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Legal Silence and the Concept of Law Regarding Gay People in Vietnam

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Abstract: Numerous people around the world are, due to their non-conforming sexuality, subject to quotidian social stigma and violence, often tolerated by state and non-state actors, who might find discrimination of this type explicitly anchored in legislative texts and thereby justifiable. However, legal ignorance might not be less detrimental to the lives of this vulnerable sexual minority. In Vietnam, same-sex sexual relations are believed to have never been criminalized; however, gay people could not be said to enjoy basic recognition guaranteed by the law. This paper would seek to highlight the legal silence concerning the position of gay people in Vietnam, focusing on their quasi-absolute absence from consideration in constitutional and legislative texts and the dominant use of a heterosexist language in the legal sphere, placing such individuals in the invisible space of the law, whether it is about marriage or any other rights. Furthermore, the present article would argue that the legal lacuna might be attributable to Vietnam's current hybrid legal approach to the matter in question owing to its long-standing preference for non-legal norms over juridical means in the regulation of social matters and its recent selective adoption of Western equality-based legal values. While the latter is a recent phenomenon, the former has been present for centuries, identifiable with the absence of explicit condemnation of non-normative sexualities in the Confucian, colonial French, and localised communist legal traditions. Consequently, although granted some recognition in the last decade, gay people in Vietnam are mostly left out of legal considerations, not to speak of protection, leaving them vulnerable to social instability, discrimination, and even hatred-motivated violence.

Keywords: Gay People, Vietnam, Concept of Law, Hybrid Legal Identity, Legal Protection, Vulnerability

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Introduction

Same-sex sexual relations¹, particularly in Europe, have been treated as a legal subject for centuries since it was, at least, codified in the Roman Empire's Theodosian Code, promulgated in 439 (Boswell 1980, 123-124). Since then, except for some particular national contexts², many aspects of sexual activities between two persons of the same sex have never ceased to mark their presence in various national legal codes, which have undergone a significant transformation from explicit condemnation and punishment to decriminalisation and recognition with some hope for full equality, not least in Western Europe and sporadically in Latin America and Asia. Similarly, same-sex sexual relations have, for a century, been present in the legal sphere, due to colonial legal impositions, as a crime subjected to increasing draconian legal sanctions in such British former colonies as Kenya, Uganda and Tanzania (Sanders 2009, 12). Although divergent on the approaches, the two geographical examples seem to illustrate the fact that such sexual activities have made their way into the legal sphere for a significant part of these countries' national history, either as a subject for condemnation or protection.

Different from the two trends of legal treatment of same-sex sexual unions, another reality is characteristic of its maintenance of silence or reticence on the matter. In the third category, such relations may not be treated as a legal subject to a significant extent, being left out of legal considerations and official political debates. If elsewhere homosexuality is subjected to legally banned and persecuted, gay people in this camp are victims of legal non-existence, where their presence is not acknowledged and their fundamental rights not recognised. The detrimental impact exerted on them might not be much less alarming than that endured by those who risk legal sanctions.

¹ The terms 'same-sex sexual relations/activities/unions' will be used throughout the paper and refer in particular to the dynastic period of the country before any terminological importation from Europe. For specific reflections of the vocabulary of the French colonial period, 'pederasty' will be the prioritised term. Regarding the contemporary description, either 'gay' or the historical medical term 'homosexual', is used to refer to both males and females whose emotional, romantic, and/or sexual attraction is with individuals of the same sex.

² For example, in France sexual relations between consenting adults in private ceased to be mentioned in the legal corpus since the French Revolution of 1789 up to the year 1942, when the pro-Germany Vichy government enacted an *ordonnance* that raised the age of consent to twenty-one for homosexuals while that for heterosexuals remained at thirteen (Sibalis 2002, 302). A similar mode of legal silence in the regard was deliberately activated in post-Unification Italy up to the beginning of the twenty-first century, when sexual orientation was recognised as legitimate ground for protection against discrimination in employment (Concas 2022).

This was because, in addition to the lack of legal guarantees, gay people in the silent camp are also likely to face adversarial treatment and resultant violence committed and/or tolerated by state and non-state actors. Such an observation precisely aligns with the concept of ‘repressive tolerance’, which was employed by Giovanni Dall’Orto in his research on homosexuality in Italy during fascism (1986). The notion was applicable in the present paper in that the absence of legal condemnations, often interpreted or presented as an indicator of official tolerance, actually co-exists or even gives way to non-legal regulatory mechanisms, mostly informed by conservative moral conventions. Such disciplinary systems might exert an even more penetrating form of oppression. In these dynamics, invisibility placed the individuals affected outside of the legal recognition and protection, causing them to suffer from vulnerability in both legal and non-legal domains.

Vietnam then seems to feature itself in this group because, only since the year 2000, some certain aspect of homosexuality as an identity has made its way into the legal corpus, although initially prohibitive (Marriage and Family Law, Article 5). Since then, despite a few positive developments, the country still witnesses a reticence or a quasi-total silence on the part of the government in the legal treatment of individuals identified as homosexual. Although free from official criminalisation and sanctions, they suffer from a state of legal non-existence and instability since their presence and inalienable rights are lacking in legal recognition, not to mention the fact that discrimination against them in different quotidian settings might be kept a blind eye on by competent authorities³.

While the current scholarship on Vietnam appears to show little interest in the field of law in relation to homosexuality or at large non-conforming sexuality, a few research attempts⁴ that indirectly took the nexus into consideration narrowed their focus to investigate only the question of same-sex marriage as a priority of social activism owing to the official debates thereon that eventually led to the revision of the Marriage and Family

³ It is to be noted that the lacking legal recognition of gay people is relatively contrasting with an increasingly positive social attitude towards them in the last ten years, particularly in the field of marriage quality. A survey, conducted in late 2012, found out that 33,7% of Vietnam’s population supported the authorization of same-sex marriage, while 52,9% opposed to the idea (IS, iSEE, & HSPI 2013, 46). However, according to a June-September 2023 Pew Research Center poll, the percentage of people in Vietnam in favour of same-sex marriage significantly increased to 65%, while that of those against it was 30%. This level of popular support was the second highest in Asia with Japan (68%) holding the first place, and the greatest in Southeast Asia, where Thailand (60%) and Cambodia (57%) came in the second and third position respectively.

⁴ A significant portion of the existing scholarship on the question of homosexuality in Vietnam features works carried out from an anthropological, ethnographical, and literary perspective (Horton & Rydstrom 2019; Newton 2012; Quang-Anh Richard Tran 2011).

law in 2014 (Oosterhoff et al. 2014; Faludi 2016). Even though the event initiated an unprecedented wave of academic output around the question of homosexuality, even if still limited on the legal aspect, it might have created an over-emphasis on the materialisation of the right to same-sex marriage as a top-notch destination for the achievement of equality. Moreover, it was the legal repercussion, one of which was the complexity of harmonising other sections of law once the legislation of same-sex marriage was authorised, that was provoked as one of the primary justifications to postpone such an advancement of rights in the debates in the early 2010s (Vo et al. 2013). Therefore, it might be suggested that an alternative should start with other areas of law by targeting discrimination on the ground of sexual orientation in such fields as employment, housing, and access to health care. This approach might help construct a solid foundation for the advocacy for other rights seen more controversial. As one of the first of its type, the present article aims to highlight the legal vulnerability of gay people due to the lack of legal recognition and protection, or better put the legal reticence, constituting a state of invisibility in numerous fields of one's quotidian functioning.

Moreover, the existing scholarship on the question of homosexuality in contemporary Vietnam takes the legal situation as an established, immovable fact, on the basis of which other discussions are presented, often of non-legal nature or linked to the legal consequences of that specific legal rule, without embarking on an explanatory journey to demystify it or examine it from a historical triangle. Furthermore, scholarly research of historical investigation on the question of law and morality, only one in quantity to the best knowledge of the current author (Tuyet Nhung Tran 2020), commits wholeheartedly to its unidirectional and cross-sectional approach; therefore, refraining itself from venturing further into contemporaneity. However, it is to be acknowledged that there is a continuity of the past and the present, even though throughout the time lapse numerous changes of various scales have been recorded, and it is not less useful to study discontinuities, or rather epistemological breaks and ruptures. Therefore, going beyond the analytical approach to the current legal status of gay people in contemporary Vietnam, this research attempt ventures into a historical investigation with the hope of bringing more attention to what might have shaped and influenced the current concept of law in this regard. Four legal identities, including Confucianism, French colonialism, communism or socialist legality, and Western liberal values, each chronologically linked to a specific period of Vietnam's history, are argued to have exerted a significant impact in the formation and manifestation of the country's present legal approach to the treatment of gay people.

Corroborations on the hypotheses mentioned above come from the use of discourse analysis, yielding an in-depth analysis of original historical and contemporary sources, including legal codes, writings, official and non-official speeches, and newspapers. Michel Foucault's meaning of discourse is endorsed in that it refers to, beyond formal linguistic dimensions, institutionalised patterns of knowledge present in disciplinary structures as a form of power manifestation⁵. Moreover, scholarly works on related topics also provide important input particularly when both the research topic and approach adopted in the present paper, do not seem, at least not yet, to have gathered creditworthy attention in the academia. To start with, the article will present an analysis of the current legal corpus regarding the treatment of gay people in Vietnam, the result of which would be linked to the country's hybrid legal identity in the regard. Then, each of the four attributes to the formation of this juridical character would succinctly be presented in a chronological order of prevalence⁶. Finally, some concluding remarks would be provided.

1. Legal Reticence

Although Vietnam, during the last decade, has witnessed an increasing openness to discussions about matters related to homosexuality and the government's actualisation of some legislative measures aimed at bettering the position of gay people in society, the current legal corpus is still very much characterised of legal reticence. The situation was also noted in the recent United Nations Human Rights Council's report in the framework of the country's Universal Periodic Review (2024, 9). This legal silence risked hampering an accelerated concretisation of theoretical ideals of equality, anchored in the Constitution (2013, Article 16), from being carried out. The current author argues that the reticence in the legal sphere is featured by legal invalidity, half-way recognition and protection, legal vagueness, and legal invisibility, the discussion of which all will be presented as follows. The first three features are retained from the legislative texts in which aspects of homosexuality as an identity are mentioned, meanwhile the last attribute no

⁵ '[...]“discourse”, in the form in which they can be heard or read, are not, as one might expect, a mere intersection of things and words: an obscure web of things, and a manifest, visible, coloured chain of words; [...] I would like to show with precise examples that in analysing discourses themselves, one sees the loosening of the embrace, apparently so tight, of words and things, and the emergence of a group of rules proper to discursive practice. These rules define [...] the ordering of objects' (Foucault 1969, 53-54).

⁶ The term 'prevalence' in this context refers to the period in which such factors exerted their impact in the most visible manner.

doubt is the dominant voice of the country's existing legislations⁷, some of which will be analysed as illustrations for the point being made.

1.1. Legal Invalidity

The legal language of invalidity does not seem to present a prohibition which in itself transmits a discouragement from or warning against possible transgressions and carries with it a justified punishment once a violation thereof is committed. Instead, legal invalidity implicates a possibility of pursuing the act of doing; however, the obtainment of the result desired from the action is not feasible from a legal perspective. In concrete terms, Article 8 of Vietnam's 2014 Marriage and Family Law, in spite of no longer featuring the ban on same-sex marriage enacted in the 2000 version of the same legislation (Article 10), explicitly refuses to recognise the marriage-like union of two persons of the same sex. Indeed, it stated that 'The State shall not recognise marriage between persons of the same sex'. The law then indirectly allows same-sex couples to get married through socially recognised ceremonies, cohabit, and treat each other as spouses⁸, which signalled a positive change in the State's approach to the matter⁹. However,

⁷ It is first and foremost to be noted that, according to the Law on the Promulgation of Legislative Documents (2015), the Vietnamese legal corpus comprises of a variety of documents issued by a range of authorities, both national and local. The most authoritative legal text is the Constitution, followed by legal codes, laws, and resolutions promulgated by the National Assembly, and orders issued by the Standing Committee of the National Assembly. Subsequent levels of descending authoritativeness are President's commands, governmental decrees, Prime Minister's decisions, ministerial circulars, ministerial joint circulars, the Supreme Court's (SC) judgements, the Supreme Court's circulars, the Supreme People's Procurator's circulars, decisions issued by the Auditor General of the State Audit Office, circulars and decisions prepared by administrative and adjudicatory bodies at various local levels, and finally instructional documents.

⁸ It should be noticed that the organisation of a wedding ceremony in Vietnam does not require by law any prior administrative publication and authorisation thereof. A couple can also choose to register their marriage at the local competent authority after having held the ritual. Only during this process, the validity of their marriage will eventually be checked and then confirmed or invalidated.

⁹ The removal of the ban on same-sex wedding ceremonies might feature itself as a milestone in the campaign for marriage equality since it acknowledged the social dimension of marriage in Vietnam, which is separated and perhaps more important than its legal counterpart. As mentioned in Note 8, a couple can be seen as married by their family and their neighbours after the ceremony, even though they have not gone to the local authority to register their marriage. Moreover, only recently has the registration of marriage been considered an important step in officialising the union between a man and a woman. Traditionally, registration was largely ignored, particularly by those living in the countryside, and also by the government. Only in the 2000 Marriage and Family Law did the State make a clear position in the regard by stipulating that 'a union by a man and a woman is not legally recognised if they have not registered their marriage' (Article 11).

the union between two persons of the same sex, no matter how committed and devoted, is not recognised by the State as legally valid.

Another legislative text (Article 12, Clause 5, Circular No. 04/2020/TT-BTP), describing the preconditions to the registration of marriage, allows the civil magistrate at a given competent local authority to make a blanket refusal of the request for a document attesting the requester's civil status as single for the marriage-contracting purpose if it comes to knowledge that the partner is a person of the same sex. It can be followed that the presentation of the request is permissible; however, it encounters immediately a legally justified denial of reception without any further explanations and, as a consequence, becomes invalid. In both instances, analysed above, the legal status quo marginalises and discriminates the parties involved on the ground of their 'unconventional' sexual orientation not by prohibiting them from following a certain act, but by invalidating their legitimate requests.

1.2. Haft-way Recognition and Protection

Another aspect of legal vulnerability suffered by gay people in contemporary Vietnam has a great deal to do with the fact that when some fundamental rights are given consideration, their actualisation or concretisation is left too much to be desired. The regulation regarding same-sex marriage, analysed for the point made above, can serve again as a case in point. Indeed, the blanket ban on the organisation of marriage ceremonies by same-sex couples, introduced in 2000 and accompanied by some legislative texts imposing administrative fines in case of violations, was lifted in 2014. However, the State made a clear statement that it does not legally recognise such a union (Article 8, Clause 2, Marriage and Family Law). This modification was preceded by the Governmental Decree No. 110/2013/ND-CP, removing the administrative penalty imposed on those who had organised a same-sex wedding ceremony. The two legislative texts, read together, indicate that same-sex couples can celebrate their union by way of a wedding ritual without the risk of being fined. However, their relationship is not considered valid; therefore, both the rights and duties, given to legally married opposite-sex couples, in the field of inheritance, welfare, separation or divorce, to name but a few, are completely absent, creating gigantic loopholes affecting negatively the couples involved and also creating complexities for the magistracy when such issues emerge.

Another exemplification of unsatisfactory recognition can be seen in Article 30, Clause 5 of the Law No. 41/2019/QH14 on the execution of criminal judgements, promulgated by the National Assembly, guaranteeing

the separation of the inmates while in detention who are homosexuals, transgenders, or those whose sex is unidentified. The legislative effort is a significant step towards the recognition of vulnerability suffered by sexually non-conforming individuals in peculiar circumstances. However, critical uncertainties arise from the fact that the law does not specify, *inter alia*, what the identification mechanism in use is and how it works since the process of verification and categorisation on the basis of claimed non-conforming sexual orientation can easily, intentionally or not, from the part of the authority in charge, give rise to a great number of inhuman malpractices and irreversible damages to the already vulnerable subject in question¹⁰.

The incomplete legal measures aimed at bettering the living condition of gay people can be detected from the latest governmental output, that is the Official Letter No. 4132/BYT-PC sent by the Minister of Health in August 2022 to municipal health departments and health facilities registered to the Ministry of Health, in which it is recommended that homosexuality, bisexuality, and transgender not be considered pathological and conversion therapy, cures, and unjustified medical intervention not be practiced¹¹. The communication was initially applauded as one of the first official ministerial-level efforts of depathologisation of what once was considered 'diseases'. However, the initial exultation quickly gave space to a feeling of doubts as the communication, itself being a recommendation, does not stipulate enforcement mechanisms and measures used to implement the guidance therein contained. Nor does it incorporate any allusion to a foreseeable legislative project taking these recommendations as its object. Such developments, despite signifying a change in the government's approach towards a just treatment of the sexual minorities, do not, at least for the time being, measure up to giving them a dignified existence,

¹⁰ Malpractices were perpetuated in the verification mechanism adopted by some member states of the European Union when they handled applications for asylum submitted by individuals coming from Africa and the Middle East on the ground of possible criminal prosecution due to their sexual orientation. In January 2018, the European Court of Justice declared illegal the use of psychological reports based on personality tests in determining an asylum seeker's sexual orientation (Zheng 2018).

¹¹ It shall be noticed that, as far as the current author is aware, homosexuality was never declared as a disease by any official medical authority in Vietnam. However, the idea that it was pathological might have emerged during the 1980s and 1990s, following the opening of the country to the international community. Then, health-based discourses by doctors and experts of sexology which linked homosexuality to psychological disorder, categorised as gender inversion or the archaic European concept of a woman's soul trapped in a man's body, started to circulate (Richard Quang-Anh Tran 2014, 74). Such unregulated opinions justified the thriving of conversion theory being encouraged and even practiced, particularly in private clinics (Tien Phong 2011).

not even minimally. This is because their fundamental rights, those that enable them to lead a life, as ordinarily as the others, are absent, and the granting thereof does not appear to be on the table for a foreseeable round of legislative discussion.

1.3. Legal Vagueness

Possibly argued to identify with the previous category as one of its undesired implications, legal vagueness, however, is used in the present work to characterise those legal stipulations whose linguistic formation, often in the form of catch-all phrases, may give rise to uncertainty and confusion as to whether they can be applicable to individuals whose sexual orientations are considered non-conforming. Among many possible cases in point, two illustrations will be given as they concern an often-discussed topic in debates for equality, that is equal treatment regardless of one's sexual orientation.

Article 3, Clause 1 of the 2015 Civil Code states that 'every person, natural or juridical, is equal, therefore indiscriminately protected by law in civil and property rights, and shall not, for any reason, be discriminated against'. It may be posited that the regulation indicates the inherent inclusion of sexual orientation as one of the clause's legitimate categories under its scope for protection. However, such an interpretation has not, at least to the knowledge of the current author, been made official or endorsed by any competent national-level authority, whether executive, legislative, or judiciary.

A similar tone can be sensed in Article 5, Clause 1, Paragraph A of the Governmental Decree No. 167/2013/ND-CP on sanctions of administrative violations in social security matters, in which an administrative fine shall be imposed on those who are proved guilty of having used rude gestures or words to provoke, tease, and offend another person's honour and dignity. Again, interpretative ambiguities arise due to the catch-all linguistic formation of the legal rule since it cannot be ascertained as of what words would be considered as offensive when the target is a gay person or if verbal discrimination against a non-conforming sexual orientation is included under its scope at all. Moreover, the fine is stipulated to be around 100,000 to 300,000 Vietnamese *dong*, which is too light a pecuniary sanction as it corresponds roughly 4 to 12 *euros*. Both examples cited here represent a reality in which some legal measures are phrased in too vague a manner to be considered applicable to the protection of gay people in basic civil relations. The vagueness is exacerbated when there has been any clarification given by a competent authority at national level. As a consequence, the interpretation and application of these measures would be left to the discretion of those in

charge at local level, which may give rise to legal uncertainty and worsen the condition of the already fragile sexual minorities¹².

1.4. Legal Invisibility and Deduced Impossibility

The last aspect of legal reticence identified in the present paper is probably the domain in which the greatest sources of vulnerability suffered by gay people can be detected since the large portion of the current legal corpus is heterosexist in origin and remains explicitly so. The legal invisibility translates itself into legal impossibility, especially when some laws mention or hint at only heterosexual individuals as their subject for consideration and application.

It is first and foremost to be acknowledged that heterosexism is always the univocal tone in all the different versions of the Constitution since 1945 until the latest adoption in 2013, particularly the section of which regulates marriage because only the union between a man and a woman is considered. Moreover, some other family-related rights, which have been granted to same-sex couples in some Western European states (European Commission 2020) and may be on the way to be recognised elsewhere¹³, are non-existent in the Vietnamese legal corpus. Article 8, Clause 3 of the 2010 Adoption Law only mentions single persons or legally married – meaning opposite-sex – couples as those who are legitimate to ask for adoption. The fact that same-sex couples are not mentioned, due to their non-conforming sexual orientation, seems to demonstrate that they are not given legal visibility and that the possibility for adoption is denied to them, unless they choose to adopt as single individuals, not in pair. A similar example of the heterosexual status quo can be found in the Governmental Decree No. 10/2015/ND-CP on *in vitro* fertilisation and conditions for altruistic gestational surrogacy, the access to which only single women and legally married couples are

¹² Unfortunately, the current author could not find any judicial decision regarding the application of this Article and also Article 3, Clause 1 of the 2015 Civil Code in cases where one's sexual orientation was concerned. After having briefly consulted the digital collection of cases handed down by the Supreme People's Court, made available to the public only since July 2017, and other unofficial collections of sentences by inferior courts, the author managed to find only a few sentences where homosexuality was mentioned. In these cases, where murder (Sentence 16/2020/HS-PT) and divorce (Sentence 261/2018/HNGĐ-ST) were involved, homosexuality did not seem to be given any particular consideration in the Courts' decisions. However, research by case-law is often ignored by researchers of Vietnam, which results in the reality that the judicial corpus is still largely unexplored. In the present paper, it is impossible to embark on such ambitious a journey.

¹³ In November 2023 the Thai Cabinet approved a bill whose objective was to allow same-sex couples to marry and adopt. The bill has recently passed the first parliamentary reading and may be expected to be approved and come into effect in 2024 (Strangio 2023).

authorised as they are explicitly listed in the document (Article 5). Similar to the law on adoption, a lesbian woman can be allowed to recourse to vitro fertilisation only if she declares and proves to be single. Such cases accentuate the conspicuous lack of legal consideration for gay couples, especially when adoption rights are concerned. A desired legal deliberation, at the moment still unheard of, would correspond to a significant update of the rights in question, which might eventually work to alleviate the current legal vulnerability suffered gay people in Vietnam.

As indicated until now in this section of the paper, vulnerability faced by gay people in contemporary Vietnam can come from, *inter alia*, the legal reticence on non-conforming sexuality that manifests itself in four main aspects, including legal invalidity, half-way recognition and protection, legal vagueness, and legal impossibility deduced from invisibility. These legal shortcomings seem to touch more on the State's positive obligations, which should require it to actively engage in the law-making towards more recognition and protection of gay people (Wibye 2022, 365). Indeed, in a law-binding state, as the government aspires to be¹⁴, the lack of basic legal protection for gay people appears to have placed them at the margin of society, not to mention the fact that they risk being victims of various forms of abuse, which may remain unchecked and unpunished by competent authorities.

Indeed, such a precarious situation has definitely resulted in widespread discrimination and even violence committed by state and non-state actors, rendering life even more challenging than it already is for gay people, especially children and young adults (Human Rights Watch 2020). In order for the situation to be ameliorated, particularly by social activism, it is imperative to understand what constitutes such a hybrid legal and political attitude towards the topic in question. The current author argues that the country's hybrid legal identity in the regard might have been shaped by its multi-layered legal history, constituted of traces of Confucian, French colonial, and socialist legal thinking as well as recently imported Western liberal ideas. These attributes might have created a peculiar situation in which homosexuality has not become a full legal subject in its own right, and many of its aspects are not transposed into the legal domain. Each of the four contributing factors to the current hybrid identity will be analysed in the following section.

¹⁴ In 1991 the government declared itself to be a law-based socialist state, and has since then sought to remain so (Gillepsie 2007, 150).

2. A Hybrid Concept of Law

Throughout centuries of formation and development, a national legal system might have undergone various mutations that could be seen in the current structure and substance owing to, but not exclusively to, colonialism, asymmetries of geopolitical preponderance, and voluntary or involuntary legal transplantation. In the case of Vietnam, its current legal system has been considered hybrid since traces of several legal identities can be found. Bui (2022) lists Confucian, socialist, liberal (or rather French liberal ideas), and universal ideas as contributing factors to the formation of Vietnam's mixed constitutionalism. Although his analysis is constitutional in nature, the current author argues that it is also applicable to a study of ordinary laws since constitutional ideas, anchored in the Constitution, in most cases are then transposed in specific legislations¹⁵. However, while Bui generalises his analysis in giving elucidations on the country's plurality of constitutional ideas, the current paper turns to the legal approach to the question of non-conforming sexual orientation as a kernel of research in hoping that the hybrid concept of law, currently embraced by the country, can be better illustrated.

2.1. Confucian Legal Thinking

Confucian legal thinking, as embraced by dynastic Vietnam for hundreds of years¹⁶, values a harmonised society in human relations where all individuals are assigned a set of moral behavioural norms to follow in accordance with their familial and social status (Gardner 2014, 16). Those normative rules of conduct help construct a hierarchical and patriarchal society in which the power of the ruler in official contexts and that of the head of the household in informal settings are strongly exerted. As inherently concentrated on the power of moral rules, Confucian legal thinking discourages the (over) promulgation of man-made rules in the regulation of human affairs, favouring the use of socially prescribed – Confucian-inspired – moral conventions in such a task (Legge 1885, 40). This virtue-based political ideology resulted in the absence of legal rules concerning a wide range of issues, especially those

¹⁵ See Note. 7.

¹⁶ Vietnam had been under China's colonial control for roughly one thousand years (111 BCE-939 CE), during the period of which the former's society underwent radical sinonisation due to the latter's assimilationist policies. It was then no surprise that Confucianism as a political and moral school of thought, originated in ancient China, was introduced in Vietnam. However, its impact was more visible only after the country's independence and reached a new peak particularly with the reign of the Later Le dynasty (1428-1789) since its ideas started to make their presence in all corners of public and private life, including the legal system (Ly 2015, 72).

relating to familial affairs, which might be thought to fall within the domain of the head of the household (Viet Huong Nguyen 1994, 273). Only when those issues extended its influence on the detriment of the State's political status quo did they become a subject worth of legislative efforts, constituting moralistic laws whose sanctions were quite draconian.

To put it concisely, Confucian legal thinking only punishes those moral behaviours that can exert a detrimental impact on the State's political ideology, that is social hierarchy and patriarchy, and left to the regulation of non-legal moral rules, the conducts, considered non-threatening to the State's interest. The legal implication of such a legal approach can be seen in the fact that the Le Code, promulgated around 1470-1497, punished with decapitation a male servant who had engaged in sexual intercourse with the eldest son of the household (Article 134). In this case, the upward moving of social hierarchy and the degradation of the future household leader, not the sexual nature itself, seemed to be the main affront to the Confucian State and therefore shall be subject to severe legal punishment. The selective legal approach to same-sex sexual relations can be seen in another legal case in which sexual activities between two women were not considered illicit owing to the absence of male involvement and an eventual pregnancy (Hong Duc Book of Good Governance 1541-1560, 105).

The above-mentioned legal cases, as the only evidence to have been found in the regard, seem to suggest that same-sex sexual relations between two persons of the same sex were left unregulated by the legislators since they were non-procreative and equal in social status. Under this light, they presented no direct threats to the State's political and moral status quo, characterised of social hierarchy and patrilineality under the umbrella of patriarchy. However, the absence of legal sanctions could not by any means indicate a relatively tolerant attitude, whether official or not, towards such relations since they would fall within the endorsed domain of the non-legal regulatory mechanism mostly established by Confucian values. Of Confucian moral teachings, the most relevant to the question under study were filial piety, shown in procreation as a way to carry on the family lineage¹⁷, and gender-based expectations¹⁸, according to which a rigid heterosexual matrix

¹⁷ Filial piety, expressed in the form of continuation of the family lineage, might have been one of the most valued principles of Confucian teachings since it was a way to carry on the name of the family and conduct ceremonies in commemoration of ancestors. Mencius (370 BCE-289 CE), one of the main interpreters of Confucianism, considered having no descendants as the gravest unfilial act ever committed by (male) individuals towards their parents (Legge 1885, 195). In practice, research has shown that gay people in Vietnam often choose to engage in heterosexual marriage to produce offspring in order not to face familial and societal pressure (Horton & Rydstrom 2011, 546).

¹⁸ Pressures on conformance to gender-based expectations in Confucian states largely find

(Butler 1990, 208) obliged every individual not to deviate from what was explicitly prescribed for them since birth. These moral norms must have had a significant detrimental impact on the occurrence of same-sex sexual relations, particularly those fully committed, since they might not escape the adversarial judgement and punishment of household masters and village leaders, the two important figures in the non-formal regulation of human affairs in dynastic Vietnam (Viet Huong Nguyen 1994, 273).

The Confucian concept of law, as explained earlier, might have contributed to the fact that same-sex sexual relations, in the largest sense, contrary to medieval Europe's antisodomitical legal crusade, were left out of the legal system since they seemed to be within the non-legal regulation of socially prescribed moral conventions. Such an attitude seemed to have persisted even until today, not least because Confucianism, being ubiquitous, whether latently or manifestly, in many Vietnamese people's identity, still marks its impact in the legal system (Vu & Yamada 2020, 14; Bui 2022, 303). The continuity of this aspect of Confucian legal thinking, proliferated in dynastic times, might have been made possible by its being sustained and further enhanced in the country's subsequent particular political regimes, starting with the French colonial authority.

2.2. French Colonial Legal Thinking

Vietnam's dynastic legal identity, largely informed by Confucianism, started to be made more noticeable and judged as insufficient, barbarous, and uncivilised by French colonists, who employed these 'defects' to justify in the name of *mission civilisatrice* their expansionist agenda and competition for geopolitical power against other European colonists in the middle of the nineteenth century (Blazy 2012, 72). The immediate decades following their arrival had marked their assimilationist ambition of making the country a law-based French department overseas by, *inter alia*, implementing radical legal reforms, one successful of which introduced Napoleonic legal codes almost *verbatim* in the Southern part, known as Cochinchina (Blazy 2012, 23). Internal and external political complexities forced France to scale down their assimilationist project in the Central and Northern part of Vietnam, often referred to as Annam and Tonkin respectively, and opt for an associationist approach that, at least in theory, brought French 'progressive' ideas in harmony with local cultural values, which were increasingly modified in the process of codification (Blazy 2012, 23).

their justifications in Mencius's classical comment that 'When a son is born, what is desired for him is that he may have a wife; when a daughter is born, what is desired for her is that she may have a husband' (Legge 1885, 195).

Regardless of the colonial regime's change of direction, its legal stance on pederasty or homosexuality seemed to reflect the approach adopted by the 'motherland' since the Revolution of 1789, when the subject in question was intentionally left out of the legal system. Indeed, in the revolutionary and Napoleonic legal codes, only some criminal factors as public indecency and corruption of the youth might have some references to same-sex sexual activities¹⁹. As a result, colonial legal corpus in Vietnam made no explicit mention of such relations except in the penal code and its subsequent updated versions applicable in the South as it was a loose modification of the Napoleonic penal code (Cochinchinese Penal Code 1912, 138). Another close reference, besides those terms relating to public moral attacks, could be seen the law on repression of public drunkenness and management of bars, enacted on October 1917 and applied in French territories and her colonies, that imposed a sanction on those employers of entertainment avenues who had hired or hosted, *inter alia*, 'individuals of special morality' (1917, 5). Even though the practical application of the regulation and also the other relevant legal stipulations in colonial Vietnam has not been found yet, it can be seen that those colonial laws mirrored the legal ideologies of the 'motherland' in that homosexuality *per se* was not persecuted. However, like in France, the non-conforming sexuality was a special category taken into consideration as a possible cause of criminality²⁰.

¹⁹ Indeed, the so-called 'sodomy' or 'pederasty' stopped being a criminal offense punishable by death after the collapse of the *Ancien Régime* in the face of the Revolution dating back to 1789. Instead, 'public moral attacks', 'indecency acts', and 'corruption of the youth' were transposed into the Code of Municipal Police and Correctional Police, promulgated in 1791 by the revolutionary Constituent Assembly. Such terms were later appropriated in the Napoleonic penal code, enacted in 1810, having hitherto served as the legal base for legal prosecutions concerning some forms of same-sex sexual relations for the large part of the nineteenth century and the first half of the twentieth century (Sibalis 1996). Same-sex sexual relations were then subject to a legal silence until the issue of the 1942 *Ordonnance* under the pro-Germany Vichy government concerning the increase in the age of consent for homosexuals from thirteen to twenty-one and the 1960 legal crusade against homosexuality, finally appealed in 1982 (Silabis 2002).

²⁰ Among a panoply of sentences issued by various colonial courts in French Indochina, still largely understudied, there have been few revelations regarding how homosexuality was seen in the context of colonial adjudication. The only closest evidence for such a search was proposed by Ann Laura Stoler (2002, 86) in that a tribunal located in the French Indochinese city of Northern Vietnam refused to grant leniency to a French minor naval employee for having injured his colleague, having rejected his 'claimed' father's plea for pardon. The Court's refusal was justified by the argument that the boy was a mixed-race, born to a French father and a Vietnamese mother, and also by the counterargument that he might have engaged in 'immoral relations' with his 'assumed' father. Even though the case did not enter netly in the search for judicial views on homosexuality in colonial contexts, it did show that the non-conforming sexuality in the absence of other criminalising factors was not subject to legal punishments, yet it could be used to question one's moral conduct.

Nevertheless, in line with the Confucian approach, the French colonial legal identity gave way to the regulatory power of non-legal rules, especially in the name of pseudo-scientific pathologising discourses, proliferated since the middle of the nineteenth century in Europe (Simard 2019, 222-223). Same-sex sexual relations, as they were concretised as an identity, also became a denigratory attribute of a portion of the local male population, considered as dangerous for the French soldiers serving there since the former was blamed, initially by French or other European writers, to have seduced and corrupted the latter, who contracted syphilis and other high-profile sexually transmitted diseases (Proschan 2002, 614). The attacks against those local individuals having engaged in sexual intercourse with persons of the same sex then came also from Vietnamese writers, who attached them to the debauchery brought about by immoral colonists (Richard Quang-Anh Tran 2022, 364).

Under continuous condemnations, already germinated, although deductively, in Confucian teachings and intensified by French identity-based pathological discourses, those individuals were probably seen as despicable and hated by society. The situation could be best characterised as an example of 'repressive tolerance' (Dall'Orto 1986), according to which legal sanctions towards consenting homosexual relations between adults in private were absent; however, non-legal social norms were employed to exert a detrimental impact on those subjects. In the context of colonial Vietnam, the legal silence, informed by Confucian legal thinking on the topic, seemed to have been reinforced with the French *laissez-faire* attitude, yet the French colonial period witnessed vehement moral attacks against same-sex sexual relations, who were used as scapegoats for moral and political agendas from both sides. The silent treatment would again be maintained, if not enhanced by the subsequent political regime in Vietnam, this time dominated by socialist legality, as the North of the country, since 1945, and then its entirety, since 1975, adopted communism as its political identity²¹.

2.3. Socialist Legality

As identified by Gillespie (2015, 49-50), socialist legality entails, *inter alia*, an inferiority of individuality to collectivity in legal considerations

²¹ The discriminatory laws, enacted in France after the Second World War, did not leave a mark in Vietnam probably because the French impact was already weakened in the early 1940s, particularly with the entry of Japan in Indochina. After 1945, while many other African colonies joined the French Union and used French laws, whose anti-homosexuality marks still linger around in some current national penal codes, Northern Vietnam claimed independence and followed the Soviet Union while Southern Vietnam gradually fell under the 'tutelage' of America (Berinzon & Briggs 2016).

and a complete subservience of law to the interest of the ruling class, who then uses it as a management tool. In couple with the centuries-old Vietnamese appreciation of moral virtue in the management of human affairs, two dimensions of socialist legality present significant, mostly undesirable, implications for the legal considerations on questions relating to homosexuality.

Indeed, the adoption of Soviet socialist legality in 1960 helped the newly-established communist government found an up-to-date theoretical base, constructed on collectivism *vis-à-vis* individualism, for national building and also for the fights against its proclaimed enemy, being the 'bourgeoisie' (Gillepsie 2015, 49). Such a revolutionary ideology, exacerbated by the war with America in the South, restrained the thinking of individual romantic love and happiness, which was denounced as a form of selfishness. Under this light, homosexuality was considered a remnant of the bourgeoisie and needed to be eradicated, not through legal means, but mostly through disciplinary methods. Such was the method employed to treat a prominent writer turned soldier who was reported to have engaged in sexual acts with some of his male comrades in their barracks and then removed from leading roles by his unit leaders, as was told decades later by his comrade (To Hoai 1992, 193)²². The story also highlighted the power of unofficial regulatory mechanisms enhanced by physical proximity of living with one another in cooperatives and social housing units, a form of living and working in groups common in the Soviet world and in Vietnam since the late 1940s²³.

The suppression of individual feelings for the cause of collectivity then found a new language in the immediate years after the reunification of the country in 1975 in that romantic (heterosexual) love in the linear pathway to a legitimate marriage was encouraged for the purposes of, not least procreation and labour (Richard Quang-Anh Tran 2014, 14-16). In this picture, homosexuality was completely silenced and if mentioned somewhere, it was linked to criminality, especially prostitution, that was claimed to have had a detrimental impact on the institution of marriage and then the national well-being (Richard Quang-Anh Tran 2014, 11).

Another feature of socialist legality having exerted considerable restraints on the legal development of recognition and protection for the sexual minorities can be the fact that law is seen as a management tool serving

²² This story remains probably the only evidence of how homosexual relations were seen under a socialist light in pre-Unification Vietnam.

²³ According to the Vietnam Cooperative Alliance (2023), in 1960 there were 50,000 cooperatives registered in Northern Vietnam. In 1986 at the peak of cooperative development, there were 76,000 units across the entire country that accommodated 20 million members (one third of the country's population).

the political interests of the ruling class (Gillepsie 2015, 47). Therefore, while litigation to constitutional courts or other adjudicatory bodies who possessed the power of judicial review as a way to proclaim rights in the name of liberty and privacy was seen in social activism in North America and Western Europe in the 1970s and 1980s and actually achieved impressive success (Cain 1993), this practice was and still is not existent in Vietnam since the National Assembly as the highest body of state organs has the last saying in all legislative, executive, and adjudicatory functions. The 'so-called judicial review' is limited to the power of a constitutional committee, still a component of the Standing Committee in the National Assembly. Such legal characteristics might have enhanced the centuries-old practice of leaving homosexuality at the invisibility of legal consideration.

The manifestation of socialist legality, as shown earlier, demonstrates that some aspects relating to homosexuality did not enter the legal sphere since other non-legal disciplinary tools and official discourses concentrated on procreation, appeared to be highly appreciated by the government. However, socialist legality itself did not exclude the option of criminalisation of same-sex sexual relations since they did become targets for criminal punishments elsewhere in the Soviet bloc, for example, in Soviet Russia since 1934 (Stella 2013, 23). This was where one could highlight the prominent role played by the Vietnamese version of socialist legality, according to which the long-rooted tradition of rule by morality and virtue was still prevalent. Indeed, early manifestations of moral rule could be seen in the conflict with America, in which sentimentalist campaigns were prioritised since the general public often responded more readily to sentiments than to legality-based discourses (Gillepsie 2015, 53). It might be according to this strategy that public support was mobilised by revolutionary morality that emphasised sacrifice of individual happiness and prosperity for revolutionary causes, including the building up of socialism and an eventual reunification of the entire country (Gillepsie 2015, 53). Such a focus on morality rather than legality might have led the Vietnamese leaders not to look up to the Soviet Union as a model in the management of same-sex sexual relations. The long-lasting silence on the use of legal means to manage same-sex sexual relations, therefore, continued.

The silence was, however, broken in the late 1990s and early 2000s, when homosexuality entered the official documents as a social evil, and particularly the 2000 version of the Marriage and Family Law, followed by a governmental decree, explicitly prohibited same-sex marriage and the organisation thereof. Such a change in attitude, partially diverted from an endorsement of non-legal measures, might be linked to the fact that in the context of the country's comprehensive reforms since 1986 it was officially acknowledged that moral rule could not be the dominant tool of national

regulation anymore, and instead, a law-based socialist state was promoted (Gillepsie 2015, 53-54).

However, the (quasi)absence of legal elaborations, even in prohibitive nature, on other questions relating to homosexuality in the immediate years following the 2000 amendment to the Marriage and Family Law shows that a more dominant role in this negative change might have been played by other mechanisms, one of which was reactionary regionalism, as in other Asian countries, against the expansion of Western influence (Ravenhill 2009, 219). It can be indicated that the role of law as a tool to regulate society was formally acknowledged, yet its use was still limited. However, the country's initial antipathetic reaction to the wave of liberalism flooding from the West was later transformed into a more welcoming attitude that resulted in the selection and embracement of some liberal values and rendered the legal identity all the more hybrid, yet not less uncertain.

2.4. Selected Western Liberal Thoughts

A last imprint of Vietnam's current hybrid legal identity towards legislation for gay people evinces itself in the country's recent internalisation of some liberal right-based reasoning and actualisation of some legal recognition. One of the first traces for such a change in attitude might have been detected in its inclusion of homosexuals in foreign-supported social programs in the midst of the HIV/AIDS epidemic in mid-2000s (Montoya 2021, 38). However, the first legal consideration in a relevant aspect emerged when the Minister of Justice, back in 2012, for the first time, asked for opinions from the civil society regarding the changes made to the Marriage and Family Law (Oosterhoff et al. 2014, 29). Even though the legal project did not go beyond the decriminalisation of organisation of same-sex weddings, it marked a new era of legislation, taking on the path towards an acknowledgement of the government's positive obligations in guaranteeing a life of dignity for gay people. Since then, some legal recognition, yet limited, have been realised for the benefit of gay people as was already discussed in the analysis of the country's current legal corpus.

Other steps towards an appreciation of some liberal values can be seen in the 2013 Constitution, in which political rights and freedoms are explicitly declared as protected categories, conceived deductively as limitations on state power (Bui 2022, 310). Even though such constitutional developments did not concern directly the sexual minorities, they presented a change of the government's attitude towards accepting and internalising some liberal legal ideologies. Such changes can be hoped to eventually generate a series

of chain effects towards the recognition of some fundamental rights for gay people in Vietnam.

Recent positive official movements can be seen also in the National Assembly's determination to promulgate in 2024 a long-awaited (since 2017) detailed law allowing sex change as it announced in April 2023 (Vietnam Law and Legal Reform Magazine 2023). This act focusing on non-normative sexuality in general might signal an upcoming, yet unforeseeable effort in promulgating some laws to recognise and protect same-sex couples. On the Facebook page of VTV4, the international branch of the national broadcaster, some positive depictions of same-sex couples were presented in the context of the International Day against Homophobia, Biphobia, and Transphobia on the seventeenth of May, 2023. Indeed, characterisations of homosexuality on social media and other mass media means have seen a significant change towards positivity in the last decade, although some clickbaits are still in occasional use (Thi Huyen Linh Nguyen 2021, 74).

However, these official positive changes have not yet transposed into the legislation concerning gay people, who may still suffer from numerous obstacles and discrimination in their quotidian activities, not to speak of anxiety derived from instability and uncertainty. In an ever-changing world when rights, even if considered fundamental, can easily be suppressed on the pretext of relativist religious and cultural beliefs, as is happening in many countries around the world, little can be sure of when it comes to foreseeing the future.

Conclusions

For while many of its [juridical monarchy] forms have persisted to the present, it has gradually been penetrated by quite new mechanisms of power that are probably irreducible to the representation of law [...] it is utterly incongruous with the new methods of power whose operation is not ensured by right but by technique, *not by law but by control* [emphasis added], methods that are employed on all levels and in forms that go beyond the state and its apparatus.

Michel Foucault (1976, 89) characterised how European societies, not least that of France, had seen a radical change in the manifestation of regulatory power, from the use of legal prohibitions to the employment of non-legal, yet more effective measures, constituting what could be called 'repressive tolerance'. However, these new mechanisms did not do away with some traces of the old system of regulation and formulated a mixed, multi-layered identity. Such a situation, although operational in the other

way around, could be seen in the current legal identity of Vietnam with respect to the question of homosexuality. Indeed, if Foucault located the noticeable start of power manifestation in the form of non-legal norms in eighteenth-century Europe, the large part of Vietnam's legal history in the regard was characteristic of rigid cultural and political norms of conduct, largely informed by Confucian moral-based legal thinking, French colonial laws silent on consensual sexual relations between adults in private, and individuality-denounced socialist legality. This combination of convergent legal dimensions, with Confucian legal thinking perhaps being the most resistant, had resulted in an absence of legal consideration and visibility of non-conforming sexuality, even in prohibitive tone. It was not until recently that some liberal rights-based values were imported into legal discussion and actualisation. The co-existence of all these legal approaches has formed a hybrid identity in the regard, presenting a spectrum of future possibilities.

While some hopes are cast for a future of more equality, gay people still suffer daily from legal reticence on fundamental matters concerning their basic living conditions and needs. In such a restrictive environment, the advancements in legal recognition and protection for gay people depend on the prevailing interest of the government, which currently does not show any particular tangible alignment with the cause. With the rise of far-right political agenda around the world that has increasingly thwarted decades of significant progress in the call for equality, who can be sure that the same phenomenon not be expanded further?

References

- Berinzon, M., and Briggs, C. R. (2016) 'Legal Families without the Laws', *The American Journal of Comparative Law*, 64(2), 329-370).
- Blazy, A. (2012) *L'organisation judiciaire en Indochine française (1858-1945)* [*The judicial Organisation in French Indochina*], Ph.D. Dissertation, University of Toulouse.
- Boswell, J. (1980) *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*, Chicago: University of Chicago Press.
- Bui, N. S. (2020) 'Vietnam's Mixed Constitution and Human Rights', *The Law & Ethics of Human Rights*, 16(2), 295-319.
- Butler, J. (1990) *Gender Trouble: Feminism and the Subversion of Identity*, New York: Routledge.

- Cain, A. P. (1993) 'Litigating for Gay and Lesbian Rights: A Legal History', *Virginia Law Review*, 79(7), 1551-1642.
- Cochinchinese Penal Code* (1880/1912), retrieved from <http://sach.nlv.gov.vn/sach/cgi-bin/sach?a=d&d=jynzm1913.2.1.3.4&e=-----vi-20--1--img-txIN-----> (accessed: 23/05/2024).
- Concas, A. (2022) 'I diritti delle persone omosessuali in Italia: I report' [Rights of Homosexual People in Italy], retrieved from <https://www.diritto.it/diritti-delle-persone-omosessuali-in-italia-report/> (accessed: 10/12/2023).
- Constitution of Vietnam*. (2013), retrieved from <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Hien-phap-nam-2013-215627.aspx> (accessed: 18/12/2023).
- European Commission. (2020) 'Spotlight on the EU and LGBT Equality', retrieved from <https://op.europa.eu/webpub/com/factsheets/lgbti/en/> (accessed: 18/12/2023).
- Faludi, L. (2016) *The Vietnamese LGBT Movement and the Media: Framing and Re-Framing Homosexuality in Vietnamese Public and Media Discourses*, Master's Thesis, University of Hamburg.
- Foucault, M. (1969) *The Archaeology of Knowledge*, New York: Pantheon Books.
- Gardner, K. D. (2014) *Confucianism: A Very Short Introduction*, Oxford: Oxford University Press.
- Gillespie, J. (2007) 'Understanding Legality in Vietnam', in Balme, S., & Sidel, M. (ed), *Vietnam's New Order: International Perspectives on the State and Reform in Vietnam*, Palgrave Macmillan, 137-161.
- Gillespie, J. (2015) 'Changing Concepts of Socialist Law in Vietnam', in Gillespie, J., and Nicholson, P. (ed.), *Asian Socialism and Legal Change*, Canberra: Asia Pacific Press, 45-75.
- Giovanni Dall'Orto, 'La "Tolleranza Repressiva" dell'Omosessualità. Quando un Atteggiamento Legale Divene Tradizione', in *Omosessualità e Stato*, edited by Arci Gay Nazionale, 1988, Cassero, Bologna, pp. 37-57.
- Government of Vietnam. (2013) 'Decree 110/2013/ND on the Regulation on Sanctions of Administrative Violations in the Field of Judicial Assistance, Judicial Administration, Marriage and Family, Civil Judgement Enforcement, Enterprise and Cooperative bankruptcy', retrieved from <https://thuvienphapluat.vn/van-ban/Doanh-nghiep/Nghi-dinh-110-2013-ND-CP-xu-phat-vi-pham-hanh-chinh-bo-tro-tu-phap-hanh-chinh-tu-phap-208274.aspx> (accessed: 23/11/2023).

- Government of Vietnam. (2013) 'Decree No. 167/2013/ND-CP on the Regulation of Sanctions of Administrative Violations in Social Security, Order and Safety, Prevention and Fighting of Social Evils, Fire, and Domestic Violence', retrieved from <https://thuvienphapluat.vn/van-ban/EN/Vi-pham-hanh-chinh/Decree-No-167-2013-ND-CP-sanction-of-administrative-violation-in-social-security-order-safety-domestic-violence/219151/tieng-anh.aspx> (accessed: 10/12/2023).
- Government of Vietnam. (2015) 'Decree No. 10/2015/ND-CP on Vitro Fertilisation and Conditions for Altruistic Gestational Surrogacy', retrieved from <https://thuvienphapluat.vn/van-ban/The-thao-Y-te/Nghi-dinh-10-2015-ND-CP-sinh-con-bang-ky-thuat-thu-tinh-trong-ong-nghiem-mang-thai-ho-264622.aspx> (accessed: 18/12/2023).
- Gubbala, P., and Miner, W. (2023) 'Across Asia, Views of Same-Sex Marriage Vary Widely', retrieved from <https://www.pewresearch.org/short-reads/2023/11/27/across-asia-views-of-same-sex-marriage-vary-widely/> (accessed 20/05/2024).
- Horton, P., and Rydstrom, H. (2011) 'Heterosexual Masculinity in Contemporary Vietnam: Privileges, Pressures, and Protests', *Men & Masculinities*, 14(5), 542-564.
- Horton, P., and Rydstrom, H. (2019) 'Reshaping Boundaries: Family Politics and GLBTQ Resistance in Urban Vietnam', *Journal of LGBT Family Studies*, 15(3), 290-305.
- Human Rights Council's Working Group on the Universal Periodic Review. (2024) 'Compilation of Information Prepared by the Office of the United Nations High Commissioner for Human Rights', retrieved from <https://www.ohchr.org/en/hr-bodies/upr/vn-index> (accessed: 20/05/2024).
- Human Rights Watch. (2020) "'My Teacher Said I had a Disease": Barriers to Education for LGBT Youth in Vietnam', retrieved from <https://www.hrw.org/report/2020/02/13/my-teacher-said-i-had-disease/barriers-right-education-lgbt-youth-vietnam> (accessed: 10/12/2023).
- Institute of Sociology; Institute for Studies of Society, Economy, and Environment; and Health Strategy & Policy Institute. (2013) 'Results of the Referendum on Same-Sex Marriage', retrieved from <https://thuvien.lgbt/documents/ket-qua-trung-cau-y-kien-nguoi-dan-ve-hon-nhan-cung-gioi-2013> (accessed: 20/05/2024).
- Legge, J. (1885) *The Four Books of Confucianism*, Oxford: Oxford University Press.

- Hong Duc Book of Good Governance* (1541-1560), translated by Nguyen, S. G. (1959), Saigon: Nam ha Publishing House.
- Law on the Promulgation of Legislative Documents* (2015), No. 80/2015/QH13, retrieved from <https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Luat-ban-hanh-van-ban-quy-pham-phap-luat-2015-282382.aspx> (accessed: 10/12/2023).
- Law on the Execution of Criminal Judgments* (2019), No. 41/2019/QH14, retrieved from <https://thuvienphapluat.vn/van-ban/EN/Trach-nhiem-hinh-su/Law-41-2019-QH14-on-Execution-of-Criminal-Judgments/421274/tieng-anh.aspx> (accessed: 31/11/2023).
- Loi du 1er octobre 1917 sur la répression de l'ivresse publique et sur la police des débits de boissons [Law of 01/10/1917 on the repression of public drunkenness and on the regulation of bars]*, retrieved from <https://gallica.bnf.fr/ark:/12148/bpt6k6151390k/f7.item> (accessed: 22/12/2023).
- Ly, H. T. (2015) 'Confucian Influences on Vietnamese Culture', *Vietnam Journal of Social Sciences*, 5, (169), 71-81.
- Marriage and Family Law* (2000), No.22/2000/QH10, retrieved from <https://thuvienphapluat.vn/van-ban/Quy-en-dan-su/Luat-Hon-nhan-va-Gia-dinh-2000-22-2000-QH10-46450.aspx> (accessed: 31/11/2023).
- Marriage and Family Law* (2014), No. 52/2014/QH13, retrieved from <https://thuvienphapluat.vn/van-ban/Quy-en-dan-su/Luat-Hon-nhan-va-gia-dinh-2014-238640.aspx> (accessed: 18/12/2023).
- Ministry of Health of Vietnam. (2022) 'Official Letter No. 4132/BYT-PC on the Reorganisation of Activities Related to the Examining and Curing of Homosexuals, Bisexuals, and Transgenders', retrieved from <https://thuvienphapluat.vn/cong-van/The-thao-Y-te/Cong-van-4132-BYT-PC-2022-chan-chinh-cong-tac-kham-chua-benh-nguoi-dong-tinh-song-tinh-525166.aspx> (accessed: 05/12/2023).
- Ministry of Justice of Vietnam. (2020) 'Circular No. 04/2020/TT-BTP on the detailed regulation concerning the implementation of some stipulations of the Law on Civil Status and the Governmental Decree No. 123/2015/NĐ-CP regulating the implementation of some stipulations of the same Law', retrieved from https://thuvienphapluat.vn/van-ban/Quy-en-dan-su/Thong-tu-04-2020-TT-BTP-huong-dan-Luat-ho-tich-va-Nghi-dinh-123-2015-ND-CP-ve-ho-tich-446237.aspx?anchor=chuong_pl (accessed: 23/05/2024)
- Montoya, A. (2021) 'Becoming MSM: Sexual Minorities and Public Health Regimes in Vietnam', *Open Anthropological Research*, 1, 33-45.

- Newton, N. N. (2012) *A Queer Political Economy of 'Community': Gender, Space, and the Transnational Politics of Community for Vietnamese Lesbians (Les) in Saigon*, Ph.D. Dissertation, University of California, Irvine ProQuest Dissertations Publishing.
- Nguyen, V. H. (1994) 'Marriage and Family Law', in Dao, T. U., *Research into the Legal History of Vietnam between Fifteenth and Eighteenth Centuries*, Hanoi: Social Sciences Publishing House, 266-287.
- Nguyen, T. H. L. (2021) *Mediascapes and National Imaginaries: LGBT Characters in the Media in Vietnam*, Ph.D. Dissertation, University of Wollongong, University of Wollongong Thesis Collections.
- Oosterhoof, P., et al. (2014) *Negotiating Public and Legal Spaces: The Emergence of an LGBT Movement in Vietnam*, Evidence Report No. 74 on Sexuality, Poverty, and Law, Institute of Development Studies and Centre for Creative Initiative in Health and Population, United Kingdom.
- Proschan, F. (2002) "Syphilis, Opimania, and Pederasty": Colonial Constructions of Vietnamese (And French) Social Diseases', *Journal of History of Sexuality*, 11(4), 610-636.
- Ravenhill, J. (2009) 'East Asian Regionalism: Much Ado about Nothing?', *Review of International Studies*, 35, 215-235.
- Sanders, E. D. (2009) '377 and the Unnatural Afterlife of British Colonialism in Asia', *Asian Journal of Comparative Law*, 4(1), 1-49.
- Sentence 261/2018/HNGĐ-ST, issued on 16/04/2018, concerning divorce and child custody, People's Court of Phu Tan District, An Giang Province, retrieved from <https://lawnet.vn/judgment/ban-an/ban-an-2612018hngdst-ngay-16042018-ve-tranh-chap-hon-nhan-ly-hon-vanuoi-con-31768> (accessed on 20/05/2024).
- Sentence 16/2020/HS-PT, issued on 15/01/2020, concerning murder, High People's Court of Ho Chi Minh City, retrieved from <https://thuvienphapluat.vn/banan/ban-an/ban-an-162020hspt-ngay-15012020-ve-toi-giet-nguoi-128190> (accessed: 20/05/2024).
- Sibalis, D. M. (1996) 'The Regulation of Male Homosexuality in Revolutionary and Napoleonic France, 1789-1815', in Merrick, F., and Ragan, T. B. Jr., *Homosexuality in Modern France*, New York: Oxford University Press, 55-80.
- Sibalis, D. M. (2002) 'Homophobia, Vichy France, and the "Crime of Homosexuality"', *GLQ: A Journal of Gay and Lesbian Studies*, 8(3), 301-318.

- Simard, D. (2019) 'La médicalisation de la sexualité et de la Droit: perversions, santé sexuelle et droits sexuels [The Medicalisation of Sexuality and of the Right: Perversions, Sexual Health, and Sexual Rights]', in Giami, A., and Py, B., *Droits de l'Homme et sexualité: Vers la notion de droits sexuels? [Human Rights and Sexuality: Towards the Notion of Sexual Rights]*, Editions des archives contemporains, 217-232.
- Stella, F. (2013) 'Lesbian Lives and Real Existing Socialism in Late Soviet Russia', in Taylor, Y., & Adison, M., *Queer Presences and Absences*, London: Palgrave Macmillan, 58-68.
- Stoler, L. A. (2002) *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule*, California Press.
- Strangio, S. (2023) 'Thai Cabinet Approves Draft Law on Marriage Equality', retrieved from <https://thediplomat.com/2023/11/thai-cabinet-approves-draft-law-on-marriage-equality/> (accessed: 18/12/2023).
- The Le Code* (1470-1497), translated by the Institute of Law of Vietnam (1991), Hanoi: Law Publishing House.
- Tien Phong. (2011). 'Why Are People Gay?', retrieved from <https://tienphong.vn/vi-sao-bi-dong-tinh-post540341.tpo> (accessed: 20/05/2024).
- To Hoai. (1992) *Dust and Sand at Someone's Feet*, Hanoi: Literary Group Publishing House.
- Tran, Quang-Anh. R. (2011) *From Red Lights to Red Flags: A History of Gender in Colonial and Contemporary Vietnam*, Ph.D. Dissertation, University of California, eScholarship.
- Tran, Quang-Anh. R. (2014) 'An Epistemology of Gender: Historical Notes on the Homosexual Body in Contemporary Vietnam, 1986-2005', *Journal of Vietnamese Studies*, 9(2), 1-45.
- Tran, Quang-Anh. R. (2022) 'Sexuality as Translation. Locating the "Queer" in a 1920s Vietnamese Debate', *Annali di Ca' Foscari. Serie orientale*, 56, 353-378.
- Tran, T. N. (2020) *Familial Properties: Gender, State, and Society in Early Modern Vietnam, 1463-1778*, Honolulu: University of Hawai'i Press.
- Vietnam Law and Legal Reform Magazine. (2023) 'NA Standing Committee Discusses Gender Affirmation Law, State Budget Settlement', retrieved from <https://vietnamlawmagazine.vn/na-standing-committee-discusses-gender-affirmation-law-state-budget-settlement-69847.html> (accessed: 19/12/2023).
- Vietnam Cooperative Alliance. (2023). 'The Story and Developments of collective economy, cooperatives, and the Vietnam Cooperative

- Alliance', retrieved from <https://binhphuoc.gov.vn/vi/lmhtx/thong-tin-tuyen-truyen/lich-su-hinh-thanh-va-phat-trien-kinh-te-tap-the-hop-tac-xa-va-lien-minh-htx-viet-nam-144.html> (accessed on 21/05/2024).
- VTV4. (2023) 'Behind the Wedding of Two Guys of Ethnic Minority', retrieved from <https://www.facebook.com/vtv4go/videos/215243751301137/> (accessed: 19/12/2023).
- Vo, V. T. (2013) 'Same-Sex Marriage: Why still Unrecognised?', retrieved from <https://tuoitre.vn/hon-nhan-dong-tinh-vi-sao-chua-cong-nhan-569132.htm> (accessed: 18/12/2023).
- Vu, T. M., and Yamada, H. (2020) 'The Legacy of Confucianism in Gender Inequality in Vietnam', *Japan Society for the Promotion of Science*, Munich Personal RePEc Archive.
- Wibye, V. J. (2022) 'Revising the Distinction between Positive and Negative Human Rights', *Ratio Juris*, 35 (4), 363-382.
- Zheng, J. (2018) 'European Court of Justice Bans Homosexuality Tests for Asylum Seekers', retrieved from <https://www.ejiltalk.org/european-court-of-justice-bans-homosexuality-tests-for-asylum-seekers/> (accessed: 05/12/2023).

