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Liberal Constitutionalism and the Socialist State in an Era of Globalisation: An Inquiry into Vietnam's Constitutional Discourse and Power Structures

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Abstract: The article explores the influences of liberal constitutionalism over the socialist state in an era of globalisation and its impacts on the power structures. Embarking on market-based reforms, the socialist state is increasingly facing with pressures for changes in the Constitution to narrow gaps between real practices and written legal rules as well as to deal with problems in existing governance structure and demands for democratic rights from the public. In that context, political liberalism is making inroads into emerging constitutional discourse which is traditionally dominated by socialist theory. The paper examines the impacts of liberal constitutionalism on Vietnam's constitutional discourse and power structures and its limits in transforming statist socialism. It is argued that while Vietnam's constitutional discourse is absorbing many elements of liberal constitutionalism, syncretism controlled by the Communist Party of Vietnam (CPV) limits changes in the foundation of power structures and state-society relations.

Keywords: Liberal Constitutionalism, Socialist State, Communist Party of Vietnam, Power

Nowadays, in the world, there are a few socialist countries left in one-party rule: China, Vietnam, Laos, Cuba and North Korea. Most of these politically closed authoritarian regimes, as classified by Diamond (2002), have been undergoing or started market based reforms, opening up their economies, but all remain reserved on political reforms if any at all. China has been the flagship country in the socialism-transforming process followed by Vietnam. The reforms coupled with the effects of globalisation in these countries have entailed dramatic changes in various social, economic, political and legal fields. After some early periods of success and euphoria, socialist countries have become entangled by major challenges mounted by pressures for substantive political reforms that they find increasingly difficult to navigate. As for Vietnam, many of these critical problems are highlighted in the debate for changes in the 1992 Constitution and in the search for appropriate responses to the incremental encroachment by liberal constitutionalism advanced by globalisation influences.

The end of the Cold War in late 1980s paved the way for accelerating globalisation, which is underlined by the claimed victory of liberal ideas in the ideological competition. As a survival strategy, China and Vietnam embarked on market-oriented economic reforms on the verge of crisis and collapse in late 1970s and 1980s respectively and have tried to rein the political and legal implications of liberalism for their rule within an authoritarian governance framework, especially in the constitutional discourse. However, despite their precautious and tight control over the process, the impacts of constitutional liberalism could be traced with ease in an area traditionally dominated by socialist theory. The ruling communist parties have in fact accepted some concessions by developing a syncretism strategy to cope with such challenges in an effort

to maintain its monopoly of power. Therefore, the power structure and relations are also exposed to some degree of change. In the following sections, the article will discuss some key aspects of liberal constitutionalism and socialist constitutional thinking to highlight the tension between these two different perspectives. It investigates the case of Vietnam to explore the interactions between these two ideational forces and the influences of liberal constitutionalism over the socialist state and its power structures through the constitutional discourse. Facing with the challenge by liberal constitutionalism while lacking effective ideational responses, the CPV has adopted a syncretism strategy to control the liberal influences, navigate the tension, and manage the constitutional amendment process. The accommodating approach, albeit limited, by the party-state has facilitated new forces of change in the power structure and state-society relations in Vietnam.

Liberal Constitutionalism and Socialist Constitutional Theory

Before an engagement with the impacts of liberal constitutionalism in a socialist country like Vietnam, it is important to discuss some of its philosophical roots and key features. The idea of liberal constitutionalism is centred around the ‘distinctively liberal fear of power’ and the ‘potential tyrannies’ of governments against individual liberty (Heywood 2007: 38). Thus, it aims at a limited government in the sense that effective external and internal constraints on government power are established through constitutional rules. Key features of liberal constitutionalism include, but are not limited to, a codified constitution that sets out a system of checks and balances among government institutions, i.e. separation of power, judiciary independence, rule of law, a bill of rights, decentralisation, and constitutional review. Liberal constitutionalism has philosophical roots in the ‘social contract’ arguments discussed by prominent thinkers in the era of Enlightenment like John Locke, Thomas Hobbes, and Jean-Jacques Rousseau. In their ideas, government is based on a consent of the people, or a big fictional contract, to act as a neutral arbiter for individuals and groups in society (Heywood 2007: 38). This liberal normative claim about the role of a government is to prevent power from corrupting and threatening individual liberty. In this sense, a constitution is the actual expression of popular sovereignty so that both a political authority is exercised over the community and constitutional constraints are established by the people upon the government (McHugh 2002: 2–3). Therefore, liberal constitutionalism is generally associated with formal institutions and a particular set of procedures in operation.

One of the most important items on the ‘checklist’ of liberal constitutionalism is the institution of rights and human rights. Originated in the natural rights theory, the idea of rights is a key component in constitutionalism. It is argued that human rights or the individual’s rights neither derive from the Constitution nor are bestowed from government but they are inherent, “purely by the reason of humanity” (Burchill et al. 2009: 69) and inalienable in the sense that they cannot be created or taken away by the government. As Henkin and Rosenthal (1990: 4) puts it, “the idea of rights protected the individual against society, not only against officials but even against the majority, against elected representative of the people, even when they acted in good faith for the common welfare.” Thus, the Constitution is in place to protect the rights. Liberal constitutionalism is highly appealing, especially to the educated people in authoritarian countries because it embraces and promotes this idea as a core value through the auspices of globalisation.

The major problem with the contract-based perspective of a constitution, as argued by Hardin (2003: 84–89), is the fact that “popular sovereignty stopped at the adoption of the constitution.” He suggests that constitutionalism is actually a matter of coordination among institutions which are created to implement the constraints and depends on sanctions “not from some external powers” but “sanctions and incentives internal to the group governed by them.” This view is resonated by Balme and Dowdle (2009: 2–4) in their caveats to the relationship between constitutionalism and judicial power. They contend that “significant aspects of constitutional

structure are invariably nonjusticiable” and “at its heart, a constitution is an innately *cooperative* phenomenon.” This critical aspect of the political process relating constitutionalism is often obscured or lacks adequate attention in constitutional discourse in socialist countries. In fact, discussions about constitutionalism, if present, disproportionately focus on the set menu of institutions and procedures for a constitution to work effectively.

In socialist countries, the traditional ideology dominated by the ruling communist parties about law in general and a constitution in particular is very different from and even contrary to liberal constitutionalism in many aspects. This difference is rooted in their view of human nature and the state or power. In the orthodox socialist approach, human beings are understood in collectivist terms as social creatures, thus collective interests or the interest of the community are more important and prioritized than those of the individual. The state or state power is the key to uphold collective interests in a class-based society. The Stalinist view of power has been very influential among socialist countries: “The seizure of power is only the beginning...The whole point is to retain power, to consolidate it, and make it invincible” (Stalin 1947: 39, cited in Kornai 1992: 59–60). Therefore, the core of socialist ideas is concentration of power into the communist party or the omnipotent leadership of the communist party over the state and society. In terms of rights, socialist theorists place them in relation to duties with an emphasis on the latter. Individual freedom and liberty is to give way to order and discipline which is of primary importance for the state to ensure collective interests. The state is regarded as the only legitimate representative of universal interests of the general public.

In such a Marxist-Leninist vision of state, society, and human, the understanding of a ‘socialist’ Constitution must be placed under the primacy of three tenets: socialist legality, democratic centralism, and collective mastery (Gillespie 2005: 47–49). In this line of thought, the Constitution, or law in general, is completely class-based, which reflects the ‘will of the ruling class’ represented by the communist party. Therefore, the party-state needs a Constitution as a political expediency and a management tool in line with the Marxist Leninist cannon. Sidel (2008: 18) succinctly describes all the roles that a Constitution plays in such a context:

The instrumentalist approach is clear: constitutions in Communist Party-run states have been, and remain, a means of political control by a single party, a way of expressing Communist Party political, economic, and social policy, a method for mobilizing action, and a malleable document subject to redrafting and adoption by a compliant legislature as times and policies changed.

Naturally, a theory of constitutional instrumentalism has been developed and dominated the constitutional discourse in socialist countries since 1950s and the scholarly perception of Chinese, Vietnamese, and other socialist constitutions (Sidel 2008: 18). This perspective remained unchallenged until these countries embarked on market-based reforms and opened up their economies and societies to different forces ensuing globalisation, particularly liberal constitutionalism. The following parts turn to discussions on the typical case of Vietnam to explore how liberal constitutionalism has encroached into the constitutional discourse and contributed to transforming socialist constitutional ideas. While attention might be overly directed to changes, adequately balanced view is needed to highlight the continuity or durability of many key features in the orthodox socialist ideology persistently overshadowing the constitutional dialogue due to the party-state’s perversely defensive efforts and syncretic responses. It is argued that despite the CPV’s attempts to lead and manage the changes, it is actually reacting to them to defend the remaining strongholds of its power.

Vietnamese Constitutional Context and the Recurrence of Constitutional Debate

The 1992 Constitution of Vietnam has been in effect for two decades. It is the fourth Constitution adopted since the country's independence from the French colonialism and Japanese occupation was declared in 1945 if the two Constitutions promulgated in 1956 and 1967 by the Republic of Vietnam in the South are not taken into account. Previous Constitutions, in 1946, 1959, and 1980, are characterized by distinctive historical periods of the country: a struggle for independence and unity; the road to socialism in the North and the fight for liberation in the South; and national reunification under socialism. The 1992 Constitution is a landmark in the *renewal* (*Doi moi*) process launched in late 1980s by the CPV following a deep economic and social crisis in Vietnam in mid-1980s. While the legacies of Soviet constitutional traditions still loom large in the Constitution, many important changes to accommodate the market-oriented reforms have signalled a departure from the socialist ideology. Since late 1980s, the impacts of the economic reforms have resulted in the increasingly less effectiveness of traditional Leninist institutions in building popular legitimacy and managing society (McCormick 1999: 153).

The 1980 Constitution, which is based exclusively on these Leninist institutions, were seen as largely irrelevant and out of date. There was an urgent need for a new Constitution to allow a changing mode of political legitimization toward economic performance. However, discussion on the making of the new Constitution in 1992 as a natural product of *renewal* may hide important seeds of an emergent constitutional discourse with attention to the ferocious intra-party debates on the official ideology in late 1980s and 1990s. While this closed ideological debate among the elite circles was kept in low profile by the party-state, it has lasting and spreading effects on the political discourse and constitutional development. Tran Xuan Bach, a prominent party leader and thinker, led an ideological uprising within the party to challenge the orthodox socialist ideals. He put forth a political reform agenda with certain liberal values which strongly advocated toleration, political pluralism and multiparty democracy. Although his attempts had stirred up some heated ideological debates inside the party, he failed miserably. Being expelled from the CPV's Politburo and Central Committee, his political career ended. The major consequence of this event is that political pluralism and multiparty were made 'taboo' and excluded from any official political discourse. However, it represents a first substantial challenge to the despotic and infrastructural power of the party-state by offering alternatives to the official ideology.

The intra-party ideological debate had certain resonance in constitutional amendment process and the constitutional discourse that emerged not long after the enactment of the 1992 Constitution. This is because "the institutions that formerly created incentives for citizens to participate in the production of official ideology have been undermined" (McCormick 1999: 162). In the 1992 Constitution, the CPV for the first time accepted some constraints, albeit limited and unsubstantive, upon its powers as evidenced by some changes in comparison with the 1980 Constitution. The CPV is now no longer "the *only* force leading the state and society" and "all Party organisations operate within the framework of the Constitution and the law" (Article 4, 1992 Constitution). These subtle changes, as suggested by Sidel (2009: 88), signal that the CPV is "opening the door for very gradual moves or begin strengthening and differentiating the role of the government and the National Assembly, and to begin recognising the positive roles that business, mass organisations and other sectors of society might have." It is clear that the party has taken a less direct and visible role in governance to give rise to the more dynamic roles of the executive power and the voice of the legislature is raised in the political arena of the country since 1992. The CPV sees it as a political expediency to transfer certain symbolic and limited policy-making power to the National Assembly in an effort to build its legitimacy. The evidences in Vietnam's constitutional development is consistent with Dowdle's proposition on the Chinese case that "socialist ideals are conspicuously absent from the process shaping constitutionalism in China" but power politics "induce constitutional reform" (Gillespie and Nicholson 2005:

6). Limited constitutional reform by the 1992 amendments in Vietnam has not done away with extensive legal and constitutional borrowing from the Soviet Union, which serves as a mainstay for its authoritarian governance, thus being unable to deal with the root problems of a conflict with ongoing market-based reforms.

Since the 1992 Constitution was adopted, the economic and social changes have continued to widen the gap between practice and constitutional rules. Although it is “always mediated by practical policymaking” as contended by Gillespie (2005: 7), this fact undermines the control of the party-state over the constitutional discourse and the constitutional legitimacy itself. By late 1990s and early 2000s, the party-state officially sanctioned a constitutional dialogue with an aim to make some urgent updates to the 1992 Constitution (Sidel 2008 and 2009). It is important to note that by mid-1990s, Vietnam had normalised relations with most Western countries and financial institutions, particularly the US, EU, IMF and the WB. The Western influence in Vietnam could be measured by the increasing amount of foreign direct investment (FDI), commercial loans and official development aid (ODA) inflows. These types of economic aids to Vietnam’s development were contingent on introducing various market-based reforms and neoliberal agenda. Under the auspices of global governance agents, liberal constitutional ideas began to make inroads into Vietnamese constitutional discourse.

The point of departure for liberal constitutionalism in Vietnam is the widespread nostalgia among scholars for the 1946 Constitution which explicitly embodies various liberal ideas and democratic features. The first Constitution of the modern Vietnam, although it had never been implemented due to a war that broke out with the French colonizers right after its passage, gains high legitimacy because it was drafted by Ho Chi Minh, the ‘founding father’ of the nation and the CPV. It has plenty of characteristics on the checklist of liberal constitutionalism like separation of powers, judiciary independence, popular sovereignty exercised by means of referendum over the Constitution, fundamental rights of the people. It is apparent that Ho Chi Minh, albeit a communist leader, did not apply any socialist ideals or borrow any ideas from the 1936 Soviet Constitution, but employed universal liberal values embraced by the US Declaration of Independence in 1776, the US Constitution, and the French Declaration on the Rights of Man and Citizens in 1789 for the 1946 Constitution. It stands in stark contrast to all the three later Constitutions in 1959, 1980, and 1992 which are heavily influenced by Soviet legal transplantation. Liberal scholars and reformists in the political elites try to frame the 1946 Constitution in nationalistic values to gain legitimacy in the constitutional discourse. Although the call for a return to the 1946 was rejected outright in the first place, some initial seeds of liberal constitutionalism can be traced in the 2001 constitutional amendments with regards to the introduction of the law-governed state doctrine and the idea of power allocation and coordination among state institutions. With active participation from some intellectuals, legal scholars, retired officials, and National Assembly members who advocated a revolutionary approach with fundamental revision, the robust debate leading up to the 2001 amendments was so extensive that it moved beyond the areas and boundaries set out by CPV and National Assembly leaders. In fact, the debate addressed various issues of constitutionalism. However, as noted by Sidel (2008: 29), the senior leaders from the CPV and the National Assembly had “sought to channel and rechannel the constitutional amendment process back into more limited paths.” The Constitutional Amendment Commission resolutely asserted a reactive perception of the amendments.

The amendments, promulgated by a resolution of the National Assembly (Resolution No. 51/2001/QH10 dated 25/12/2001), are clearly very limited and served as some patchy updates for the 1992 Constitution, leaving out hotly debated themes in the constitutional discourse such as rule of law, judiciary power and constitutional review, checks on state power, human rights and decentralisation. These have become recurring themes, which came out of the disappointment with the 2001 amendments and the continuing discrepancy between practice and constitution rules. References to the 1946 Constitution as the embodiment of democratic, pro-

gressive, and national values and a true reflection of Vietnamese people's aspirations are persistently repeated in the public discourse, indicating a disillusion with the current Constitution [Nguyen Si Dung 2011]. This nostalgia has been reinforced by the eroding legitimacy of the 1992 Constitution in the very area of legislative affairs where the Constitution is placed as the highest in the legal order, let alone in practice. Remarkable examples include the Law on State Audit in 2005 and Resolution No.26/2008/QH12 on a pilot scheme of abolishing People's Council at ward and district levels, which clearly bypass the Constitution. Another problem that has been repeatedly highlighted in the constitutional discourse is the disjuncture between such constitutional rights as assembly, association, demonstration, access to information stipulated in Article 69 of the 1992 Constitution and many practices by authorities that prevent these rights. According to statistics by the Ministry of Justice, on average 25.59% of authorities' executive orders/decisions inspected between 2007–2011 are against the law or constitution (Vietnamnet 2012).

The apparent gap between the Constitution and practices raises a critical question about 'protecting' the Constitution against violations and the role of a constitutional review mechanism. Discussions about a mechanism to adjudicate the constitutionality of state institutions' acts and documents came to the fore during the debate for the 2001 constitutional amendments. Although this call was excluded in that process, the debate was revived in the following years especially with the initial green light given by the part-state leadership and the official consent stated in the CPV National Congress Resolution in 2006. In spite of being marginalised in the Party elitist politics, the idea has re-emerged prominently in recent discussions about further amendments of the 1992 Constitutions. Under mounting pressures for changes in the 1992 Constitution, the CPV has reacted by officially sanctioning a constitutional amendment process at its National Congress in January 2011. The National Assembly implemented the party decision by establishing the Constitutional Amendment Commission in August 2011 with a plan to promulgate constitutional amendments in October 2013. Since early 2011, the debate on constitutional amendment has regained some currency. Compared to that in more than a decade ago, the constitutional discourse has been enriched by the participation of a new generation of intellectuals and scholars who are trained in Western universities and supported by the means of social media and the internet. Those themes which have been excluded by the official party politics once again re-enter the constitutional discourse. Three key themes in that discourse, i.e. rule of law, the language of rights, and constitutional review, will be examined to scrutinize the interactions between socialist constitutional thinking and liberal constitutionalism, and the extent to which the former has been transformed as well as endured. These themes are closely interrelated in the constitutional discourse.

The Socialist Law-based State: Organizing Principle of Power, Constitutional Review, and Civil Rights

Since early 1990s, the concept of law-based state (*nha nuoc phap quyen*) as an analogue to 'rule of law' is introduced to Vietnam's political and legal discourse. This concept is adapted to Vietnamese context with a 'socialist' character as the statist socialist version of the rule of law which deems to be of liberal democratic value. However, there arises a theoretically irreconcilable tension with the orthodox socialist legality principle. As pointed out by Gillespie (2004: 147), "Socialist legality promotes party paramountcy and state bureaucratic management, where as *nha nuoc phap quyen* advocates limiting party and state power." In this doctrine of socialist law-based state, the role of a Constitution is special by a distinction from law. The Constitution is now placed above the state because it derives from popular sovereignty. While law is still seen and confirmed as a tool of management, the Constitution is no longer taken as the state's instrument in governance and the state is governed by a Constitution. As noted by Peerenboom (2009: 87), "the main role of the Constitution has been to provide an initial dis-

tribution of power among state organ.” Since the doctrine was institutionalized into the 1992 Constitution by the 2001 amendments, socialist legality principle has evolved into socialist law-based state and almost disappeared from the political and legal discourse. However, this doctrine remains silent on the party and party power in comparison to the Constitution.

Apparent liberal ideas in the country have demanded the return of constitutional making and amendment power to the people by reinstalling national referendum as the final decision over any constitutional amendment. This view has been publicly expressed either in writing or speeches at different seminars and press interviews by a number of well-known intellectuals and party-state’s senior officials like Tran Ngoc Duong, Nguyen Dang Dung, Nguyen Si Dung, Chu Hao, Nguyen Dinh Loc and Vu Duc Khiem. Notably, in a series of interviews with a popular online newspaper *Vietnamnet* in 2010, Nguyen Van An, former President of the National Assembly of Vietnam and former CPV’s Politburo member, reiterated this idea as a key to the amendment of 1992 Constitution. The constitutional rule on national referendum was stipulated in the 1946 Constitution but removed in later Constitutions. Critics point out that a constitutional rule on referendum to approve constitutional amendment, if introduced, would be only nominal and not meaningful given the tight control of the CPV over any electoral process. However, this demand indicates an attempt to constrain the party and state power by transferring the constitutional power to the people to reflect the idea of popular sovereignty. Recognizing the implications, the party elites have not considered this idea on the constitutional amendment agenda. The CPV is still more comfortable with the traditional mode of socialist constitution making and amendment which is regarded as the exclusive domain of state institutions. Thus, the vocal voices for a constitutional rule on national referendum have been marginalized.

There are some more subtle liberal suggestions about gradually limiting the party power to avoid power abuse by recommending a law on the CPV based on Article 4 of the 1992 Constitution. The idea was articulated by Nguyen Van An, a former senior leader of Vietnam’s party-state, in his comments on the draft of the 11th Party National Congress Political Reports. This comment had immediate widespread resonance among intellectuals and some circles within the party-state. In his contribution to the 11th Party National Congress, Nguyen Dinh Loc, former Minister of Justice, also voiced his opinion about the necessity of a law on the CPV to make the CPV rule legitimate. Remarkably, in June 2012, the Vietnam Fatherland Front, the largest party-sanctioned mass organization, filed an official proposal to amend the Article 4 of the 1992 Constitution and subsequently make a law on the CPV. It is recommended to add a constitutional rule that “all party cadres shall strictly abide by the Constitution and the law” so that it can deal more effectively with the tendencies of Party officials, described by Gainsborough (2012: 36), “to operate outside the law and ride roughshod over electoral procedures.” They also suggest redefining the role of the party and its relations with the state and as well as the society. These subtle suggestions target a mechanism that “Party coordinates and ultimately controls, but through a spectrum of direction and coordination that ranges from high levels of control, to substantial direction, to strong pressure, to relatively open debate-and always maintaining a role in post-debate, post-adoption implementation processes” (Sidel 2008: 44). In other words, the party should play a more strategic leadership role to tackle a root problem with governance in Vietnam. Although the proposal looks appealing, it is unlikely the CPV will accept it in a near future. As Gainsborough (2012: 36) maintains, the core issue of reform in Vietnam is now “exactly how the Party views the ‘rule of law’ and the ‘correct’ relationship between citizens and the state.”

An important subset of the socialist law-based state doctrine which also emerges prominently in the constitutional discourse is the organizing principle of state power. As discussed earlier, the orthodox tenet is concentration of power. The practical effectiveness and legitimacy of this claim has been seriously challenged by the liberal principle of division of power. There are increasing voices from the academic and political circles arguing for a fundamental change to the new principle organized around the division of powers. They point to the weaknesses of all

state institutions due to their overlapping and ambiguous mandates. Their strong argument also lies in the fact that the ineffectiveness of the judicial power and the lack of judiciary independence have not enabled people's access to justice. They make a liberal normative claim that justice and administration should remain impartial and neutral spheres while they are actually interwoven with the political sphere and have been deeply influenced by political interference by party cells at all levels. The claim is legitimately extended to another hotly debated issue of constitutional review and the need for a Constitutional Court. The power of constitutional review is also special because it also directly threatens the party power.

The 2001 amendment to Article 2 of the 1992 Constitution stresses that "state powers are unified, allocated and coordinated among state institutions in exercise of legislative, executive, and judicial powers." With that statement, the Constitution continues to command an allegiance to the principle of concentration of powers, it signals a departure, albeit still vague, towards separation of powers. The liberal forces in the constitutional discourse have tried to advance another move further down the road. They have successfully introduced the phrase 'state powers are controlled' to the officially political discourse sanctioned by the party. The move was championed by Tran Ngoc Duong, a legal scholar and senior official, and won recognition at the CPV National Congress in January 2011. The addition of only one word, '*controlled*', to the principle statement in the Article 2 of the 1992 Constitution has been approved and confirmed in the Resolution of the 11th Party National Congress. Given the fact that orthodox socialist constitutional thinking is alien to the idea of constraining state powers, this assertion by the CPV can be considered as a subtle success for a liberal strategy of effecting incremental change.

The last key theme that has been exposed to heated debate by the academic circles supported by certain elements in the party and state is civil rights and human rights. Chapter 5 of the 1992 Constitution frames all human rights into citizens' rights with accompanied duties to the state. As a member of the United Nations, Vietnam has acceded to the 1948 Universal Declaration of Human Rights and in 1982 ratified its ensuing Covenants in 1966 on civil and political rights, economic, social, and cultural rights. These international human rights instruments, which embody the values that is clearly a 'distilled version of political liberalism' (Langlois 2011: 441) are legally binding on Vietnam. However, the language of rights in the 1992 Constitution is far from the modern universal understanding of human rights which are inherent and unalienable. In a crude expression of socialist legal positivism, most of the rights appear in the Constitution as the gifts bestowed upon citizens by the state. What makes the implementation of these rights more difficult in practice is that many of them are all contingent on being 'stipulated by the laws' and there have been no laws for such important civil and political rights in Article 69 as the right to assembly, association, demonstration, and access to information. For example, the right to demonstration has drawn a heated debate at the National Assembly (NA) and in the cyber space of social media amid the anti-China demonstrations in Vietnam against the increased assertiveness of China in the South China Sea dispute over competing sovereignty claims in 2007, 2011, and 2012. The right to protest by people in Vietnam is anathema to many within the party-state elites who are represented by deputies like Hoang Huu Phuoc and Nie Thuat. In a speech at a NA plenary session to counter such an idea, Duong Trung Quoc, a charismatic deputy, citing various examples in history with a focus on the use of demonstrations by the CPV in the colonial period, implicitly argued that demonstration is a constitutional right that the absence of a law on demonstration could not prevent it.

Another influential liberal criticism of the Constitution is directed at property rights with a polemical focus on the Soviet model of people's ownership and state management of land which is considered as one of the remaining stronghold of socialist constitutional thinking. The argument set forth by a number of well-known intellectuals, retired party-state officials, National Assembly members, and bloggers in the cyber space for private ownership of land to resolved land disputes features prominently in the constitutional discourse. The two high-profile cases

in Tien Lang (Hai Phong) and Van Giang (Hung Yen) during Spring 2012 in which the state used excessive violence for land evictions against farmers highlight the increasing social tension and crack in the state-society relationship with regards to safeguarding the legitimate property rights of the marginalised farmers. The issue of rights serves as a warning to the party-state elites in settling urgent social problems like growing land disputes that they “have had to be more attentive to a greater plurality of interests than previously even if the way in which this occurs is generally not institutionalized” (Gainsborough 2010).

The Lack of Alternative Critical Ideas in Constitutional Discourse and Syncretic Responses: Implications for the Future

The liberal ideas which are ‘smuggled’ into Vietnam’s constitutional discourse are quietly replacing some orthodox Marxist Leninist constitutional thinking because they are powerfully appealing to many in the middle class whose freedom and liberty have been constrained for too long. In face with that strong force of liberal constitutionalism, the party-state has failed to develop any effective socialist theoretical responses. However, the CPV has developed its own defensive political and ideological strategy to react to the challenges (Dao Tri Uc 2011). The party’s theorists have attempted to reconfigure age-old socialist concepts to accommodate liberal values as part of a co-optation and syncretism strategy to maintain its legitimacy (Gillespie 2004 and 2005). Ideas about the rule of law, constitutional review, human rights, and other different mechanisms to control party-state power have been syncretized into the CPV’s political agenda. Despite criticisms that the CPV only pays lip service to these ideas, the constitutional discourse has absorbed and consumed many elements. However, the major problem with the amalgamation of these different and even conflicting ideas as a political expediency is that they lack any exposure to critical examination and scrutiny.

Many of the liberal ideas which have been contested in the West and elsewhere come to Vietnam’s constitutional discourse in a primitive form but are still received with enthusiasm due to an absence of intellectuals’ critical reflections. This is because Vietnam has just begun a new stage of receiving political and legal ideas from the outside world. For example, although the ideas of contractarian Constitution and natural rights have foundered in Western political and legal discourse due to various limitations, they are able to embrace many fanatical supporters among legal scholars in Vietnam. Or the idea of private ownership of land as a panacea to land disputes seems to have been exaggerated by constitutional liberals due to its lack of convincing evidences. It is obvious that there is a strong need to subject the imported liberal ideas to more critical scrutiny. The ineffective theoretical responses by socialist theorists do not mean that the absence of alternative ideas offered by the third ways to the problems in Vietnam’s political and constitutional discourse and the easy triumph of liberal ideas. The socialist ideological hegemony of the CPV is unlikely to give way to liberal constitutionalism easily in a near future. Rather, it has been and will be strengthening ranks and forces to counter such challenges to endure its monopoly of power. The case of Vietnam has struck a similar note with Lee (2012)’s argument about China’s continued participation in the liberal order that the Communist Party of China “is very unlikely to seek genuine integration and assimilation into it for fear of fatally undermining its domestic strategy to remain in power.” However, the lack of new ideas and ideological innovations, and the political will to implement them if come up continue to obsess the CPV and constrain its legitimacy to rule.

There are some ideas about developing the indigenous cultural values of the nation as the foundation for the constitutional discourse, for example, a call to return to Confucian norms (Pham Duy Nghia 2005). However, the possibility and feasibility of these calls has been called into question so far because they are either vague fragmented political rhetoric appealing to nationalism or dubious foreign hybrids. The idea about Confucian conception of law and Constitution is in itself transplanted from Chinese political philosophy and alien to the Viet-

namese indigenous culture. The oppressive influences of Confucianisation of the law in Confucian claim to monopoly of official ideology can be traced throughout Vietnamese history (Ta Van Tai 2007). Furthermore, it conceals the political nature of the Confucian values that serve to maintain the powerful status quo controlled by the political elites to the detriment of the interests of marginalised and governed people.

As the power base of the CPV has now some signs of being shifted from farmers and workers to the new middle class. In order to remain in power, the party needs to win over the support of the middle class. They have many characteristics in common with others in Asia who are relatively well-educated, own property, and are technologically connected to the outside world owing to the internet and social media (Fukuyama 2012b). The counter-hegemonic forces are generated through the middle class in the political and constitutional discourse to radically transform socialism. As such, they are pressing for political reforms and more open debates in constitutional discourse. However, it is important to note Fukuyama (2012a)'s warning about the changing pattern in East Asia's state-society relationship which is "the emergence of powerful interest groups, albeit small, with the ability to block significant reform." The interest groups have also been identified by the CPV as obstacle to its leadership to national development and its power. The critical question for the CPV is now how to overcome them to implement meaningful constitutional reforms to mediate the tension produced by different constitutional ideas or they will face with accumulated stronger counter-forces emerging from the constitutional discourse and social activism for a political change.

Conclusion

The world's remaining socialist countries have now been travelling or will soon have to travel on the path of market-based reforms. In this process, the pressure for social and political changes has become stronger alongside their deeper integration into the world community. In case of Vietnam, liberal constitutionalism has been gradually established its presence in the country's constitutional discourse and the CPV's political agenda. On the surface, the Communist Party of Vietnam (CPV) has opened up the constitutional discourse for different voices since 1990s in an effort to lead the change it desires rather than react against undesirable ones. The 1992 Constitution was made at a critical moment when its chief mainstay of support, the Soviet Union, collapsed but still retains a lot of Soviet ideological legacies that could hardly cope with massive changes in the economy and society throughout the decades of 1990s and 2000s. The widening gap between constitutional rules and practices has put the party-state in increasingly awkward situation and mounted pressures for constitutional amendments as many times the constitutional rules have been bypassed at the discretion of the authoritarian governance. The ambivalent practices have undermined the very socialist idea about the role of a Constitution in the entire legal system and society, thus eroding the legitimacy of the party-state. While the party-state is running short of ideas and innovation, the globalisation process with which Vietnam engages has helped blow a new breath of liberal ideas into the constitutional discourse. It is inevitable that in the process the discourse comes to absorb various elements of liberal constitutionalism. It has become the area that tension arises between the continued monopoly of power by the CPV and liberal constitutionalism. Lacking effective ideational responses, the CPV has developed a syncretism strategy as a concession to maintain hegemony. However, it faces another challenge emerged from shifting patterns at its power base. The middle class and the rise of powerful interest groups are the forces that potentially bring about a radical change to the way the CPV continues its ideological and political hegemony.

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