

Can Feminist Legal Theory Transcend Vietnamese Legal Education and Legal Research Towards the Goal of Addressing Women's Issues?

Asian Journal of Legal Education
9(2) 185–199, 2022
© 2022 The West Bengal National
University of Juridical Sciences
Reprints and permissions:
in.sagepub.com/journals-permissions-india
DOI: 10.1177/23220058221101984
journals.sagepub.com/home/ale



Doan Thanh Hai,^{1,2,3}  Doan Thi Phuong Diep^{1,2} 
and Nguyen Nu Hong Duong⁴

Abstract

This article aims to figure out why feminist legal theory is called for being studied in Vietnam and what are the possible implications of the movement of adopting feminist legal theory in Vietnam, specifically, for Vietnamese academia legal education and scholarship. This article first argues that Vietnamese legal scholarship and education lacks a soul regarding gender-related issues—a feminist insight. This article points out that finding a feminist legal theory has long been a quest for Vietnamese scholars. It would follow from this that the recognition and adoption of feminist legal scholarship can have overall positive impacts on the Vietnamese legal academia and its scholarship and contribute to addressing the need for gender equality in legal academia and the whole society.

Introduction

On 29 October 2021, the University of Economics and Law (UEL), a member of the Vietnam National University at Ho Chi Minh City, Vietnam, and the Rosa-Luxemburg-Stiftung Southeast Asia, Hanoi City, Vietnam, held the international hybrid conference on feminism, gender and law with an aim to promote feminist legal theory and gender matters in policy and lawmaking. This opens a great opportunity for Vietnamese academia and scholars to pay attention to gender and law issues and a not-quite-familiar terminology—‘feminist legal theory’.

¹ Faculty of Law, University of Economics and Law, Ho Chi Minh City, Vietnam.

² Vietnam National University, Ho Chi Minh City, Vietnam.

³ Bioethics Centre, University of Otago, Dunedin, New Zealand.

⁴ Judicial Academy, Hanoi City, Vietnam.

Corresponding author:

Doan Thanh Hai, Faculty of Law, University of Economics and Law, No. 669 National Highway 1, Quarter 3, Linh Xuan Ward, Thu Duc, Ho Chi Minh City, Vietnam.

E-mail: Haidt16503@st.uel.edu.vn

This article aims to point out the call for the study of feminist legal theory in Vietnam and the potential implications of the movement. In the second part, this article first sketches a picture of the status quo of legal academia, legal education and legal scholarship related to the philosophy of law within the broad societal landscape since the reunification. It shows that Vietnam academia and scholarship are still overshadowed by black-letterism, positivism or, if not to say, ‘un-intellectualism’⁵ ‘anti-intellectualism’.⁶ It then demonstrates that Vietnamese legal scholarship and education lack a philosophical insight—for gender-related issues, a feminist insight, and this is what has long been looked for by scholars. In the third part, this article starts by showing what is at the heart of the so-called feminist legal theory. Then, it argues that the recognition and adoption of feminist legal theory can have overall positive impacts on the Vietnamese legal academia and Vietnamese legal scholarship and might contribute to addressing the need for gender equality in legal academia and the whole society.

Vietnamese Legal Education and Legal Scholarship and a Quest for a Gender-Based Legal Theory

A General View of the Socio-political Atmosphere

Right after the reunification in 1975, the official name of Vietnam has been changed into the Social Republic of Vietnam to redeclare the recognition of—or at least the orientation towards—being a socialist state.⁷ The dictatorship of the proletariat (*chuyên chính vô sản*) was established nationwide.⁸ The dictatorship of the proletariat means the leadership of a class—the proletariat—over the state government.⁹ A ‘vanguard party’ (*đảng tiên phong*)—the Communist Party of Vietnam (CPV) holds the leadership authority over the dictatorship of the proletariat.¹⁰ Akin to any other Marxist-Leninist political systems, the CPV maintained absolute political control over the political system by introducing policy orientation, appointing leadership positions and directing the operation of all functional members of the political system, including representative bodies, administrative agencies and judicial institutions.¹¹

After reunification, there were numerous and vast social rehabilitation campaigns in the form of vast *autos-da-fé* campaigns,¹² agrarian reforms and campaigns to confiscate property of anyone labelled as ‘comprador-bourgeoisie’ without reasons, due process and just compensation (these campaigns were at a much smaller scale than of Chinese ‘Cultural Revolution’¹³). Private ownership of the means of

⁵ FIONA COWNIE, *LEGAL ACADEMICS: CULTURE AND IDENTITIES* (2004).

⁶ *Id.*

⁷ Nguyễn Phú Trọng, *Một số vấn đề lý luận và thực tiễn về chủ nghĩa xã hội và con đường đi lên chủ nghĩa xã hội ở Việt Nam* [Some theoretical and practical issues about socialism and the path to socialism in Vietnam], *NHÂN DÂN* (2021), <https://cnxh.nhandan.vn/mot-so-van-de-ly-luan-va-thuc-tien-ve-chu-nghia-xa-hoi-va-con-duong-di-len-chu-nghia-xa-hoi-o-viet-nam-168.html> (last visited Nov 9, 2021).

⁸ PHAM DUY NGHIA & DO HAI HA, *THE SOVIET LEGACY AND ITS IMPACT ON CONTEMPORARY VIETNAM* (2018).

⁹ Lê Minh Nghĩa et al., *Tuyển Tập Lê Duẩn* [Collection Of Lê Duẩn], Tập I [Volume I] (2007).

¹⁰ Lê Duẩn, *Cách mạng Xã hội Chủ nghĩa ở Việt Nam* [Socialist Revolution in Vietnam], Tập I [Vol I] (1980).

¹¹ Stanley Lubman, *Mao and Mediation: Politics and Dispute Resolution in Communist China*, 55 *CALIF. LAW REV.* 1284 (1967).

¹² Andre Gelinias, *Life in the New VietNam*, *NEW YORK REV. BOOKS* (1977), <https://www.nybooks.com/articles/1977/03/17/life-in-the-new-vietnam/>

¹³ Wenhua Shan, *Legal Education in China: The New ‘Outstanding Legal Personnel Education Scheme’ and Its Implications*, 13 *LEG. INF. MANAG.* 10–24 (2013).

production and private sector economy was all abolished and were supplanted by state ownership, collective ownership and central-planned economy.¹⁴ In the 1980s, ‘thanks to’ the central-planned economy, the economy of Vietnam was nearly collapsed with hyperinflation, food shortages and structural imbalances.¹⁵ This forced Vietnam to open its economy under the reformation so-called ‘Đổi mới’, resulting in the ‘untying’ (cởi trói) private sectors and ‘breaking fence’ (phá rào) of restrictions.¹⁶ Đổi mới and the recognition of the market economy initiated a process of globalization in Vietnam. Thanks to Đổi mới, there are increasing numbers of foreign enterprises investing in Vietnam, sparking the demand for skilled human resources working in foreign direct investment (FDI) and the private sector.¹⁷ This atmosphere saw the reception and popularization of Western-origin values and theories among the society.¹⁸

A General View of the Legal System

The Soviet legal system had played as a paragon in North Vietnam since 1950.¹⁹ While a Soviet-modelled constitution was adopted in 1959, the ‘socialist legality’ (pháp chế xã hội chủ nghĩa), seeing law as a mere reflection of the ‘will of the ruling class’ (ý chí của giai cấp thống trị)²⁰ and a mere instrument to concretize the control over the means of production of such a ruling class,²¹ was adopted at the 1960 Party Congress.²² Law is a production of a form of state, bringing with it the feature of such a form.²³ According to the CPV’s resolution and the socialist legality, law is a product of—and as such, submissive to—the State’s mind.²⁴ As Marxism-Leninism has been the monopolized politico-legal theory, which is claimed as the ‘most genuine, most concrete, most revolutionary tenet’,²⁵ any other Western legal doctrines, especially regarding private relationships and natural law,²⁶ is rejected. Instead, collective interests and means of production are prioritized.²⁷ Though there were no harsh things such as the ‘Anti-Rightist struggles’²⁸ and the ‘legal-nihilism’²⁹ as that happened in China, law is deemed only as a tool to punish crimes and reactionaries and to have a supplemental political function:

¹⁴ CPV, *Full Text of the Resolution of the 4th Party Congress* (1976), <https://tulieuvankien.dangcongsan.vn/ban-chap-hanh-trung-uong-dang/dai-hoi-dang/lan-thu-iv/ngghi-quyet-cua-dai-hoi-dai-bieu-toan-quooc-lan-thu-iv-cua-dang-1522>

¹⁵ CPV, *Full Text of the Resolution of the 6th Party Congress* (1986).

¹⁶ NGHIA & HA, *supra* note 4; Đặng Phong, *Phá rào trong kinh tế và đêm trước đổi mới* [Fence-breaking: The eve of Doi Moi in Vietnam] (2009).

¹⁷ Prema-chandra Athukorala & Tran Quang Tien, *Foreign Direct Investment in Industrial Transition: The Experience of Vietnam*, IN THE RISE OF ASIA 229–251 (2010).

¹⁸ Nhài Nguyen & Ly Thi Tran, *Looking Inward or Outward? Vietnam Higher Education at the Superhighway of Globalization: Culture, Values and Changes*, 11 J. ASIAN PUBLIC POLICY 28–45 (2018), <https://doi.org/10.1080/17516234.2017.1332457>

¹⁹ NGHIA & HA, *supra* note 4.

²⁰ Lê Minh Tâm, *Giáo trình lý luận chung về nhà nước và pháp luật* [General themes of state and law] (2009), <https://amilawfirm.com/wp-content/uploads/2020/03/Giáo-trình-lý-luận-nhà-nước-và-pháp-luật-Trường-Đại-học-luật-Hà-Nội-2009.pdf>.

²¹ *Id.*

²² CPV, *Resolution of the Third National Party Congress on the Tasks and Lines of the Party in a New Period* (1960).

²³ *Id.*

²⁴ *Id.*; NGHIA & HA, *supra* note 4; Tâm, *supra* note 16.

²⁵ NATIONAL POLITICAL PUBLISHING HOUSE, HO CHI MINH, COMPLETE VOLUME, VOLUME 2 (2011); Tâm, *supra* note 16.

²⁶ Tâm, *supra* note 16.

²⁷ Vladimir Gsovski, *The Soviet Concept of Law*, 7 FORDHAM LAW REV. (1938), [https://ir.lawnet.fordham.edu/flr/vol7/iss1/1/](https://ir.lawnet.fordham.edu/flrAvailableat:https://ir.lawnet.fordham.edu/flr/vol7/iss1/1/); NGHIA & HA, *supra* note 4.

²⁸ Han Depei & Stephen Kanter, *Legal Education in China*, 32 AM. J. COMP. LAW 543–582 (1984), <http://www.jstor.org/stable/840426>

²⁹ *Id.*

To enforce the dictatorship, the State uses not only revolutionary law to punish, but also political and ideological struggle to defeat hostile forces.³⁰

As such, law is subordinated to and even superseded by not only the Party's orientation, policy and administrative commands³¹ but also revolutionary morality (đạo đức cách mạng)³² and mass line/mass mobilization ('đường lối quần chúng'/'dân vận'),³³ which can find counterparts in Maoism ('jízhōng qúnzhòng zhìhuì'³⁴). This shows some commonalities in the thinking patterns between Vietnam and China.

Following the 9th Party Congress,³⁵ the Resolution 51/2001/QH10 on 'Amendments and Supplements to a Number of Articles of the 1992 Constitution of The Socialist Republic of Vietnam' was introduced; 'socialist legality' was reformed into 'nhà nước pháp quyền xã hội chủ nghĩa' (socialist law-based state). Even after Đổi mới, the most dynamic and prevalent de facto 'law' was still in the hand of the central government and local governments. This de facto law comprises not only legislative documents but also official letters, directives of heads of administrative bodies, which can be arbitrary. The judiciary even used to not know much about 'law',³⁶ though this reality cannot be entirely true today. The judiciary used to do not need to know much about legal doctrines and theories beyond those existing in the Soviet Union, particularly those concerning private law, nor did it need to offer analysis for its judgement. Still today, the work of the judiciary is only about matching law to a set of facts but not interpreting law, reasoning, opining or justifying judicial decisions by means of reasons.³⁷

Following the tendency to be more receptive to Western legal doctrines and theories of the Party-State—which has been argued as due to globalization, the global diffusion or transplantation of theories, and the transitional society³⁸—some doctrines and theories—for example, precedent—have been adopted by the Party-State. Nevertheless, it should be noted that sometimes, such incorporations are not quite explicit, and many functions of those theories have been disabled or compromised to fit socialist jurisprudence. For example, the Party-State has retreated from the position that case law/precedent (án lệ or tiền lệ pháp) is a 'situational solution' based on *the flexibility of the Party*³⁹ (sự linh hoạt của đường lối chính sách của đảng) [emphasis] and formally recognized the theory of precedent.⁴⁰ Nevertheless, Resolution 03/2015/NQ-HĐTP did not require or empower courts to justify their decisions by means of reasons.⁴¹

³⁰ NGHĨA ET AL., *supra* note 5.

³¹ JOHN STANLEY GILLESPIE, TRANSPLANTING COMMERCIAL LAW REFORM: DEVELOPING A 'RULE OF LAW' IN VIETNAM (2006); John Gillespie, *Concepts of law in Vietnam*, IN ASIAN DISCOURSES OF RULE OF LAW 146–182 (Peerenboom Randall ed., 2004).

³² HỒ CHÍ MINH, SỬA ĐỔI LỐI LÀM VIỆC [Correcting the way of working] (1947); HỒ CHÍ MINH, ĐẠO ĐỨC CÁCH MẠNG [Revolutionary Morality] (1958).

³³ HỒ CHÍ MINH, *Dân vận* [Mass mobilization], 120 SỰ THẬT (1949).

³⁴ CHRISTIAN SORACE, IVAN FRANCESCHINI & NICHOLAS LOUBERE, AFTERLIVES OF CHINESE COMMUNISM: POLITICAL CONCEPTS FROM MAO TO XI (2019).

³⁵ CPV, *Political Report of the Eighth Party Central Committee at the Ninth National Party Congress* (2001).

³⁶ Brian JM Quinn, *Vietnam's Continuing Legal Reform: Gaining Control over the Courts*, 4 ASIAN-PACIFIC LAW POLICY J. 432–468 (2003).

³⁷ In fact, Vietnamese constitutions bar courts from doing so: interpreting the Constitution, the law, and decree-laws is the exclusive function of the Standing Committee of the National Assembly (Article 74 of the 2013 Constitution).

³⁸ These accounts can be observed in Ngọc Sơn Bui, *The Socialist Precedent*, 52 CORNELL INT. LAW J. 421–474 (2020); Tran Kien, Pham Ho Nam & Nguyen Lu Quynh Anh, *Negotiating Legal Reform through Reception of Law: The Missing Role of Mixed Legal Transplants*, 36 ASIAN J. COMP. LAW 1–35 (2019). This article is not in the position to endorse or reject these explanatory accounts.

³⁹ Tâm, *supra* note 16, at 81.

⁴⁰ Resolution 03/2015/NQ-HĐTP, replaced by Resolution 04/2019/NQ-HĐTP.

⁴¹ *Id.*

A General View of Vietnamese Legal Academia, Legal Education and Legal Scholarship, Especially, Concerning Philosophy of Law

The above backdrop contextualizes and situates the position of Vietnamese legal education and scholarship. Despite many changes, legal education is always a ‘political mission’ which is primarily about building a pure and strong cohort of politically reliable ‘judicial cadres’⁴² who bear in mind Marxism-Leninism and do not speak against the Party (though the extent of tolerance has been varied from time to time). This shares similarity with China.⁴³

Pre-Đổi mới, considering the socio-political atmosphere, legal academia could hardly be democratic, pluralist or liberal. Anyone daring to speak against the Party was imprisoned in re-education camps⁴⁴ (Nguyễn Mạnh Tường is one of the renowned cases). As the Vietnamese Party-State already recognized the Soviet model as the political paragon, Soviet legal education experience was admired by the Party-State and incorporated into Vietnam. Soviet pedagogical techniques were adopted. Students were taught the Leninist legality, legal documents issued to abolish private ownership, and relationships in the central-planned economy. Destinations to study abroad of all cadres, legal scholars included, were primarily the Soviet-bloc (before or at the time of its collapse). Considering the restrictive political climate in the Soviet-bloc and Vietnam and the fact that many Vietnamese scholars have limited English and/or French language skills, they can hardly build—for and by themselves—pluralistic accounts of the philosophy of law.⁴⁵

After Đổi Mới, there are both impediments and stimulations towards a pluralistic and liberal legal academia, legal education and legal scholarship; notwithstanding, generally, the situation is better day by day. Right after Đổi Mới, scholars have educational opportunities beyond the Soviet-bloc. For example, Nguyễn Hồng Thao—member of the UN International Law Commission, got his doctor degree from University of Paris I, France in 1996; Nguyễn Ngọc Điện—member of Académie des Sciences d’Outre-Mer got his doctorate degree from University of Paris II in 1997; and Đỗ Văn Đại—associate member of Académie Internationale De Droit Comparé, who had several works on the pure doctrinal comparative and case study approach, got his doctor degree from University Aix-Marseille III in 2004. The great success of the USA in the global economy, arguably to find its root in the Common Law Tradition⁴⁶ and the role of English as lingua franca, then, motivated younger generations of bright and studious Vietnamese students and scholars to arrive and study in English-speaking countries at a later point of time. Western European and US legal doctrines and pedagogies were also brought into Vietnam by these scholars. While their initiatives can be just sparked individually first, gradually such initiatives spread among the academia and have significance.

Though the socio-political atmosphere experienced tremendous changes, the central government holds a firm legal education policy. In 2002, the Party passed Resolution No.08/NQ-TW 2002 about

⁴² The notion of ‘cadres’ in Vietnam can be understood relatively in the same way as in China. A cadre is the one who carries out the policies of the Communist Party, Government, or mass organizations. According to President Hồ Chí Minh, ‘Cadres are public servants of the people’ (Lubman, *supra* note 7; HỒ CHÍ MINH, HỒ CHÍ MINH, TOÀN TẬP [The completed works of Hồ Chí Minh], TẬP 4 [Volume 4], NATIONAL POLITICAL PUBLISHING HOUSE [2006]).

⁴³ Lubman, *supra* note 7.

⁴⁴ Mark Sidel, *Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training*, 11 UCLA PAC. BASIN LJ 221 (1992).

⁴⁵ There are some exceptions, for example, Phạm Duy Nghĩa. His introductory text on general themes of legal studies and methods of legal studies offers a broad view of law and policy (PHẠM DUY NGHĨA, RESEARCH METHOD ON LEGAL STUDIES [2014]).

⁴⁶ Paul G Mahoney et al., *The Common Law and Economic Growth: Hayek Might Be Right*, 30 J. LEGAL STUD. 503–525 (2001); Andrei Shleifer, *Law and Finance*, 106 J. POLIT. ECON. 1113–1155 (1988).

‘Some Central Missions of Justice Affair in the Next Phase’, considering legal education as a political mission to build a pure and strong cohort of judicial cadres, which in turn requires the unification of curricula and law textbooks and strict control of the state over legal education to ensure that students hold ‘a firm political view’ (quan điểm chính trị vững vàng).⁴⁷ The government still holds this obsolete view in 2021, within the frame of the strategy for building and perfecting the Socialist Law-Based State to 2030, oriented to 2045 and for reformation of judicial activities.⁴⁸ Not many new things have been added. In this regard, Vietnam differs greatly from China. The Chinese ‘outstanding legal personnel education scheme’, despite emphasizing the commitment to socialist legal ideology, still recognizes the demand for a reformation towards globalization, international standards and interdisciplinary approaches.⁴⁹

Particular to tertiary legal education, the Vietnamese Bachelor of Legislative Law or Legum Baccalaureus (LLB) training programme consists of three phases: a general training (phần chương trình đại cương), taking place at the first two years of the bachelor programme; a specialized training (phần chương trình chuyên ngành), taking place from the second half of the 2nd year to the first half of the final year; and an internship and/or thesis component (less than 10% top students can opt for a thesis component).

The general training for law students comprises of some ‘core’ subjects, notably, Basic Principles of Marxism-Leninism (Những nguyên lý cơ bản của Chủ nghĩa Mác Lênin) (5 credits) (this subject is now re-classified into ‘Marxist-Leninist Philosophy’ (4 credits), ‘Marxist-Leninist Political Economy’ (3 credits), ‘Scientific Socialism’ (2 credits),⁵⁰ Hồ Chí Minh Thoughts (Tư tưởng Hồ Chí Minh), Revolution Lines of Vietnam Communist Party (Đường lối cách mạng của Đảng Cộng sản Việt Nam), General Themes on State and Law (Lý luận chung về nhà nước và pháp luật) or General Accounts on Law (Pháp luật Đại cương). Actually, the general training is offered to all tertiary students⁵¹ and except for ‘General Themes on State and Law’, other subjects are taught not by law teachers but by political ones.

Frankly speaking, there is almost nothing to call philosophy of law in Vietnam, or at least, as what is understood in the USA, UK, Continental Europe or other Asian states, for example, Singapore. There are not many things on the philosophical foundation of law in textbooks, except for Leninism, rambling on the class nature of state and law.⁵² In these textbooks and subjects, there is nothing critical as what should be required for a philosophy or law subject, rather they presuppose that Marxism-Leninism is the only truth and at the same time demean other theories as being pretext and instrumental of oppression. The textbook on ‘Lý luận chung về nhà nước và pháp luật’, in particular, has been revised many times. However, revisions were made with carelessness and unreasonableness as many outdated ‘concepts and passages have largely remained unchanged’.⁵³

⁴⁷ To become a legal practitioner, graduated students have to take separate training subjected to and depended on the profession, for example, lawyer, judge or prosecution (The 2006 Law on Lawyers).

⁴⁸ Thế Kha, *Hoàn thành việc sắp xếp lại 95 cơ sở đào tạo luật trong cả nước* [Implementing the reorganization of 95 law-training institutions in the country], *DÂN TRÍ*, Apr 29, 2021, <https://dantri.com.vn/xa-hoi/hoan-thanh-viec-sap-xep-lai-95-co-so-dao-tao-luat-trong-ca-nuoc-20210429165308565.htm>

⁴⁹ Shan, *supra* note 9.

⁵⁰ Decision 4891/QĐ-BGDĐT on 23/12/2019

⁵¹ Directive 32-CT/TW on 09/12/2003, Conclusion 04-KL/TW of the Secretariat of the Party.

⁵² Tâm, *supra* note 16.

⁵³ Bui Thi Bich Lien, *Legal Education in Transitional Vietnam*, IN John Gillespie, & Pip Nicholson (eds.), *ASIAN SOCIALISM AND LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE AND CHINESE REFORM*, 135–158 (2005). Discourse on precedent can be an example of this matter: The textbook still reiterates that precedent is a ‘situational solution’ based on *the flexibility of the Party* and claims that precedent would be ‘abolished as soon as the socialism legal system has been fully

The general training has been criticized as being useless and indoctrination, deployed by outdated pedagogical methods: the teachers keep reading and the students keep copying, and the students are not encouraged to think critically but just repeat what their teachers said; some intellectuals even condemned such education as the root of the fact that the capacity of Vietnamese tertiary students lags behind students in other countries.⁵⁴ A personal view essay published by the ‘Party Building Journal’ (*Tạp chí Xây dựng Đảng*) acknowledges that students are disinterested in these subjects,⁵⁵ while another piece of writing published by the ‘Propaganda Journal’ (*Tạp chí Tuyên giáo*) acknowledges that these subjects are more about propagating political messages but having little scientific substance.⁵⁶ Indeed, the indoctrination process should have been perceived as unfruitful by a wide range of students: Why students should be eager learning somethings which is neither intellectual nor beneficial to their future profession? In educational debates, there have been calls for a more liberal and philosophical education to stimulate students’ critical thinking.⁵⁷

Specialized training comprises law subjects such as criminal law, contract law and, in some cases, some non-legal subjects, for example, economics and accounting.⁵⁸ In specialized training, generally, legal education is relatively equivalent to the teaching and learning laws and regulations in force. This is not something weird or strange as such pedagogy can be observed commonly in dictatorial and liberal states, socialist and democratic states, and Western and Eastern states: worldwide, until the 1950s, the culture of legal education in almost all universities, including those most prestigious ones, was primarily positivist.⁵⁹ Nevertheless, legal education in Vietnam can be more positivist and less intellectual [than in the UK or somewhere else]: many textbooks do not have many things other than replicating legal rules and arranging them differently from legislative documents. Many law teachers still adhere to a ‘traditional’ approach, perceiving law mainly as the embodiment of the mind of political forces. With this in mind, many students are still taught to learn law by heart (this fact becomes less common today) or, if any better, to read the existing law or find legal provisions across legal documents and apply directly without any further analysis. Contrary to the situation in the UK or elsewhere,⁶⁰ lecturers taking a ‘pure’

established’; nevertheless, in a later chapter, it claims that precedent would be adopted in a socialist legal system due to globalization. (Tâm, *supra* note 16).

⁵⁴ Ngọc Quang, *Sinh viên Việt Nam tụt hậu vì những môn học vô bổ* [Vietnamese students lag behind because of useless subjects], GIÁO DỤC, Feb 20, 2016, <https://giaoduc.net.vn/giao-duc-24h/sinh-vien-viet-nam-tut-hau-vi-nhung-mon-hoc-vo-bo-post165681.gd#comment165681>

⁵⁵ Nguyễn Văn Công, *Giáo dục tư tưởng cho sinh viên trong nhà trường: Cần tinh gọn, thực chất và bám sát thời đại* [Ideological education for students in schools: Need to be refined, having real substance, and abreast of the times], TẠP CHÍ XÂY DỰNG ĐẢNG, Nov 1, 2021, <http://xaydungdang.org.vn/Home/dien-dan/2021/15996/Giao-duc-tu-tuong-cho-sinh-vien-trong-nha-truong-Can-tinh.aspx>

⁵⁶ Vũ Thị Mai Oanh, *Không nên tích hợp các môn Mác - Lênin* [Marxist-Leninist subjects should not be integrated], 6 TẠP CHÍ TUYỂN GIÁO (2018), <https://tuyengiao.vn/nghien-cuu/nghiep-vu-cong-tac-tuyen-giao/khong-nen-tich-hop-cac-mon-mac-lenin-113083>

⁵⁷ Đào Thị Hữu & Bùi Thị Hồng Thúy, *Nâng cao năng lực tư duy phân biện cho học sinh, sinh viên* [Improving students’ critical thinking capacity], TUYỂN GIÁO, Jun 10, 2021, <https://tuyengiao.vn/nghien-cuu/ly-luan/hang-cao-nang-luc-tu-duy-phan-bien-cho-hoc-sinh-sinh-vien-133980>; Ngô Hữu Hoàng, *Dạy tư duy phân biện trong nhà trường* [Teaching critical thinking in schools], GIÁO DỤC VÀ XÃ HỘI, Oct 16, 2018, <http://giaoducvaxahoi.vn/giao-duc-dao-tao/d-y-tu-duy-ph-n-bi-n-trong-nha-tru-ng.html>

⁵⁸ The full training programme and specific name of each subject vary across universities. For example, in some universities, there is a subject called contract law, whereas, in some others such a subject is called Civil Law 2 (Civil Law 1 refers to the subject studying entities in civil relationships and their capacity).

⁵⁹ WILLIAM TWING, *JURIST IN CONTEXT* (2019).

⁶⁰ COWNIE, *supra* note 1.

Soviet-style letterism approach⁶¹ are still dominated in Vietnamese legal academia. This approach to the study of law can hurt attempts to incorporate a subject on gender equity in the training programme because the repetition of maxims such as ‘man and woman are equal in all fields of social and family life’ or ‘man and woman are not discriminated in terms of gender’ as declared in law⁶² shall not provide much help insofar as the worldview and methods of legal education and legal research is unchanged.⁶³

In legal scholarship, issues related to women and any marginalized groups are discussed occasionally, including, most notably, issues relating to women’s participation in the polity, sex-based violence or treatment of women in criminal procedure. Nevertheless, there are many limitations concerning Vietnamese legal research.⁶⁴ First, the scope of Vietnamese legal scholarship on women and gender issues is still restrictive: many social-related issues have not been put on the frontline. Second, research articles [and theses] are dominated by a pure ‘black-letter approach’.⁶⁵ Third, many research articles [and theses] do not indicate what method they deploy or what theoretical frame served as their foundational basis, why and how; they only repeatedly claim that they deploy the Marxist ideological theory.

A Quest for a Gender-Based Legal Theory

A theoretical basis, especially, a theoretical basis on gender-related issues is what has been sought. Hoàng Thị Kim Quế, a renowned scholar, in ‘*Lý luận chung về nhà nước và pháp luật*’ in 2002 claimed the following:

‘However, studies on women are just at a beginning stage. There is still *no special discipline on the psychology, sociology, anthropology of women*, and there is still *a lack of a thorough and coherent social science theory about women*.⁶⁶’

⁶¹ Considering that Socialist jurisprudence rejects ‘natural law’ as well as the pluralistic account of the sources of law, that is, statutory law is the only source of law (NGHIA & HA, *supra* note 4; GILLESPIE, TRANSPLANTING COMMERCIAL LAW REFORM, *supra* note 27), in referring to ‘lecturers taking a ‘pure’ letterism approach’, this article means lectures who only repeat statutory law.

⁶² Article 6 of the 2006 Law on Gender Equality.

⁶³ A subject on the Law on Gender Equality has been adopted as an optional subject by a handful of universities for a few years: to my best knowledge, only Hanoi Law University and Hue Law University have incorporated this optional subject. This subject teaches mainly the 2006 Law on Gender Equality and bylaw regulations. Feminist materials have been referred to as a historical matter (history of the three waves of feminism) in a section of a chapter. Philosophical and methodological accounts (feminist legal theory) are lacking.

⁶⁴ The following statements are made based on our small survey conducted in early September 2021. We have collected a set of data from the database of major Vietnamese journals (including (a) ‘Vietnam Journals Online’ (<https://vjol.info.vn/>)—the database of the Ministry of Information and Technology that provides information on various legal-related journals, such as the *Journal of Vietnam Women’s Academy*, *Journal of Social Science Information*, *Hanoi Law Journal*; (b) *Journal of Legal Studies* of VNU Hanoi (<https://js.vnu.edu.vn/>); (c) *Science & Technology Development Journal—Economics—Law And Management* of VNU HCMC (<http://stdjelm.scienceandtechnology.com.vn/>); (d) *Vietnamese Journal of Legal Sciences* (VJLS) of Ho Chi Minh City University of Law (HCMCUL); (e) *Journal of Legislative Studies of Legislative Institutions*, Vietnamese Assembly (<http://www.lapphap.vn/>).

⁶⁵ Generally, though scholars declare to deploy Marxist jurisprudence and express the preoccupation with social issues, scholarship often justifies itself on the existing legal structure. There may have been a few exceptions, see for example (Nguyễn Đức Chiện & Nguyễn Ngọc Hương, *Phụ nữ tham gia hệ thống chính trị ở cơ sở (cấp xã/phường): nhìn từ kết quả khảo sát ý kiến người dân ở bốn tỉnh thành* [Women participating in the political system at the grassroots level (commune/ward level): From the survey results of people in four provinces], 309 NGHIÊN CỨU LẬP PHÁP [LEGISLATIVE STUD. (2016), <http://www.lapphap.vn/Pages/TinTuc/208544/Phu-nu-tham-gia-he-thong-chinh-tri-o-co-so-cap-xa-phuong-nhin-tu-ket-qua-khao-sat-y-kien-nguoi-dan-o-bon-tinh-thanh.html>).

⁶⁶ Hoàng Thị Kim Quế, *Nghiên cứu phụ nữ trong khoa học pháp lý* [Women’s studies in legal science], NGHIÊN CỨU LẬP PHÁP [LEGISLATIVE STUD. (2004), <http://www.lapphap.vn/Pages/TinTuc/208927/Nghien-cuu-phu-nu-trong-khoa-hoc-phap-ly.html>

‘In general, the legal research on women in our country’s legal science is still very modest compared to other legal fields and in considering the position and stature of the policy and law on women issues in our country today itself.’⁶⁷

‘In general, the research is not really ‘even’, between substantive law and procedural law, between the study of legal regulations, regimes on women in legal documents and their application and implementation, between legal theory and legal psychology of women and women’s legal awareness, legal circulation, education to understand women’s approach and reception of the law....’⁶⁸

The message of Hoàng Thị Kim Quế’s claims is not something that should be taken lightly: it demonstrates the soullessness of Vietnamese scholarship and the absence of women’s voices and experiences.

Feminist Legal Theory and Its Adoption in Vietnam

Feminist Legal Theory

Feminist legal theory is a body of scholarship within feminist jurisprudence. This theory studies how women had been treated differentially, and presumably, less favourable, under the laws to such an extent that they deserve formal gender equality.⁶⁹ Feminist jurisprudence aims to establish a theoretical framework that gives grounds to moral claims of women’s rights. A scholar may rightly argue that hardly there is a genuine way to criticize an existing social practice if the only means to do so presupposes the validity of the justificatory practice one employs, to successfully communicate a politically transformative insight if being limited to what others recognize as authoritative.⁷⁰

Katherine T. Bartlett introduced a set of three feminist legal methods to challenge traditional methodologies and help maintain feminist legal theory’s distinctiveness. These techniques include (a) asking the women questions, (b) feminist practical reasoning and (c) consciousness-raising, all of which are grounded in women’s experiences of exclusion.⁷¹

1. *Asking the woman question*: Woman questions ask how women would be impacted by the decision-making process which is underpinned by legal doctrine unconsciously and unwittingly incorporating a bias favouring males. These questions have three purposes: (a) to identify bias against women implicit in legal rules and practices that appear neutral and objective; (b) to expose how the law excludes the experiences and values of women; and (c) to insist upon application of legal rules that do not perpetuate women’s subordination.⁷² There are several ways to phrase a

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 *FORDHAM L. REV.* 977 (2018).

⁷⁰ Elizabeth Cantalamessa, *Democracy is Sentimental*, *AEON*, Aug 9, 2021, <https://aeon.co/essays/democracy-should-be-sentimentalist-not-rationalist>

⁷¹ Katharine T Bartlett, *Feminist Legal Methods*, 103 *HARV. LAW REV.* 829–888 (1990).

⁷² Lydia A Clougherty, *Feminist Legal Methods and the First Amendment Defense to Sexual Harassment Liability*, 75 *NEB. L. REV.* 1 (1996).

woman question and several woman questions. For example, Janet Ainsworth raised a question: ‘What would the law be like if women had been considered by the drafters and interpreters of the law?’⁷³; meanwhile, Sharon K. Horn breaks down woman questions into a set of questions:

Who are the policy-makers? What values and experiences are they reflecting and drawing upon? What are the intended and unintended consequences of a monopoly of power by predominately male decision-makers in realms which have a foreseeable disparate impact on women? How can future policy-making be informed by the excluded voices and perspectives of those at the bottom of the political, economic, or patriarchal social hierarchy? How can these voices and perspectives claim and exercise social transformative power without becoming complicitous in resorting to the ‘Master’ discourses, ideologies, and political strategies?⁷⁴

2. *Feminist practical reasoning*: Feminist practical reasoning is a form of legal reasoning grounded in the contextualized and concrete reality, focusing on the reality and recognizing competing interests within a legal issue⁷⁵ to reveal insights about gender exclusion and take into account the perspective of the powerless.⁷⁶ Bartlett proposed aversion of feminist practical reasoning that is the combination of a classic Aristotelian model of practical reasoning with a feminist focus on identifying and taking into account the perspectives of the excluded. The Aristotelian model of practical reasoning holistically deliberates about (a) appropriate ends and (b) the best means and actions to meet such ends in the most complex and ambiguous circumstances. Practical reasoning in law works from rules, but it does not intend to reject rules. Alternatively, it looks for general rules or standards to enjoy a greater leeway for individualized analysis and generate new insights and interpretation of such rules under new contexts.
3. *Consciousness-raising*: Consciousness-raising is the process of articulating personal experiences in dialogue with others to better understand common experiences and patterns of oppression.⁷⁷ The primary significance of consciousness-raising is as a meta method, providing a substructure for other feminist methods by enabling feminists to draw insights and perceptions from their own experiences and those of other women and to use these insights to challenge dominant versions of social reality. Elizabeth Schneider explains the interplay between theory and practice as the centrality of consciousness-raising:

Consciousness-raising groups start with personal and concrete experience, integrate this experience into theory, and then, in effect, reshape theory based upon experience and experience based upon theory. Theory expresses and grows out of experience but it also relates back to that experience for further refinement, validation, or modification.⁷⁸

The insights generated from the consciousness-raising has been translated into normative accounts of the legal process and legal decision-making in demanding decision-makers to acknowledge and consider all

⁷³ Janet E Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE LAW J. 259–322 (1993).

⁷⁴ Sharon K Horn, *Female Infanticide in China: The Human Rights Specter and Thoughts Towards (An) Other Vision*, 23 COLUM. HUM. RTS. L. REV. 249 (1991).

⁷⁵ Bartlett, *supra* note 67.

⁷⁶ Carol Sanger, *Feminism and Disciplinarity: The Curl of the Petals*, 27 LOY. LAL REV. 225 (1993).

⁷⁷ Mari J Matsuda, *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls’ Theory of Justice*, 16 NML REV. 613 (1986).

⁷⁸ Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women’s Movement*, 61 N.Y.U. L. REV. 589 (1986).

points of view, including the women's and to provide real reasons for deciding issues that negatively affect women.

There are many applications of the feminist legal theory and its methods. For example, in terms of lawmaking, Janet E. Ainsworth applies the method of asking the women question to Miranda rights, discussing whether a legal doctrine preferring direct and unqualified assertions of the right to counsel takes into account the speech patterns of women as well as other powerless groups.⁷⁹ In terms of legal education, for example, Leslie Bender has considered how the method of asking the women question can be applied in teaching torts.⁸⁰ It can be observed that feminist legal theory and its methods fit well or reinforce policy strategies, including gender sensitivity⁸¹ and gender mainstreaming.⁸²

Overcoming Hesitations of Adopting Feminist Legal Theory in Vietnam

Before examining what feminist jurisprudence can bring about for the Vietnamese academia, some nuances related to potential challenges relating to such a 'transplantation' should be first handled. It is worth asking if any adoption [of Western-origin feminist legal theory] into the Vietnamese legal environment is feasible, to what extent things can be 'transplanted' or would there be any criticisms that feminist legal theory is a harmful Western product or a kind of imperialism. Any worries are real; nevertheless, there are reasons for these worries to be eased.

As with regards to the political system, things have never been a black-and-white story on whether theories are welcomed: while the state has committed to more and more international instruments that embrace Western-originated values—for example, human rights conventions—and new-generation Free-trade agreements—for example, European-Vietnam free trade agreement and Comprehensive and progressive agreement for Trans-Pacific partnership, which touch used-to-be sensitive issues, for example, corruption and transparency, the discourse of the state-backed media and Force 47—Internet polemicists (đư luận viên)⁸³ in many instances are hostile against 'Western' values such as human rights; for example, they claimed that 'whatever human rights are, they are not absolute and must be limited within the frame of positive law, overly emphasizing human rights is the rhetoric of hostility forces'.⁸⁴

⁷⁹ Ainsworth, *supra* note 69; Janet E. Ainsworth, *Categories and Culture: On the 'Rectification of Names' in Comparative Law*, 82 CORNELL LAW REV. 19 (1996).

⁸⁰ Leslie Bender, *Teaching Torts as if Gender Matters: Intentional Torts*, 2 VA. J. SOC. POL'Y & L. 115 (1994).

⁸¹ Gender sensitivity aims to understand and take account of the societal and cultural factors involved in gender-based exclusion and discrimination in the most diverse spheres of public and private life. (The European Institute for Gender Equality, *Gender sensitivity*, <https://eige.europa.eu/thesaurus/terms/1218>).

⁸² The Council of Europe defined gender mainstreaming as: 'The (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages ...' Council of Europe, *What is Gender Mainstreaming?* <https://www.coe.int/en/web/genderequality/what-is-gender-mainstreaming> (last visited Apr 13, 2022); Feminist legal theory is a research theory, whereas gender sensitivity and gender mainstreaming are strategies in policymaking and policy-enforcing. They belong to distinct terrains. Notwithstanding, feminist legal theory and its methods offer practical ways to realize gender sensitivity and gender mainstreaming.

⁸³ Force 47 or Internet polemicists (đư luận viên) is a cyberspace unit funded by the state. It consists of thousands of people who are tasked with setting up, moderating and posting on pro-state social media pages to correct 'wrong views' (James Pearson, *How Vietnam's 'Influencer' Army Wages Information Warfare on Facebook*, REUTERS, Jul 9, 2021, <https://www.reuters.com/world/asia-pacific/how-vietnams-influencer-army-wages-information-warfare-facebook-2021-07-09/>).

⁸⁴ Đỗ Đức Hoàng et al., *Facing: Human rights [Đối diện: Nhân quyền]*, VTV1 (2021), <https://vtv.vn/video/doi-dien-nhan-quyen-527961.htm>; Cao Đức Thái, *Tuyệt đối hóa quyền con người, lảng tránh trách nhiệm công dân - thủ đoạn chống phá của các thế lực thù địch [Absolutization of human rights and evasion of civic responsibilities - sabotaging maneuvers of hostile forces]*, QPTD, Oct 18, 2012, <http://tapchiquptd.vn/vi/phong-chong-dbbh-tu-dien-bien-tu-chuyen-hoa-tuyet-doi-hoa-quyen-con-nguoi-lang-tranh-trach-nhiem-cong-dan-thu-doan-chong-pha-cua-cac-t/1529.html>

Notwithstanding, it should be noted that with the more and more open attitude since Đổi mới, the Party-State seem not to reject outright and entirely the Western theories due to being imperialism or whatsoever akin reasons. The Party-State has endorsed the teaching and circulation of Western doctrines that used to be taboos, for example, the idea of free market. Any theory can be endorsed insofar as the essence of it is not about challenging the Party leadership or criticizing the hardcore of Marxism-Leninism publicly. Moreover, today, the Party and government are far more responsive than previously. Indeed, many essays about the need for critical thinking in education have been published by Party's outlets.⁸⁵ It seems that the apparatus shall only assault the use of an idea on a case-by-case basis; such an assault targets individuals who challenge the apparatus and are deemed as dangerous to the apparatus rather than a theory per se.

The adoption of feminist legal theory should be no more problematic than any other Western-origin theory. There seems to be no inherent disagreement between Marxism and feminism, rather their voices seem to be resonance. First, they are naturalist schools and both of them are critical in their nature.⁸⁶ Second, for both of them, issues do not emerge in a social and political void.⁸⁷ Third, the two theories both look for 'social justice'.⁸⁸ While Marxism focuses on the struggle of class, feminism focuses on gender issues. The patriarchal structures and forms of Western law criticized by feminists are capitalism and capitalist order in a Marxist term. It would follow from this that the two schools may reinforce each other on a range of issues, for example, issues related to feminine workers who face unfavourable working conditions. The critical attitude of feminism is for promoting the benefit of women and marginalized groups but not about challenging the leadership of the Party, and as such, the Party-State seems to have no problem with it. Indeed, the Feminist Legal Theory Conference was supported by Rosa-Luxemburg-Stiftung and Vietnam Women's Union—a socio-political organization within the state's apparatus and welcomed by the state's media.

For the populace, the Vietnamese have an open attitude and welcome ideas and theories regardless of their origin. The fact that an idea is of Western origin shall not make it be discriminated against or excluded. It is also doubtful that anything rooted in Vietnamese culture is at odds with openness, particularly, with the adoption of 'Western-origin ideas', including feminism.

Though it should be noted that with the state-backed media's discourses and the polarization in masculine Western media, some Vietnamese can be prejudiced or paranoid about 'Western state values', assertively arguing that 'basically, a higher standard for female students to be enrolled in the Court system is justifiable because, with pregnancy, they cannot do their tasks' and depicting feminist theory as straw feminism or feminazi, such views are not of representative nature.

I have done some seminars about legal research for students in Ho Chi Minh City and Hanoi. In conversations with students, I am always impressed by their knowledge. Many students know things beyond textbooks: they know about and seem to approve Kantian, feminist accounts. Their eyes have zeal for learning new things. I learnt that many students had studied a lot in short courses taught by community initiatives or funded foundations. A take-away message should be that the eagerness and joyfulness of learning of human beings should be recognized, recognizing that we should promote knowledge to be communicated effectively and be supportive to help students think critically and see many aspects of

⁸⁵ Hữu and Thúy, *supra* note 53; Oanh, *supra* note 52.

⁸⁶ W. L. McBride, *Marxism and Natural Law*, 15 AM. J. JURISPRUD. 127–153 (1970); Catharine A MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS J. WOMEN CULT. SOC. 515–544 (1982).

⁸⁷ Shazia Qureshi, *Research Methodology in Law and Its Application to Women's Human Rights Law*, 22 J. POLIT. STUD. 629–643 (2015).

⁸⁸ MacKinnon, *supra* note 83.

societal and theoretical issues. Feminism and feminist legal theory can be surrounded by myths; nevertheless, the job of academics is not about ignoring such issues but offering an academic lens.

Transforming Vietnamese Legal Scholarship and Legal Education

Feminist legal theory may address Hoàng Thị Kim Quê's concerns on the void of legal education. Filling the void yields a robust podium for further development regarding legal studies on gender-related issues. Indeed, the effort to promote the discussion and adoption of the feminist legal theory should motivate the study of methodology and methods in Vietnamese legal studies.

The adoption of feminist theory can bring about significant positive impacts on Vietnamese legal academia, considering its distinctive features. At the heart of [Western] law and legal methods, both intra- or extralegal, are some fundamental ideas: autonomy, rationality and coercion: While some classical accounts of legal positivism and intra-legal method put great emphasis on coercion and the internal structure of law,⁸⁹ more 'progressive accounts' of law and economics, such as those of Posner, pay a heap of attention to rationality and following that stress on economic efficiency and independent decision-making subjects,⁹⁰ situating itself on utilitarianism. These ideas of the supremacy of rationality and/or coercion have been advocated since the ancient days of Greece. To Aristotle, rationality and strength—a version of force, power and coercion—are among other things that makes someone superior over lesser beings in nature,⁹¹ men are 'zoon logon echon'—a rational animal,⁹² and 'the male is by nature superior and the female inferior'.⁹³ As such, it would seem that characteristics that are in opposition with rationality and strength/force—such as relationality, dependency or care—have long been deemed as inferior, excluded or put at a periphery. While a reverse version—relationality, dependency or care are superior over rationality—may not be more accurate, 'feminine features' and 'feminist theory' may fill the gap left by the masculine positivist legal theories. As within the context of Vietnamese jurisprudence, feminist legal theory can do the following:

1. Offer a way to see law as less coercive than what is perceived by the Vietnamese orthodox accounts
2. Advocate for a nuanced case-to-case basis approach that can benefit the making of case law and legal reasoning. As such, it can supplement the traditional civil law approach which favours abstract legal rules of the Vietnamese jurisprudence.
3. Remind Vietnamese jurisprudence to pay attention to marginalized people or groups who can be overlooked. Though hardly we may reach the point where we can make everyone happy, we should not lose our hope and give up caring. There are many instances where love, care and relationality may work better than 'rational' cold-hearted speculations.
4. Reinforce the concern of Vietnamese jurisprudence for social issues and encourage teachers and students to be literate to the law in action.
5. Promote gender sensitivity in both lawmaking and law-enforcing processes.

⁸⁹ HANS KELSEN, *PURE THEORY OF LAW* (2020).

⁹⁰ Richard A Posner, *The Economic Approach to Law*, 53 *TEX. LAW REV.* 757 (1975); RICHARD A POSNER, *THE ECONOMICS OF JUSTICE* (1983).

⁹¹ Aristotle, *The Politics*, *IN THE CIVIL SOCIETY READER* (2003).

⁹² *Id.*

⁹³ *Id.*

Addressing Women's Issues

A general observation about [Western] law is that despite intentionally casting itself in a neutral light, law was a product of white males which excluded 'non-normative' subjects, such as women, non-European ethnicities and anyone who does not fit a pre-existing paradigm. As this structure and order have been borrowed and transplanted worldwide, whether it is voluntary or not, its problems are also inherited beyond Europe. This observation can be true in the case of Vietnam. Outside discussions related to feminism, Vietnamese scholars have recognized the negligence of gender in the 'neutral' approach of law which results in the de facto structural disadvantages and inequality. These points are illustrated papers concerning the revised Draft Civil Code 2015 by Bùi Thị Thanh Hằng or on the Gender Equality Law of Nguyễn Thu Linh.⁹⁴

Stepping a bit further, in reality, there are many issues untouched or not addressed adequately by laws. For example, bearing the current framework in mind, from my observation, in some foreign capital enterprises, women can be subjected to unilateral termination of contract once they are pregnant (this is not hard to imagine, considering the non-litigious attitude of the Vietnamese, many low-skilled—and even graduate-level—employers often choose to silence when being terminated a contract instead of following daunting and unfruitful litigations). Female teachers can be subjected to sexual harassment from their bosses, being assigned to wine parties, having to offer wine to the guests and being acted rudely to.⁹⁵ Some social issues are even not treated as of legal nature or have legal solutions.

In 2020, the Vietnam Court Academy required that to pass the entrance exam, female students must have a higher score than their male peers (roughly 1 to 2 scores).⁹⁶

In 2008 and 2013, there were allegations that the Ministry of Transport had proposed that to drive a car, [both male and] female drivers must meet the chest circumference threshold.⁹⁷

In the age of the COVID-19 pandemic, many local governments passed directives and official letters defining 'essential goods'—goods could be transported across localities for individual needs.⁹⁸ Unfortunately, sanitary napkins were excluded and containing trucks were stuck at blockage/control points.⁹⁹

Thanks to various versions and methods, feminist legal theory can offer pluralistic accounts that may benefit figuring out, voicing and contributing to solving women's and gender issues. As such, feminist legal theory can be a theoretical foundation for Vietnamese scholarship to raise its voice in gender-related issues and contribute to the better formation and enforcement of laws bearing in mind justice and interests of women and any marginalized groups.

⁹⁴ Nguyễn Thu Linh, *Luật bình đẳng giới và trách nhiệm của các cơ quan nhà nước* [Law on gender equality and responsibilities of state agencies], PHỤ NỮ VÀ TIỀN BỘ, <https://congdoan.vnpt.vn/Tin-tuc/Nu-cong/573098/luat-binh-dang-gioi-va-trach-nhiem-cua-cac-co-quan-nha-nuoc?page=3>

⁹⁵ Phạm Đức, *Nữ giáo viên bị điều động tiếp rượu* [Female teachers were ordered to serve alcohol], THANH NIÊN, Nov 12, 2016, <https://thanhnien.vn/doi-song/nu-giao-vien-bi-dieu-dong-tiep-ruou-764408.html>

⁹⁶ Thùy Linh, *Điểm chuẩn Học viện Tòa án tăng so với năm ngoái* [Benchmark of the Court Academy is higher than that of last year], LAODONG, Oct 5, 2020, <https://laodong.vn/giao-duc/diem-chuan-hoc-vien-toa-an-tang-so-voi-nam-ngoai-841999.ldo>

⁹⁷ Trần Ngọc, *'Ngực lép' không được lái xe trên 50 cc* [Small-chested people are not allowed to drive bikes that are over 50 cc]? TUYẾN GIÁO, Oct 22, 2008, <https://tuyengiao.vn/dien-dan/nguc-lep-khong-duoc-lai-xe-tren-50-cc-2847>; Thành Văn, *Lại đề xuất 'ngực lép' không được lái xe* [Another attempt to propose driving ban for small-chested people], PHÁP LUẬT, Aug 23, 2013, <https://plo.vn/xa-hoi/lai-de-xuat-nguc-lep-khong-duoc-lai-xe-295541.html>

⁹⁸ Đức Minh, *Xe chở băng vệ sinh, tã bỉm bị chặn vì 'không phải thiết yếu'* [Trucks carrying sanitary napkins and diapers were blocked because of being 'non-essential'], VNEXPRESS, Jul 28, 2021, <https://vnexpress.net/xe-cho-bang-ve-sinh-ta-bim-bi-chan-vi-khong-phai-thiet-yeu-4331958.html>

⁹⁹ *Id.*

Conclusion

In a rule-of-law State, law is supposed to provide a neutral legal framework for the conduct of all, regardless of gender, class or social status. The formal recognition of feminist legal theory in legal studies and the legal practice in Vietnam is necessary for (a) the Vietnamese legal scholarship to be on par with the international jurisprudence and (b) to ensure consideration of women's rights in the promulgation and application of law in practice or, more accurately, to ensure neutrality is an inherent attribute of the law. To this end, it is necessary to first widely recognize and apply this theory from the legal research community. When the recognition and application of feminist legal theory becomes an indispensable habit of researchers, this will affect the thinking and actions of the lawmaker and law-enforcer. This, in view of us, means that today in Vietnam, the role of legal researchers is beginning to be appreciated with a certain influence on the legislative and judicial work. During the course of pursuing the mandate of exposing the viability and preferability of the adoption of feminist theories into Vietnamese legal academia and to facilitate this, we have fully examined the Vietnamese and the global context, the content of the feminist theory, and provided some brief thoughts on the application of the feminist legal theory in the Vietnamese context.

Acknowledgements

We wish to thank the anonymous reviewers for their constructive critical comments which provide materials for us to reflect on and deepen our papers. The authors are grateful to the Editorial Team for their assistance in finalizing this article. All mistakes are our own. Many of the people mentioned in this article are inspirational to us, and we are also thankful to them.

Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The authors received no financial support for the research, authorship and/or publication of this article.

ORCID iDs

Doan Thanh Hai  <https://orcid.org/0000-0002-1365-0761>

Doan Thi Phuong Diep  <https://orcid.org/0000-0001-5021-3408>