VOLUME 10 ISSUE 2 ARTICLES & ESSAYS

University of Bologna Law Review

https://doi.org/10.60923/issn.2531-6133/23306

Received: 12 Apr. 2025 | Reviewed: 25 Jul. 2025 | Accepted: 27 Jul. 2025 | Published: 14 Jan. 2026

From Socialist to Roman Concepts: The Reform of Property Law in a Developing World

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ABSTRACT

This article examines structural problems in Vietnamese property law arising from the reception of mixed legal transplants during the twentieth and twenty-first centuries. Through historical-comparative analysis of the 2015 Civil Code of Vietnam, it identifies six critical deficiencies in the codification of personal property law (law of obligations and rights in personam): inconsistencies in code model selection, structural incoherence, overlapping provisions, conflicts between orthodox socialist legality and revived civilian tradition, problematic selective borrowing from divergent civil and common law systems, and insufficient engagement with civilian legal science. The analysis demonstrates how Vietnam's unique legal trajectory—combining socialist legal orthodoxy with market-oriented civil law revival—generates systematic tensions that transcend typical mixed jurisdiction challenges. These structural deficiencies manifest in three dimensions: internal contradictions within the code itself, impaired effectiveness in legal application, and compromised consistency in adjudication leading to unjust outcomes. The article argues that the root cause lies not merely in hasty incorporation of new legal phenomena, but in the absence of coherent codification philosophy grounded in civilian legal science. By tracing the historical reception of property law traditions and analysing their interaction within a single national framework, this study contributes to comparative understanding of legal transplant pathologies and offers insights for legal reform in transitional systems navigating between socialist legality and civilian tradition.

KEYWORDS

Vietnam; Civil Code; Law of Property; Law of Obligations; Legal Transplantation

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INTRODUCTION

The development of Vietnam's legal system regarding property in the modern age is characterised by complexity and ongoing transformation. Over a century, the legal system underwent at least three major revolutions, moving in diverse directions according to differing ideologies. The original expansion phase, from 1864 to 1954 in the North and 1975 in the South, witnessed the formation of a colonial and then national legal system influenced by French Civil Law, characterised by a relatively progressive ideology. Following the founding of the Democratic Republic of Vietnam and subsequently the Socialist Republic of Vietnam, the nation initiated a reform process incorporating communist legislation from the Soviet Union. Nonetheless, it retained a considerable segment of the previously enacted French legislation, especially regarding private affairs in 1954 in the North and 1975 in the South. It initially transpired during the era of people's democracy and subsequently under the doctrine of the dictatorship of the proletariat, bolstered by a centrally planned economy. Nonetheless, the so-called socialist legality, established with strict compliance, was amended in 1986, in reaction to the economic reforms enacted that year. The reforms were enacted to facilitate the country's shift towards a more market-oriented and liberal economy. This phase of transformation has continued to the present day.

As a result, civil law in general and property law in particular received significant emphasis in that specific environment. Within the context of complexity and ongoing transformation in Vietnamese legislation for the past hundred years, the change in the legal system has profoundly impacted and altered the fundamental structure and substance of property law at different historical junctures, especially after 1986, when the country introduced a nationwide reform towards a more market-oriented and liberal economy. At first, the reformers of Vietnam employed a pragmatic approach by enacting separate statutory and regulatory instruments to govern different kinds of property. Ordinance on Civil Contract, Ordinance on Economic Contract, Land Law, Marriage and Family Law, Ordinance on Industrial Property Protection, Ordinance on Author's Rights Protection, Ordinance on Succession, Ordinance on Residential Housing, and so on were promptly promulgated from 1986 to 1994. The prevailing strategy at that time involved enacting concise, brief, and condensed statutes that outlined limited essential provisions. These statutes granted the Government extensive authority to issue statutory instruments, allowing them to provide guidance and instructions on implementing these statutes. This approach involved a process of experimentation and observation, allowing the regulated matter to develop and mature before considering the

adoption of a comprehensive statute. It was argued that this law-making programme and its strategies suited Vietnam's law-making competencies and early experiences in dealing with reform towards a new state and national economic development model.

In tandem with this pragmatic approach, a more comprehensive law-making effort was also initiated to codify and promulgate a new Civil Code for Vietnam. It was reported that on 3rd November 1980, a Civil Code Drafting Committee was formed by the Government. And in 1991, the first draft of a new Civil Code was submitted. From 1991 to 1995, fourteen different revised drafts were put up for discussion. Finally, in October 1995, the National Assembly of Vietnam passed the draft, promulgating the first Civil Code of Vietnam after reunification.

However, the results might not have been as effective as the law-making agencies wished. In just thirty years, the Civil Code has been revised extensively and replaced three times. The 2005 Civil Code replaced the 1995 Civil Code. Then, in 2015, a new Civil Code was passed, replacing the 2005 Civil Code, making Vietnam probably the champion in codifying and passing the greatest number of civil codes in the shortest period of time.

In the following sections, this article discusses major problems that make the civil codes of Vietnam ineffective and irrelevant to a certain extent. These range from macro issues such as philosophy of law, legal traditions' structure, sources of law, and history of law to micro problems such as transplantation of law, legal techniques, legal thinking, and law interpretation. The law of property, as codified in the civil codes, suffers from the most serious problematic shortcomings and mistakes.

The law of property in general and the law of obligations in particular, as transplanted into Vietnam in modern history, are the prime and distinctive legal ideas of the civil law tradition, be it French or Soviet. It plays a significant role in the area of private law: numerous and complex relationships of obligation exist between individuals, between companies, between public authorities and individuals, between people of different nationalities, and even between states. Commercial law, administrative law, and private or public international law largely depend on the general theory of property and obligations. The law of property also has a deep relation with other branches of law, such as the law of persons and the law of actions, since property in general and obligations in particular are considered part of a person's patrimony (*patrimoine* in French), which includes all his rights and obligations. Regarding the obligor or debtor, the obligation is a passive element in his patrimony; at the other end, the obligation is an active element of the obligee or creditor's patrimony.

Therefore, the law of property and the law of obligations are highly complex areas that require a high degree of legal technique in codification. In civil law systems,

codification is not simply an aggregation or a compilation of laws but a systematic, synthetic, and methodical organisation of rules governing a particular field of law. According to the Roman-Germanic conception, a code should provide an organised system of general rules from which judges and citizens, through a logical deductive reasoning process, can find an appropriate solution for the issues in question. Its purpose is not to provide concrete solutions for every case, but to create a permanent framework for further development of the law. For this purpose, a code should be durable and leave enough space for necessary evolution.

To codify the law of property and the law of obligations successfully and effectively, one must fully capture the civil law tradition's spirits, models, structures, and working methods. Some fundamentals need to be apprehended, such as the notion of obligation, its legal nature, its sources, and, most importantly, its classification.

All that being said, this article will provide a nuanced and detailed discussion of the reform of the law of property in Vietnam, a developing and transitioning country, from socialist law to Roman concepts as championed in the civilian legal tradition. It aims to unfold major problems, including structural, conceptual, and taxonomic issues that impede a sound and effective codification of the law of property and its successful application. By doing so, it hopes to contribute to the theory of comparative law in general and provide meaningful lessons for other developing and transitioning countries that face similar problems.

1. HISTORICAL PERSPECTIVE

The evolution of property law in general and obligations in particular in Vietnam from 1858 to the present reflects a complex interplay of Roman law principles, French civil law codification, Soviet socialist legal ideology, and Vietnam's unique socio-political context. This section briefly traces the development of these legal concepts from their origins in Roman law, their adaptation in French and Soviet legal science, and their reception in Vietnam through colonial, socialist, and market-oriented phases.

As a cornerstone of the civil law tradition, Roman law established foundational concepts of property and obligations that profoundly influenced modern legal systems, including those transplanted to Vietnam. In Roman law, property (*dominium*) was defined as the absolute right to control a thing, encompassing ownership (*proprietas*),

possession, and real rights such as servitudes and usufruct.[1] Ownership granted the owner the ability to use, enjoy, and dispose of a thing (*ius utendi, fruendi, abutendi*), forming the most complete right over property.[2] Obligations were legal ties (*vinculum iuris*) binding a debtor to perform an act for a creditor, arising from contracts, delicts, or other juridical acts.[3] Roman law distinguished between *ius in rem* (real rights, enforceable against all) and *ius in personam* (personal rights, enforceable against a specific person), a taxonomy that became critical to property and obligations in later civil law systems.[4] Real rights included ownership and lesser rights like easements, while obligations typically arose from consensual agreements (e.g., sale, lease) or wrongful acts (e.g., theft, damage). The relational nature of obligations, encompassing both the debtor's duty and the creditor's right to claim performance, was a hallmark of Roman law, later adopted in civil law jurisdictions.[5] These concepts were systematised in the *Corpus Juris Civilis* under Justinian, providing a comprehensive framework for private law.[6] Roman law also recognised customary practices as supplementary sources when written laws were silent, provided they met criteria like continuity and community acceptance, and legal doctrine from jurists like Gaius and Ulpian played a significant role in interpreting and shaping norms.[7]

French legal science, rooted in Roman law, refined these concepts through the Civil Code of 1804 [hereinafter *Code Civil*], which became a model for Vietnam during French colonial rule (1862–1945). The *Code Civil* defined ownership as the right to enjoy and dispose of a thing in the most absolute manner, provided it did not violate laws or public order, distinguishing between movable and immovable property, real rights (e.g., usufruct, servitudes), and personal rights.[8] Obligations, addressed in Book III, were legal ties whereby a person was bound to perform an act for another, arising from contracts, quasi-contracts, delicts, or quasi-delicts, with principles like good faith and freedom of contract balancing state regulation and individual autonomy.[9] The code's structure reflected Roman law's emphasis on general principles, enabling judges to apply broad

[1] *See* George Mousourakis, Fundamentals of Roman Private Law 123–50 (2012).
[2] *See id.* at 127.
[3] *See id.* at 201–30.
[4] *See id.* at 115–20.
[5] *See id.* at 205.
[6] Corpus Juris Civilis, Dig. 1.1.10 (Justinian, 6th century), cited in Mousourakis, *supra* note 1, at 45.
[7] *See* Antonino Rotolo, *Chapter 7. Sources of Law in the Civil Law*, *in* A Treatise of Legal Philosophy and General Jurisprudence. Volume 3: Legal Institutions and the Sources of Law , 150 (Roger A. Shiner ed., 1. Aufl ed. 2005).
[8] Code Civil [C. civ.] [Civil Code] art. 544 (Fr.).
[9] *Id.* arts. 1101–1386, art. 1134.

rules to diverse cases, supplemented by custom when statutes were silent.[10] Legal doctrine, influenced by scholars like Pothier, shaped the drafting of the Code Civil, while case law played an interpretive role, particularly in commercial disputes where courts sometimes adopted *contra legem* customs to ensure fairness.[11] During French colonial rule in Vietnam, these principles were introduced through civil codes (e.g., 1883 for Cochin-China, 1931 for Tonkin, 1936 for Annam).[12] The 1925 Decree on Land established a modern property law system, recognising individual land ownership, a concept absent in Vietnam's feudal system.[13] Intellectual property [hereinafter I.P.] laws, such as the 1793 French Literary and Artistic Property Act and the 1941 Ordinance in Annam, treated literary and technological works as movable property, introducing obligations like authors' rights to control their works, aligning with the Code Civil's framework.[14]

In contrast, Soviet legal science, grounded in Marxist-Leninist ideology, reshaped property and obligations to align with socialist principles, profoundly influencing Vietnam from 1945 to 1986. Soviet law rejected private ownership of the means of production, prioritising state and collective ownership, with land, natural resources, and major industries declared state property under the 1936 and 1977 Soviet Constitutions.[15] Individuals were granted use rights through cooperatives rather than ownership, fundamentally diverging from Roman law's proprietary focus.[16] Obligations were redefined to serve state interests, with "economic contracts" functioning as tools to implement central economic plans, binding state enterprises and cooperatives to produce and distribute goods according to state directives.[17] Unlike Roman and French law, obligations lacked a relational aspect, as the state, not individuals, was the primary enforcer, and the creditor's right to claim was subordinate to state policy.[18] The Soviet system relied solely on codified laws and administrative decisions, rejecting judicial precedent and custom as sources, reflecting the principle of democratic centralism.[19]

[10] *See generally* Yvon Loussouarn, *The Relative Importance of Legislation, Custom, Doctrine, and Precedent in French Law*, XVIII La. L. Rev. 235, 240–45 (1958).
[11] *See id.* at 250.
[12] *See* Ngọc Đ. Nguyễn, *Technical Structure of the Immovable Property Law of Vietnam: A Legal Perspective*, Tạp chí Nghiên cứu Lập pháp (2007) (Viet.).
[13] Decree du 21 Juillet 1925 fixant les règles relatives au régime de la propriété foncière en Cochinchine (Fr.).
[14] *See* Kien Tran, *Politics as a Function of Trademark: A New Perspective from the Historical Development of Trademark Law in Colonial and Socialist Vietnam*, 24 World Intellectual Property 122, 135–140 (2021) (U.K.).
[15] *See* O. S. Ioffe & Peter B. Maggs, The Soviet Economic System a Legal Analysis 59–101 (2021).
[16] *See id.* at 65.
[17] *See* Decree No. 004-TTg of the Prime Minister of the DRV (Jan. 4, 1960) (Viet.).
[18] *See generally* John Quigley, *Socialist Law and the Civil Law Tradition*, 37 The American Journal of Comparative Law 781 (1989).
[19] *See* John Gillespie, *Changing Concepts of Socialist Law in Vietnam*, *in* Asian socialism & legal change: the dynamics of Vietnamese and Chinese reform 45, 50–55 (John Gillespie & Pip Nicholson eds., 1st ed. 2005) (Austl.).

These principles were adopted post-1945 in Vietnam, particularly under the 1959 and 1980 Constitutions. The 1959 Constitution established a people's democratic state, with land reform laws (e.g., 1959 Law on Land Reform) transferring private land to collective ownership via cooperatives, and decrees (e.g., 1950, 1958) transforming private enterprises into public-private partnerships, eliminating bourgeois ownership.[20] Obligations were narrowly defined as duties, with Article 274 of the 1995 Civil Code, influenced by Soviet law, omitting the creditor's right to claim, a stark departure from Roman and French principles.[21] Intellectual property rights, such as patents and trademarks, were not proprietary but served state quality control, with no recognition of exclusive rights until limited provisions in the 1980 Constitution.[22]

Vietnam's pre-colonial legal system (before 1858) was rooted in Confucian principles, with codes like the *Le* Code (15th century) and *Gia Long* Code (19th century) blending criminal and civil norms without distinguishing public and private law.[23] Property was primarily land-based, controlled by the state or village communities, with customary laws governing private relations, including early I.P. practices like *Ca Tru* performance rights.[24] Obligations were enforced through penal sanctions, lacking the Roman relational framework.[25] The French colonial period (1858–1945) marked the first reception of Roman-inspired civil law principles. The 1883, 1931, and 1936 civil codes introduced ownership as a private right, with the 1925 Decree on Land recognising individual land ownership.[26] Obligations were codified as contractual or delictual ties, aligning with the Code Civil. Intellectual property laws, such as the 1941 Ordinance in Annam, treated literary and technological works as property, introducing the term "intellectual property" before France's 1992 Intellectual Property Code.[27] Custom remained a supplementary source, particularly for ethnic minorities, as seen in Article 1453 of the 1931 Northern Civil Code, which allowed local customs to prevail over codified law, reflecting Roman law's recognition of custom.[28]

[20] *See* The Law on Land Reform 1959, art. 1; Decree No. 06/SL of the President of the DRV (Jan. 20, 1950) (Viet.).
[21] *See* Hong Hai Nguyen, *A Study on the Civil Code Revision: The 2015 Civil Code of Vietnam*, *in* Civil Law Reforms in Post-Colonial Asia (2019).
[22] *See id.* at 14.
[23] *See generally* Duy Nghia Pham, *Confucianism and the Conception of the Law in Vietnam*, *in* Asian socialism & legal change: the dynamics of Vietnamese and Chinese reform 76, 80–85 (John Gillespie & Pip Nicholson eds., 1st ed. 2005) (Austl.).
[24] See Tuyet Nhung Tran, *The Commodification of Village Songs and Dances in Seventeenth- and Eighteenth-Century Vietnam*, *in* State, Society and the market in contemporary Vietnam 141, 145–48 (Hue-Tam Ho Tai & Mark Sidel eds. 2012).
[25] *See id.* at 146.
[26] *See* Kien Tran & Lu Quynh-Anh Nguyen, *From Socialist to Roman Concept of Sources of Law: A Journey to the Past in Vietnam*, 27 Chung Cheng Financial and Economic Law Review 295 (2023) (China).
[27] *See* Tran, *supra* note 14.
[28] *See* Nguyễn, *supra* note 12.

The socialist period (1945–1986) saw a radical shift towards Soviet-inspired law, rejecting partly Roman and French principles. The 1959 Constitution established a people's democratic state, with the 1980 Constitution adopting the dictatorship of the proletariat, prioritising state and collective ownership.[29] Land reform laws and public-private partnership decrees eliminated private ownership, granting individuals use rights under state oversight.[30] Obligations served the command economy, with economic contracts enforcing state plans rather than individual agreements.[31] Sources of law were limited to codified statutes and administrative decisions, with custom and case law implied as incompatible with state authority. Intellectual property rights were state-controlled, with trademarks regulating quality rather than competition, and authors' rights subject to censorship.[32]

The *Đổi Mới* (renovation) reforms 1986, driven by economic crises, marked a return to civil law principles, influenced by French and German traditions. The 1992 Constitution recognised private ownership and a multi-sector economy, phasing out the dictatorship of the proletariat.[33] The 1995, 2005, and 2015 Civil Codes reintroduced Roman-inspired concepts, with the 2015 Civil Code defining property as including movable and immovable things, money, and I.P., restoring ownership as a private right akin to the Code Civil.[34] Obligations were redefined as legal ties, with Article 274 recognising both the debtor's duty and the creditor's right to claim, aligning with Roman and French principles.[35] However, socialist legacies persist, with the Code's structure reflecting the Pandectist model (via Soviet influence) but lacking the logical coherence of the German *Bürgerliches Gesetzbuch* (Civil Code) [hereinafter B.G.B.]. The 2015 Civil Code's sources of law—laws, custom, case law, and fairness—reflect civil law principles but create contradictions. Custom is recognised as a supplementary source, consistent with Roman law. Still, its application after "similar law" is illogical, as analogous application of law is a method of interpretation, not a source. Case law, now binding in some instances, conflicts with its low priority, creating judicial uncertainty. Fundamental principles (e.g., good faith, equality) are codified but misplaced in the application order, undermining their precedence over custom.[36] Vietnam's integration into global treaties (e.g., Berne, Paris Conventions) further reinforced civil law principles, shaping a legal system that balances market-oriented reforms with socialist political structures.

[29] Constitution of Vietnam arts. 2, 4 (1959); Constitution of Vietnam arts. 2, 4 (1980).
[30] *See* Gillespie, *supra* note 19.
[31] *See supra* note 17.
[32] *See* Tran, *supra* note 14.
[33] Constitution of Vietnam arts. 2, 15–29 (1992).
[34] Civil Code art. 105 (2015) (Viet.).
[35] *Id.* art. 274.
[36] *See* Tran & Nguyen, *supra* note 26.

2. STRUCTURAL PROBLEMS – AN UNCERTAIN CODIFICATION MODEL

For a code to be "a coherent body of rules, a whole built around a thought, rules, and institutions which make up its framework",[37] a substantive codification[38] is determined by the structure and the legislative style. While the structure of a code expresses its material and logical internal organisation, its legislative style must express the norms precisely and coherently. Consequently, any codification requires a systematic and coherent structure and presupposes a specific terminology and phraseology.[39] This structure organises provisions systematically and coherently and reflects the nation's dominant doctrinal ideas, concepts, and legal tradition. However, few countries have developed original legal frameworks; most have adopted French or German codification models.

Following the enactment of the French *Code Napoléon* in 1804 and German B.G.B in 1896, these codes emerged as paradigmatic models for civil law codification, inspiring a global wave of codification efforts based on their structural approaches. The French jurists, though not the first ever to realise a modern codification of civil law, are credited for their achievement since the French Code Civil is considered as a model for many countries to adopt its approach and structure, such as the first Italian Civil Code in 1865, the first Spanish Civil Code in 1889, the Civil Code of Louisiana, the Civil Code of Quebec, etc. The German B.G.B., adopted after almost a century, exercises its influence in later civil law codification, being a template for many jurisdictions such as Italy with a new Civil Code in 1942, Switzerland with the Code of Obligations in 1911, Russia with its Civil Codes under and post-Soviet Federation, Japan, Thailand, etc.

France and Germany exemplify a distinct codification methodology, tracing their origins to the influential *Corpus Juris Civilis* promulgated under Emperor Justinian in the sixth century. The French *Code Civil*, shaped by the *Institutes*, integrates Renaissance philosophy, humanism, and natural law principles. In contrast, the B.G.B., inspired by the systematic organisation in the *Digest* compilation, or so-called the Pandectist approach, emphasises abstract principles applicable across private law.

The French jurists and legislators, in drafting their first Civil Code, adopted the structure rooted in Gaius's *Institutes*, which organises civil law into three core parts: the law of persons, the law of things, and the law of actions.[40] Gaius famously stated that

[37] Gérard Cornu, Droit Civil. Introduction, Les Personnes, Les Biens [Civil Law: Introduction, Persons, Property] 287 (2nd ed. 1985) (Fr.).
[38] More on substantive codification, see Jean Louis Bergel, *Principal Features and Methods of Codification*, 48 Louisiana Law Review (1988).
[39] *See id.* at 1084–88.
[40] *See* Alain A. Levasseur, *On the Structure of a Civil Code*, 44 Tulane Law Review 693 (1970).

"[a]ll the law which we make use of has reference either to persons, to things, or to actions".[41] Partly inspired by this structure,[42] the French *Code Civil* of 1804 was thus structured into three books: (1) Book of Persons, (2) Book of Property and Different Kinds of Ownership, and (3) Book of the Different Ways of Acquiring Property,[43] corresponding to persons, real rights, and obligations, respectively. Scholars often critique this structure as lacking logical rigor and optimal coherence.[44] Regarding its style, as the Code was addressed to the layman, the norms must be presented in concise and understandable language.[45] The language of the Code was thus made of "judicialised" common words that were shaped into an abstract concept.[46] However, to ensure enduring applicability, the drafters deliberately left many concepts undefined, entrusting their interpretation to judicial discretion. The notion of "fault" that appeared in former Article 1382 (now Article 1240) could be a great example to illustrate this particular style.[47] As a result, this article could survive to this day despite some drastic economic and social changes. Conversely, the Pandectist approach, developed through 18th-century German legal scholarship and based on Justinian's *Digest*, underpins the structure of B.G.B. This Code is organised into five parts: (1) General Provisions, (2) Law of Obligations, (3) Law of Things, (4) Law of Family, and (5) Law of Succession.[48] This structure illustrates a systematic approach from the general to the specific provisions, with the General Part establishing definitions and legal frameworks that govern the subsequent books.[49] A cohesive interplay among parts, chapters, and sections necessitates frequent cross-referencing between general and specific provisions.[50] It is said that the B.G.B., unlike the *Code Civil*, was not written for the layman but for the legal profession,[51] and consequently, the language of the B.G.B. is rather abstract and complex, demanding a sophisticated understanding of various legal concepts.[52]

[41] Reinhard Zimmermann, The Law of Obligations - Roman Foundations of the Civilian Tradition 25 (1992) (U.K.): "Omne autem jus quo utimur vel ad personas pertinet, vel ad res, vel ad actiones [all the law that we use relates either to persons, to things, or to actions.]."

[42] More on how the structure of the French Civil Code differentiates from the Institutes, see generally Levasseur, *supra* note 40, at 695–97.

[43] *See* Peter de Cruz, Comparative Law in a Changing World 64 (1995) (U.K.).

[44] *See* Konrad Zweigert & Hein Kotz, An Introduction to Comparative Law 93 (3rd ed. 1998) (U.K.); *see also* Levasseur, *supra* note 40, at 696.

[45] *See* de Cruz, *supra* note 43, at 63.

[46] *See* Levasseur, *supra* note 40, at 698.

[47] *See id.*

[48] Gerhard Dannemann & Reiner Schulze, German Civil Code. Bürgerliches Gesetzbuch (BGB) - Article-by-Article Commentary. Volume I: Books 1–3: §§ 1–1296 1 (2020) (Ger.).

[49] *See* de Cruz, *supra* note 43, at 87.

[50] *See id.*

[51] *See id.* at 86.

[52] *See id.* at 88.

As mentioned above, the strong political influence of the Soviet Union explains the reception of Soviet legal ideas and concepts into Vietnamese law, especially while drafting the first Civil Code of communist Vietnam in the last years of the twentieth century.[53] As a result, the Vietnamese Civil Code, since its first ever version in 1995 and two other modified versions in 2005 and 2015 respectively, shows imprints of the Russian Civil Code and, indirectly, the Pandectist methodology. The structure of the Vietnamese Civil Code reflects the Pandectist approach, acknowledged by one of the drafters of this Code,[54] features by five parts: (1) General provisions, (2) Ownership rights and other rights over property, (3) Obligations and contracts, (4) Inheritance, (5) Law applicable to civil relations involving foreign elements. It only differentiates from the original Pandectist structure by two points: (i) the law of family is not included in the Civil Code, and (ii) the provisions of legal conflicts are included as a part of the Civil Code.[55] This structure shows remarkable similarities to the Russian Soviet Federative Socialist Republic's [hereinafter: R.S.F.S.R.] Civil Code in 1964, which was clearly influenced by the B.G.B.[56] However, the codification model question has rarely been raised in the debate among Vietnamese lawmakers and jurists. The lack of research on the codification model, supporting the legislative priority but the specific solutions for specific problems, results in a significant gap between the knowledge of positive law and its doctrinal, including conceptual and structural foundations, especially when the German Pandectist model is adopted, an approach characterised by its abstractness and complexity.

In fact, the Vietnamese Civil Code has never attained the standard Pandectist model. In terms of legislative style, the language of the Code lacks general clarity. It shows almost no coherent interplay between parts, chapters, and provisions within the Code, especially between the general and the specific provisions. Some titles are confusing, such as "Ownership rights and other rights over property" (Part Two) or "Obligations and contracts" (Part Three). This third part of the Civil Code delineates various obligations across six chapters: (1) General Provisions, (2) Common Types of Contracts, (3) Promise of Rewards and Prize Competitions, (4) Unauthorised Performance of Acts, (5) Obligation to Return Property Due to Unlawful Possession, Use, or Derivation of Benefits, and (6) Compensation for Non-Contractual Liability. Although contracts undeniably represent the primary source of obligations, titling this Part to emphasise contracts while encompassing all obligation sources is illogical. Furthermore,

[53] *See* Hoàng Anh Ngô & Trí Hùng Phạm, *Luật so Sánh và Thực Tiễn Xây Dựng Bộ Luật Dân Sự Việt Nam* [Comparative Law and Practices in Drafting Vietnam's Civil Code], 4 Tạp chí Luật học 32 (2007) (Viet.).
[54] *See* Nguyen, *supra* note 21.
[55] *See id.*
[56] *See* de Cruz, *supra* note 43, at 187.

regulations on contractual obligations appear within the first chapter of General Provisions, suggesting an intent to consolidate core provisions, akin to B.G.B.'s codification style. However, due to deficiencies in legal technique and understanding, Vietnam's Civil Code deviates from the B.G.B.'s logical coherence, exhibiting confusion between the sources of obligations and the obligations themselves, resulting in an incoherent structure. In other words, drafters of the Vietnamese Civil Code failed to create a cohesive structure that unifies its disparate parts, undermining the fundamental requirement for a civil code. Vietnamese jurists have identified this as the primary reason for the code's shortcomings.[57] There are still doubts as to whether the Pandectist or the French model would be a pertinent model for Vietnam, prioritising a carefully selected and thoroughly considered codification model is essential for the Code's next revision.

3. CONCEPTUAL PROBLEMS

3.1 MIXED DEFINITION OF PROPERTY

The concept of property, a cornerstone of private law, has evolved across legal traditions, reflecting diverse cultural, economic, and political contexts. In Roman law, property was fundamentally tied to the concept of *dominium*, representing the most comprehensive control over a thing, encompassing ownership (*proprietas*), possession, and various real rights such as servitudes and usufruct.[58] The *Corpus Juris Civilis*, particularly the *Institutes* of Justinian, provided a systematic classification of things (*res*), dividing them into corporeal (*res corporales*) and incorporeal (*res incorporales*). Corporeal things were tangible, capable of being seen or touched, such as land, garments, gold, or silver, while incorporeal things were intangible, existing only in law, including inheritances, usufructs, servitudes, and obligations.[59] This distinction was critical, as it recognised that legal rights, such as those arising from contracts or delicts, could be treated as property despite their intangible nature. Roman law further categorised things as *res in commercio* (capable of private ownership) and *res extra commercium* (outside private

[57] *See* Huy Cương Ngô, *Sự Ảnh Hưởng Của Pháp Luật Pháp Tới Luật Tư Việt Nam* [The Influence of French Law on Private Law in Vietnam], *in* Ảnh hưởng của truyền thống pháp luật Pháp tới pháp luật Việt Nam [The influence of the French legal tradition to Vietnamese law] (Arnaud de Raulin et al. eds. 2016) (Viet.).

[58] *See* Mousourakis, *supra* note 1, at 123–50.

[59] *See* Justinian, Institutes, lib. II, tit. 2, pr. 2, cited in Yaëll Emerich, Conceptualising Property Law: Integrating Common Law and Civil Law Traditions 19 (2018) (UK.).

ownership, e.g., public goods like air or navigable rivers), reflecting a balance between individual and communal interests.[60] Ownership under Roman law was unitary, granting the owner absolute rights to use, enjoy, and dispose of a thing (*ius utendi, fruendi, abutendi*), subject to legal limitations that foreshadowed modern neighbour principles.[61] While Roman law did not clearly distinguish between fundamental and personal rights; its concepts principally laid a foundation for such a taxonomy later in the modern legal system. Rights (*jura*) were considered *res*, particularly incorporeal ones, as jurists like Gaius and Ulpian emphasised.[62] This objective conception of rights meant that obligations, as incorporeal things, were integral to the Roman property framework, enforceable through actions like *actio in personam* for contractual duties or *actio in rem* for proprietary claims.[63] Customary practices supplemented written law when statutes were silent, requiring continuity and community acceptance, while legal doctrine from jurists shaped interpretation, embedding property within a broader normative system.[64]

The French *Code Civil* of 1804, heavily influenced by Roman law, codified and refined these concepts, adapting them to the socio-political context of post-revolutionary France. The *Code Civil* defined the right of ownership in Article 544 as the right to enjoy and dispose of a thing in the most absolute manner, provided it does not violate laws or public order, echoing Roman *dominium* but emphasising individual autonomy in line with revolutionary ideals.[65] The Code classified property or things into movable and immovable property, a distinction rooted in Roman law's corporeal categorisation, with immovables including land and buildings, and movables encompassing tangible objects like goods or intangible rights like debts.[66] Articles 516–710 detailed this taxonomy, recognising real rights (e.g., ownership, usufruct, servitudes) and distinguishing them from personal rights, thus formalising the Roman *ius in rem* and *ius in personam* dichotomy partly conceived in Roman law itself.[67] The *Code Civil*'s treatment of incorporeal things, such as obligations, drew directly from Justinian's *Institutes*, treating them as property within the legal framework, particularly in commercial and contractual contexts.[68] The Code's structure prioritised codified statutes as the primary source, supplemented by custom when consistent with law, reflecting Roman law's spontaneity and continuity requirements, while legal doctrine,

[60] *See id.* at 127–30.
[61] *See id.* at 18.
[62] *See* Michel Villey, cited at 18.
[63] *See* Mousourakis, *supra* note 1, at 201–05.
[64] *See* Rotolo, *supra* note 7, at 150.
[65] Code Civil 1804 [C. civ.] art. 544 (Fr.).
[66] *Id.* arts. 516–710.
[67] *Id.* arts. 526–528.
[68] *Id.* arts. 1101–1386.

influenced by scholars like Pothier, played a significant interpretive role.[69] During French colonial rule in Vietnam (1862–1945), these principles were transplanted through civil codes (e.g., 1883 for Cochin-China, 1931 for Tonkin, 1936 for Annam), with the 1925 Decree on Land introducing individual ownership, a novel concept in Vietnam's feudal system.[70] This codification marked a significant reception of Roman law's unitary ownership and classification of things, adapted to a modern legal framework emphasising subjective rights.

The French legal tradition further developed the concept of property through the *théorie du patrimoine* (heritage theory) by Charles Aubry and Charles Rau, which posited that obligations constitute a form of property within an individual's patrimony. Introduced in the nineteenth century, this theory conceptualised patrimony as the totality of a person's assets and liabilities, encompassing both real and personal rights, including obligations.[71] Aubry and Rau argued that obligations, as rights *in personam*, are incorporeal property because they represent economic value enforceable against a specific debtor, akin to Roman law's inclusion of obligations as *res incorporales*.[72] In the *Code Civil*, obligations (Articles 1101–1386) are defined as legal ties whereby a person is bound to perform an act for another, arising from contracts, quasi-contracts, delicts, or quasi-delicts, with the creditor's right to claim performance treated as a patrimonial asset.[73] This approach integrated obligations into the property framework, as the creditor's claim, such as a debt or contractual right, could be assigned, inherited, or otherwise treated as property, much like tangible assets.[74] For example, a contractual debt is a movable, incorporeal asset within the creditor's patrimony, enforceable through legal action, aligning with Roman law's recognition of obligations as intangible things. The *théorie du patrimoine* thus bridged Roman law's objective *jura* with modern subjective rights, emphasising the economic unity of a person's legal interests.

In contrast, Article 105 of Vietnam's 2015 Civil Code defines property as including movable and immovable things, money, valuable papers, and property rights, explicitly encompassing I.P. and other rights arising from legal relations.[75] This definition draws principally from the former Soviet Union Civil Code while at the same time still recognising both corporeal and incorporeal property, with "property rights" now

[69] *See* Loussouarn, *supra* note 10, at 240–45.
[70] *See* Nguyễn, *supra* note 12.
[71] *See* Charles Aubry & Charles-Frédéric Rau, Cours de Droit Civil Français: D'après La Méthode de Zachariae [French Civil Law Course: According to the Method of Zacharie]. Tome Deuxième 68–72 (5th ed. 1897) (Fr.).
[72] *Id.* at 72–74.
[73] Code civil 1804 [C. civ.] arts. 1101–1386 (Fr.).
[74] *See id.* art. 1165.
[75] Civil Code art. 105 (2015) (Viet.).

interpreted broadly to include real rights (e.g., ownership, usufruct) and personal rights (e.g., contractual claims), mirroring the *Code Civil*'s taxonomy.[76] However, the 2015 Civil Code definition reveals incompatibilities between Roman and French concepts. It is shaped by Vietnam's socialist legal history from 1945 to 1986 and its incomplete transition to civil law principles post-*Đổi Mới* (1986). In Roman law, property was a unitary concept centred on *dominium*, with obligations as *res incorporales* seamlessly integrated into the property framework, while the *Code Civil* refined this through a clear distinction between real and personal rights, with obligations as patrimonial assets under Aubry and Rau's theory.[77]

As discussed in the previous Section, the socialist period (1945–1986), influenced by Soviet law, fundamentally altered the concept of property, rejecting private ownership of the means of production in favour of state and collective ownership, as codified in the 1959 and 1980 Constitutions.[78] Land and major industries were state-owned, with individuals granted use rights through cooperatives, diverging from Roman *dominium* and French absolute ownership.[79] Obligations were redefined as duties to serve state economic plans, with Article 285 of the 1995 Civil Code (retained from socialist law) omitting the creditor's right to claim, unlike the relational approach of Roman and French law.[80] The *Đổi Mới* reforms of 1986 prompted a return to civil law principles, with the 1992 Constitution recognising private ownership and the 1995, 2005, and 2015 Civil Codes reintroducing Roman-inspired concepts. Article 105's inclusion of "property rights" seems to align with the *Code Civil*'s recognition of incorporeal property, including obligations, but its broad and vague phrasing creates ambiguity. Unlike the *Code Civil*'s precise taxonomy and the *théorie du patrimoine*'s integration of obligations as patrimonial assets, Article 105 does not explicitly clarify whether obligations are property rights, reflecting socialist legacies prioritising state control over individual rights.

3.2 POORLY WORDED DEFINITION OF OBLIGATIONS

Article 274 of the Vietnamese Civil Code of 2015 defines obligations as *"acts whereby one or more subjects (hereinafter obligors) must transfer objects, transfer rights, pay money or provide valuable papers, perform acts or refrain from performing certain acts in the interests of one or*

[76] *See id.* art. 115.
[77] *See* Mousourakis, *supra* note 1, at 115–20; *see also* Aubry & Rau, *supra* note 71, at 68–72.
[78] Viet. Const. arts. 2, 4 (1959) (Viet.); Viet. Const. arts. 2, 4 (1980). (Viet.).
[79] *See* Ioffe & Maggs, *supra* note 15, at 59–101.
[80] Civil Code art. 285 (1995) (Viet.).

more other subjects (hereinafter obligees)." This concept of obligation has undergone a few changes since it was first integrated in 1995, and it is one of the examples that prove the indirect influence of the German B.G.B. on the Vietnamese Civil Code, mediated through the direct political and ideological impact of Soviet Russia on Vietnam. The R.S.F.S.R.'s Civil Code in 1964 includes the similar provision, Article 158, titled "Concept of an obligation and the basis on which it arises": "*By virtue of an obligation, one person (the debtor) is required to do a certain act-e.g., transfer property, perform work, pay money, etc.-for the benefit of another person (the creditor), or to refrain from doing a certain act, and the creditor has a right to demand from the debtor the performance of such duty. Obligations arise from contract or the other grounds indicated in Article 4 of this Code*".[81] This provision persists in the current Russian Civil Code, with Article 307, paragraph 1, reflecting minor modifications.[82] The R.S.F.S.R. Civil Code's approach draws heavily from the B.G.B.'s provisions on *Schuldverhältnisse* (obligations relationship), notably Section 241, entitled *Pflichten aus dem Schuldverhältnis* or Duties arising from the obligatory relationship: "1. By virtue of an obligation, an obligee is entitled to claim performance from the obligor. The performance may also consist of forbearance. 2. An obligation may also, depending on its contents, oblige each party to take account of the rights, legal interests, and other interests of the other party". Despite these similarities, notable differences between the provisions set them apart.

On the one hand, Section 241 of the B.G.B. does not define a legal term but describes a legal relationship. The German term *Schuldverhältnisses,* literally *obligatory relationship,*[83] indicates that an obligation encompasses all legal transactions involving a special relationship between obligee and obligor, in which one has the right to claim and the other bears the duty to perform.[84] On the other hand, the Vietnamese and Russian

[81] Whitmore Gray & Raymond Stults, Civil Code of the Russian Soviet Federated Socialist Republic: An English Translation 43 (1965).

[82] Grazhdanskiĭ Kodeks Rossiĭskoĭ Federatsii [Civil Code], art. 307 (Russ.): "By virtue of an obligation, a person (the debtor) is obliged to make in favour of another person (the creditor) a certain action, such as: to transfer property, to perform a job, to render a service, to make a contribution to joint activities, to pay money, etc., or to abstain from a certain action, while the creditor has the right to demand of the debtor execution of the obligation thereof."

[83] The German term *Schuldverhältnis* is a compound noun derived from two components: (1) *Schuld* - From Old High German sculd or scult, meaning "debt," "obligation," or "guilt." It stems from Proto-Germanic *skuldiz*, related to "owing" or "being obliged." Cognates include Old English *scyld* (crime, guilt) and Old Norse *skuld* (debt). The term evolved to encompass both moral and legal obligations, particularly in the sense of a duty owed to another ; (2) *Verhältnis* - From Middle High German *verhältnisse*, derived from the verb *verhalten* ("to behave," "to relate"). *Verhältnis* means "relationship," "condition," or "ratio," emphasising a mutual connection or obligation between parties. *Schuldverhältnis* thus denotes a "relationship of obligation" or "legal bond of debt," reflecting a juridical connection where one party (the debtor) owes performance to another (the creditor).

[84] *See* Bürgerliches Gesetzbuch [B.G.B.] [German Civil Code], §310, (Gerhard Dannemann & Reiner Schulze eds., 2020).

conceptual approaches are different to the German one, when they both employ terms, respectively *nghĩa vụ* and *обязательства*, which correspond with *obligation*. These terms carry strict yet broad meanings, making their definition in the Civil Codes delicate. The quoted provisions reveal issues that require further comment.

The Russian Civil Code's definition of obligation aligns closely with the Pandectist framework of B.G.B., consistently emphasising the legal bond between obligor and obligee through the latter's right to claim and the former's duty to perform. This approach conceptualises "obligation" broadly, encompassing the relational dynamic between parties. In contrast, Article 274 of the Vietnamese Civil Code adopts a narrower interpretation, defining "obligation" solely as the obligor's duty to perform an act for the obligee, omitting the obligee's right to claim. Consequently, "obligation" is framed as a burden or debt on the obligor, neglecting the broader legal relationship binding both parties. This suggests a legislative misunderstanding, reducing obligation to a mere duty imposed on the obligor towards the obligee.[85]

Some scholars propose that the concept of obligation in Article 274 of the Vietnamese Civil Code should be interpreted broadly to encompass civil, natural, and moral obligations.[86] However, this interpretation conflicts with subsequent provisions on the sources and execution of obligations, which apply exclusively to civil obligations. The absence of specific provisions addressing moral or natural obligations, particularly regarding the legal effects of performing natural obligations, with the lack of a theoretical basis for this distinction, indicates that the legislator did not intend to include these categories in the definition. Furthermore, this broad interpretation is problematic, as neither moral nor natural obligations entail the obligee's right to claim performance: moral obligations are not consistently legal, and natural obligations lack an enforceable claim. In a civil code, the concept of obligation should focus on civil obligations, characterised by three key elements: a legal relationship wherein the obligor has a duty to perform, and the obligee has a corresponding right to claim that performance.

The deficiencies in the definition of obligation in Article 274 stem from limited familiarity with the German legal tradition and civil law principles, despite their significant influence on Vietnamese civil law. At the time of Vietnam's first Civil Code, most jurists had been trained in either Vietnam or Russia, where legal education emphasised public law, neglecting the development of private law. The

[85] *See* Huy Cương Ngô, Giáo Trình Luật Hợp Đồng: Phần Chung [Textbook on Contract Law: General Part] 38 (2013).

[86] *See id.* at 43; *see also* Ngọc Điện Nguyễn, Giáo Trình Luật Dân Sự. Tập 2 [Textbook on Civil Law. Volume 2] 9 (6th ed. 2023).

communist/socialist legacy prioritised public law domains, such as criminal law and administrative regulations, overshadowing civil disputes. Additionally, Vietnamese jurists favoured European and Western legal traditions, particularly the French model, bolstered by governmental cooperation in law and education and the active involvement of French jurists in drafting the 2005 and 2015 Civil Codes. The German legal tradition is not well presented and established among Vietnamese jurists, largely due to its abstractness and complexity. Furthermore, the flawed definition reflects insufficient knowledge of Roman law, the ultimate foundation of the current Vietnamese legal system. A deeper understanding of Roman law would facilitate the reception of German legal concepts. The classical conception of the term "obligation" – a tie that exists between at least two persons which enables one person to request something from the other[87] - is likely to originate from Roman law's *obligatio*.[88] In Justinian's Institutes, an obligation is defined as: "a tie of law by which we are of necessity constrained to pay something according to the laws of our civitas".[89] Another definition, or rather description, can be found in the Digest: "The substance of obligation does not consist in that it makes some property or servitude ours, but it binds another person to us to give, do, or be responsible for something".[90] This conception of obligation as a legal relationship has been reflected in civil codes. For example, Article 1756 of the Louisiana Civil Code defines obligation as "a legal relationship whereby a person, called the obligor, is bound to render a performance in favour of another, called the obligee", and further explains that the performance may consist of giving, doing, or not doing something. This definition implies that obligation means more than just duty. In this legal relationship, on the one end, the duty is confined to the obligor, and on the other end, there is a right that entitles the obligee to demand the performance of the duty. The obligation links the duty to the right so that they cannot exist one without the other.[91] As we can see, what is essential to these definitions is the description of the *obligatio* as a tie of law. An obligation connotes a legal relationship between two parties, and it is based on this legal relationship that the obligation can be enforceable.

[87] *See* J. Ghestin, M. Billiau, & G. Loiseau, Le Régime Des Créances et Des Dettes [The Regime of Claims and Debts], Traité de Droit Civil 3 (2005) (Fr.).

[88] *See* The Oxford Handbook of Roman Law and Society 569 (Paul J. Du Plessis, Clifford Ando, & Kaius Tuori eds., 2016) (U.K.).

[89] J. Inst. 3.13.pr: Obligatio est juris vinculum, quo necessitate adstringimur alicujus solvendae rei secundum nostrae civitatis jura, translation in *id.* at 573.

[90] Dig. 44.7.3: Obligationum substantia non in eo consistit, ut aliquod corpus nostrum aut servitutem nostram faciat, sed ut alium nobis obstringat ad dandum aliquid vel faciendum vel praestandum, translation in *Id.* at 574.

[91] *See* Saul Litvinoff & Ronald J Scalise, The Law of Obligations, 2d (Vols. 5 and 6, Louisiana Civil Law Treatise Series) 2 (2020).

Article 274's definition of obligation in the Vietnamese Civil Code conflates obligation with the concepts of legal transaction/legal act and contract. The Vietnam Civil Code, over the course of twenty-seven years, has been employing the term "civil transaction" to indicate legal acts in civil law matters.[92] Article 116 defines a civil transaction as "contracts or unilateral acts, which give rise to, modify, or terminate civil rights and obligations". This Article is highly influenced by the formula of Article 41 of the R.S.F.S.R.'s Civil Code on the concept of *Сделка,* or legal transactions, which "are acts of citizens and organisations directed towards establishment, alteration or termination of civil rights or obligations", and "may be unilateral, or bi- or multilateral (contracts)". These terms and definitions are quite atypical, since "transaction" is usually employed to indicate multilateral/bilateral acts in contemporary legal language.[93] However, this concept finds its origin in the German Pandectist tradition, with the introduction of the term *Rechtsgeschäft* – literally translated as legal transactions, with *Willenserklärung* (declaration of intent) as a synonym – into German legal doctrine in the eighteenth century[94] and this doctrine of legal transaction, developed by Savigny,[95] was then codified in the B.G.B. The B.G.B. does not provide any definition of *Rechtsgeschäft* but German jurists tend to define this term as "all legal acts by which a party, or the parties, may create certain legal consequences by virtue of their free will".[96] The Pandectist tradition of German jurists developed the concept of *Rechtsgeschäft* as an act type (*Aktstypen*), which focuses on the free will of persons to establish, modify or terminate a legal relationship.[97] In their English translation of the R.S.F.S.R.'s 1964 Civil Code, Whitmore Gray and Raymond Stults indicate a similar meaning for the term "*Сделка*"

[92] Surprisingly, this term is a unique feature of Vietnamese Civil Law. In other communist and post-communist countries such as China and Russia, legislators use the term 'legal acts' or 'civil juristic act'.

[93] *See* Black's Law Dictionary 1635 (Bryan A. Gagner ed., 9th ed. 2009). Definition of transaction: 1. The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. 2. Something performed or carried out; a business agreement or exchange. 3. Any activity involving two or more persons. 4. Civil law. An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions.

[94] *See* Werner Flume, Allgemeiner Teil des Bürgerlichen Rechts: Das Rechtsgeschäft [General Part of Civil Law: the Legal Transaction] 28 (Dritte, ergänzte Auflage ed. 1979) (Ger.). It was likely Nettelbladt who introduced the terms actus juridicus and negotium juridicum into legal literature.

[95] *See id.* at 30.

[96] Dannemann & Schulze, *supra* note 48, at 122.

[97] *See* Flume, *supra* note 94, at 105. This concept is contrasted by *Rechtshandlungen*, acts to which legal effects are attached, for whose occurrence the legal order is indifferent as to whether they are intended or unintended by the actors and by *unerlaubte Handlungen*, acts where unintended legal effects (e.g., damages obligations under § 823 BGB) arise from illegal behaviour, like torts.

which is still employed by the current Russian Civil Code,[98] and is equivalent to *Rechtsgeschäft* in German, *acte juridique* in French and juridical act in English.[99]

It is no surprise that this concept is integrated into the Vietnamese Civil Code with the influence of Soviet Russia; the problem, however, rests in the fact that the Vietnamese language devotes a specific meaning to the word *giao dịch* (transaction), which is a relationship of exchange, excluding the meaning of a unilateral act. The use of this concept in Vietnamese thus results in a misunderstanding of its full meaning.

4. TAXONOMIC PROBLEMS

It is a commonly held view that taxonomy shapes the architecture of legal science – as described by Professor Ugo Mattei, it "provides the intellectual framework of the law and makes the law's complexity more manageable", reflects the "legal culture of a given legal system", and becomes "the product of the interaction of the legal tradition and of the new sensibilities".[100] [...] Given its foundational role, taxonomy is a complex and evolving construct that can be understood as encompassing three key aspects: (1) the selection of sets of ideas, categories, and concepts used to describe and order the subject of study, (2) the basis on which norms are created for these concepts and categories, and (3) the relationship between the various categories, concepts, and ideas.[101] Taxonomy in the legal sphere is, therefore, the core element demonstrating the concept of law as a legal system. Any attempt to create a new taxonomic model or to modify an existing one matters, as it reflects changes and developments within the legal system. Consequently, even within the same legal tradition, each legal system has its own distinctive approach to taxonomy.

[98] The current Russian Civil Code still employs this term, in its plural form *Сделки* [Transactions], in the Title of Subsection 4 of Section of Part One.

[99] *See* Gray & Stults, *supra* note 81. In the translation into English of the R.S.F.S.R.'s Civil Code, Whitmore Gray and Raymond Stults well describe one of their particular problems with the term "Сделка": "Generally it may be said to have the meaning of 'legal act,' i.e., the equivalent of the German *Rechtsgeschäft* or the French acte juridique. In this sense it is a technical tool of refined legal analysis. For example, a contract, a will, and an heir's rejection of an inheritance are all classified as 'legal acts.' In some articles of the Code the term is used in this sense, and in those cases 'legal act' seems to be a workable translation, even though the term is not one of art for the Anglo-American reader. The Code also uses the term, however, to describe the whole contract or contract dealings between two persons, and in such situations it would seem that 'transaction' would give the Anglo-American reader a better idea of what is meant. The difficulty of drawing a meaningful line between the two usages, however, and the possible confusion as to whether provisions relating to 'legal acts' would apply to these 'transactions' has led us to use the term 'legal act' in all cases."

[100] Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 The American Journal of Comparative Law 5 (1997).

[101] *See* D. Sheehan & TT. Arvind, *Private Law Theory and Taxonomy: Reframing the Debate*, 35 Legal Studies 480 (2015) (U.K.).

Since taxonomy lies at the heart of a legal system, it is undoubtedly embedded in any process of legal transplant. For example, when a country adopts the corpus of civil law principles from another jurisdiction, it cannot simply copy the law word-for-word. These principles are deeply connected with that system's legal taxonomy that orders property, contract and tort remedies. It is difficult to imagine transplanting a legal concept without bringing along the entire system surrounding it. Any such attempt, if made possible, must result from thorough consideration and careful execution. It requires not only a deep understanding of the source taxonomies but also a deliberate effort to reconcile their differences.

As discussed earlier, the Vietnamese legal principles governing property and obligations reflect an eclectic blend, combining the structural framework of the Russian Civil Code (itself rooted in the German B.G.B.) with the French private law doctrines. This Section examines how the drafters of the Vietnamese Civil Code approached legal taxonomy. Starting with a general overview, it proceeds to focus on matters of property and obligations, highlighting some of the problems that have arisen as a result.

4.1. LACK OF TAXONOMY OF RIGHTS AND LAW

Although Civil Law legal systems may differ in various aspects of their concept of law, they commonly share fundamental taxonomies – such as the distinction between private law and public law, and between real rights and personal rights – tracing back to their roots in Ancient Roman Law.[102] In contrast, the Vietnamese legal system lacks explicit recognition of these taxonomies, resulting in a poorly drafted Civil Code that offers limited clarity on the scope and nature of different rights and obligations.

The first issue concerns the lack of an (explicit) distinction between private law and public law, a fundamental element of the civil law tradition. There is more than one way to conceive this distinction,[103] but in the most conventional understanding, it reflects the difference in the protected interests: while public law concentrates on the general interest of a community, private law is designed to protect the interests of individuals in their legal relationships. As a result, two key differences distinguish these branches of law. First, the main purpose of public law is to ensure collective interests through the organisation of government and public administration, whereas private law primarily serves to satisfy individual interests. Second, reflecting their different

[102] *See* Mousourakis, *supra* note 1, at 125.

[103] *See, e.g.*, Randy E Barnett, *Four Senses of the Public Law-Private Law Distinction*, 9 Harvard Journal of Law and Public Policy 267 (1987).

purposes, each branch employs a distinct method of regulation: public law is imperative, requiring strict compliance with established rules, while private law allows significant freedom for individuals to exercise their will in engaging in private legal relations. Although some critics point to the vague borderlines between the two branches, this distinction remains crucial to the civil law tradition, as it marks a clear division between two contrasting mindsets.

Compared to many other countries whose legal systems are categorised into the civil law tradition, Vietnam's legal system notably lacks a clear distinction between public and private law, a characteristic that can be attributed to its communist legal heritage. As Vladimir Lenin, the leader of the communist U.S.S.R., once said famously:

> We do not recognise anything "private", and regard everything in the economic sphere as falling under public and not private law. We allow only state capitalism, and as has been said, it is we who are the state. Hence, the task is to extend the application of state intervention in "private legal" relations; to extend the right of the state to annul "private" contracts; to apply to "civil legal relations" not the *corpus juris romani* but our revolutionary concept of law.[104]

Recognised as the guiding ideology and foundational legal theory in communist thought,[105] Lenin's conception of law provides the foundation for the rejection of private law as a distinct legal domain. Due to this influence, the distinction between private law and public law has received little attention in Vietnamese legal thinking, notwithstanding its introduction to Vietnam during the French colonial period. Even though the first Vietnamese Civil Code was drafted in the 1990s as Vietnam began transitioning towards a market-oriented economy, the legacy of communist legal thought persisted, as most Vietnamese legal scholars at the time had been trained in the Soviet legal tradition.

After about four decades of legal modernisation, as the Vietnamese legal system has been progressively shaped through numerous legal transplants from developed countries, Vietnamese legal scholars nowadays generally agree that constitutional law, administrative law, and criminal law fall within the realm of public law, while civil law and commercial law are considered typical branches of private law, with civil law serving as its foundational body.[106] However, serious classification challenges arise in other

[104] Lenin Collected Works, Volume 36, 1920 – 1923 563 (Yuri Sdobnikov ed., Andrew Rothsein tran., 2013) (Russ.).
[105] *See* Giáo Trình Lý Luận Nhà Nước và Pháp Luật [Textbook on Theories of State and Law] 341–46 (Thị Kim Quế Hoàng ed., 2015) (Viet.).
[106] *See* Giáo trình Luật dân sự Việt Nam. Tập I (Textbook on Civil Law. Volume I) 19 (Văn Thanh Đinh & Minh Tuấn Nguyễn eds., 2018) (Viet.).

areas, such as land law, financial law, and environmental law, leading to an inappropriate regulatory approach. Land law provides a particularly illustrative example, since the property regime regarding land in Vietnam is a dual one: land is state-owned, while individuals hold rights to use it. The state's authority to appropriate land often causes significant conflicts when it clashes with these private property rights, resulting in many high-profile cases.[107]

The distinction between real rights and personal rights is another heritage of the Civil Law tradition, rooted in Roman Law. Real rights, or rights *in rem,* are directly exercised over a thing and imply a legal relationship between the thing itself and a person or group of persons. In contrast, personal rights, or rights *in personam,* mean a legal relationship between two persons where one party – the debtor or obligor – owes an obligation towards the other party – the creditor or obligee.[108] Despite some criticism and efforts to challenge it, the distinction between real rights and personal rights remains fundamental and indispensable in most Civil Law systems, since it marked the foundation of the law of obligations in the early days, differentiating it from the relationship between a person and a thing – the law of property. From this distinction, legal scholars have developed specific sets of rights attached to each of these two types. Accompanying real rights are the right of pursuit (*droit de suite*), which allows the rights holder to assert their claim over the property regardless of its possession or use, and the right of preference (*droit de préférence*), which grants them the priority over others holding only personal claims or subsequent real rights. Regarding personal rights, the creditor is granted a *droit de gage général* (general security right) – "a floating charge over the debtor's property".[109]

Although some Vietnamese scholars – primarily those familiar with Civil Law concepts – have recognised the importance of distinguishing between real rights and personal rights,[110] this fundamental taxonomy remains largely neglected by both legislators and mainstream legal scholarship.[111] During the 2015 reform of the Vietnamese Civil Code, the possibility of incorporating these terms was discussed,[112] but their crucial role in establishing a coherent theoretical framework for classifying and systematically

[107]*See* John Gillespie, *Narrating Land Disputes in Three Vietnamese Communities*, *in* Resolving Land Disputes in East Asia: Exploring the Limits of Law (Hualing Fu & John Gillespie eds., 2014) (U.K.).

[108]*See* Jean Macqueron, Histoire Des Obligations [History of Obligations], Le Droit Romain 2 (1971) (Fr.); Initially, when there are no rights of obligations yet, Roman jurists use the terms action in rem and action in personam, *see generally* Mousourakis, *supra* note 1, at 125.

[109]De F. H. S. Bridge, The Council of Europe French-English Legal Dictionary 95 (2002).

[110]*See* Giáo trình Luật dân sự Việt Nam. Tập I (Textbook on Civil Law. Volume I), *supra* note 106, at 74.

[111]*See id.* at 8.

[112]In fact, "real rights" (*vật quyền*) and "personal rights" (*trái quyền*) were included in the Draft of the Civil Code in 2015; however in the official version, the legislator decided to leave these terms out.

regulating these rights continued to be underestimated. Significantly, some of the most highly regarded legal scholars in Vietnam have even claimed that the absence of these terms in the Vietnamese Civil Code poses no real practical issue, as their "essence" is already reflected in the Code by specific rules regarding property and civil transactions.[113]

Although it might seem reasonable, given that even the French Civil Code does not formally distinguish between these concepts and yet legal scholarship has nevertheless developed a comprehensive theoretical framework with significant practical implications, this claim deserves closer examination. Let us consider the case of real security rights, such as pledge and mortgage, as our main illustration, since it has been the subject of intense debate within Vietnamese legal scholarship: on one side, scholars like Nguyen Ngoc Dien and Ngo Huy Cuong advocate for the formal recognition of real rights,[114] while on the other hand, Do Van Dai represents the opposing view. The following points draw heavily on this scholarly debate. In most Civil Law systems,[115] pledge and mortgage are categorised as real security rights. In contrast, the Vietnamese Civil Code addresses these real securities under the section on obligation and treats them as personal rights, focusing on the duty of the obligor towards the obligee rather than the legal relationship between the secured creditor and the secured property. As a result, core features of real rights – such as the right of pursuit and the right of preference, as described above – are not clearly recognised in the Code nor guaranteed in practice. Despite assertions that the existing provisions on pledge and mortgage are sufficient to ensure their security function, practical realities suggest otherwise. Because these rights are not treated as real rights but merely as personal (contractual) rights, they depend heavily on the will and solvency of the debtor rather than attaching directly to the property itself. The absence of real security rights also fails to allow the secured creditor to assert their claim over the property and to take precedence over unsecured creditors,

[113] *See* Văn Đại Đỗ, *"Vật Quyền" Bảo Đảm: Kinh Nghiệm Của Nước Ngoài Cho Việt Nam [Security in Rem: Foreign Experiences for Vietnam]*, 1 Tạp chí Khoa học pháp lý 57 (2015) (Viet.).

[114] *See generally* Ngọc Điện Nguyễn, *Lợi Ích Của Việc Xây Dựng Chế Định Vật Quyền Đối Với Việc Hoàn Thiện Hệ Thống Pháp Luật về Tài Sản* [*The Importance of Establishing a Regime of Real Rights for the Improvement of the Legal System on Property*], Tạp chí Nghiên cứu lập pháp (2018) (Viet.); Ngọc Điện Nguyễn, *Cần Xây Dựng Lại Khái Niệm "Quyền Tài Sản" Trong Luật Dân Sự (The Need to Reconstruct the Concept of "Property Rights" in Civil Law)*, 3 Tạp chí Nghiên cứu lập pháp (2005) (Viet.); Huy Cuong Ngô, *Những Sai Lầm Khi Xây Dựng Chế Định Tài Sản Trong Dự Thảo Bộ Luật Dân Sự Sửa Đổi* [*Mistakes in the Construction of the Property Regime in the Draft Revised Civil Code*], 7 Tạp chí Nghiên cứu lập pháp (2015) (Viet.); Huy Cương Ngô, *Những Bất Cập về Khái Niệm Tài Sản, Phân Loại Tài Sản Của Bộ Luật Dân Sự 2005 và Định Hướng Cải Cách* [*Inconsistencies in the Definition and Classification of Property in the 2005 Vietnamese Civil Code and Recommendations for Reform*], 22 Tạp chí Nghiên cứu lập pháp (2009) (Viet.).

[115] For example, the French Civil Code devotes the entire Book 4 to mechanisms for securing obligations, with two distinct Titres: one addressing real security rights (*sûretés réelles*) and the other covering personal security rights (*sûretés personnelles*). Another example is the Dutch Civil Code, which places its provisions on real security rights within Book 3 on property law in general.

as the Code remains completely silent on the issue of claim priority. Judicial practice in resolving disputes related to pledge and mortgage reveals that, in most cases, disputes over secured loans are treated as ordinary loan disputes, and lenders rarely succeed in exercising their rights over the pledged property.[116] In this context, a formal recognition of the fundamental distinction between real rights and personal rights would have significantly helped to avoid such weakness and legal uncertainty.

Ultimately, the Vietnamese Civil Code's failure to formally recognise this foundational taxonomy reflects a broader conceptual gap that led to doctrinal confusion and persistent practical difficulties in regulating rights coherently and systematically.

4.2. LACK OF TAXONOMY OF OBLIGATIONS

Since regulations vary depending on the type of obligation, in terms of both their formation and legal effects, it is essential to classify obligations based on certain criteria. Accordingly, there are usually two main approaches to obligation classification. One focuses on the formation of obligations, classifying them based on their sources, while the other relates to their execution, classifying them according to the object of the obligation and its resulting legal consequences.[117] Source-based and object-based classifications – these two criteria have been established since Ancient Roman law.[118]

The source-based classification remains one of the most influential legacies of Roman law.[119] Its enduring merit stems from a long history of gradual development.[120] Originally, the Roman jurist Gaius established a twofold division of obligations: those arising from contract (*ex contractu*) and those arising from delict (*ex delicto)*.[121] Later, as the original dichotomy was largely deemed unsatisfactory, a third category – obligations arising from various causes (*ex variis causarum figuris*) – was added, likely by Gaius himself, and eventually figured in Justinian's *Digest*.[122] This threefold classification was

[116]For disputes over loans secured by pledge, *see* District People's Court of Tam Binh, Vinh Long Province, Case No. 07/2021/DS-ST, (13 January 2021) (Viet.); People's Court of Ha Tien City, Ha Giang Province, Case No. 09/2021/DS-ST, (29 April 2021) (Viet.); and for disputes over loans secured by mortgage, *see* People's Court of Tien Giang Province, Case No. 299/2023/DS-PT, (24 May 2023) (Viet.). In these decisions, courts primarily focused on the debtor's failure to repay the loan, and almost always ruled in favour of monetary compensation instead of enforcing the secured creditor's right to claim the asset.

[117]*See* Henri Mazeaud, Léon Mazeaud & Jean Mazeaud, Leçon de Droit Civil. Tome II: Obligations. Théories Générales. 11 (François Chabar ed., 9th ed. 1998) (Fr.).

[118]*See* Yves Lequette et al., Droit Civil. Les Obligations [Civil Law. Obligations] 1329 (12th ed. 2018) (Fr.).

[119]*See* Mazeaud, Mazeaud & Mazeaud, *supra* note 117, at 11.

[120]*See* Mousourakis, *supra* note 1, at 185–87.

[121]*See* G. Inst., 3. 88., in Gai Institvtiones or Institutes of Roman Law by Gaius 315 (Edward Poste (trans.), 1904)

[122]*See* Dig., 44. 7. 1., in Les cinquante livres du Digeste ou des Pandectes de l'empereur Justinien 355 (Henri Hulot (trans.), vol. 30 1805.

probably the precursor of the fourfold division adopted by the compilers of Justinian's Institutes three centuries later, according to which an obligation may arise: (a) from contract (*ex contractu*); (b) as if from contract (*quasi ex contractu*); (c) from delict (*ex delicto* or *ex maleficio*); and (d) as if from delict (*quasi ex delicto* or *quasi ex maleficio*).[123] This final scheme constituted the ultimate Roman classification of the sources of obligations that has ever since shaped the structure of modern civil law systems. Although it has faced considerable criticism, particularly due to the increasingly blurred borderlines between delicts and quasi-delicts[124] as well as the emergence of the force of law itself as a distinct source of obligations (as in the works of the modern French jurist Pothier),[125] this taxonomy remains a foundational element of the civil law tradition. It plays a key role in distinguishing the legal regimes applicable to each type of obligation, particularly regarding the requirement of fault in liability and the burden of proof.

There is an alternative approach to source-based classification that was developed by German jurists in the nineteenth century and later adopted by many civil codes inspired by the B.G.B.: the distinction between juridical acts (*acte juridique*) and juridical facts (*fait juridique*). The 2016 reformed French Civil Code also embraces this distinction in its Article 1100. Accordingly, juridical acts refer to manifestations of will intended to produce legal effects, which include both unilateral engagement and agreement, and are generally governed by the rules governing contracts. In contrast, juridical facts are events to which the law attaches legal consequences and are governed by the rules of extra-contractual liability or other non-contractual sources. This distinction has the merit of encompassing unilateral acts and natural events not caused by human action, thereby offering a broader and more inclusive legal framework.

With respect to the object-based classification of obligations, the Roman law provided a tripartite division: *dare* (to give or to hand over a thing), *facere/non facere* (to do something/to refrain from doing something), and *praestare* (to perform or to be responsible for something).[126] However, as the scope of obligations expanded with the development of different types of contracts, modern legal systems sought to streamline these distinctions for clarity and practicality. *Praestare* was absorbed into *dare* and *facere,* and most civil law systems, especially those influenced by the French Civil Code, have then adopted the distinction between obligation to give (*obligation de donner*), obligation to do (*obligation de faire*), and obligation not to do *(obligation de ne pas faire*). This distinction is primarily significant in determining how these obligations could be

[123] J. Inst., 3. 13. 2.
[124] *See* Boris Starck, Droit Civil. Obligations [Civil Law. Obligations] 7 (1972) (Fr.).
[125] Œuvres de Pothier. Tome Deuxième. 3 (Bugnet ed., 1861) (Fr.).
[126] *See* Mousourakis, *supra* note 1, at 189.

enforced, precisely; obligations to give could be enforced through forced performance or through damages (in case such performance is impossible), while obligations to do and not to do are generally enforced through damages.

Apart from these fundamental classifications, there are some more recent ones developed by contemporary jurists, such as those based on the criterion of intensity, on the method of execution of obligations, on the nature or the plurality of the object, or on the relation between creditors and debtors, etc. Despite their differences, these classifications share the common foundation of being based on clear and precise criteria.

A close examination of the Vietnamese Civil Code's provisions on obligation reveals no such well-established taxonomy. At first glance, Article 274 of the Code appears to reflect the Roman object-based classification by defining obligations as acts whereby an obligor must "transfer objects, transfer rights, pay money or provide valuable papers, perform other acts or refrain from performing certain acts" in the interests of the obligee. However, unlike the French Civil Code, the Vietnamese Code does not go further to clarify the legal implications in terms of enforcing these different types of obligations and instead provides definitions for each category that seem redundant and unnecessary.[127]

A source-based classification of obligations can be found at Article 275, which divides obligations into six categories based on their respective sources. It will be examined in detail in the subsequent section, as the way the Code approaches this classification requires a separate analysis.

There are also several other provisions, from Article 279 to Article 291, in the Section on "Performance of obligations", from which some additional classifications may be inferred. However, these articles merely list various types of obligations without providing any clear criteria to categorise them into coherent categories. For instance, Article 282 on the performance of obligations in stages, Article 283 on the performance of obligations through third parties, Article 284 on the conditional performance of obligations, Article 285 on the performance of obligations having optional subject matters, and Article 286 on the performance of substitutable obligations; the list goes on.

Despite offering numerous provisions concerning different types of obligations, the Vietnamese Civil Code lacks a unified and coherent system for classifying obligations. The various types of obligations appear in a scattered and unstructured manner, without

[127]For example, Article 281 merely defines obligation to perform an act as "obligation whereby the obligor must perform that particular act", and obligation not to perform an act as "obligation whereby the obligor must not perform that particular act".

clear criteria or theoretical work underlying them. As a result, these provisions offer little doctrinal and practical value.

4.3. MISUNDERSTANDINGS ON SOURCES OF OBLIGATIONS

As mentioned in the previous section, Article 275 of the Vietnamese Civil Code offers a source-based classification of obligations with six categories: (1) contract, (2) unilateral juridical act, (3) unauthorised performance of acts, (4) unlawful possession or use of or receipt of benefits from property, (5) causing damage through unlawful acts, and (6) other bases as provided by law. This article suffers from serious problems in both form and substance, reflecting not merely a sloppy drafting process but, more importantly, a much deeper issue: a limited understanding by Vietnamese legislators of the concept and structure of the sources of obligations.

The form-related concern lies in the poor drafting and terminology of Article 275. The article uses lengthy and imprecise terms such as "unauthorised performance of acts", "unlawful possession or use of or receipt of benefits from property" and "causing damage through unlawful acts", instead of, respectively, "management of affairs" or "agency without authorisation", "*unjustified enrichment*" and "*delictual liability*" – those are the concise legal terms systematically used in civil law systems. This seems to be an intentional drafting style throughout the Code, as many other provisions show the same tendency to employ long-worded terms to describe a concept rather than using well-established legal terminology.[128] The main reason for this hesitation to adopt abstract legal terms is that Vietnamese jurists – not only legal practitioners who primarily work with codes and regulations but also legal researchers – are not familiar with them.[129] Since the first codification of civil law in 1995, on the foundation of the communist ideology and the Soviet conception of law, Vietnamese legislators have shown little intention to adopt fundamental legal terms into the existing legal system, fearing it might cause radical changes in both the legal system and legal education.[130] While this drafting style might appear easier to understand, it ultimately leads to a lack

[128]For example, in the Civil Code, Vietnamese legislators employ the term "right on the adjacent immovable property" (*quyền đối với bất động sản liền kề*) instead of the term "servitude", in Article 159.

[129]For example, Do Van Dai explained five reasons why legislators continue to employ the term "*quyền tài sản*" (rights on property) instead of the term "*vật quyền*" (real rights) in the Civil Code: (1) this term is too abstract, so many jurists would not understand its meanings; (2) it would complicate the legal system; (3) the employ of the term would require new programme and method of legal education, especially for current legal practitioners; (4) it is not suitable for the current legal system of Vietnam because there are not only "*vật*" (things) but also other assets such as "*quyền sử dụng đất*" (rights to use land); (5) this term is difficult to translate accurately into English, in Đỗ, *supra* note 113.

[130]*See id.*

of understanding of legal theory and terminology, and results in an incoherent and insufficient theoretical foundation for the Civil Code and the private law system in Vietnam.

The substance-related concern lies in the lack of a deep understanding of the fundamental classification of the sources of obligations. Any Civil Law jurist will immediately remark that Article 275 presents a confused and inconsistent taxonomy. On one hand, it appears to adopt the classical source-based classification of obligations – contracts, quasi-contracts (dressed as "unauthorised performance of acts" and "unlawful possession or use of or receipt of benefits from property"), delicts and quasi-delicts (combined in "causing damage through unlawful acts"), and the force of law. On the other hand, for some reason, it includes unilateral acts, which fall into the category of juridical acts – a concept that belongs to the modern source-based classification between juridical acts and juridical facts. However, this inclusion seems to give rise to significant doctrinal confusion and misunderstanding, largely due to the underdeveloped theoretical framework of juridical acts and juridical facts in Vietnamese legal scholarship. Many scholars have interpreted "juridical acts" as any intentional human acts, which lead to the misclassification of delicts as unilateral juridical acts.[131] This understanding differs substantially from the German classification, where juridical acts are strictly defined as acts manifesting an intention to produce legal effects and not merely any act involving intention.

As a result, while this mixture might be seen as an effort to combine the classical and modern source-based classifications of obligation, it ultimately reflects a lack of understanding of the foundational rationale underlying these classifications, resulting in a confused and incomplete framework.

CONCLUSIONS

The development of the law of property in general and the law of obligations in particular in Vietnam, in the same destiny as the Vietnamese legal concepts and legal science, has witnessed radical changes and diverse transplants since the *Doi Moi* in 1986, with the aim of modernising the legal system. Despite its central role, however, the law of property and obligations was not properly codified with a unified and pertinent legal

[131] *See, e.g.*, Giáo trình Luật dân sự Việt Nam. Tập I (Textbook on Civil Law. Volume I), *supra* note 106, at 60; *see also* Giáo trình Lý Luận Nhà Nước và Pháp Luật (Textbook on Theories of State and Law), *supra* note 105 at 390–402.

theory. At the outset, this may result from the lack of a proper concept of private law and the distinction between real rights and personal rights. This fundamental flaw in theoretical aspects has brought about long-lasting issues that have not been repaired by legislators and jurists since the first codification of civil law in 1995. These problems – including a mixed definition of property, the poorly worded definition of obligations, and the lack of understanding of the taxonomy of obligations and the sources thereof – have led to significant overlap between, for example, contracts and obligations, or between a number of other related legal institutions, such as civil liability, fault, and so on. Since 1995, legislators and jurists in Vietnam have had two opportunities to recodify the Civil Code: one in 2005 and another in 2015. Unfortunately, they failed both chances to carry out a better codification based on two core elements – a coherent theoretical foundation and proper techniques of codification – and continued to pursue the wrong path. At this point, in our most humble opinion, Vietnam's Civil Code is irreparable, no matter which year the legislators would add after its name.

FUNDING DETAILS

This research is funded by the Vietnam National Foundation for Science and Technology Development (NAFOSTED) under grant number 505.01-2021.03.

DISCOSURE STATEMENT

The authors report there are no competing interests to declare.

DATA AVAILABILITY STATEMENT

Data sharing is not applicable to this article as no new data were created or analysed in this study.