

# CHECKS AND BALANCES REGIME: A PRECONDITION FOR THE SUCCESSFUL DEVELOPMENT OF A RULE OF LAW STATE IN VIETNAM

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*The author reviews the checks and balances system as a precondition for the successful development of a rule of law state in Vietnam. Apart from the general considerations of the definition of the rule of law and its principles, the author gives a theoretical analysis of the functioning of the checks and balances regime in the rule of law state, their most important characteristics and also emphasises the consequences of a governmental system devoid of checks and balances. The main conclusion reached is that the system of checks and balances is necessary for the creation of the “rule of law state” and that its development is never successful without the creation of an effective and practical state-power check regime through the public system to ensure the balance of the three powers (legislative, executive, and judicial).*

*Key words: checks and balances system, rule of law state, Vietnam*

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**Note by The International Human Rights Law Institute of DePaul University College of Law:** In 1991, in response to shifting political dynamics similar to those found in the former Soviet Union and Eastern Europe, the 9<sup>th</sup> Vietnamese National Party Congress adopted a political strategy to rejuvenate the Vietnamese political system, as well as forestall a downward trend in the Vietnamese national economy. The strategy established specific goals for the Vietnamese government to achieve in order to advance “Doi Moi” (*i.e.* State Renewal) - a national policy designed to revamp the Vietnamese political, economic and legal infrastructure.<sup>1</sup> In 2001, the 10<sup>th</sup> Vietnamese National Party Congress reiterated its commitment to Doi Moi and directed State agencies to comply fully with the policy. It further directed State agencies to present a report outlining their progress to the 11<sup>th</sup> Vietnamese National Party Congress in January 2011. It likewise directed Vietnamese State agencies to draft a 10-year socio-economic development strategy (for the years 2011-2020) and to do so in time for presentation to the 11<sup>th</sup> Congress. It is anticipated that when this report is presented to the 11<sup>th</sup> Vietnamese National Party Congress, sub-committees of the Congress will mandate a number of changes in national political personnel, as well as plot the future organization of the Congress and the Country.

In December 2009, in anticipation of the 11<sup>th</sup> Congress, Vietnamese State agencies submitted a draft report to the Central Committee of the Communist Party of Vietnam. The draft report outlined the 20-year progress of Doi Moi in all fields of governance, including law, economics, socio-culture, and political infrastructure and development. Significantly, the draft report highlighted a number of shortcomings concerning the progress of Doi Moi. In particular, it indicated that the results achieved to date had not matched “national potential.” In fact, the draft report specifically noted that the Vietnamese economy remained non-competitive on the global stage, in part because of official corruption and inefficient political institutions. Upon receiving - and approving - this draft report, the Central Committee directed that the forthcoming 10-year development strategy (for 2011-2020) focus on reforming the Vietnamese education sector, increasing the quality of “human resources,” and restructuring the national government.<sup>2</sup>

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<sup>1</sup> For a more in-depth discussion of the forthcoming Congress, *see*: Vietnamese Ministry of Foreign Affairs website at: <http://www.mofa.gov.vn/en/nr040807104143/nr040807105039/ns090706170032>, last accessed January 7, 2010.

<sup>2</sup> *See* Vietnam.net website at <http://english.vietnamnet.vn/politics/2009/07/856576/>, last accessed January 7, 2010.

In light of these historic developments, A/Prof. Dr. Sc. Le Van Cam (“Le Cam”) - one of only two Doctors of Law currently working in Vietnam - has submitted his article to IHRLI. The article will be jointly published in Vietnam. Significantly, the article suggests State officials are ignoring learned critics. It intimates that some officials may be corrupt, some may be acting arbitrarily and all are acting non-transparently. It further intimates that because some officials may be engaging in what Le Cam calls “depravations of power,” they are subject to being “overthrown”. Le Cam concludes his article with the observation that when a “State Apparatus . . . is completely destroyed,” a “new State power system” - with a new legal and political system - must be established. In this regard, Le Cam calls for his government to dedicate itself to the rule of law, organize around the principal of checks and balances of power, and commit itself to the advancement of society, freedom, democracy and human rights.

## I. OVERVIEW REGARDING THE DEFINITION OF “RULE OF LAW” AND ITS BASIC PRINCIPLES:

The development of a successful “rule of law State,” requires that its citizens - particularly its lawyers - understand precisely what constitutes *the rule of law*. However, such understanding is difficult given the vague and extremely broad nature of the term. The problem is exacerbated by the fact that an analysis of the legal theory of Vietnam and other countries, as well as of the international community, reveals that the definition of a “rule of law State” varies greatly.<sup>3</sup>

Notwithstanding these difficulties, for the purposes of this paper, I will define the term “rule of law State” as:

A civil authority (public power) in the political system of a civil society, established on the basis of advanced legal theories of human nature (such as equality, humanity, democracy and legislation), that aims to: ensure the respect and protection of human rights and freedoms; ensure the primacy of law in all areas of social life; ensure the supremacy of law (the Constitution first) in all activities of the State; guarantee the separation of governmental powers

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<sup>3</sup> Analysis of the various existing definitions is not the goal of this paper. For further discussion regarding the difficulty in defining “rule of law” see *The Rule of Law Handbook*, ch. 2 *Defining the Rule of Law Problem*, 2009, at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/rule-of-law\\_2009.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/rule-of-law_2009.pdf), accessed January 12, 2010.

into three branches (legislative, executive and judicial branches); and check the three branches of government through public power and the mastery of the people.<sup>4</sup>

Understanding the elements of this definition can help us understand the special characteristics which reflect its underlying basic principles. Consequently, based on this definition, and also based on the understanding of the practical applications of the rule of law in developed countries, there are seven basic elements that must exist in order for a State to be recognized as legitimate (*i.e.* in order for it to be recognized as a “rule of law State”) by the international community. An analysis of these seven elements will help the Vietnamese people find ways to develop their own true “rule of law State.”<sup>5</sup>

The seven elements necessary for a State to be a “rule of law State” are as follows:

- 1) The State must be the sole power organization (*i.e.* sole exerciser of public power) within the political system of a civil society;
- 2) The State must be based on advanced legal principals, including equality, humanity, democracy and legislation;
- 3) The State must ensure respect for - and protection of - human rights and liberty;
- 4) The State must ensure the supremacy of its laws (beginning with its Constitution) in all activities of the State. It must likewise ensure the application of these laws in all areas of social life;
- 5) The State must separate the power of its government into branches, which *should* - most efficiently - include a legislative branch, an executive branch, and a judicial branch;
- 6) The State must ensure its branches of government *are subject to a system of checks and balances*; and
- 7) The State must ensure the effective governance of the people.

These seven basic elements of a “rule of law State” manifest the undeniable nature of *advancement, democracy and humanity*. Each are worthy of discussion.

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<sup>4</sup> See Le Cam, “Rule of Law Doctrine and Practical Implementation in Russian Federation,” Commented by Dr. Sc. *Pham Xuan Son*, Dr. Sc. *Luong Dinh Hai* and LLD *Nguyen Canh Hop*, Publishing House of Vietnam Science-Technology Association in Russian Federation, Moscow (1997)(Vietnamese, with summary in English and Russian).

<sup>5</sup> In my opinion, such a State is one of the people, by the people, and for the people rather than just a so-called rule of law State or a State based on hollow written declarations of politics.

However, for the purposes of this paper, I will focus my analysis on the sixth principle (*i.e.* checks and balances) and discuss how we should enforce this principle in Vietnam.

## II. THEORETICAL CONSIDERATIONS REGARDING THE OPERATION OF A SYSTEM OF CHECKS AND BALANCES IN A RULE OF LAW STATE:

**First:** Creating effective domestic systems of checks and balances has been a desire of mankind for the past 1,000 years. This longing for a system of checks and balances can be traced back to John Locke and Montesquieu. Such scholars highlighted the importance of the establishment of the “rule of law State” in order to ensure human rights and liberty of the people and to prevent inequality, unfairness, and governmental corruption.

**Second:** The most basic requirement for a State to be subject to the rule of law is that it possesses *a system of checks and balances*. Such a system can only be achieved through a *separation of governmental powers* among the three branches (legislative, executive, and judicial).

**Third:** In principle, the separation of power in a “rule of law State” will create an effective balance between the three constituent branches of government. Hence, the term “checks and balances” consists of two elements which are closely linked and interact with one another.<sup>6</sup> An examination of these two elements follows:

1) “*Checks*” means to ensure the practical effective organization and implementation of activities of each branch of government. However, this kind of check is never absolutely done. Rather, it is controlled (checked) by the two other branches in order to ensure that public institutions and their staff conform to the constitution and provisions of the law. In other words, this kind of check will create *limits* during the organization *and* implementation of governmental power.

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<sup>6</sup> It is necessary to specify the nature of the two elements of “checks” and “balances,” as some of our leaders (even high-ranking politicians) think that these two elements are too transcendent. That is because the leaders are too busy with large workloads and have little time for a thorough study of the nature of the terms. Their assistants (“inferior strategists”) also do not understand the term well, or do not have deep understanding of the nature of the two elements.

2) “*Balance*” means the clear and transparent division of power (authority, function and task) between public institutions of the three branches (legislative, executive, and judicial). It is instituted in order to avoid abuses of power (*i.e.* to ensure the balance of power among these institutions so that no branch has the opportunity or ability to prevail over the other branches).<sup>7</sup> Such a policy on concentration of power, and clear division and assignment of responsibilities, is fully appropriate in the context of the development of socialism.

Organization of the State apparatus under such a policy of “checks and balances” has the following consequences: 1) governmental power will be evenly maintained in a manner that does not contradict democratic ideals; 2) clear division and assignment of responsibilities will result; and 3) it will increase the professionalization of agency staff.<sup>8</sup>

**Fourth:** Only when a State’s checks and balances *exist in the literal sense* will there ever exist an incentive for governmental officials to abide by the Constitution and the law. This prevents the *deprivation of power and its serious consequences, which are unacceptable in a rule of law State*.<sup>9</sup> When officials abide by the Constitution and the law, the following are prevented:

- 1) abusing, exceeding or losing authority;
- 2) agencies, organizations, units or individuals being beyond the law or out of control of authorized State agencies;
- 3) overreaching bureaucracy, imperativeness, authoritative attitude, irresponsibility;
- 4) ignorance of the suffering of the poor;
- 5) corruption and arbitrary use of State budget and property (which comes from tax contributions of the people through their hard work) for individual benefits;
- 6) the purchase of higher titles of degree by persons who have not earned them; and

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<sup>7</sup> Regarding this issue, A/Prof. Dr. Nguyen Manh Khang argues that *the less clear the division of the limit of power is, the less effective and efficient the check of power is*.

<sup>8</sup> See: Nguyen Manh Khang, “Legal Bases for State Power Check-Oversight”, in Prof. Dr. Sc. Dao Tri Uc, A/Prof. Dr. Vo Khanh Vinh (editors), *Oversight and Regime of Oversight of State Power in Vietnam* (reference book), People’s Public Security Publishing House, Hanoi (2003), p. 41.

<sup>9</sup> It is also strongly condemned by people struggling for the successful development of the rule of law in Vietnam.

7) the decline and degradation of ethics resulting in the loss of the confidence of the people and low prestige, etc.

**Fifth:** Deprivations of power (and the consequences thereof, mentioned above) are caused by a *lack of a State checks and balances system in the literal sense* (especially lack of “checks and balances” among State institutions of the three branches during the organization *and* realization of State power). In this regard, A/Prof. Dr. Chu Hong Thanh has argued that it is logical that an emphasis on “checks and balance” is a basic principle in the organization *and* operation of the State and that, thanks to this element, no State agency is fully given power to influence or prevail over other agencies. At the same time, no agency or organization is beyond the law without check, oversight or supervision of other agencies.<sup>10</sup>

**Sixth:** *Finally*, it should be noted that *elements* of the State checks and balances system mentioned in this paper are interpreted in the literal sense. In other words, due to limitations of the scope and space of this paper, only *internal State checks and balances systems are analyzed - i.e. internal checks of the State apparatus through checks and balances among State institutions of the three branches of a “rule of law State,”* but not *external State checks and balances systems* (such as State power-check regimes of the ruling party, social organizations, the people, etc.).

### III. DEFINITION AND MAIN CHARACTERISTICS OF A SYSTEM OF CHECKS AND BALANCES:

During discussions regarding effective regimens of *checks of the whole power system*, as well as the requirements necessary for establishing such regimes, Prof. Dr. Sc. Dao Tri addressed the current Vietnamese legal system and logically enunciated two requirements necessary for its reform:

**“First:** Effective regimens must be able to check the whole government system *from the external point of view*. However, if the regimens (*i.e. mechanisms*) themselves *are an internal part* of the power system *subject to checking, they are not effective;*

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<sup>10</sup> See: Chu Hong Thanh, “Issues on oversight of State power in Vietnam”, in Prof. Dr. Sc. Dao Tri Uc, A/Prof. Dr. Vo Khanh Vinh (editors), *Oversight and Regime of Oversight of State Power in Vietnam* (reference book), People’s Public Security Publishing House. Hanoi (2003), p. 47.

**Second:** Effective regimens must have a measure of independence to check and control various aspects of the State's power."<sup>11</sup>

Based on a scientific understanding of the theoretical issues mentioned above, as well as a practical understanding of the organization and realization of State power-checks in "rule of law States" in developed countries,<sup>12</sup> I believe the term "*checks and balances in a rule of law State*" should generally be understood as follows:

A State 'power-check mechanism' in a 'rule of law State' must be constituted by a general system of methods and principles provided for in the Constitution and other basic laws of a country. It serves as the underlying legal basis for relevant agencies of the State apparatus (i.e. legislative, executive, judicial branches). It regulates the organization and realization of State power and does so by ensuring that the State conducts its activities in conformity with constitutional and legal parameters. These parameters must be specified in legal documents which are issued and implemented by central State agencies - and

<sup>11</sup> Dao Tri Uc, "Definition on Oversight of State Power Realization and Oversight Regimes", in Prof. Dr. Sc. Dao Tri Uc, A/Prof. Dr. Vo Khanh Vinh (editors), *Oversight and Regime of Oversight of State Power in Vietnam* (reference book), People's Public Security Publishing House, Hanoi (2003), p.12

<sup>12</sup> For example, see: Trirkin V. E., "Constitutional Law in Some Countries", Legal Publishing House, Moscow (1997) (Russian); Trirkin V. E., "Constitutional Law in Some Countries: US, UK, France, Italia, Spain, Greece, Germany, Japan, Canada", Second edition with revision and supplement, Bek Publishing House, Moscow (1997) (Russian); Trirkin V.E., and "Constitutional Law of in Some Countries out of Eastern Europe, Textbooks and References", Norma-Infra Publishing House, Moscow (1996) (Russian). *And see:* Izeev. B. X., *Constitution - Rule of Law - Constitutional Court (Textbooks)*. See also: Baglai M.V., *Constitutional Law of Russian Federation Textbooks for Universities*, Norma-Infra Publishing House, Moscow (1998) (Russian); Mikhaliieva H.V., *Constitutional Law of in Some SNG Countries* (Textbooks), Legal Publishing House, Moscow (1998) (Russian); Sulzenko Iu. L., *Lecture on Constitutional Law of Russian Federation. Institute of State and Law under Russian Academy of Social Sciences*, Legal Publishing House, Moscow (1997) (Russian); *Constitutional Justice in SNG and Baltic Countries: Normative documents* (Chief Editor M. A. Mitriukov), Zertxal Publishing House, Moscow (1998) (Russian); Prof. Dr. Sc. Dao Tri Uc, A/Prof. Dr. Nguyen Nhu Phat (Co-editors), *Constitutional Jurisdiction and Establishment of a Model of Constitutional Jurisdiction in Vietnam*, People's Public Security Publishing House, Hanoi (2007); Dr. Cao Van Lie, *Introduction of Countries and Forms of State in the World*, Youth Publishing House, Hanoi (2003); and Official Documents of the Committee on Foreign Affairs of the Xth Congress, including "Parliaments in the World", Hanoi, (1999). *And others.*



leaders of such agencies - during constitutional proceedings, or in documents produced during judicial cases involving the interpretation of constitutional provisions. Furthermore, the legal parameters of a State power-check mechanism in a rule of law State must be clearly articulated in such a way as to ensure that the realization of State power is kept in conformity with the provisions and limitations provided within the Constitution and other normative provisions of the law. By adopting such a regime, a State ensures systemic injection of 'checks and balance' mechanisms within the various branches of a 'rule of law State.' It also protects the common interests of the people and the civil society. It effectively protects the underlying basis of the constitutional regime. And it ensures the adoption of human rights and freedoms of citizens as the most noble social values of the civilization.

Based on this definition of "checks and balances" in a "rule of law State", and also based on my independent research of the practical principles underlying the organization and realization of State power, I believe it is logical to infer six basic characteristics (or signs) of State power-check regimes in developed "rule of law States". These are as follows:

**First:** State power-check mechanisms in a "rule of law State" must include a system of *methods and principles* specified and mandated in *the Constitution and other fundamental national laws*. These methods and principles must serve as the *legal bases* for the relevant agencies of the State apparatus assigned to oversee the organization and operation of the State's power;

**Second:** State power-check mechanisms in a "rule of law State" must include specific methods *to review the constitutionality and legality of certain legal documents issued by central agencies and their leaders*;

**Third:** State power-check mechanisms in a "rule of law State" must include the possibility of conducting constitutional review proceedings in cases relating to constitutional provisions;

**Fourth:** State power-check mechanisms in a "rule of law State" must aim at ensuring the *organization of State power is in line with the provisions of the Constitution and the law*;

**Fifth:** State power-check mechanisms in a "rule of law State" must create *checks and balances" among three State branches* (legislative, executive, and judicial) of the State and do so for the common interest of *the people and the civil society*;

**Sixth:** Finally, State-power check mechanisms in a "rule of law State" must effectively contribute to the protection of the underlying basis of a constitu-

tional regime, and also to the human rights and freedoms of its citizens as the most noble social values of civilization.

#### IV. CONSEQUENCES OF A GOVERNMENTAL SYSTEM DEVOID OF CHECKS OF BALANCES:

It has repeatedly been demonstrated that governmental systems which fail to adopt - and effectively implement - a system of “checks and balances” will undoubtedly suffer a number of negative governance and social-psycho consequences.<sup>13</sup> These consequences include, but are not limited to, the following:

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<sup>13</sup> For example, see: *History of Philosophy* (4 volumes). Volume I, Institute of Philosophy under USSR Academy of Social Sciences, Moscow (1957)(Russian); *History of Political and Legal Doctrines* (Textbooks for Universities and Faculties of Law), Chief Editor Prof. Dr. Sc. V. X. Hercexiantx, Norma-M-Codes, Moscow (1995)(Russian); Alekxeev X. X, *Rule of Law Philosophy*, Norma Publishing House, Moscow (Russian)(1997), p.1; *Law and Power*; Advance Publishing House, Moscow (1998)(Russian); Ixaev I. A., *History of Russian State and Law* (Forth edition with revision and supplement), Legal Publishing House, Moscow (2004)(Russian); Alain Laurent (Professor in Philosophy - Lecturer of Political and Social Advance Training School), Books on Modern Knowledge: History of Individualism (translated by Phan Ngoc), World Publishing House, Hanoi (1999); Dominique Folscheid (Professor of University of Marne-Il-Valle), *Gender and Destiny* (translated by Van Toan-Trong Phung), Culture and Information Publishing House, Hanoi (2003); *Art of Being Human* (translated by Van Nghi and Quoc Bao), Labour Social Publishing House, Hanoi (2004); Nguyen Chau-Nguyen Minh Tien (Editors), *What do Tibetans Think About Death (Where Will Dead People Go?)*, Culture and Information Publishing House, Hanoi (2005); Ngoc Le (Editor), *1001 Figures and Events in World History*, Hai Phong Publishing House (2006); So Nhat Ly. Tran Ngoc Lan (Collector and editor), *Stories of the Spiritual World* (2<sup>nd</sup> printing), Culture and Information Publishing House, Hanoi (2006); Le Thuy Chi (Editor), *100 Most Powerful Figures in the World History*, Culture and Information Publishing House, Hanoi (2007); Hoang Tam Xuyen (Editor), *Theravada Buddha Teachings* (TN Ngoc Duyen edit), Religious Publishing House, 2007 (Buddhist Calendar Year of 2551); Da Lai La Ma, *Methods for Happily Life* (translated by Venerable Thich Tri Chon, Ph. D.), Phuong Dong Publishing House, Hochiminh City (2007); *Da Lai La Ma* (translated by Hoang Phong), Phuong Dong Publishing House, Hochiminh city (2008); *Nguyen Huy Co*, Tran Huu Nung (Edit), Culture and Information Publishing House, Hanoi (2008); Dan Thien, *12 Constellations & Human Life* (Translated by Nguyen Thi Ha), Danang Publishing House (2008); Thousand Years of Eastern Knowledge, Hanoi National University Publishing House (2008); Baild. T. Spalding; and *Mysterious Lives of Tibetan Shaman* (Translated by Nguyen Van Su), Encyclopedia Publishing House (2009). *And others.*

**First:** Ineffective institutionalisation of governmental “check and balance” mechanisms will normally lead to a general lack of transparency amongst governmental agencies and officials;

**Second:** In such non-transparent/non-accountable environments, national leaders will often find it easy to disregard the opinions and beliefs of scholars, critics, and the general population. This, in turn, will often foster increasingly *arbitrary, subjective* and *unilateral actions* on their part. Such capriciousness can make it virtually impossible for any State apparatus to objectively organize - and/or effectively realize - State power;

**Third:** Stubborn refusal to listen to positive proponents of public opinion, as well as to consider peaceful reactions of the people, will also often create an environment where national leaders may succumb to the temptation of engaging in deprivations and abuses of power;

**Fourth:** Failing to stem such deprivations of power will cause the State apparatus to become increasingly *corrupted through a series of serious consequences in internal affairs*. Significantly, they will become increasingly alienated from their citizens and administrative bureaucracies. The symptoms of such alienation will normally include increasingly corrupt State officials, increasingly authoritative attitudes among these officials, greater impositions on the functions of democracy, increasingly arbitrary behaviour - and dictatorship. All of which will create *the loss of confidence of the international community in the affairs of the nation in question*;

**Fifth:** Corruption within the *internal agencies of State*, as well as the international community’s loss of confidence *in the external affairs of the State*, will lead to the State apparatus being condemned by the people and losing its rightful place in society. Meanwhile, as the people lose confidence in their national leadership, they will no longer support their leadership. This will often cause them to conduct an *uprising (or armed struggle)* against the old State apparatus. In this regard, it is worth recalling the famous early 20th century dictum of Russian jurist *V. I. Lenin* regarding *revolutionary changes*, to wit: it is the right time for the blooming of an armed uprising when “the lower classes no longer stand as before while the upper classes no longer manage in an old manner”;

**Sixth:** In the end, because of the struggle of the people, the old State apparatus *will be completely destroyed*. The people will then establish a new State power system with a new prestigious leadership (in internal and foreign affairs), who will work for the common benefit of society and the people. To do so, they will establish a new legal and political system for the advancement of society, freedom, democracy and human rights.

## V. CONCLUSION:

In conclusion, there is more than enough evidence to conclude that a system of “checks and balances” of public power is one of the seven most important elements necessary for the creation of a “rule of law State”. Conversely, the development of a “rule of law State” will never be successful without the creation of *an effective and practical State-power check regime through the public system* (i.e. *internal check regime of the State power system*) to ensure the balance based on “checks and balances” of the three branches of power (legislative, executive, and judicial).

Sadržaj

Le Van Cam \*

### SUSTAV PROVJERA I RAVNOTEŽA: PRETPOSTAVKA USPJEŠNOG RAZVOJA PRAVNE DRŽAVE U VIJETNAMU

*Autor razmatra sustav provjera i ravnoteža (checks and balances) kao prepostavke za uspješnu uspostavu i razvoj pravne države u Vijetnamu. Uz opći pregled definicije vladavine prava i njezinih osnovnih načela, u radu se prikazuju teorijska razmatranja o djelovanju sustava provjera i ravnoteža u pravnoj državi, njihova osnovna obilježja te se ukazuje na posljedice vladina nevažavanja ovog sustava. Zaključak je autora da je sustav provjera i ravnoteža javnih vlasti nužan za stvaranje pravne države te da razvoj pravne države nikad nije uspješan bez stvaranja učinkovitog i praktičnog sustava provjera javnih vlasti putem javnog sustava, kojim se osigurava ravnoteža u trima granama vlasti - zakonodavnoj, izvršnoj i sudskoj.*

*Ključne riječi: sustav provjera i ravnoteža, pravna država, Vijetnam*

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## Zusammenfassung

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**DAS SYSTEM DER HEMMNISSE UND GLEICHGEWICHTE:  
VORAUSSETZUNG EINER ERFOLGREICHEN ENTWICKLUNG  
DES RECHTSSTAATES IN VIETNAM**

*Der Autor erörtert das System der Hemmnisse und Gleichgewichte (checks and balances) als Voraussetzung der erfolgreichen Konstituierung und Entwicklung eines Rechtsstaates in Vietnam. Neben einem allgemeinen Überblick über die Definition der Herrschaft des Rechts und ihre Grundprinzipien werden in diesem Beitrag theoretische Überlegungen über das Wirken des Systems der Checks and Balances im Rechtsstaat und ihre Hauptmerkmale angestellt sowie aufgezeigt, welche Folgen es hat, wenn eine Regierung dieses System nicht beachtet. Der Autor kommt zu dem Schluss, dass das System der Checks and Balances in Bezug auf die öffentlichen Gewalten erforderlich ist, um einen Rechtsstaat zu verwirklichen, und dass die Entwicklung eines Rechtsstaates ohne die Einführung eines wirksamen und praktischen Systems zur Überprüfung der öffentlichen Gewalten durch ein öffentliches System, mit dem das Gleichgewicht in den drei Gewalten, der Legislative, Exekutive und Judikative, gewährleistet wird, niemals Erfolg haben kann.*

*Schlüsselwörter: System der Hemmnisse und Gleichgewichte, Rechtsstaat, Vietnam*

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