Asian Journal of Law and Society (2021), **8**, 372–401
doi:10.1017/als.2020.46

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Law and Development Minus Legal Transplants: The Example of China in Vietnam

Matthew S. Erie* and Do Hai Ha

University of Oxford
*Corresponding author. E-mail: matthew.erie@orinst.ox.ac.uk

Abstract

Legal transplants are broadly recognized as one of the main mechanisms by which donor states influence the legal development of recipient states. The experience of China, however, challenges convention. While, in recent years, China has been one of the largest capital-exporting countries in the world and has mobilized law to protect its investment in high-risk recipient states, legal transplants have, to date, not played a major role in China's approach to law and development. This article examines this puzzle through the case of China's participation in formulating Vietnam's 2018 SEZ Bill. In doing so, this article sets forth a number of hypotheses as to why Chinese law has thus far not assumed the form of legal transplant. The example of the SEZ Bill demonstrates how Chinese legal transplants depend as much on the "pull" of recipient states as they do on the "push" of the donor. The case-study of the SEZ Bill raises important questions not only for Chinese law and development, but also, more generally, for the viability of "second-order" legal transplants: those from an Asian donor to an Asian recipient.

Keywords: law and development; legal transplant; China; Vietnam; industrial policy; SEZ

1. Introduction

The concept of "legal transplant," understood, at its most basic, as the movement of law from one jurisdiction to another, has become deeply wedded to the study of law and development—that is, how donor states influence the economic development of recipient states through legal institutions and practices. Law and development is most commonly associated with the ascendance of the US in the post-World War II international economy—a period during which the US exported legal rules, statutes, doctrines, and pedagogies to developing countries in Latin America and, later, in Southeast and East Asia. Although widely perceived to be a failure, law and development has been rebooted in various guises, including the "rule-of-law" revival in the 1990s—an effort that was primarily American-led. US legal transplants gained currency particularly in the post-Soviet states of Central Asia and Eastern Europe, as well as, to some extent, the People's Republic of China (PRC). At the same time as the US was transplanting law bilaterally to recipient states, it was also structuring the major international organizations, including the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO). Doing so has allowed the US to be a norm-shaper of both international economic law and domestic or municipal law in developing states.

Fast-forwarding to the present, the US is retreating from its commitments under international economic law and China is seeking to supplant the US's position as a norm-shaper. Since the late 1990s, China has been exporting ever higher volumes of capital, including investments, loans, and aid, to recipient states in Africa and Southeast Asia. The "Belt and

© The Author(s), 2021. Published by Cambridge University Press on behalf of Asian Journal of Law and Society

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Road Initiative" (BRI) has seen further injections of capital into mainly Central Asia and South Asia, but also into Africa, Pacific Island states, Latin America, the Caribbean, and Eastern Europe. In such recipient states, Chinese enterprises and policy banks are providing the financing, expertise, and labour for mega-regional infrastructure and energy projects that are stimulating economies throughout these regions. While the 2020 coronavirus pandemic is curtailing Chinese outbound investment in the near term, in the long term, a more streamlined Chinese economic globalization will likely continue. The PRC has a strong incentive to protect its investments in high-risk states and law plays a part in such risk mitigation, suggesting a Chinese approach to law and development. Whereas not only the US, but also the British and French, too, has each relied on legal transplants for various types of law-and-development projects[1]—what could be called "first-order" legal transplants—to date, the Chinese have largely avoided legal transplants. This difference is important, as it suggests a novel way for an economic hegemon to promote and protect its interests through law.[2]

This article examines the role of legal transplants in Chinese law and development (CLD)—that is, China's approach to cross-border ordering that includes both legal and non-legal norms, which is a question of broad relevance to some two-thirds of the world's population.[3] Whereas certain Asian states have transplanted their laws to other emergent economies in Asia—what could be called "second-order" legal transplants—this article argues that, thus far, Chinese law has not gained traction as a source of legal transplant in recipient states, but it may do so in the future, to the extent that recipient states perceive Chinese law as instrumental in the success of China's industrial policy: a policy from which some developing states are eager to learn. CLD thus highlights the "pull" by would-be recipient states as much as the "push" by China, as donor. The element of the attractiveness of Chinese law as legal transplant by recipient states may, in fact, be more relevant in CLD than in the law-and-development experiences of past donors.

To make this argument, we first review the history of legal transplant as an idea, briefly examine its relevance in the law-and-development field, and then focus on CLD primarily through the example of Chinese involvement in legal development in Vietnam. Methodologically, we combine our observations of law in China and Vietnam based on our respective practice of law in these countries, as well as drawing on relevant official documents, media reports, social media, and interviews with people involved in the decision-making process and practice. We believe this collaborative approach suggests a new field of inquiry into "Inter-Asian" legalities: the interaction of law between and among Asian jurisdictions.[4] Our paper concludes that the relatively minor role of legal transplants in CLD requires new thinking about transnational ordering.

2. Legal transplants as law and development

2.1 Legal transplant revisited

The concept of legal transplant has become integral to the study of law and development. Moreover, legal transplant has become a leitmotif of not only law and development, but also the disciplines of comparative law, and law and society. For law and development, legal transplant has become routinized into the scholarly vocabulary as one of the main

[1] Cohn (2010); Deschamps (2012); Chen-Wishart (2013).

[2] There is a growing literature on China's engagement with international economic law and legal development abroad. See e.g. Chen (2017); Seppänen (2018); Shaffer & Gao (2020).

[3] For a fuller treatment of CLD as an analytical theory, see Erie (2021).

[4] Ho (2017), p. 907 (describing "Inter-Asia" as an "old world crisscrossed by interactions between parts that have known and recognized one another for centuries"); Erie (2020) (providing a study of emergent legal hubs across Eurasia).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

vectors of how a donor state moves its legal system or rules to a recipient state, such that it is difficult to conceptualize law and development without legal transplant. How did we get here?

Alan Watson's 1971 *Legal Transplants: An Approach to Comparative Law* is commonly seen as the origin of the theory; however, legal transplant has much deeper roots in Anglo-American legal comparativism and can be traced back to Jeremy Bentham's 1802 *Of the Influence of Time and Place in Matters of Legislation*.[5] Bentham's use of legal transplant combined his commitment to utilitarianism and imperialism (he provided advice to the East India Company in transplanting English laws to Bengal via "Anglo-Bengali law").[6] While Bentham's work would have a lasting influence in legal philosophy, most notably in the thinking of H. L. A. Hart,[7] it was Watson's contribution that popularized the idea.[8]

Watson wrote *Legal Transplants* as a programmatic text for comparative law. For Watson, legal transplant, as "the moving of a rule or a system of law from one country to another, or from one people to another," was indispensable to understanding the relationship between legal systems.[9] The legal transplant, then, was part methodology and part theory. As to the former (method), Watson theorized a plurality of forms of transplantation: "imposed reception, solicited imposition, penetration, infiltration, crypto-reception, inoculation."[10] Yet, more controversially, as for the latter (theory), for Watson, legal transplants were a kind of universal technology that occurred independently of social context.[11] He wrote: "usually, legal rules are not peculiarly devised for the particular society in which they now operate."[12] The implication—perhaps in its hard form—is that culture and politics (and to some extent, history) are irrelevant. This perspective on legal change flies in the face of much of the canon of socio-legal theory, beginning with Montesquieu and, later, Marx and Weber.

Given its radical nature, the idea of legal transplant has incited a lively debate particularly centred on the issue as to whether the legal transplant is agnostic to context. On the one hand, some comparativists have found Watson's legal transplant to be "good to think with."[13] On the other hand, socio-legal scholars have challenged Watson's views, particularly on this point.[14] Despite the contested nature of legal transplant, it continues to inspire comparative law research, some of which has revised Watson's original idea (which he himself subsequently modified)[15] by incorporating greater sociocultural awareness into the analysis.[16]

[5] Huxley (2007), p. 177.

[6] *Ibid.*

[7] Hart (1970), pp. xxxii–xxxiii.

[8] Cairns (2012), p. 638.

[9] Watson (1993b), p. 21.

[10] *Ibid.*, p. 30.

[11] In taking such a stance, Watson demonstrated some of the utilitarianism of Bentham. Although Watson had read Bentham, it is believed he tried to ensure that his thinking on legal transplants was divorced from that of Bentham. See Huxley, *supra* note 5, p. 177.

[12] *Ibid.*, p. 96.

[13] See e.g. Ewald (1995), p. 489; Mattei (1994), pp. 2, 5.

[14] See e.g. Cotterrell (2001), p. 70; Kahn-Freund (1974), p. 5, contesting "mechanical" notions of transplantation; Kingsley (2004), pp. 510–9, building a theory of legal transplantation that is sensitive to culture; Legrand (1997), p. 111; Teubner (1998), p. 12, suggesting "legal irritant" over "legal transplant."

[15] In the 1993 edition, Watson added a discussion on the relationship between law and society. Watson (1993a), pp. 107–18.

[16] Ajani (1995); Chen (2013); Choudhry (2006); Crouch (2018); Feldman (1994); Langer (2004); Nichols (1997); Sannerholm (2009).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

2.2 Development by transplant

One of the fields in which legal transplant has gained most traction is law and development. Law and development, in the American guise during the Cold War and after, largely assumed the form of transplanting US laws and institutions first to developing economies in Latin America and Southeast Asia (some of them, client states), and later to African and East Asian countries. During this "first moment" of law and development, the common legal transplants were law schools based on the Socratic pedagogy and case-study approach, familiar to US law students.[17] The goal of such reforms, championed by the US government (i.e. the United States Agency for International Development (USAID), Justice Department, Commerce Department, Securities and Exchange Commission), civil society (e.g. the Ford Foundation), and educators (i.e. law schools), was to create a cohort of commercial lawyers who could facilitate cross-border transactions and, potentially, catalyze institutional change.[18] This first moment gave rise to criticism, however,[19] and henceforth law and development underwent reform without necessarily minimizing the role of legal transplants.

During the "second moment" of law and development, in the form of the "rule-of-law" revival directed at post-socialist states in Eastern Europe and Central Asia, legal transplants, many inspired by US law, were again deployed, with some measure of success.[20] Specifically, an increasingly diversified array of actors, including not only US governmental agencies and civil society, but also multilateral organizations such as development banks, proposed "structural adjustment," which included political conditionalities to recipient states, as informed by primarily neoliberal prescriptions. Development assistance thus required deeper reform, including multiparty elections, independent bar and bench, and an outward-looking legal framework that was market-oriented and investor-friendly.[21] During this period, the US and the UK exported their commercial law to post-Soviet republics.[22] At the same time, the US has also used, to varying degrees, US-inspired standards to inform the "international" standards of multilateral organizations, whether in the field of securities or of human rights.[23] The US has mobilized both these types of transplants, the first horizontal and bilateral and the second vertical and multilateral, to promote its interests via law and development abroad.[24]

2.3 East Asian patterns of law and development

Much of the theorization of legal transplants derives from the Anglo-American common-law or European civil-law experience, but legal transplants are not solely the legacies of these powers. East Asian states have also exported their laws to recipient states. Often, East Asian states were themselves the recipients of earlier or first-order waves of legal transplants from Anglo-European precedents, and subsequently adapted and transformed those transplants, including statutes, Constitutions, and doctrines as well as legal pedagogies, legal practices, and legal institutions, which they have then exported to other Asian recipient states. These second-order legal transplants have gained greater currency in the post-World War II period following Japan's growth and the rise of the Asian "tigers," including Hong Kong, Taiwan, Singapore, and South Korea. The Asian tigers have left a legacy of the

[17] Trubek & Santos (2006), pp. 1–4; Krishnan (2004), p. 448; Kroncke (2016), pp. 102–3.
[18] Trubek (2006), p. 75; Trubek (2016), p. 304.
[19] Trubek & Galanter (1974).
[20] Carothers (1998); Trubek & Santos, *supra* note 17, pp. 3, 5, 6; Berkowitz et al. (2003); Lindsey (2007).
[21] deLisle (1999), p. 181.
[22] Ajani, *supra* note 16; Nichols, *supra* note 16.
[23] deLisle, *supra* note 21, pp. 201–3.
[24] Miller (2003), pp. 840–1.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

so-called East Asian development model, characterized by the strong role of the government in promoting industrial growth. This model has garnered the attention of emerging economies throughout Southeast Asia, Oceania, Central Asia, and Africa. Law may be seen as part of the success of these states' industrial policies.

While not categorized as representing the East Asian development model, among East Asian states, Japan has been the most successful in presenting its law as a model for emerging economies in Asia.[25] It is perhaps not surprising that Japan has emerged as the first Asian power to engage in law and development through transplants given Japan's history of learning colonial techniques from Germany and the US, among other Western imperial states. Along with trajectories exhibited elsewhere, Japan has also become a donor to territories it previously occupied, in this case, Southeast Asian states, such as the former French Indochina.[26] Consequently, beginning in the 1990s, Japan has done so through its official development-assistance programmes, in such countries as Vietnam and Cambodia.[27]

What is noteworthy, however, is that the Japanese appear to have modified some of the methods of legal transplantation. Although generalizations can be problematic, the Japanese approach appears to be a "light touch" compared to that of some of the US donors. For instance, through the Japan International Cooperation Agency, Japanese legal experts worked as consultants to Vietnam as it rewrote its Civil Code in the early 2000s, but they "were not directly involved in the actual drafting of the Code."[28] Similarly, Japanese experts have provided technical training to Vietnamese judges in "fact-finding, application of law, and reference to judicial precedents."[29] Japanese legal scholars have characterized this approach to law and development as "incremental"[30] and "pragmatic."[31] Such an approach, which eschews some of the cultural hubris of past American efforts, seems to have been generally well received, and thus created more demand.

3. China and international economic law

CLD shows a higher propensity to seek to shape international economic law rather than intervening directly in the legal systems of recipient states through, for example, legal transplants. In recent years, China has emerged as a potential donor in the increasingly competitive law-and-development field, in Asia and beyond, yet CLD demonstrates even more reluctance to transplant than some of China's East Asian neighbours. There are a number of factors that may, in the near term, militate against the extensive use of legal transplants in CLD.

China's economic modernization over the past 40 years has attracted the interest of low-income and developing states around the world, from Southeast Asia to Africa to Latin America. There is, as a result, significant demand from such states to learn from China, particularly during a time at which American-style democracy and liberal rule of law appear tarnished. China has self-consciously presented itself as a model for

[25] See Matsuura (2005). See also the example of Singapore that has translated its version of "rule of law" into governance training for a number of low-income states in Southeast Asia, including Cambodia, Laos, Myanmar, and Vietnam. See Harding (2018), p. 257.

[26] Japan has, however, also been active in providing legal assistance to Central Asia, where it did not have a colonial presence.

[27] Kaneko (2010), p. 313; Kaneko (2019), pp. xii, xvii; Kuong (2018), p. 271; Nicholson & Kuong (2014), pp. 156–61; Taylor (2005), p. 251.

[28] Kuong, *supra* note 27, p. 282; Nicholson & Kuong, *supra* note 27, pp. 161–2.

[29] Kaneko (2010), *supra* note 27, p. 327.

[30] *Ibid.*, p. 353.

[31] Kuong, *supra* note 27, p. 271. See also Nicholson & Kuong, *supra* note 27, p. 167, indicating that incrementalism reflects a "practical strategy."

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

developing economies,[32] most noticeably in the period following the 2008 world financial crisis and after 2013 when Xi Jinping announced the BRI.

Likewise, following the BRI, China is exporting higher volumes of capital to recipient states in the form of loans and investment. For instance, the Export-Import Bank of China, one of the PRC's two main policy banks, has financed over 1,800 construction projects in so-called BRI states for a total of nearly $145 billion[33] and, according to the PRC Ministry of Commerce, Chinese enterprises have invested over $100 billion in BRI states.[34] Following the US–China trade war and the COVID-19 pandemic, the Chinese economy stagnated in 2020 leading to a drop in Chinese investment to and financing toward developing countries; nonetheless, given the centrality of the BRI and like initiatives to Beijing, a revised and more mature form of CLD will likely result. Chinese enterprises and lenders require security to protect their investments abroad. According to conventional thinking, such measures include robust courts and other dispute-resolution institutions such as international arbitration (both commercial and state-investor) whereby Chinese contracts are enforced and judgments or awards are rendered. As a result, there is demand on the Chinese side, too, to mobilize legal measures to protect Chinese financial and strategic interests.

Scholars have observed China's broad engagement with international economic law (i.e. trade and investment law), in recent years, interpreting such engagement as efforts to introduce Chinese norms into existing regimes.[35] On the trade side, for example, China has consciously studied the WTO rules and, in so doing, created whole knowledge industries in the PRC for improving China's status in the WTO, particularly vis-à-vis the US and other trade partners.[36] As many of the BRI states are WTO members, the groundwork China has laid since its accession to the WTO in 2001 will provide a normative framework for its trade relations with those states.[37]

At the same time, the BRI has been regarded as a "radically new approach to international trade and investment,"[38] as, while it may build on WTO rules, it also overlays them with what are essentially bilateral projects that involve combinations of investment and concessional and market-rate loans that are themselves tied to trade relationships. Likewise, on the side of investment law, the PRC has, almost more than any other country except Germany, championed bilateral investment treaties (BITs), signing some 129 BITs, as well as 20 free-trade agreements (FTAs) with investment chapters to facilitate its investments, both bi- and multilaterally.[39] China has been particularly active in using existing international fora such as the G20 to promote its investment concerns.[40] Furthermore, China has actively participated in emerging international commercial dispute-resolution mechanisms such as the Singapore Convention on Mediation.[41]

One question, then, is whether China's involvement in building such legal infrastructures constitutes vertical transplantation. A closer examination of China's activities in these international legal fora suggests that Chinese are not yet as assertive in their purposes as the Americans or others have been, even if the Americans too have demonstrated variance in their strategies for integrating US norms into international law.[42] For example,

[32] Peerenboom (2007).
[33] Wang (2019).
[34] Xinlang Caijing (2019).
[35] Burnay (2018); Du (2014); Toohey et al. (2015); Kong (2017).
[36] Shaffer & Gao (2017).
[37] Shaffer & Gao, *supra* note 2.
[38] Chaisse & Matsushita (2018), p. 167.
[39] UNCTAD Investment Policy Hub (2020); Chaisse (2018), p. 2.
[40] Bath (2018); Sauvant (2019).
[41] UN Convention on International Settlement Agreements Resulting from Mediation (2018); Corne & Erie (2019).
[42] See deLisle, *supra* note 21, p. 201.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

while the Chinese spearheaded the non-binding "Guiding Principles for Global Investment Policymaking" (hereinafter, "the Principles") during the 2016 meeting of the G20 Trade Ministers in Shanghai, the Principles do not necessarily veer from established practice.

Rather, the Principles continue with the tradition of imposing obligations on host states (e.g. nondiscrimination, investment protection, etc.) and do not mention home-state obligations.[43] The fact that the Principles demonstrate continuity with past practice does not in any way negate or disprove the active participation of the Chinese delegation in their formulation, but transplants, for the most part, function to introduce change.[44] Hence, the PRC's involvement in extant international law regimes may be one more of "nudging"[45] than "transplanting," the difference being that the former is an incremental push, often in a multilateral arrangement, and the latter is the wholesale borrowing, importation, or replication of a set of legal rules or norms from one jurisdiction into another, even if the recipient is an international legal institution.[46]

While CLD may show greater aptitude for transplant-like behaviour with regard to international legal fora, the PRC's general (but not, by any measure, absolute) reluctance to engage in bilateral or horizontal legal transplants is much more apparent. We hypothesize a number of reasons to explain China's hesitance:

1. Regulatory capacity
2. Relative nascence of the PRC legal system
3. The prestige deficit of PRC law
4. Linguistic hurdles
5. Valorization of sovereignty
6. The nature of PRC law as an agglomeration of different legal systems and the problem of the second-order transplant.

Taking these reasons in turn, starting with, one, *regulatory capacity*, the common criticism of Chinese law is not about the quality of the legislation, but rather that it suffers from poor implementation and enforcement.[47] There are a number of reasons for this state of affairs—institutional, cultural, and political—that stem from the current stage in the PRC's legal development. Perhaps most critically in the PRC, the Chinese Communist Party (CCP) still trumps the law.[48] As a result, whether in the fields of environmental law or administrative litigation, Chinese litigants encounter roadblocks to mobilizing PRC law when doing so challenges state interests, understood usually as the local government and its internal CCP apparatus, as well as affiliated business interests.[49] In summary, in terms of ensuring justice, PRC legislation may not be law of the highest grade.

Looking at law for its transplantable potential not from the perspective of a citizen or user, but rather from the vantage of an authoritarian (i.e. law-as-order), one could argue that PRC law has helped to support the rule of the party-state[50] and, by extension, other authoritarians could borrow from this law. However, the argument for the authoritarian-

[43] Sauvant, *supra* note 40, p. 319.

[44] Miller, *supra* note 24, pp. 867–73, demonstrating how different types of transplants introduce change based on economic efficiency or legitimacy.

[45] Nudging is a concept developed most extensively in the behavioural-economics literature but that has migrated into law and economics. See e.g. Sunstein & Thaler (2008); Mathis & Tor (2016); Alemanno & Sibony (2016).

[46] Cf. Wang (2018), pp. 8–10 (calling China's approach one of "uploading" BRI-related principles into international law via such bodies as the UN).

[47] Clarke (2003), pp. 91–3; Peerenboom (2002), p. 323.

[48] Zhonggong zhongyang (2014); Sapio (2010).

[49] van Rooij (2006); He (2014).

[50] Biddulph (2015).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

friendly transplant encounters difficulties when considering the complex intermingling of party-state power and formal law—a relationship that is difficult to replicate *sui generis*, although, for states where there are a pre-existing Marxist–Leninist ideology and political structures, there may be more portability, as we show in the example of Vietnam below.

A contributing factor to the enforcement incapacity of PRC law is the second reason: the *relative nascence of the PRC legal system*. The modern PRC legal system was established only in the early 1980s. While China has achieved remarkable progress in that short time in most areas of law, this progress has been uneven. While what is taught as "economic law" in PRC law schools, including such areas of civil and commercial law as contracts, banking, investment, company law, and dispute resolution, has received particular emphasis for modernization, progress has been stunted in the areas of public law, including constitutional law, criminal law, and administrative law, for political reasons.[51] Even in frequently used areas of economic law, such as arbitration, there are still significant gaps (e.g. the 1994 Arbitration does not follow the 1985 UNICTRAL Model Law on International Commercial Arbitration (as amended in 2006), which has become standardized in the domestic legislation of most East Asian states).

The third reason, namely what could be called the *prestige deficit of PRC law*, follows from the foregoing concerns, among others. When a non-Chinese corporate lawyer advises a client on the governing law in their contract and weighs as options, for example, UK common law versus PRC law, the choice is clear. UK common law has become the preferred law for cross-border transactions due to its long history, predictability, and pro-business substantive rules (e.g. freedom of contract).[52] All of these are effects of the British empire, which, at its height, covered approximately a quarter of the world—an empire that ruled not only by the law (and, also, its navy, joint stock companies, Industrial Revolution, and slavery), but also the prestige it generated around its law.[53]

Vehicles and signs of prestige include the Royal Court of Arms, court oaths, Magic Circle firms, Inns of Court, silks, Ox-Bridge law faculties, full-bottomed wigs, and so on. As any English law student knows, the UK common law is riddled with hierarchies and saturated with prestige.[54] As a generalization, PRC law has very little prestige within China (if one considers preferences for majors among university students) and even less outside of China. The prestige deficit of PRC law may correlate with a deficit in the attractiveness of the Chinese developmental model. The perception of CLD, however, may be changing, particularly among developing countries, and globalizing PRC law firms are increasingly pushing for PRC law to be the governing law of BRI contracts.

The fourth reason and another obstacle for the transplantation of PRC law are *linguistic hurdles*. Mandarin is considered one of the most difficult languages in the world. English is also difficult but, again, has benefitted from the 400-year-old legacy of the British empire. Legal transplants require translation, which takes a number of forms (technical, doctrinal, and institutional), but is, at its root, linguistic. Hence, transplanting PRC law requires familiarity with, if not mastery of, Mandarin. The difficulty of Mandarin aside, others have noted that the language may enable vagueness or imprecision in law-making.[55] Still others have argued that the arbitrariness of Chinese characters enables arbitrary discretion of

[51] Hurst (2018), arguing that China demonstrates one type of legal regime in one domain of law, something like "rule of law" for civil and commercial law, and another type of regime in other domains of law, e.g. "neo-traditionalism" in criminal law.

[52] Groffman (2018), arguing for the use of English law in BRI contracts.

[53] Ajani, *supra* note 16, noting that the prestige of common-law models has varied over time in post-Soviet states.

[54] Bourdieu (1987), p. 812, observing that the juridical field is one profession particularly susceptible to symbolic capital, including authority, knowledge, prestige, reputation, academic degrees, and so on.

[55] Cao (2018), Chapter 7.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Chinese leaders.[56] While the growth of Mandarin as a second language worldwide may belie some of these claims and China may eventually follow some of the path dependency of English as the lingua franca for international transactions, nonetheless, Mandarin faces obstacles in gaining traction as a legal language abroad.

The fifth reason is China's deep-seated *valorization of sovereignty* and concomitant reluctance to engage in the domestic affairs of foreign states. Since the "reform and opening," the recognition of state sovereignty has served as the cornerstone of China's foreign policy,[57] with the apparent logic that such a position would be reciprocated by other states that would not interfere in the affairs of the contested regions in and around the PRC: Taiwan, Tibet, Xinjiang, and the South China Seas.[58] This rationale was encapsulated in former leader Deng Xiaoping's epigram, "hide our capacities and bide our time" (*tao guang yang hui*). Popular commentary on the BRI has firmly closed the chapter on this foreign-policy approach.[59] While there is no question that China is increasingly embroiled in domestic politics in countries in Central Asia, Southeast Asia, and elsewhere,[60] the Chinese presence pales in comparison to evangelical American interventionism (through military campaigns, regime change, and corporate penetration of local markets) in fragile states such as in Afghanistan and Iraq.

The sixth reason for which PRC law has not yet gained currency as legal transplant may be the *nature of PRC law as an agglomeration of different legal systems*. Closely related to reason two above, as a result of the particularities of Chinese legal history and the fast-paced legal reform over the past 40 years, PRC law is a palimpsest of different legal orders, including some remnants of traditional Chinese law, Soviet law, European civil law (mainly German and Swiss), and Anglo-American common law.[61] These different legal orders apply to different areas of PRC law; for example, Soviet law inheritance is more prominent in PRC criminal law and the law that applies to questions of ethnic minorities (i.e. "regional ethnic autonomy"), whereas German law has had some influence in PRC property law and PRC company law shows traces of US law.

It is not accurate to describe all of these influences as "legal transplants," as legal transplant denotes some intention, on the side of the donor, to replicate the donor's law in the recipient legal system. While there are notable exceptions,[62] often, Chinese law reform has proceeded through Chinese reformers' assessments of the merits of settled law in more developed jurisdictions and borrowed from these sources of law for the purposes of China's modernization.[63] The end result is a fairly idiosyncratic legal system that, in its current form, endeavours to balance market liberalization with strong state control over key sectors of the economy—a goal it may not always fulfil in practice, as evinced by, for example, contemporary debates on data governance and privacy in China. In sum, the PRC legal system may not be one for emergent states to emulate.

The counter-argument is the second-order-transplant effect: countries that have undergone economic modernization (e.g. "upper-middle-income" states, by World Bank standards) have experience of legal reform, including legal transplants, and emerging states (e.g. "lower-middle-income" or "low-income" states, by World Bank standards) may learn more from the example of such states than from the donor states that originally sourced transplants (e.g. "high-income" states, by World Bank standards). To give an

[56] Lubman (1999), p. 149.

[57] Guangming ribao pinglunyuan (2019).

[58] Garver (2016), p. 553; Christensen (2015), pp. 18, 19, 21, 22.

[59] See e.g. Clover (2017).

[60] See e.g. Karrar (2009); Thul (2016); Pheap (2019).

[61] Keller (1994), p. 711, noting the "normative richness" of PRC law and calling it "not a coherent body of law."

[62] See Erie (2019), footnote 89, explaining the origin of Art. 164 of the PRC Criminal Law in the 2011 amendments to that law as a result of US influence.

[63] Potter (2004), p. 478, observing the selective adaptation of PRC legal reforms.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

example, Tajikistan may have more to learn from the United Arab Emirates (UAE) than it does from the UK. While we do not contest the plausibility of the second-order-transplant argument and derivative transplants may in fact offer a new area for academic research, as with any transplant ("first"- or "second"-order), the viability of the transplant depends foremost on the quality of the transplant (and, additionally, the process of transplantation and a number of contextual factors in the recipient state). A threshold question, then, for would-be recipients of PRC law, for instance, along the BRI, is whether PRC law provides quality transplants.

The foregoing hypothesis of interrelated causes for the lack of evidence for PRC legal transplants, to date, is primarily but not exclusively an analysis from the donor or supply side of the equation. For example, the prestige factor of a legal system has as much to say about the perception of a would-be recipient of a transplant as it does the inherent quality of the donor-state law. Nonetheless, the "push" of a donor state is only one side of the equation. We argue that the recipient state's "pull" is just as important, if not more so, in the viability of second-order transplants. Moreover, some of the challenges identified above may be manageable in those circumstances in which China has long-standing cultural, political, and ideological ties with neighbouring states. In the following section, we illustrate this argument through the example of China and Vietnam, and a rare case of a Chinese legal transplant in CLD.[64]

4. Chinese legal transplants in Vietnam

4.1 Some historical background

CLD has traction for the Sino-Vietnamese relationship for a number of reasons, both from the vantage of China as a potential donor and Vietnam as a host state. Vietnam has a long history of borrowing from Chinese legal ideas and attitudes. Neo-Confucian political-legal beliefs were introduced into pre-modern Vietnam and, after centuries, began to dominate Vietnamese legality from the fifteenth century.[65] As in China, Vietnamese Confucianists advocated combination between rule by virtue (*đức trị*) and rule by law (*pháp trị*).[66] Legal rules were not seen as independent from moral standards, but as an instrument to maintain social morality.[67]

The PRC was not the main developmental model for socialist Vietnam during the planned economy era; rather, the Union of Soviet Socialist Republics (USSR) was the preferred template.[68] From the 1950s to the late 1980s, Soviet borrowing dominated the legal order of the Democratic Republic of Vietnam (DRV) and, subsequently, the Socialist Republic of Vietnam.[69] Still, the PRC had considerable influence on Vietnamese socialist law. A case in point is the DRV's 1953 Law on Land Reforms, which was drafted and implemented with instruction from Chinese advisers, showing that transplantation was achievable quite early in the history of PRC–DRV relations.[70]

Furthermore, Chinese political ideology left an important imprint on DRV legal thinking and practice. As with its Chinese counterpart,[71] the Communist Party of Vietnam (CPV) endorsed the doctrine of "revolutionary morality" (*đạo đức cách mạng*), which promoted

[64] Gillespie & Chen (2010b), demonstrating the influence of China's legal developmental model on Vietnam.
[65] Nguyen & Tai (1987), p. 18.
[66] Gillespie (2007), p. 140; Nguyen (1974), p. 50.
[67] Gillespie, *supra* note 66, p. 140; Nicholson (2007), p. 207.
[68] Pham & Ha (2018), pp. 98–106.
[69] Nicholson, *supra* note 67; Pham & Do, *supra* note 68, pp. 103–6.
[70] Duiker (2000), p. 437; Võ (1995), p. 412.
[71] Maosen (2011).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

CPV rule through moral edict and example.[72] Vietnamese communists also imported the Maoist theory of the "mass line," which emphasizes the importance of popular participation and support and, therefore, the adoption of flexible and outcome-oriented approaches to legal problems over principle-based ones.[73] Put differently, law was subordinated to and suffused with moral concepts and political expediency.[74] Despite bold legal reforms from the late 1980s, the Chinese-inspired emphasis on virtue-rule and mass mobilization continues to have considerable impact on Vietnamese regulatory thinking and practice to this day.[75]

Economic factors have driven the relationship between the two countries closer in recent years. From 2011 to 2018, the annual registered Chinese capital in Vietnam rose from US$700 million to more than US$2.4 billion.[76] Importantly, the figures exclude numerous cases in which Chinese investors used legal entities from a third jurisdiction, like Singapore, or local individuals and entities to hold their businesses,[77] suggesting that the actual amount of Chinese investment is much higher. This significant volume of Chinese capital invested in Vietnam suggests that both sides have incentives in protecting those investments through safeguards, which may include law.

4.2 *Chinese legal borrowing in contemporary Vietnam*

The USSR has ceased to be the main model and donor for development in Vietnam since the 1990s (though its legacy has persisted and remains significant)[78]; China has become the sole major socialist state that the CPV can take as its model for legal reform. Chinese influence has been felt, to a greater or lesser degree, particularly in the area of commercial law. Beginning in the late 1980s, Chinese legal templates had considerable effects on Vietnam's first wave of commercial law reforms, including the enactment of the 1987 Foreign Investment Law and the 1989 Ordinance on Economic Contracts, among others.[79] However, Vietnamese law-makers soon turned to capitalist states and international organizations as the main source for commercial law reforms in the 1990s.[80]

Take Vietnamese labour law, for example. The 1994 Labour Code—the first major labour law after the transition towards a more market-oriented and open economy from the late 1980s (known as *Đổi mới* reforms)—reflected mixed influences of capitalist, international, and socialist labour law.[81] Although legal drafters consulted PRC regulations, Chinese influence was not any more than that of several other states.[82] The most visible borrowing from China in this Code was the three-tier system for labour dispute resolution (i.e. conciliation–arbitration–litigation).[83]

Even so, this system was not based solely on the Chinese model. It was also proposed in light of the experience of various other jurisdictions, including the Republic of Vietnam, the capitalist state that existed in southern Vietnam before 1975.[84] Consequently, the

[72] Gillespie, *supra* note 66, pp. 142–3.
[73] Do & Nicholson (2020); Gillespie (2005), p. 49.
[74] Do & Nicholson, *supra* note 73.
[75] Pham & Do, *supra* note 68, pp. 127–8.
[76] Lam (2019), p. 2.
[77] Interviews with E, F, G (Hanoi, 7 January 2020), H (Hanoi, 8 January 2020), I (HCMC, 12 February 2020), J (HCMC, 23 February 2020), and K (HCMC, 13 March 2020). E–K are lawyers with Chinese commercial clients.
[78] Pham & Do, *supra* note 68, pp. 106–31.
[79] Gillespie (2006), pp. 65–6.
[80] *Ibid.*, pp. 66–7.
[81] Do (2016), pp. 106–27.
[82] *Ibid.*, pp. 115–6.
[83] *Ibid.*, p. 119.
[84] *Ibid.*, pp. 118–21.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Vietnamese system has diverged remarkably from its Chinese counterpart in that it has distinguished collective disputes from individual ones and recognized workers' right to strike.[85] The 2006 and 2019 labour-law reforms furthered the borrowing from capitalist states and international law, including the division between rights and interests disputes, and especially greater recognition of workers' freedom of association.[86] Thus, Vietnam's legal framework for industrial conflicts today is significantly distinct from the Chinese one.

With this caveat aside, Vietnamese law-makers remain "attuned to legal developments in the PRC due to the geographical, economic, political and cultural proximity between the two countries."[87] Consequently, there are examples of both limited and remarkable Chinese legal imports. For the former, corporate law,[88] competition law,[89] and consumer protection are all examples.[90] An illustration of the latter is the introduction of the "land use rights" (*quyền sử dụng đất*) concept in the 1993 Land Law, which was central to that law's retention of state ownership of land while simultaneously enabling the emergence of real-estate markets.[91] Another example is Vietnam's adoption of a case-law system in 2015. This system largely resembles the unique case-law system of China in that it exists in the form of guiding cases selected and interpreted by the People's Supreme Court.[92] More recently, the Vietnamese Cybersecurity Law promulgated in 2018 replicates Chinese law in some important ways.[93]

More evidence is needed to conclude that Vietnam has recently increased Chinese legal borrowing. Nonetheless, the examples mentioned above suggest that such borrowing is likely to be greater when the CPV needs to address new phenomena, like real-estate markets, case-law, or the Internet, without sacrificing core socialist and Marxist–Leninist institutions and principles, such as the socialist ownership of means of production, Soviet-style CPV-led courts, and CPV control over society. That said, Vietnamese law remains divergent from its Chinese counterparts in important respects, including the treatment of Soviet legacies.[94]

In summary, Chinese legal borrowing has existed and, on occasions, had a significant impact on legal reforms in transitional Vietnam. So far, the importation of legal innovations from China has normally resulted from Vietnamese law-makers' own initiative.[95] The Bill on Special Administrative-Economic Units[96] (often known as the Bill on Special Economic Zones ("SEZs"), "SEZs Bill," or "the Bill") examined below is a rare example of Chinese transplanting attempts. However, as we show, the legal transplant was ultimately unsuccessful despite Chinese actors' active participation in the exportation of their legal model to Vietnam, illustrating some of the obstacles to the presence of transplants in CLD identified above.

[85] Do, *supra* note 81, pp. 340–1.

[86] See Labour Code (Revised) 2006; Labour Code 2019.

[87] Interviews with A (Hanoi, 8 January 2020) and B (Hanoi, 9 January 2020). A and B are staff of the National Assembly of Vietnam.

[88] Gillespie, *supra* note 79.

[89] Le (2012).

[90] Nguyen (2011).

[91] See Kaneko (2021).

[92] See Resolution No. 03/2015/NQ-HDTP of the Judges' Council of the Supreme People's Court dated 28 October 2015; Resolution No. 04/2019/NQ-HDTP of the Judges' Council of the Supreme People's Court dated 18 June 2019. See Jia (2016) for Chinese case-law.

[93] Sherman (2019).

[94] See e.g. Chan (2019); Fu & Buhi (2018); Gillespie & Chen (2010a), p. 22.

[95] Interviews with A (Hanoi, 8 January 2020) and B (Hanoi, 9 January 2020).

[96] Bill on Special Administrative-Economic Units (2018) Draft submitted to the 5th Session of the 14th National Assembly (15 June).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

4.3 The SEZs bill and Chinese transplanting attempts

An SEZ existed in unified Vietnam during the planned economy era (1976–86), but was terminated due to its "failure to produce significant impact."[97] Nonetheless, the idea of SEZs was revived in the late 1990s. A resolution of the CPV adopted in 1997 called to "study [and] pilot some SEZs ... in coastal regions."[98] This idea has, however, never been fully realized, although 328 industrial parks and 46 economic zones of different kinds have been established to promote foreign investment and cross-border trade since the early 1990s.[99]

Facing the pressure of economic slowdown and international competition,[100] the CPV became more determined to realize the SEZ initiative in the 2010s. The CPV's 2011–2020 Socio-Economic Development Strategy suggests that "some—especially coastal—regions with outstanding advantages be ... developed into economic zones that spearhead the development."[101] On this basis, Quảng Ninh, Khánh Hoà, and Kiên Giang Provinces, respectively, submitted their proposals to develop Vân Đồn, Bắc Vân Phong, and Phú Quốc into "special administrative-economic units"—that is, SEZs. These proposals were approved by the Politburo, the most powerful organ of the CPV, in 2012–13.[102] In view of this, the 2013 Constitution has, for the first time, specifically prescribed SEZs as a type of local administrative unit.[103] These changes laid down the policy and constitutional foundations for the government to begin drafting the SEZs Bill in 2014.[104] This Bill was forwarded to the National Assembly (NA) in August 2017 for deliberation and passage.[105]

The SEZs Bill aimed to establish a unique legal framework for the three proposed SEZs by granting them "superior institutions and policies."[106] The underpinning objectives were to promote fast-paced economic growth at local, regional, and national levels, and experiment with new institutions, policies, and regulatory models.[107] There was also an emphasis on fostering green, hi-tech, and knowledge-based businesses and industries.[108]

To realize the above-stated goals, the SEZs Bill offered a series of unique regulations and favourable incentives to promote investment. These regulations and incentives included *inter alia*: relaxation of licensing conditions and procedures; expansion of land rights for investors, particularly foreign investors, including land leases of up to 99 years; tax and other financial incentives; special financial mechanisms for infrastructure development; and easy rules for immigration and expatriates.[109] The Bill also proposed new models for a smaller but more effective government in SEZs.[110]

As explained in a government paper, the SEZs Bill was constructed in light of the experience of SEZs from 13 jurisdictions.[111] These SEZs include: (1) successful SEZs; (2) SEZs in neighbouring countries; and (3) new-style SEZs aiming at Industrial Revolution 4.0 in developed states.[112] Put differently, the Bill reflected eclectic foreign influences rather than a single foreign model. Apart from that, the drafters also attempted to adapt foreign

[97] Anh (2012).
[98] CPV (1997), Part Two I.3.
[99] Drafting Committee (2017b).
[100] Government (2017), pp. 1–2.
[101] CPV (2011), Part IV.6. See also CPV (2016); CPV (2017).
[102] Government, *supra* note 100, p. 6.
[103] Constitution (2013), Art. 110.
[104] Government, *supra* note 100, p. 6.
[105] *Ibid.*
[106] CPV (2011), *supra* note 101, Part III.4; Government, *supra* note 100, pp. 4–5.
[107] CPV (2011), *supra* note 101; Government, *supra* note 100, p. 4.
[108] Government, *supra* note 100, pp. 4–5.
[109] See generally SEZs Bill. See also Drafting Committee of the SEZs Bill ("Drafting Committee") (2017a) for elaboration of major features of the SEZs Bill.
[110] *Ibid.*, pp. 25–32.
[111] Government, *supra* note 100, p. 6.
[112] *Ibid.*

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

experience, particularly in designing governmental structures for Vietnamese SEZs, and provide incentives more favourable to foreign investors than SEZs in other countries.[113]

A close reading of the *Report on the Review of the International Experience in Constructing, Developing and Managing SEZs and Similar Models* (hereinafter, "the *Report*") prepared by the Drafting Committee of the SEZs Bill reveals that the greatest attention was given to SEZs in China, Korea, Singapore, the UAE, the British Virgin Islands, and the Cayman Islands.[114] The *Report* not only highlighted SEZs from these countries as successful models,[115] but also examined them carefully with a view to drawing lessons for Vietnamese SEZs.[116] Of these jurisdictions, the Drafting Committee was particularly focused on China and Korea, dedicating the largest part of their *Report* to analyzing these two jurisdictions.[117] They specifically noted: "The special administrative-economic units to be developed [under the Bill] are a combination of Chinese SEZs and special administrative and economic zones in Korea."[118]

4.3.1 Chinese participation and influence

While borrowing from various jurisdictions, the drafters of the SEZs Bill had a strong interest in the Chinese experience. China was ranked first and occupied the longest part in the summary of foreign experience of the *Report*.[119] Demonstrating obvious admiration for the Chinese experience, the Drafting Committee stressed: "China is the birthplace of SEZs and is one of the most successful countries in developing SEZs."[120] Furthermore, Chinese SEZs "set examples for [economic] development in the world; therefore enhancing the position of [China] in the international arena."[121]

More importantly, the drafters widely applied Chinese lessons in formulating the SEZs Bill. Arguably, the most remarkable aspect of borrowing from the Chinese experience was the proactive involvement of the Vietnamese state in developing its SEZs.[122] Modelling the Chinese approach to SEZ design and governance, the Bill endorsed an extensive role of the government in the development of SEZs, for instance, through determining market-entrance requirements; co-ordinating, financing, and facilitating infrastructure development; reducing taxes and levies; and providing subsidy and other support to investors, such as in relation to research and development, vocational training, and labour recruitment.[123]

Moreover, the Drafting Committee tried to define the organization of Vietnamese SEZ authorities, following China, by proposing new decentralized government structures, which are smaller but enjoy relatively greater autonomy than those of normal local authorities.[124] In the same light, SEZ governments were encouraged to utilize technology and simplify administrative procedures.[125] Also modelling Chinese SEZs, the Bill placed SEZ authorities under the control of provincial authorities so Vietnamese SEZ authorities have,

[113] *Ibid.*, especially pp. 6, 13–21.
[114] Drafting Committee (2017c).
[115] *Ibid.*, p. 2.
[116] See *Ibid.*, pp. 2–9. While the Report dedicated more than six pages to summarizing the experience from these SEZs, other SEZs in the Association of Southeast Asian Nations (ASEAN) and developed states were mentioned within less than a page.
[117] *Ibid.*, pp. 2–6, 19–29.
[118] *Ibid.*, p. 11.
[119] *Ibid.*
[120] *Ibid.*, p. 10.
[121] *Ibid.*, p. 15.
[122] *Ibid.*, pp. 19–22. See also CCSEZR (2019) for such advice from Chinese experts to a Vietnamese delegation.
[123] *Ibid.*, pp. 19–22. See also generally SEZs Bill; Drafting Committee, *supra* note 109.
[124] Drafting Committee, *supra* note 114, pp. 20–2; Government, *supra* note 100, pp. 13–21.
[125] *Ibid.*

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

comparatively, less autonomy than those in many other jurisdictions, such as Korea and Hong Kong.[126]

Another striking example of Chinese influence is the adoption of a gradual approach to expanding the SEZs. Pointing to the experience of the first SEZs in China, Vietnamese law-drafters suggested that the Bill permit the inclusion of various industries instead of immediately focusing on selected core industries in the early stage of SEZ development.[127] In defending the Bill, the Minister of Planning and Investment, Nguyễn Chí Dũng, a key drafter of the Bill, emphasized: "[We] should not be too cautious in making the SEZ Law .... If necessary, we can amend it later, during the implementation."[128] This statement closely replicated Chinese thinking on economic development in general and on SEZ construction in particular.[129]

There are other examples of borrowing from the Chinese in the process of setting up SEZs in Vietnam. The above-mentioned examples are remarkable as they illustrate that Vietnamese legal drafters not only imported policy concepts from China, but they were also driven by the ideas underlying the governance of the Chinese SEZ model. It suffices to say that, of all the alternatives, Chinese SEZs have left the greatest imprint on Vietnam's SEZs Bill.

It is difficult to trace the exact involvement of Chinese actors in the drafting of the SEZs Bill due to the political sensitivity of the Bill in Vietnam. Despite this limitation, accessible data reveal that the Vietnamese government received extensive technical support from Chinese experts, particularly the China Centre for Special Economic Zones Research (CCSEZR) at Shenzhen University, noteworthy as it was Shenzhen that has become the exemplar of the Chinese-style SEZ. Considerable evidence indicates that the Quảng Ninh government sought technical advice from the CCSEZR to prepare its proposal for the Vân Đồn SEZ. The websites of these institutions list at least eight important events between the two parties including multiple-day visits, fieldwork activities, a two-week training programme, many meetings and workshops, and one international conference with more than 200 participants.[130] The conference was co-organized by Quảng Ninh and the CCSEZR in early 2014, and was a major event.[131] It attracted numerous Vietnamese CPV-state leaders and officials at the national level and from provinces with an interest in SEZ development, including Khánh Hoà and Kiên Giang.[132] While including experts from other jurisdictions and international organizations, the main objective of the conference—as described in the CCSEZR website—was to introduce Chinese experience and consider its applicability to Vietnam and other emergent economies.[133]

CCSEZR experts were said to provide Quảng Ninh with "opinions on the theoretical foundation, strategic development paths, and legal framework planning of Vietnamese SEZ construction."[134] Chinese technical assistance not only occurred during these early stages and with representatives from the CCSEZR, but also involved additional Chinese experts and continued well into the later stages of setting up the SEZs.[135] At the same time, it is apparent that the co-operation between Quảng Ninh and the CCSEZR had implications for the SEZs Bill. Quảng Ninh was the first province that submitted an SEZ proposal to the

[126] Drafting Committee, *supra* note 114, pp. 3, 13–14, 20.
[127] *Ibid.*, p. 20.
[128] Huyền (2018b).
[129] See Drafting Committee, *supra* note 114, p. 21; CCSEZR, *supra* note 122.
[130] See e.g. CCSEZR (2018); QNP (2013a); QNP (2013b).
[131] CCSEZR (2014).
[132] *Ibid.*; Tuấn (2014).
[133] CCSEZR, *supra* note 131.
[134] *Ibid.*
[135] Interviews with A (Hanoi, 8 January 2020) and B (Hanoi, 9 January 2020). See also e.g. CCSEZR, *supra* note 122; CCSEZR, *supra* note 130; CCSEZR, *supra* note 131.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Politburo. This proposal became a template for subsequent proposals prepared by Khánh Hoà and Kiên Giang, and the approach strongly influenced the SEZs Bill and related governmental documents.[136] Further to this, Phạm Minh Chính, Quảng Ninh's CPV Secretary from 2011 to 2015, was later promoted to a Politburo member and became a key leader of the Steering Committee for SEZ Construction in the central government. In these new roles, Chính headed a delegation to the CCSEZR and sought advice on many issues regarding the SEZs Bill.[137] In short, the SEZs Bill is a rare case in which China proactively introduced its legal model to another state.

4.3.2 Local protests

The SEZs Bill triggered considerable criticism. Throughout the law-making process, the most vocal criticism normally came from economists, including domestic, diasporic, and sometimes international experts (e.g. the World Bank) and lawyers. Their opinions were communicated mainly through sanctioned channels, such as state media, legislative fora, or private communication with state officials.[138]

First, opponents challenged the SEZ model in general. They argued that SEZs were effective in attracting foreign capital only when several states maintained a closed economy.[139] They contended that, as national economies, including Vietnam, have become considerably more open to global trade and capital, SEZs no longer enjoy outstanding economic advantages.[140] Some indicated that the success of Shenzhen was unique due to its special location and historical context.[141]

They also criticized preferential policies offered by SEZs, especially tax and other financial incentives. Some believed that such incentives would encourage short-term investment and harmful tax practices, like transfer pricing and tax avoidance, and money laundering.[142] It was argued that the overemphasis on the promotion of investment would lead to the disrespect of the interest of others and of society at large.[143] According to critics, consequences of the preference for foreign investors included the growing gap between rich and poor, greater tolerance of breaches of environmental and labour law, increased social conflict (e.g. as a result of land, environmental, or labour disputes), and the authorities' over-dependency on "strategic" investors.[144] And Chinese SEZs, including Shenzhen, were cited to illustrate many of these problems.[145]

Moreover, SEZ antagonists were concerned about a fragmentary regulatory system that would intensify regional inequality, foster a race to the bottom between SEZs and other regions in attracting investment, weaken national industrial strategies, and separate SEZs from other parts of the country.[146] Some underlined that, while the construction of an SEZ requires enormous investment, its benefits are uncertain.[147] They noted the failure of

[136] Interview with A (Hanoi, 8 January 2020). See also Quảng Ninh Province (2017) in comparison with Khánh Hoà People's Committee (2017); Kiên Giang Province (2017); Government, *supra* note 100; Drafting Committee, *supra* note 109; Drafting Committee, *supra* note 114. The latter essentially replicates the structure and contents of the former.

[137] CCSEZR, *supra* note 130.

[138] For illustration, see various newspaper articles cited in this section.

[139] Kim (2018); Nguyễn Tiến Lập (2018); Lê Ngọc Sơn (2018); Tô (2018); Trí (2018).

[140] Kir (*supra* note 139; Nguyuyễn Tiến Lập*supra* note 139; Lê Ngyễn Tiến*supra* note 139; Trí, *supra* note 139.

[141] Đinh (2018); Thái (2018); Vũ & Phương (2017).

[142] Trí, *supra* note 139.

[143] Hồ (2018).

[144] *Ibid.*; Trí, *supra* note 139.

[145] Hnot*supra* note 143; Vũ & Phương, *supra* note 141.

[146] Hote*supra* note 143; Ki & P*supra* note 139.

[147] Hồ (2017); Hồ, *supra* note 143; Tô, *supra* note 139; Trí, *supra* note 139; Trương (2018); Tư (2014).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

several SEZs in the world and stressed that even Chinese SEZs only succeeded in their early stages.[148]

Criticism was also aimed specifically at the SEZs Bill and the national situation in Vietnam. It was reasoned that, as Vietnam had become a more open economy, it would be hard for the proposed SEZs to offer policy incentives that were significantly higher than those in other regions.[149] Similarly, as a result of economic globalization, Vietnamese SEZs would not be able to maintain economic conditions that were more favourable to investors than those in other countries.[150] Additionally, the opponents argued that the SEZs Bill prioritized foreign investment while it should have fostered domestic enterprises.[151] Another robust criticism was that the incentives offered by the Bill, such as those relative to taxes and levies, land access and leases, immigration and gambling, would encourage labour- and resource-intensive real-estate, hospitality, and tourist businesses rather than green, hi-tech, and knowledge-based enterprises.[152]

The locations of the proposed SEZs were challenged, as they are far from economic centres such as Hanoi or Ho Chi Minh City.[153] Several experts highlighted the likelihood of corruption, as the Bill would set up special mechanisms for (state) funding for infrastructure projects, provide investors with generous incentives, and grant SEZ authorities with considerable autonomy without effective supervisory tools.[154] The prevalence of land speculation and "real-estate fever" in the proposed SEZs was cited to illustrate the possibility of rent-seeking practices and the negative impact of SEZ construction.[155]

Lastly, economists consistently expressed concerns about national security and China.[156] They pointed to the geopolitical importance of all proposed SEZs, their significance to national defence, and their relevance to China's ambitious BRI strategy.[157] To support their argument, critics referred to Chinese factories with environmental and labour problems, many of which were strictly closed to outsiders and situated in crucial locations, and Chinese (illegal) purchases of property throughout Vietnam, especially in coastal provinces.[158] Critics also mentioned "negative lessons" from Chinese investment in other countries and their SEZs.[159] They worried that the significant capital required for SEZ infrastructure would create a debt trap that could be utilized by China.[160] There was also a belief that easy regulations on immigration (including permanent residency), expatriates, land lease, and property ownership would pave the way for Chinese people to occupy crucial strategic regions in Vietnam, especially considering the permission of land leases of up to 99 years.[161]

In May 2018, a month before the SEZs Bill was scheduled for passage, criticisms against the Bill exploded. High-profile intellectuals, retired CPV-state officials, and some legislators strongly criticized the Bill, particularly in relation to the Chinese threat and 99-year land leases.[162] Prime Minister Nguyễn Xuân Phúc admitted: "[There is] an enormous wave relative to these issues[.] Intellectuals are very anxious. I have received numerous calls,

[148] Đinh, *supra* note 141; Hồ, *supra* note 143.
[149] Tư, *supra* note 147.
[150] Hnot*supra* note 147.
[151] Đinh, *supra* note 141; Trần (2018).
[152] Đinh, *supra* note 141; Tô, *supra* note 139; Trí, *supra* note 139; Trí, (*supra* note 151; Trương, *supra* note 147.
[153] Hnot*supra* note 143; Trương*supra* note 151; Tư, *supra* note 147.
[154] Luân (2017); Phương (2018); Tô, *supra* note 139.
[155] Huyền (2018a); Tô, *supra* note 139.
[156] Lê Quỳnh (2018); Tô, *supra* note 139; Trương, *supra* note 147.
[157] Lê Qu 147.*supra* note 156; Tô, *supra* note 139; Tr, ng*supra* note 151; Trương, *supra* note 147.
[158] Lê Quỳnh, *supra* note 156; Trương*supra* note 151.
[159] Kim (2018); Hoàng & Minh (2018).
[160] Trương, *supra* note 147.
[161] Lê Quỳnh, *supra* note 156; Troàng*supra* note 151; Trương *supra* note 147.
[162] K (2018); Luân (2018); Nguyễn Đức (2018); Trương, *supra* note 147; Văn (2018).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

messages and opinion letters."[163] The SEZs Bill became a lightning rod for criticism in the media.[164] Several authorities demanded more time for deliberation, while some, including a legislator, suggested a referendum.[165]

Responding to growing criticisms, the NA Chairwoman Nguyễn Thị Kim Ngân emphasized: "The Politburo has made its conclusion [that] the Bill does not violate the Constitution[.] We discuss to enact the Law, not withdraw it."[166] The Minister of Planning and Investment added: "The Bill contains no reference to China[.] There are only peoples who think in that way and exaggerate the issue to divide the relationship with China."[167] A Deputy Head of the NA's Economic Committee responded: "Why are we afraid of Chinese influence in SEZs? Why do Australia, France [and] the US all have a Chinatown?"[168]

These replies did not foster consensus within and beyond the CPV state, but rather fuelled opposition. Intellectuals and retired officials began to voice concerns in social media[169] and foreign media,[170] and initiated collective petitions online.[171] Independent bloggers and political dissidents quickly joined and then dominated the campaign. Their criticism of the SEZs Bill went viral on Facebook.[172] Unlike those of economists and lawyers, their messages were much simpler and concentrated on three points: first, 99-year land leases would render SEZs a Chinese "concession;" second, lessons from other countries indicated that SEZs could be a Chinese "trap" for Vietnam; and, third, contrary to what was suggested by the government, the SEZs Bill did offer special treatment for Chinese citizens in immigration.[173] Calls for public demonstration quickly emerged.[174]

Facing escalating objection and possible demonstrations, the central authorities backed down. The prime minister promised to consider public opinions, including those relative to 99-year land leases.[175] On 9 June 2018, the NA announced that it would delay the Bill for further consideration.[176] Still, demonstrations involving hundreds or thousands of people took place in major cities and provinces across the country.[177] The "pull" from the Vietnamese side for the would-be legal transplant lost its momentum and, as a result, the SEZs Bill has been postponed indefinitely.

[163] P (2018).

[164] From May to June 2018, the SEZs Bill was extensively covered by popular newspapers, including: *Ngưm May to, Ngưm May to Ju*, *Tưưm May*, *VnExpress*, and *VnEconomy*, to name a few. Foreign Vietnamese-language media, such as the BBC and VOA Vietnamese, were also active.

[165] BBC (2018a); Nguy18OA Vie*supra* note 162; Trương, *supra* note 147.

[166] Nguye Lê (2018).

[167] Bảo (2018).

[168] Nghi (2018).

[169] See e.g. Tô, *supra* note 139; Vu (2018).

[170] See e.g. BBC (2018b); BBC, *supra* note 165.

[171] *Kêu g 165.âêu g 165.thu g 165.đơn v 165.h chính-kinh tế đặc biệt (Vân Đh-kinh tế đặc biệtwere also* —Đ– n Đh-kinh tế đặc biệtwere also active.ge media, such as d by poSee e.g. Nguyen Ngoc Chu (2018). His post had more than 16,000 reactions.

[172] Interview with B (Hanoi, 9 January 2020). See also e.g. Nguyen Ngoc Chu's Facebook at https://www.facebook.com/chu.nguyenngoc; *Nhterview with B* Facebook Page at https://www.facebook.com/nhatkyyeunuoc1/ for numerous posts regarding the SEZs Bill from late May to mid-June 2018. Each of these posts had thousands of reactions, comments, and shares.

[173] *Lshares.gshares. tình ôn hoà phat* https://www.facebook.com/n (2018).

[174] P, *supra* note 163.

[175] Lê Hiệp (2018).

[176] Tomiyama (2018).

[177] Miller, *supra* note 24, pp. 845–6 (describing "externally-dictated transplants" as those whereby foreign entities indicate adoption of foreign legal model is a condition for doing business or for allowing the dominated country a measure of political autonomy).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

4.4 The viability of Chinese legal transplants: the SEZs bill and beyond

The case of the SEZs Bill is a noteworthy one for understanding how CLD works, as it reveals a number of factors that may affect the viability of Chinese legal transplants in Vietnam and in other recipient states. We first assess the factors that facilitated the would-be transplant and then evaluate those that were detrimental to the transplant and ultimately led to its rejection. As a threshold issue, whether it is helpful to conceptualize the SEZs Bill as a case of a legal transplant, we note that the SEZs Bill features a combination of elements including not only donor technical expertise (i.e. the CCSEZR as well as other Chinese consultants), but also political negotiation, diplomacy, and a good measure of donor self-interest. These economic and political motives may appear to exceed the purely technical legal ones; however, they are really part of the same process of influence. The history of legal transplants shows that donors rarely act out of altruism.[178]

On the side of facilitative elements, we underscore that the Bill's drafters saw China as the "birthplace" and most successful model for SEZ development. China's SEZs were themselves an agglomerative model, borrowing from Western-controlled treaty ports in pre-Communist China as well as from other Asian polities, namely Taiwan.[179] As a feature of the PRC's industrial policy, the SEZ has gained remarkable currency in prescriptions for economic development in emergent economies around the world.[180] China's SEZs carry a positive reputation for leaders of developing countries shopping for marketization prescriptions.

Vietnam is no exception in this regard. Due to their admiration of Chinese SEZs, the Vietnamese drafters of the Bill drew on the Chinese experience extensively and sought technical assistance from China. The perceived efficacy of Chinese-style SEZs boosted the confidence of Chinese experts in their model. It was stated on the CCSEZR's website:

> Prof. Tao Yitao ... Director of the CCSEZR ... point[ed] out [that] the successful experience of China has important reference value to Vietnam[.] Shenzhen is a typical representative of the ... success of China's special economic zones, which is [a] product of the China's modernization process[.] Its successful construction and development mode [have] attracted Vietnam attention and inspires other developing countries to establish and develop their own SEZs.[181]

The question, however, is whether PRC law played a role in building China's SEZs. Many PRC economists, including former World Bank Chief Economist Justin Yifu Lin, argue that policy was central to China's success with SEZs and not law.[182] Legal scholars disagree, however, and point to the numerous bespoke rules (land use, tax, customs, bankruptcy, etc.) that enhanced the attractiveness of China's SEZs to foreign investors.[183] In the case of the SEZs Bill, when Chinese consultants advised on the legal framework of the SEZs Bill, lessons from PRC law were "smuggled in" through the Chinese SEZ model such that, even if the former lacked prestige, that lack of prestige was outshone by the appeal of the Chinese SEZ model. This finding suggests that China's economic success may, misleadingly or not, enhance the prestige, and therefore exportability, of PRC law.

Another factor that facilitated the would-be transplant is the relevance of Chinese economic globalization for Vietnam. The involvement of Chinese actors in the drafting

[178] Lanteigne (2005), p. 37.

[179] Brautigam & Tang (2011); Brautigam & Tang (2014); UNDP International Poverty Reduction Center (2015); Zeng (2016); Ramos (2017); UN Office for South-South Cooperation and the UN Development Programme (2019).

[180] CCSEZR, *supra* note 122.

[181] Institute for New Structural Economics (2019).

[182] See e.g. Zheng (1987).

[183] Interview with B (Hanoi, 9 January 2020).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

of the SEZs Bill was likely related to China's increasing investment in Vietnam. Further, all of the proposed SEZs are in economically attractive locations for Chinese businesses. Geographically abutting Guangxi, Quảng Ninh—one of the most industrialized and economically developed provinces in northern Vietnam—has maintained economic exchanges with China for decades.[184] Quảng Ninh, Khánh Hoà, and Kiên Giang are also all favourite places for Chinese tourists and real-estate investors.[185] As a result, the Vietnamese government has, at least at these localities and elsewhere, tried to attract Chinese capital.[186] The activism of local leaders in Quảng Ninh, for example, in supporting the SEZs Bill, suggests that Chinese investment has the potential to increase the "pull" for Chinese transplants from Vietnam.

In addition, the SEZs Bill was aligned with China's geo-economic and geopolitical initiatives. Quảng Ninh is an important point in the "Two Corridors, One Belt" initiative that connects major cities and ports in northern and central Vietnam with Yunnan, Guangxi, Guangdong, and Hainan in China.[187] This initiative has recently been incorporated into the BRI.[188] The latter is one of the focuses of the CCSEZR and was repeatedly mentioned in its meetings with Vietnamese delegates regarding SEZ development.[189]

Last but not least, the case of the SEZs Bill illustrates that the transplantability of Chinese law in Vietnam was enhanced by similarities in economic policy and political ideology between the two countries. While analyzing the Chinese SEZ model, the Bill's drafters were attentive to the similarity of its approach to investment policy to that of Vietnam and how this model combined market-based policies with the "unique features" of Chinese economic and political conditions.[190] Economic and political analogies also led Chinese experts to believe that their SEZs offer a good model for socialist Vietnam. This is exemplified by the CCSEZR Director's statement in a meeting with Vietnamese officials that: "Shenzhen is an example for socialist countries to achieve transformation."[191]

However, there are a number of factors that were detrimental to the SEZs Bill and that shed light on the limitations of Chinese legal transplants, more generally. Many of these elements are the obverse of the foregoing facilitative factors. For instance, whereas the attractiveness of Chinese industrial policy, in this case in the form of SEZs, may outweigh the relative unattractiveness of PRC law, PRC law's lack of prestige is nonetheless an enduring feature of these emergent relationships. In this connection, a veteran legal expert at the Vietnamese NA stated:

> China has considerable impact in Vietnam in terms of political ideology, economic policy and political reforms. However, its influence on the Vietnamese legal system, especially economic law, is moderate. China is basically similar to Vietnam. They began economic reforms just some years earlier than Vietnam, have little experience in regulating market economies and also have to learn from more advanced market economies .... Even in the sphere of public law, similarities between the two countries have derived from Soviet legacies more than Chinese borrowing.[192]

[184] *Ibid.*

[185] Interviews with C (HCMC, 11 February 2020) and L (HCMC, 19 February 2020). C and L are officials of the Vietnam Chamber of Commerce and Industry (VCCI).

[186] Le (2018), p. 3.

[187] *Ibid.*

[188] See CCSEZR, *supra* note 122; CCSEZR, *supra* note 130.

[189] Drafting Committee, *supra* note 114, pp. 20–1.

[190] CCSEZR, *supra* note 131.

[191] Interview with A (Hanoi, 8 January 2020).

[192] Interview with B (Hanoi, 9 January 2020).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

This statement explains why Vietnamese law-makers have not relied extensively on Chinese borrowing for legal reforms, despite their constant attention to the PRC. First, they believe that China lacks experience in regulating a market economy. Second, they do not consider Chinese law to be more developed than Vietnamese law. Last, they think that, like Vietnam, China has also imported law from more developed states, such as Western democracies and the USSR. In short, the relative nascence of Chinese law and its low prestige have substantially prevented it from having far-reaching effects in Vietnam. Moreover, noting that Chinese SEZ law and policy are derivative, the second-order-transplant argument appears to have little traction in the Sino-Vietnamese relationship.

Another impediment to Chinese legal transplants, also drawing attention to weaknesses on the demand or "pull" side of the equation, is the general perception of China—not merely its law—in the recipient state. As mentioned, concerns about the Chinese threat played an important part in the failure of Chinese attempts to export their SEZ model to Vietnam. One can say that these concerns derived partially from the complicated history between the two countries. Yet, they were not merely nationalistic. As another NA expert recognized, these concerns did have rational grounds, including several environmental, labour, and social problems caused by Chinese investment in Vietnam and other countries; the existence of illegal purchases of properties by Chinese people; China's geopolitical ambition and its increasingly aggressive approach in the South China Sea; and the crucial locations of the proposed SEZs.[193] Simply put, China failed to assuage such concerns, as held by local actors, and thus did not facilitate the exportation of its model.

Furthermore, critiques of the SEZs Bill did not focus only on the Chinese threat. They also questioned the SEZ model, its effectiveness, and its side effects, including in China. There were also doubts about the suitability of the SEZ model for Vietnam, including the argument that Chinese SEZs and their success are hard to reproduce in other countries. As one NA expert commented: "The failure of the SEZs Bill was not simply because of the anti-China sentiment or concerns about the Chinese threat. The SEZ model did not really serve socio-economic development in Vietnam. It was the root of the opposition."[194] In other words, China failed to offer a developmental model sufficiently attractive to the recipient state. This weakened local confidence in Chinese law and its regulatory capacity, contributing to the failure of the SEZs Bill.

The Chinese approach to legal-reform aid was also relevant. Until recently, China has been much less assertive than its competitors in promoting legal models. Technical aid for legal reforms in Vietnam usually comes from international, Japanese, and Western donors.[195] Chinese relative inactivity in legal-development assistance not only reflects the Chinese "non-interference" policy, but is also a result of the lack of Chinese technical capacity and confidence in Chinese law.[196] The SEZs Bill was an exception in this regard, as it involved energetic technical assistance from Chinese actors. Still, there were problems with the Chinese approach to technical aid in this case.

Conversations with two NA staff and a development expert involved in the law-making process suggest that Chinese experts did not widely interact with local actors, except for those working on draft SEZs proposals and Bills.[197] Meanwhile, Western and international donors often interact extensively with actors within the CPV state and beyond, and engage

[193] Interview with A (Hanoi, 8 January 2020).

[194] Interview with A (Hanoi, 8 January 2020) and B (Hanoi, 9 January 2020).

[195] Interviews with C (HCMC, 11 February 2020) and D (HCMC, 25 February 2020). C is a VCCI official whereas D is member of a Chinese business association in Vietnam.

[196] Interviews with A (Hanoi, 8 January 2020), B (Hanoi, 9 January 2020), and E (Hanoi, 7 January 2020).

[197] Interview with E (Hanoi, 7 January 2020).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

local technical experts in addition to international consultants.[198] They also regularly encourage and participate in consultation activities during the law-making process.[199] However, in general, Chinese technical assistance was less publicly accessible and showed little regard for the opinions of local stakeholders. The Chinese approach increased doubts and misunderstandings regarding the SEZs Bill and Chinese involvement among the recipient population. Arguably, Chinese inexperience in legal-development assistance is an effect of its own regulatory capacity—one that is diminished particularly in China's overseas operations.

To summarize, the SEZs Bill suggests a number of reasons for which CLD has currency in Vietnam, both from the Chinese perspective, to secure its interests in Vietnam, and from the Vietnamese vantage, to import a vital component of China's industrial policy. Yet, it also shows that there remain considerable obstacles to the success of Chinese legal transplantation in Vietnam and perhaps elsewhere. The prestige deficit of PRC law; the relative nascence of the Chinese legal system and its promoters abroad; China's lack of regulatory capacity, including legal assistance; its valorization of sovereignty and resistance to interventionism (developmental, humanitarian, etc.); and the inapplicability of the second-order transplant all led to the demise of the SEZs Bill as a would-be transplant.

5. Conclusion

Law-and-development orthodoxy has highlighted legal transplants as one of the main technologies for norm diffusion across borders, usually from North to South. CLD, however, is part of emerging Inter-Asian dynamics, including second-order legal transplants. CLD demonstrates an exception to conventional thinking about law and development, and the role of legal transplants in particular. CLD suggests that, whereas the PRC government and Chinese enterprises have strong incentives, including commercial and geopolitical issues, to secure their investment and assets overseas, in the near term, horizontal legal transplants will likely not be a major part of this process. The 2018 Vietnamese SEZs Bill shows that, even in a country with a close historical, cultural, and ideological nexus with the PRC, the would-be transplant, in this instance the Chinese SEZ, encountered resistance both as a technical matter and on more pervasive societal grounds (i.e. sinophobia). The Chinese SEZ has gained popularity in many host states in Africa and South Asia,[200] suggesting novel interactions in wider Inter-Asia, yet the Vietnam case shows that writing the policy into local law—that is, transplanting it *legally*—was too much. There was not only insufficient demand in the recipient state, but outright antagonism toward a legal form of transplantation.

China may continue a below-the-radar approach to legal transplantation in nearby states or those that are economically dependent on the PRC. China may be incentivized to do so where it is confident of its legal model or where the legal transfer will substantially enhance its commercial and political interests. Nonetheless, Chinese capacity to export law is still limited not only by the innate features of PRC law (e.g. nascence, amalgamated nature, etc.), but also by local doubt of Chinese intention and Chinese lack of experience in providing technical assistance. Specifically, the Chinese approach to legal transplantation merits reconsideration. Whereas Beijing has taken a highly mediatized if not propagandistic approach to promoting the BRI as a "win–win" proposition, as the 2018 Vietnamese SEZs Bill shows, Chinese legal technical assistance is insular, if not secretive. In other words, such methodologies present public-relations problems for CLD. Greater transparency and inclusiveness would potentially mitigate some of the

[198] *Ibid.*

[199] *Supra* note 180.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

suspicion toward Chinese legal transplants. In the midterm and long term in the post-coronavirus world, Chinese economic globalization will likely see greater fine-tuning in the party-state's approach to legal transplantation.

All of this suggests that, if China is to emerge as a successful contender in the law-and-development market, it will likely resort to other means, in addition to legal transplants, to secure its investments abroad. This means greater vertical integration of Chinese norms into international economic law and the building of cross-border transnational law, mainly in the form of intercorporate agreements, international arbitration, and onshoring commercial disputes—each of which is formative of CLD.

Acknowledgements. This article is part of the "China, Law and Development" project, which has received funding from the European Research Council under the European Union's Horizon 2020 research and innovation programme (Grant No. 803763). The authors thank Professor Setsuo Miyazawa for organizing the "Legal Transplant" panel at the 2019 Asian Law & Society Association conference, as well as Anita Chan, Erik Harms, Rob Leflar, and two anonymous reviewers for their comments. All errors are the authors'.

References

Articles/Books/Reports/Theses

Ajani, Gianmaria (1995) "By Chance and Prestige: Legal Transplants in Russia and Eastern Europe." 43 *American Journal of Comparative Law* 93–117.

Alemanno, Alberto, & Anne-Lise Sibony, eds. (2016) *Nudge and the Law: A European Perspective*, Oxford: Hart Publishing.

Anh, Minh (2012) "*Đặc khu kinh tế: Hành trình đang viết dở* [SEZs: An Incomplete Journey]," *VnEconomy*, 24 August, http://vneconomy.vn/thoi-su/dac-khu-kinh-te-hanh-trinh-dang-viet-do-20120824014356769.htm (accessed 19 April 2020).

Bảo, Lâm (2018) "*Bộ trưởng KHĐT: Luật đặc khu không có chữ nào về Trung Quốc* [Minister of Planning and Investment: SEZs Law Contains No Reference to China]," *Zing.vn*, 6 June, https://news.zing.vn/bo-truong-khdt-luat-dac-khu-khong-co-chu-nao-ve-trung-quoc-post849028.html (accessed 19 April 2020).

Bath, Vivienne (2018) "Chinese Investment and Approaches to International Investment Agreements," in F. Morosini & M. R. S. Badin, eds., *Reconceptualizing International Investment Law from the Global South*, Cambridge: Cambridge University Press, 47–94.

BBC (2018a) "*Tôi cho rằng cần trưng cầu dân ý về Luật Đặc khu* [I Think that There Should be a Referendum of the SEZs Law]," *BBC News Tiếng Việt*, 3 June, https://www.bbc.com/vietnamese/media-44347521 (accessed 19 April 2020).

BBC (2018b) "*Tôi đề nghị chưa thông qua dự luật về ba đặc khu* [I Suggest that the Bill on Three SEZs Not Be Adopted Now]," *BBC News Tiếng Việt*, 31 May, https://www.bbc.com/vietnamese/media-44318152 (accessed 19 April 2020).

Berkowitz, Daniel, Katharina Pistor, & Jean-Francois Richard (2003) "The Transplant Effect." 51 *American Journal of Comparative Law* 163–204.

Biddulph, Sarah (2015) *The Stability Imperative: Human Rights and Law in China*, Vancouver: University of British Columbia.

Bourdieu, Pierre (1987) "The Force of Law: Toward a Sociology of the Juridical Field." 38 *Hastings Law Journal* 805–55.

Brautigam, Deborah, & Tang Xiaoyang (2011) "African Shenzhen: China's Special Economic Zones in Africa." 49 *The Journal of Modern African Studies* 27–54.

Brautigam, Deborah, & Tang Xiaoyang (2014) "'Going Global in Groups': Structural Transformation and China's Special Economic Zones Overseas." 63 *World Development* 78–91.

Burnay, Matthieu (2018) *Chinese Perspectives on the International Rule of Law: Law and Politics in the One-Party State*, Cheltenham: Edward Elgar.

Cairns, John W. (2012) "Watson, Walton, and the History of Legal Transplants." 41 *Georgia Journal of International and Comparative Law* 637–96.

Cao, Deborah (2018) *Chinese Language in Law: Code Red*, Lanham: Lexington Books.

Carothers, Thomas (1998) "The Rule of Law Revival." 77 *Foreign Affairs* 95–106.

CCSEZR (2014) "World Special Economic Zone Development Forum International Conference," *CCSEZR*, 11 April, http://www.ccsezr.org.cn/index.php?m=content&c=index&a=show&catid=82&id=12 (accessed 19 April 2020).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

CCSEZR (2018) "Pham Minh Chinh, Secretary of the CPV Central Committee, and His Party Visit CCSEZR," *CCSEZR*, 5 February, http://www.ccsezr.org.cn/index.php?m=content&c=index&a=show&catid=46&id=28 (accessed 19 April 2020).
CCSEZR (2019) "Consul-General of Consulate General of Vietnam in Guangzhou Visits CCSEZR," *CCSEZR*, 17 February, http://www.ccsezr.org.cn/index.php?m=content&c=index&a=show&catid=46&id=55 (accessed 19 April 2020).
Chaisse, Julien (2018) "Introduction: China's International Investment Law and Policy Regime—Identifying the Three Tracks," in J. Chaisse, ed., *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy*, Oxford: Oxford University Press, 1–22.
Chaisse, Julien, & Mitsuo Matsushita (2018) "China's 'Belt and Road' Initiative: Mapping the World Trade Normative and Strategic Implications." 52 *Journal of World Trade* 163–86.
Chan, Anita (2019) "Vietnam's and China's Diverging Industrial Relations Systems: Case of Path Dependency." *Journal of Contemporary Asia*, doi: 10.1080/00472336.2019.1623907.
Chen, Vivien J. H. (2013) "The Evolution of Malaysian Shareholder Protection: A Legal Origins Analysis." 65 *Singapore Journal of Legal Studies* 100–24.
Chen, Weitseng (2017) *The Beijing Consensus? How China Has Changed the Western Ideas of Law and Development*, Cambridge: Cambridge University Press.
Chen-Wishart, Mindy (2013) "Legal Transplant and Undue Influence: Lost in Translation or a Working Misunderstanding." 62 *International and Comparative Law Quarterly* 1–30.
Choudhry, Sujit, ed. (2006) *The Migration of Constitutional Ideas*, Cambridge: Cambridge University Press.
Christensen, Thomas J. (2015) *The China Challenge: Shaping the Choices of a Rising Power*, New York: W.W. Norton & Co.
Clarke, Donald C. (2003) "Economic Development and the Rights Hypothesis: The China Problem." 51 *American Journal of Comparative Law* 89–111.
Clover, Charles (2017) "Xi Jinping Signals Departure from Low-Profile Policy," *Financial Times*, 20 October.
Cohn, Margit (2010) "Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom." 58 *American Journal of Comparative Law* 583–630.
Corne, Peter, & Matthew S. Erie (2019) "China's Mediation Revolution? Opportunities and Challenges of the Singapore Mediation Convention," *Opinio Juris*, 28 August, http://opiniojuris.org/2019/08/28/chinas-media-revolution-opportunities-and-challenges-of-the-singapore-mediation-convention/ (accessed 19 April 2020).
Cotterrell, Roger (2001) "Is There a Logic of Legal Transplants?," in D. Nelken & J. Feest, eds., *Adapting Legal Cultures*, Oxford: Hart Publishing, 70–92.
Crouch, Melissa (2018) "The Prerogative Writs as Constitutional Transfer." 38 *Oxford Journal of Legal Studies* 653–75.
deLisle, Jacques (1999) "Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond." 20 *University of Pennsylvania Journal of International Economic Law* 179–308.
Deschamps, Isabelle (2012) "Commercial Law Reform in Africa: A Means of Socio-Economic Development, but for Whom? Perspective of Women Entrepreneurs in Benin," in E. T. Laryea, N. Madolo, & F. Sucker, eds., *International Economic Law: Voices of Africa*, Cape Town: Siberlnk, 212–51.
Đinh, Trường Hinh (2018) "*Các đặc khu kinh tế có cần thiết cho kinh tế Việt Nam* [Are SEZs Necessary for the Vietnamese Economy?]," Người Đô thị, 2 June, https://nguoidothi.net.vn/cac-dac-khu-kinh-te-co-can-thiet-cho-kinh-te-viet-nam-14073.html (accessed 19 April 2020).
Do, Hai Ha (2016) "The Dynamics of Legal Transplantation: Regulating Industrial Conflicts in Post-Đổi mới Vietnam." PhD diss., University of Melbourne.
Do, Hai Ha, & Pip Nicholson (2020) "Vietnamese Deliberative Authoritarianism and Legality," in H. Fu & W. Chen, eds., *Authoritarian Legality in Asia: Formation, Development and Transition*, Cambridge: Cambridge University Press, 227–56.
Drafting Committee (2017a) *Detailed Explanation of the Bill on Special Administrative-Economic Units*, 9 September.
Drafting Committee (2017b) *Report on Review of Operation of Industrial Parks, Economic Zones and Similar Models*, 30 August.
Drafting Committee (2017c) *Report on the Review of the International Experience in Constructing, Developing and Managing SEZs and Similar Models*, 9 October.
Du, Ming (2014) "China's State Capitalism and World Trade Law." 63 *International and Comparative Law Quarterly* 409–48.
Duiker, William J. (2000) *Ho Chi Minh: A Life*, Crows Nest, Sydney: Allen & Unwin.
Erie, Matthew S. (2019) "Anticorruption as Transnational Law: The Foreign Corrupt Practices Act and Party Rules in China." 67 *American Journal of Comparative Law*: 233–79.
Erie, Matthew S. (2020) "The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution." 60 *Virginia Journal of International Law*: 225–98.
Erie, Matthew S. (2021) "Chinese Law and Development," 62 *Harvard International Law Journal* 51–115.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Ewald, William (1995) "Comparative Jurisprudence (II): The Logic of Legal Transplants." 43 *American Journal of Comparative Law* 489–510.

Feldman, Eric A. (1994) "Legal Transplants, Organ Transplants: The Japanese Experience." 3 *Social and Legal Studies* 71–91.

Fu, Hualing, & Jason Buhi (2018) "Diverging Trends in Socialist Constitutionalism," in H. Fu, J. Gillespie, P. Nicholson, & W. Partlett, eds., *Socialist Law in Socialist East Asia*, Cambridge: Cambridge University Press, 135–63.

Garver, John W. (2016) *China's Quest: The History of the Foreign Relations of the People's Republic of China*, Oxford: Oxford University Press.

Gillespie, John (2005) "Changing Concepts of Socialist Law in Vietnam," in J. Gillespie & P. Nicholson, eds., *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform*, Canberra, ACT: Australian National University E Press, 45–75.

Gillespie, John (2006) *Transplanting Commercial Law Reform: Developing a "Rule of Law" in Vietnam*, Aldershot: Ashgate Publishing.

Gillespie, John (2007) "Understanding Legality in Vietnam," in S. Balme & M. Sidel, eds., *Vietnam's New Order: International Perspectives on the State and Reform in Vietnam*, Basingstoke: Palgrave Macmillan, 137–61.

Gillespie, John, & Albert H. Y. Chen (2010a) "Comparing Legal Development in China and Vietnam: An Introduction," in J. Gillespie & A. H. Y. Chen, eds., *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes*, New York: Routledge, 1–26.

Gillespie, John, & Albert H. Y. Chen, eds. (2010b) *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes*, New York: Routledge.

Groffman, Nicholas. (2018) "Why English Law Could Rule on China's Belt and Road Disputes," *South China Morning Post*, 6 March, http://www.scmp.com/week-asia/opinion/article/2135329/why-english-law-could-rule-chinas-belt-and-road-disputes (accessed 19 April 2020).

Guangming ribao pinglunyuan (光明日报评论员) [Guangming Paper Commentator] (2019) Jianchi he wanshan duli zizhu de heping waijiao zhengce (坚持和完善独立自主的和平外交政策) [Uphold and perfect an Independent Foreign Policy of Peace], Zhonggong zhongyang dangxiao guojia xingzheng xueyuan (中共中央党校) [Party School of the Central Committee of the CCP National Academy of Governance], 13 November, http://www.ccps.gov.cn/llwx/201911/t20191113_135880.shtml (accessed 19 April 2020).

Harding, Andrew (2018) "Multi-Level, Recursive Law and Development: Singapore's Legal Role in ASEAN." 5 *Asian Journal of Law and Society* 251–69.

Hart, Herbert L. A. (1970) "Introduction," in J. Bentham, ed., *Of Laws in General*, London: Athlone Press, i–xliii.

He, Xin (2014) "Administrative Reconsideration's Erosion of Administrative Litigation in China." 2 *The Chinese Journal of Comparative Law* 252–69.

Ho, Engseng (2017) "Inter-Asian Concepts for Mobile Societies." 76 *The Journal of Asian Studies* 907–28.

Hồ, Quốc Tuấn (2017) "*Đặc khu hành chính-kinh tế: một trào lưu không có gì đặc biệt* ["Special Administrative-Economic Zones: Nothing Special about this Trend]," *Thời báo Kinh tế Sài Gòn*, 12 December, https://www.thesaigontimes.vn/164347/Dac-khu-hanh-chinh-kinh-te-mot-trao-luu-khong-co-gi-dac-biet (accessed 19 April 2020).

Hồ, Quốc Tuấn (2018) "*Cái giá của đặc khu kinh tế* [The Price of SEZs]," *Thời báo Kinh tế Sài Gòn*, 7 June, https://www.thesaigontimes.vn/273572/cai-gia-cua-dac-khu-kinh-te.html (accessed 19 April 2020).

Hoàng, Phú, & Minh Tiến (2018) "*Trung Quốc đã làm gì ở các đặc khu châu Phi?* [What Did China Do in African SEZs?]," *Pháp luật thành phố Hồ Chí Minh*, 8 June, https://plo.vn/van-hoa/ho-so-phong-su/trung-quoc-da-lam-gi-o-cac-dac-khu-chau-phi-774833.html (accessed 19 April 2020).

Hurst, William (2018) *Ruling Before the Law: The Politics of Legal Regimes in China and Indonesia*, Cambridge: Cambridge University Press.

Huxley, Andrew (2007) "Jeremy Bentham on Legal Transplants." 2 *Journal of Comparative Law* 177–88.

Huyền, Trang (2018a) "*Dự án Luật Đặc khu: Thuận lợi trong kinh doanh quan trọng hơn ưu đãi kinh tế* [The SEZs Bill: The Ease of Doing Business Is More Important Than Economic Incentives]," *Diễn đàn Doanh nghiệp*, 26 May, https://enternews.vn/du-an-luat-don-vi-hanh-chinh-kinh-te-dac-biet-van-don-bac-van-phong-phu-quoc-thuan-loi-kinh-doanh-quan-trong-hon-uu-dai-kinh-te-129810.html (accessed 19 April 2020).

Huyền, Trang (2018b) "*Nếu quá cầu toàn khi xây dựng, Luật Đặc khu có thể làm mất đi cơ hội của đất nước* [The Country May Loose Opportunities If [We] Are Too Cautious in Making the SEZs Law]," *Diễn đàn Doanh nghiệp*, 18 May, https://enternews.vn/bo-truong-nguyen-chi-dung-neu-qua-cau-toan-khi-xay-dung-luat-dac-khu-co-the-lam-mat-di-co-hoi-cua-dat-nuoc-129425.html (accessed 19 April 2020).

Institute for New Structural Economics (2019) "International Development Cooperation," http://www.nse.pku.edu.cn/en/policy/internaration/index.htm (accessed 17 October 2019).

Jia, Mark (2016) "Chinese Common Law? Guiding Cases and Judicial Reform." 129 *Harvard Law Review* 2213–34.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

K, Nam (2018) "*Đặc khu có nên cho nhà đầu tư thuê đất 99 năm?* [Should SEZs Allow 99-Year Land Leases for Investors?]," Tuổi trẻ, 3 June, https://tuoitre.vn/dac-khu-co-nen-cho-nha-dau-tu-thue-dat-99-nam-2018060309491778.htm (accessed 19 April 2020).

Kahn-Freund, Sir Otto (1974) "On Uses and Misuses of Comparative Law." 37 *Modern Law Review* 1–27.

Kaneko, Yuka (2010) "A Procedural Approach to Judicial Reform in Asia: Implications from Japanese Involvement in Vietnam." 23 *Columbia Journal of Asian Law* 313–55.

Kaneko, Yuka (2019) *Civil Law Reforms in Post-Colonial Asia: Beyond Western Capitalism*, Singapore: Springer.

Kaneko, Yuka (2021) "Land Law Reforms in Vietnam and Myanmar: 'Legal Transplant' Viewed from Asian Recipients." 8 *Asian Journal of Law and Society* 401–427.

Karrar, Hasan Haider (2009) *New Silk Road Diplomacy: China's Central Asian Foreign Policy Since the Cold War*, Vancouver: UBC Press.

Keller, Perry (1994). "Sources of Order in Chinese Law." 42 *American Journal of Comparative Law* 711–59.

Kêu gọi phản đối dự thảo Luật đơn vị hành chính-kinh tế đặc biệt (Vân Đồn, Bắc Vân Phong, Phú Quốc)—Đợt 1–8 (Call for Objection to the Bill on Special Administrative-Economic Units (Vân Đồn, Bắc Vân Phong, Phú Quốc)—1st-8th Times), *Boxivn.net*, 15 June 2018, http://www.boxitvn.net/bai/54908 (accessed 13 January 2020).

Khánh Hoà People's Committee (2017) *Đề án thành lập đơn vị hành chính-kinh tế đặc biệt Bắc Vân Phong thuộc tỉnh Khánh Hoà* [*Proposal for the Establishment of Bắc Vân Phong Special Administrative-Economic Unit in Khánh Hoà Province*], October.

Kiên Giang Province (2017) *Đề án thành lập đơn vị hành chính-kinh tế đặc biệt Phú Quốc, tỉnh Kiên Giang* [*Proposal for the Establishment of Phú Quốc Special Administrative-Economic Unit, Kiên Giang Province*], October.

Kim, Hoa (2018) "*Đặc khu kinh tế Trung Quốc ở Campuchia* [Chinese SEZs in Cambodia]," *Đất Việt*, 8 June, https://baodatviet.vn/the-gioi/tin-tuc-24h/dac-khu-kinh-te-trung-quoc-o-campuchia-3359607/ (accessed 19 April 2020).

Kingsley, Jeremy J. (2004) "Legal Transplantation: Is This What the Doctor Ordered and are the Blood Types Compatible? The Application of Interdisciplinary Research to Law Reform in the Developing World—A Case Study of Corporate Governance in Indonesia." 21 *Arizona Journal of International and Comparative Law* 493–534.

Kong, Qingjiang (2017) "Beyond the Love-Hate Approach?: International Law and International Institutions and the Rising China." 15 *China: An International Journal* 41–62.

Krishnan, Jayanth K. (2004) "Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India." 46 *American Journal of Legal History* 447–99.

Kroncke, Jedidiah J. (2016) *The Futility of Law and Development: China and the Dangers of Exporting American Law*, Oxford: Oxford University Press.

Kuong, Teilee (2018) "Legal Assistance in the Japanese ODA: The Spark of a New Era." 5 *Asian Journal of Law and Society* 271–87.

Lam, Thanh Ha (2019) "Chinese FDI in Vietnam: Trends, Status and Challenges," *ISEAS Perspective*, 24 April, https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2019_34.pdf (accessed 19 April 2020).

Langer, Máximo (2004) "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure." 45 *Harvard International Law Journal* 1–64.

Lanteigne, Marc (2005) *China and International Institutions: Alternate Paths to Global Power*, New York: Routledge.

Lê, Hiệp (2018) "*Chính phủ đề nghị lùi thời gian thông qua luật đặc khu* [The Government Proposes to Delay the Adoption of the SEZs Law]," Thanh Niên, 8 June, https://thanhnien.vn/thoi-su/chinh-phu-de-nghi-lui-thoi-gian-thong-qua-luat-dac-khu-971594.html (accessed 19 April 2020).

Le, Hong Hiep (2018) "The Belt and Road Initiative in Vietnam: Challenges and Prospects," *ISEAS Perspective*, 29 March, https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_18@50.pdf (accessed 19 April 2020).

Lê, Ngọc Sơn (2018) "*Thử nghiệm thể chế và hai câu hỏi lớn* [Institutional Experiment and Two Big Questions]," Người Đô thị, 7 June, https://nguoidothi.net.vn/thu-nghiem-the-che-va-hai-cau-hoi-lon-14009.html (accessed 19 April 2020).

Lê, Quỳnh (2018) "*Đặc khu kinh tế: Tại sao có nỗi lo Trung Quốc là mối hoạ lớn* [SEZs: Why Is China a Big Threat?]," Người Đô thị, 6 June, https://nguoidothi.net.vn/dac-khu-kinh-te-tai-sao-co-noi-lo-trung-quoc-la-moi-hoa-lon-13995.html (accessed 19 April 2020).

Le, Thanh Vinh (2012) "Competition Law Transfer in Vietnam from an Interpretive Perspective." PhD diss., Monash University.

Legrand, Pierre (1997) "The Impossibility of 'Legal Transplants'." 4 *Maastrict Journal of European and Comparative Law* 111–24.

Lindsey, Timothy, ed. (2007) *Law Reform in Developing and Transitional States*, London: Routledge.

Lời kêu gọi biểu tình ôn hoà phản đối thông qua Luật Đặc khu [Call for Peaceful Demonstration to Oppose the SEZs Law] (2018), Nhật ký yêu nước Facebook Page, 6 June, https://www.facebook.com/nhatkyyeunuoc1/photos/a.551760078184077/2283645228328878/?type=1&theater (accessed 19 April 2020).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Luân, Dũng (2017) "*Ai kiểm soát quyền lực của Trưởng Đặc khu?* [Who Will Control the Power of the SEZ President?]," *Tiền phong*, 11 November, https://www.tienphong.vn/xa-hoi/ai-kiem-soat-quyen-luc-cua-truong-dac-khu-1206546.tpo (accessed 19 April 2020).

Luân, Dũng (2018) "*Đặc khu kinh tế: 'Không đánh đổi chủ quyền lấy phát triển kinh tế'* [SEZs: 'Don't Exchange Sovereignty for Economic Growth']," Tiền phong, 4 April, https://www.tienphong.vn/xa-hoi/dac-khu-kinh-te-khong-danh-doi-chu-quyen-lay-phat-trien-kinh-te-1257900.tpo (accessed 19 April 2020).

Lubman, Stanley (1999) *Bird in a Cage: Legal Reform in China After Mao*, Stanford: Stanford University Press.

Maosen, Li (2011) "Changing Ideological-Political Orientations in Chinese Moral Education: Some Personal and Professional Reflections." 40 *Journal of Moral Education* 387–95.

Mathis, Klaus, & Avishalom Tor, eds. (2016) *Nudging—Possibilities, Limitations and Applications in European Law and Economics*, Cham: Springer.

Matsuura, Yoshiharu, ed. (2005) *The Role of Law in Development: Past, Present and Future*, Nagoya: CALE Books.

Mattei, Ugo (1994) "Efficiency in Legal Transplants: An Essay in Comparative Law and Economics." 14 *International Review of Law and Economics* 3–19.

Miller, Jonathan M. (2003) "A Typology of Legal Transplants: Using Sociology, Legal History and the Argentine Example to Explain the Transplant Process." 51 *American Journal of Comparative Law* 839–85.

Nghi, Điềm (2018) "*TS Nguyễn Đức Kiên: Đặc khu cho thuê đất 99 năm là vô nghĩa* [It's Nonsense to Lease Land for 99 Years in SEZs]," Nhà Đầu tư, 9 May, https://nhadautu.vn/gap-go-thu-tu-ts-nguyen-duc-kien-dac-khu-cho-thue-dat-99-nam-la-vo-nghia-d9535.html (accessed 19 April 2020).

Nguyễn, Đức (2018) "*Luật Đặc khu: Nên hoãn lại để xin ý kiến nhân dân* [SEZs Law: Should Be Postponed to Seek People's Opinions]," *Người Đô thị*, 7 June, https://nguoidothi.net.vn/luat-dac-khu-nen-hoan-lai-de-xin-y-kien-nhan-dan-14024.html (accessed 19 April 2020).

Nguyen, Khac Vien (1974) *Tradition and Revolution in Vietnam*, Berkeley: Indochina Resource Center.

Nguyễn, Lê (2018) "*Chủ tịch Quốc hội: Phải bàn để ra được luật đặc khu* [NA Chairwoman: We Must Discuss to Promulgate the SEZs Law]," *VnEconomy*, 16 April, http://vneconomy.vn/chu-tich-quoc-hoi-phai-ban-de-ra-duoc-luat-dac-khu-20180416130046666.htm (accessed 19 April 2020).

Nguyen, Ngoc Chu (2018) "*Không 99 năm. Không 70 năm. Không đặc khu* [No 99 Years. No 70 Years. No SEZs]," Nguyen Ngoc Chu Facebook, 9 June, https://www.facebook.com/chu.nguyenngoc/posts/1335435889923171 (accessed 19 April 2020).

Nguyen, Ngoc Huy, & Ta Van Tai (1987) *The Lê Code*, Ohio: Ohio University Press.

Nguyễn, Tiến Lập (2018) "*Những băn khoăn về dự thảo luật 'đặc khu'* [Concerns about the SEZs Bill]," *Thời báo kinh tế Sài Gòn*, 15 April, https://www.thesaigontimes.vn/271237/Nhung-ban-khoan-ve-du-thao-luat-%E2%80%9Cdac-khu%E2%80%9D.html (accessed 19 April 2020).

Nguyen, Van Cuong (2011) "The Drafting of Vietnam's Consumer Protection Law: An Analysis from Legal Transplantation Theories." PhD diss., University of Victoria.

Nichols, Philip M. (1997) "The Viability of Transplanted Law: Kazakhstani Reception of a Transplanted Foreign Investment Code." 18 *University of Pennsylvania Journal of International Law* 1235–79.

Nicholson, Penelope (Pip) (2007) *Borrowing Court Systems: The Experience of Socialist Vietnam*, Leiden: Martinus Nijhoff Publishers.

Nicholson, Pip, & Teilee Kuong (2014) "Japanese Legal Assistance: An East Asian Model of Legal Assistance and Rule of Law?" 6 *Hague Journal on the Rule of Law* 141–77.

P, Thảo (2018) "*Thủ tướng: 'Tôi nhận rất nhiều tin nhắn, thư góp ý về thuê đất tại đặc khu'* [Prime Minister: 'I Have Received Numerous Messages and Opinion Letters Regarding Land Leases in SEZs']," Dân trí, 4 June, https://dantri.com.vn/chinh-tri/thu-tuong-toi-nhan-rat-nhieu-tin-nhan-thu-gop-y-ve-cho-thue-dat-tai-dac-khu-20180604105720009.htm (accessed 2 November 2020).

Peerenboom, Randall (2002) *China's Long March toward Rule of Law*, Cambridge: Cambridge University Press.

Peerenboom, Randall (2007) *China Modernizes: Threat to the West or Model to the Rest?* Oxford: Oxford University Press.

Pham, Duy Nghia, & Do Hai Ha (2018) "The Soviet Legacy and Its Impact on Contemporary Vietnam," in H. Fu, J. Gillespie, P. Nicholson, et al., eds., *Socialist Law in Socialist East Asia*, Cambridge: Cambridge University Press, 97–131.

Pheap, Aun (2019) "Chinese Police Work in Cambodia to Handle Chinese Suspects," *Radio Free Asia*, 12 December.

Phương, Nhung (2018) "*Lò nóng lắm rồi, đừng thêm củi vào khi đặc khu ra đời* [The Oven has Already Been too Hot. Don't Put more Fire Wood into it upon the Establishment of SEZs]," Người Lao động, 23 May, https://nld.com.vn/chinh-tri/tang-quyen-luc-chu-tich-dac-khu-de-vi-pham-phap-luat-20180523105119059.htm (accessed 19 April 2020).

Potter, Pitman B. (2004) "Legal Reform in China: Institutions, Culture, and Selective Adaptation." 29 *Law and Social Inquiry* 465–95.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

QNP (2013a) "*Lãnh đạo tỉnh làm việc với đoàn chuyên gia Trường Đại học Thâm Quyến (Trung Quốc)* [Provincial Leaders Worked with the Expert Team from Shenzhen University (China)]," https://www.quangninh.gov.vn/pinchitiet.aspx?nid=55202 (accessed 19 April 2020).

QNP (2013b) "*Tỉnh Quảng Ninh và Trường Đại học Thâm Quyến (Trung Quốc) ký bản ghi nhớ hợp tác tổ chức hội thảo về KKT và giáo dục đào tạo* [Quang Ninh Province and Shenzhen University (China) Signed a Memorandum on Cooperation in the Organisation of the Economic Zone Conference and Education and Training]," https://www.quangninh.gov.vn/pinchitiet.aspx?nid=54565 (accessed 19 April 2020).

Quảng Ninh Province (2017) *Đề án thành lập đơn vị hành chính-kinh tế đặc biệt Vân Đồn" [Proposal for the Establishment of Vân Đồn Special Administrative-Economic Unit]*, September.

Ramos, Lizette (2017) "Legal Challenges for Chinese Investment in Special Economic Zones in Mexico." 6 *International Journal of Management Sciences and Business Research* 10–21.

Sannerholm, Richard Z. (2009) "'Cut-and-Past'? Rule of Law Promotion and Legal Transplants in War to Peace Transitions," in A. B. Engelbrekt & J. Nergelius, eds., *New Directions in Comparative Law*, Cheltenham: Edward Elgar Publishing, 56–80.

Sapio, Flora (2010) *Sovereign Power and the Law in China*, Leiden: Brill.

Sauvant, Karl P. (2019) "China Moves the G20 towards in International Investment Framework and Investment Facilitation," in J. Chaisse, ed., *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy*, Oxford: Oxford University Press, 311–28.

Seppänen, Samuli (2018) "Chinese Legal Development Assistance: Which Rule of Law? Whose Pragmatism?" 51 *Vanderbilt Journal of Transnational Law* 101–58.

Shaffer, Gregory, & Henry S. Gao (2017) "China's Rise: How It Took on the US at the WTO." 1 *University of Illinois Law Review* 115–84.

Shaffer, Gregory, & Henry S. Gao (2020) "A New Chinese Economic Legal Order." 23 *Journal of International Economic Law* 607–35.

Sherman, Justin (2019) "Vietnam's Internet Control: Following in China's Footsteps?" *The Diplomat*, 11 December, https://thediplomat.com/2019/12/vietnams-internet-control-following-in-chinas-footsteps/ (accessed 19 April 2020).

Sunstein, Cass R., & Richard H. Thaler (2008) *Nudge*, New York: Penguin Books.

Taylor, Veronica L. (2005) "New Markets, New Commodity: Japanese Legal Technical Assistance." 23 *Wisconsin International Law Journal* 251–81.

Teubner, Gunther (1998) "Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences." 61 *The Modern Law Review* 11–32.

Thái, Phương (2018) "*Chưa rõ cú hích từ đặc khu!* [The Nudge from SEZs Is Unclear!]," Người Lao động, 7 June, https://nld.com.vn/kinh-te/chua-nen-thong-qua-luat-dac-khu-chua-ro-cu-hich-tu-dac-khu-20180606214347517.htm (accessed 19 April 2020).

Thul, Prak Chan (2016) "China Agrees to Help Cambodia Overhaul Its Criticized Judiciary," *Reuters*, 28 September, https://www.reuters.com/article/us-china-cambodia-idUSKCN11Y17H (accessed 19 April 2020).

Tô, Văn Trường (2018) "*TS Tô Văn Trường trả lời phỏng vấn Thời báo Tài chính VN về dự thảo Luật Đặc khu kinh tế* [Dr To Van Truong's Response to an Interview of Vietnam Financial Times Regarding the SEZs Bill]," Bauxite Vietnam, 4 June, https://www.facebook.com/permalink.php?story_fbid=10156502232294679&id=859227746 78 (accessed 19 April 2020).

Tomiyama, Atsushi (2018) "Vietnam's Economic Zones Derailed by Anti-China Protests," *Nikkei Asian Review*, 3 September, https://asia.nikkei.com/Politics/International-relations/Vietnam-s-economic-zones-derailed-by-anti-China-Protests (accessed 19 April 2020).

Toohey, Lisa, Colin B. Picker, & Jonathan Greenacre, eds. (2015) *China in the International Economic Order: New Directions and Changing Paradigms*, New York: Cambridge University Press.

Trần, Văn Thọ (2018) "*Ba đặc khu cần trả lời ba câu hỏi* [Three SEZs Have to Answer Three Questions]," Người Đô thị, 9 June, https://nguoidothi.net.vn/gs-tran-van-tho-ba-dac-khu-can-tra-loi-ba-cau-hoi-14047.html (accessed 19 April 2020).

Trí, Lâm (2018) "*Luật sư Nguyễn Tiến Lập: Mô hình đặc khu đã lỗi thời* [Lawyer Nguyễn Tiến Lập: The SEZ Model Is Out-of-Date]," Một thế giới, 31 May, https://www.mtg.com.vn/kinh-te-c-67/luat-su-nguyen-tien-lap-mo-hinh-dac-khu-da-loi-thoi-89267.html (accessed 19 April 2020).

Trubek, David M. (2006) "The 'Rule of Law' in Development Assistance: Past, Present, and Future," in D. M. Trubek & A. Santos, eds., *The New Law and Economic Development: A Critical Appraisal*, Cambridge: Cambridge University Press, 74–94.

Trubek, David M. (2016) "Law and Development: Forty Years after 'Scholars in Self-Estrangement'." 66 *University of Toronto Law Journal* 301–29.

Trubek, David M., & Marc Galanter (1974) "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States." 4 *Wisconsin Law Review* 1062–102.

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Trubek, David M., & Alvaro Santos (2006) "Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice," in M. Trubek & A. Santos, eds., *The New Law and Economic Development: A Critical Appraisal*, Cambridge: Cambridge University Press, 1–19.

Trương, Trọng Nghĩa (2018) "*Chưa nên thông qua Luật Đặc khu* [The SEZs Law Should Not Be Adopted at this Time]," Người Lao động, 6 June, https://nld.com.vn/kinh-te/chua-nen-thong-qua-luat-dac-khu-2018060521233578.htm (accessed 19 April 2020).

Tư, Hoàng (2014) "*Giáo sư—Tiến sĩ Nguyễn Mại: Chúng ta được gì từ đặc khu?* [Professor—Dr. Nguyễn Mại: What Can We Get from Special Zones?]," *Thời báo Kinh tế Sài Gòn*, 10 July, —https://www.thesaigontimes.vn/117275/Giao-su—Tien-si-Nguyen-Mai-Chung-ta-duoc-gi-tu-dac-khu (accessed 19 April 2020).

Tuấn, Anh (2014) "*Quảng Ninh và Hội thảo Khoa học quốc tế về phát triển đặc khu kinh tế* [Quang Ninh and the International Conference on SEZ Development]," *Thế giới & Việt Nam*, 19 March, https://baoquocte.vn/quang-ninh-va-hoi-thao-khoa-hoc-quoc-te-ve-phat-trien-dac-khu-kinh-te-23579.html (accessed 19 April 2020).

UN Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation"), adopted 20 December 2018, https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements (accessed 31 March 2020).

UN Office for South-South Cooperation and the UN Development Programme (2019) *South-South Ideas: Report on the Potential for Monitoring and Evaluation of Special Economic Zones in Bangladesh*, New York: UN.

UNCTAD Investment Policy Hub (2020) "China: Bilateral Investment Treaties and Treaties with Investment Provisions," https://investmentpolicy.unctad.org/international-investment-agreements/countries/42/china (accessed 31 March 2020).

UNDP International Poverty Reduction Center (2015) *If Africa Builds Nests, Will the Birds Come? Comparative Study on Special Economic Zones in Africa and China*, Beijing: UNDP.

Văn, Duẩn (2018) "*Thượng tướng Nguyễn Văn Được: Mong Đảng và Nhà nước thận trọng xem xét Luật Đặc khu* [Colonel General Nguyễn Văn Được: I Hope that the Party and State Consider the SEZs Law with Caution]," Người Lao động, 7 June, https://nld.com.vn/chinh-tri/thuong-tuong-nguyen-van-duoc-mong-dang-va-nha-nuoc-than-trong-xem-xet-luat-dac-khu-2018060716212486.htm (accessed 19 April 2020).

van Rooij, Benjamin (2006) *Regulating Land and Pollution in China, Lawmaking, Compliance, and Enforcement; Theory and Cases*, Leiden: Leiden University Press.

Võ, Nguyên Giáp (1995) *Chiến đấu Trong Vòng vây [Fighting within an Encirclement]*, Hanoi: Nhà xuất bản Quân đội nhân dân.

Vũ, Mạnh, & Phương Thảo (2017) "*Đặc khu kinh tế Trung Quốc: Hào quang và nước mắt ở Thâm Quyến* [Chinese SEZs: Haloes and Tears in Shenzhen]," Zing.vn, 15 August, https://zingnews.vn/dac-khu-kinh-te-trung-quoc-hao-quang-va-nuoc-mat-o-tham-quyen-post771140.html (accessed 19 April 2020).

Vu, Thanh Tu Anh (2018) "*Mô hình đơn vị hành chính-kinh tế đặc biệt* [The Special Administrative-Economic Unit]," *Vu Thanh Tu Anh Facebook*, 4 June, https://www.facebook.com/permalink.php?story_fbid=2144183135652672&id=100001830205620 (accessed 19 April 2020).

Wang, Enbo (2019) "*Zhongguo jinchukou yinhang 'yidaiyilu' jianshe daikuan yu'e chao wan yi yuan* [China Exim Bank's 'Belt and Road' Construction Loan Balance Exceeds RMB 1 Trillion]," 18 April, https://baijiahao.baidu.com/s?id=1631156327348679751&wfr=spider&for=pc (accessed 2 November 2020).

Wang, Heng (2018) "China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability." 22 *Journal of International Economic Law* 29–55.

Watson, Alan (1993a) *Legal Transplants: An Approach to Comparative Law*, Athens and London: University of Georgia Press.

Watson, Alan (1993b) *Legal Transplants: An Approach to Comparative Law*, Athens and London: University of Georgia Press.

Xinlang Caijing (Sina Finance) (2019) "*Shangwubu: Zhongguo qiye dui: 'Yidaiyilu' yanxian guojia de touzi leiji yichao 1000 yi meiyuan* [Ministry of Commerce: Chinese Enterprises Have Invested More than $100 Billion in Countries along the 'Belt and Road']," *Sina Finance*, 29 September, https://baijiahao.baidu.com/s?id=1646002733632323146&wfr=spider&for=pc (accessed 2 November 2020).

Zeng, Douglas Zhihua (2016) *Global Experiences with Special Economic Zones: Focus on China and Africa*, World Bank Policy Research Working Paper No. 7240, Washington, DC: World Bank.

Zheng, Henry R. (1987) "Law and Policy of China's Special Economic Zones and Coastal Cities." 8 *New York Law School Journal of International and Comparative Law*: 193–296.

Zhonggong zhongyang (中共中央) [Central Committee of the CCP] (2014) Guanyu quanmian tuijin yifazhiguo ruogan zhongda wenti de jueding (关于全面推进依法治国若干重大问题的决定) [Decision on Several Important Issues Concerning the Comprehensive Promotion of Governing the Country According to Law], adopted at the Fourth Plenary Session of the Eighteenth Central Committee of the CCP on 23 October 2014, http://china.caixin.com/2014-10-28/100744069_all.html (accessed 19 April 2020).

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press

Vietnamese Policy and Legal Documents

Bill on Special Administrative-Economic Units (2018) Draft submitted to the 5th Session of the 14th National Assembly (15 June).
Constitution 2013.
CPV (1997) Resolution No. 04-NQ/HNTW on Furthering Economic Reforms, Making Use of Internal Capacity, Improving the Effectiveness of Economic Cooperation, Saving for Industrialization and Aiming to Achieve Socio-Economic Objectives until 2000 (29 December).
CPV (2011) Socio-Economic Development Strategy 2011–2020 (17 March).
CPV (2016) Report on Review of the Realization of the 2011–2015 Socio-Economic Developmental Tasks and the Orientation and Tasks for Socio-Economic Development in 2016–2020 (29 January).
CPV (2017) Resolution No. 11-NQ/TW on Perfecting Institutions for the Socialist-Oriented Market Economy (3 June).
Government (2017). Submission Paper No. 411/TTr-CP regarding the Bill on Special Administrative-Economic Units (10 October).
Labour Code (Revised) 2006.
Labour Code 2019.
Resolution No. 03/2015/NQ-HDTP of the Judges' Council of the Supreme People's Court dated 28 October 2015.
Resolution No. 04/2019/NQ-HDTP of the Judges' Council of the Supreme People's Court dated 18 June 2019.

Interviews

Interview with A (Hanoi, 8 January 2020).
Interview with B (Hanoi, 9 January 2020).
Interview with C (HCMC, 11 February 2020).
Interview with D (HCMC, 25 February 2020).
Interview with E (Hanoi, 7 January 2020).
Interview with F (Hanoi, 7 January 2020).
Interview with G (Hanoi, 7 January 2020).
Interview with H (Hanoi, 8 January 2020).
Interview with I (HCMC, 12 February 2020).
Interview with J (HCMC, 23 February 2020).
Interview with K (HCMC, 13 March 2020).
Interview with L (HCMC, 19 February 2020).

Cite this article: Erie, Matthew S. and Hai Ha, Do (2021). Law and Development Minus Legal Transplants: The Example of China in Vietnam. *Asian Journal of Law and Society* **8**, 372–401. https://doi.org/10.1017/als.2020.46

https://doi.org/10.1017/als.2020.46 Published online by Cambridge University Press