thư nói về Luật An ninh mạng và dự Luật Đặc khu [General Secretary Talks about the Law on Cyberscurity and Law on Special Economic Zones]” (2018).
21. For a full version of Resolution No. 89/2015/QH13 in Vietnamese, see: <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-89-2015-QH13-dieu-chinh-Chuong-trinh-xay-dung-luat-phap-lenh-2015-283142.aspx>.

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