

B Ò I H Ả I T H I Ệ M

Pluralism Unleashed: The Politics of Reforming the Vietnamese Constitution

As Vietnam approaches the landmark anniversaries of forty years since reunification and thirty years since *Đổi Mới* [Renovation] was initiated, the prospects for political and social change in the country have received heightened attention and discussion. Over the past few decades, Vietnam has undergone market-based reforms in the economic sphere first as a survival strategy in response to imminent economic and social crisis in the mid-1980s and later as an important source for performance-based legitimacy to bolster one-party rule on grounds of economic success. The resilience of the old-style Leninist political system and governance in Vietnam, along with a resistance to political reforms, has been a bone of contention among different commentators, observers, and activists. Within that context, different conditions and potentials have been explored to make sense of political developments in Vietnam.

For the past few years, the resilience of the political system has been seriously called into question due to the increasingly grave situation in many important areas of governance, and significant debates have emerged about the need for substantive change and transformation to overcome another imminent crisis of governance. A series of critical concerns has been raised about economic mismanagement, evidenced by the collapse of

large state-owned conglomerates like Vinashin and Vinalines, the death of hundred thousands of businesses, and massive debts incurred by the government.¹ Other endemic problems such as the structure of the economy, which is biased towards highly extractive development,² as well as environmental degradation, rampant corruption, limited access to justice, and worsening quality and services in education and healthcare have all contributed to a rising frustration in society. Long-standing political institutions have been far from effective in responding to the demands for meaningful change and have been retreating into defensive reactions. The established rules and norms underlined by orthodox narratives have been seriously challenged by different social forces straining to break political passivity and stimulate change. While regaining and maintaining high economic growth with macroeconomic stability is a formidable challenge for Vietnam, accommodating expanding social demands and calls for substantive political participation is no less of a challenge.

Amid serious problems in governance and institutional weaknesses, proposals for amending the 1992 Constitution were discussed in the years leading to the 2011 National Congress of the Communist Party of Vietnam (CPV). A major decision was reached at the Party Congress, allowing amendments of the Constitution to be put on the table for discussions beyond limited official circles and with wide participation from the public. The process of reforming the Vietnamese Constitution opened up a Pandora's box of resistance and contestations over the established rules and norms, which specify the range of actions considered legitimate and set the standards and expectations that govern or control the behavior of actors/entities. It catalyzed the emergence and assertion of plural identities and interests with the proposed amendments to the 1992 Constitution representing a focal point in the exercise of discursive power and struggles for change. In this process, the significant role of the blogosphere was brought into play with a view to generating pressure for reform. The new players took to this new battleground to engage critically with constitutional politics and amplify their voice in the public sphere.

This article discusses the significance of the conflict in the constitutional reform process that was initiated in 2011. Despite initial emphasis on stability and harmonious integration by the party-state, constitutional amendment

proposals were compromised and renegotiated in the face of sustained criticisms of the draft constitutional amendments that drew on non-orthodox ideological foundations. In the process, party-state leaders struggled to manage the increasingly diverse and strident calls for fundamental systemic change. They found it difficult to accommodate broader political participation by accepting a wider scope of compromises and concessions to continue producing consent in the society, while perpetuating their own way of command and control over constitutional ideas and norms. Even though the party-state resisted major changes in the final constitutional text issued in November 2013, the debates shed light on the emergence of a complex spectrum of values and identifications that challenged the conventional narratives of party-state institutions. The contestation that characterizes constitutional reform discourses reveals that conflict is a significant driver of political and ideological changes presently underway in Vietnam.

For the development of my argument, I will first present some theoretical discussion on discourses and discursive power with regards to Vietnam's prospects for political transformation. After a brief account of the role of the Constitution in Vietnam and the history of amending the Constitution since *Đổi Mới*, I discuss the perspectives of the old guard and the new emerging players as well as their methods and forums in this constitutional reform process. I then use this frame of reference to inform my analysis of major discourses that traditionally have shaped constitutional parameters. These discourses took place across key themes examined in this article, including party domination, constitutional review, and popular sovereignty over the Constitution. In each of these discourses, I will outline both the master narratives that dominate the discourse and the counter-hegemonic narratives that have sought to challenge them.

Discourse and Discursive Power in Vietnam's Prospect for Political Change

Engagement with discourses is a powerful and effective way to understand the current politics of reforming the Vietnamese Constitution. Discourses are important because they are a shared way of apprehending the world and the vehicles through which we give meanings to the world that we shape, produce and reproduce.³ In this respect, Joan Scott provides a useful

definition of discourse as “a historically, socially, and institutionally specific structure of statements, terms, categories and beliefs.”⁴ Discourses construct meanings and power relations that help define both common sense and knowledge. Remarkably, each discourse rests on assumptions, judgments and contentions that provide “basic terms for analysis, debates, agreements and disagreements.”⁵ Discursive power originates from the ability of discourses to structure and coordinate the actions of individuals and entities subject wholly or partly to them. It is through examining discourses that we have a more in-depth understanding of power relations, the hegemonic order, and the potential and conditions for a transition to a new order.

In the context of Vietnam, studying discourse offers a powerful way to make sense of political transformation and/or a lack thereof. Deliberations in the constitutional reform process between 2011 and 2013 had the effect of shaping and reshaping parameters for change. According to John Dryzek, most democratization scholars focus on electoral competition and effective constitutional respect for basic civil liberties and human rights at the expense of an emphasis on deliberation without which democratization cannot do.⁶ The emergence of new players in a discourse is partly prompted by the prospect of constructing a new constitutional order “through the willing agency of representatives of the old order in cooperation with the newly empowered agents of modernity.”⁷ There is no clear evidence of cooperation between those forces within the current regime and radical agents of change in the middle class, though some strong dissidence has come from within the elite ranks of the CPV and the loyal opposition.⁸ According to Zachary Abuza, the impetus for political reform normally comes from the elite ranks in the form of some ordinary evolution where the party-state would become more responsive to these elitist pressures. In a similar vein, Martin Gainsborough argues about the transformation taking the form of “a broadening of political space *within* the state” and discounts the role of a rising assertive civil society in bringing about change.⁹

Although there is significant merit in the elitist and statist approach to political transformation in Vietnam, underestimating social forces tends to offer little analytical utility in understanding the emergence of plural identities and interests or contestations in discourses. The kind of mixed and complex state behaviours toward changes in values and norms is interpreted

by Benedict J. Tria Kerkvliet in a dialogical model of state-society relations to strike a better balance between the agency of social forces and the hegemonic power of the state.¹⁰ This dialogical model provides more analytical utility to discourses and discursive power as a means to explore the politics of constitutional reform in Vietnam. This is because discourses have a crucial role in institutionalizing norms and behaviors. The dialogic model finds potency in the conflicts between hegemonic narratives and counter-hegemonic narratives in the discourses. The constitutional reform process has become “an arena of constant competition, conflict, and clash of ideas.”¹¹ It is conflict that has driven a broadening of political space in Vietnam.

In Vietnam’s constitutional discourses, the systems of meanings and knowledge are organized and negotiated among many actors and institutions so that “political claims are legitimated, making particular actions seem normal or inevitable.”¹² Understanding how competing systems of meanings and interpretations are constructed and clash is key to making sense of power relations. Immersing ourselves in the discourses where a particular language game is being played or used and a particular system of meanings is constructed or contested allows us to include and exclude certain options, ideas and possibilities via a better understanding of the mechanisms. A similar point is made by John Gillespie about the value of framing discourses in that “social actors can deploy language in strategic ways to realize particular sets of interests.”¹³ The caveat here is that the tacit recognition by the Vietnamese party-state of the existence of competing narratives and counter-hegemonic discourses from different societal groups should not be interpreted as an emergent pluralist political system. Rather, the recognition might represent certain possibilities and potential conditions to challenge the hegemonic discourse and the dominant order as a basis for effecting transformation.

The Role of the Constitution in Vietnam and Constitutional Reform Since Đổi Mới

The role of the Constitution in Vietnam, just like the role of law in general, has been traditionally understood in an instrumentalist perspective. In fact, it has been a tool of governance by the CPV whose edges should be re-sharpened from time to time in response to new needs at the total

discretionary power of the CPV. For example, the 1980 Constitution was meant to serve as an important instrument for the re-unified Vietnam to build socialism. The 1992 Constitution was to serve effectively the market-based reforms initiated in late 1980s.¹⁴ In the orthodox thinking of the CPV leadership, the Constitution is a manifestation and institutionalization of the party's political platform. The CPV General Secretary asserted this line of thought at a meeting with his constituency in Hà Nội on September 28, 2013, noting that "the Constitution is the most important political and legal document after the party's political platform."¹⁵

However, there have always been contestations and challenges to the party's dominant narrative of the Constitution and law, even during the pinnacle of the socialist era. Mark Sidel provides a comprehensive historical account of modern conflict over the role of law with party domination.¹⁶ The discourse about the role of the Constitution historically is situated broadly within that context, particularly before Đổi Mới. Although constitutional drafting and revision in Vietnam, as Sidel opined, "is a constant process of dialogue and debate,"¹⁷ such processes occurred only in the background and behind closed doors among a limited circle before the 1990s. Those dialogues and debates have come to the foreground in a more visible way and have been accessible to a larger circle and the public since Đổi Mới.

Constitutional change in Vietnam in recent decades has become more closely related to general political and legal narratives about the role of law in ordering state institutions and even party organizations and members. Efforts to build a socialist law-based state in the past two decades is evidence of the increased spread of legality into party, state and social institutions. Against that background, the meaning of a constitutional change has gone beyond a mere announcement of party policy to a legally binding force. The space for constitutional debates is no longer monopolized by party-state institutions in a compliant way but has been increasingly broadened for new players with different voices. It is this dynamic character of constitutional change that makes the constitutional reform process worth studying.

By the early 1990s, the CPV's need for a more effective tool of governance to embrace market-based reforms had led to a decision to amend the 1980 Constitution.¹⁸ Throughout the implementation of the 1980 Constitution,

there had been various problems with fence-breaking efforts at both central and local levels.¹⁹ The 1987 Law on Foreign Investment in Vietnam obviously went beyond the parameters set for the economic regime in the 1980 Constitution. The process of revising the 1980 Constitution took “an unprecedented level of debate and publicity” and “an unusually long time.”²⁰ In the official narrative of the 1992 Constitution, the rationale for amendments was to institutionalize the new vision of socialism set out in the 1991 Political Platform and the rules and norms in other party documents.²¹ The 1980 Constitution Amending Committee (CAC), chaired by Võ Chí Công, was established as early as June 1989 to lay the groundwork for extensive drafting of constitutional amendments.²² The CAC produced four official drafts, the third of which was released in late December 1991 for public consultation between January and March 1992. The final draft was subject to heated debate and close scrutiny at the National Assembly (NA) meeting in March to April 1992 and adopted on April 15, 1992.²³ The revised Constitution had extensive changes in terms of wording: 115 out of 147 articles were revised, and twenty-three new articles were added. However, many of these articles were “retrospective rather than prescriptive, affirming developments that had already taken place since [Đổi Mới].”²⁴ What is important about the process of amending the 1980 Constitution is its status as the first test for different social forces in Vietnam to propel the process of change, which could then draw on the support and guarantee from the 1992 Constitution.

Not long after its adoption, the 1992 Constitution was subject to a decision for further amendments due to the increasing irrelevance of some provisions that caused problems in economic development and governance structures, representing a far cry from current party and state policies. Expressing firm confidence in its capacity to manage the process, the NA set up the 1992 CAC in June 2001, chaired by Nguyễn Văn An.²⁵ The Committee produced a draft of amendments released for public comments for one month (from August 15 to September 15, 2001). Despite such a short time and attempts by party-state leaders and conservative legal scholars to confine commenting to specific areas, the process was supplied with representations from diverse interests and demands, many of which sought to expand the scope of the debate beyond issues pre-approved for discussion.²⁶ Some liberal constitutionalist intellectuals within party-state circles such as

Diệp Văn Sơn, Nguyễn Văn Thảo and Nguyễn Đăng Dung pressed for substantive political reform through a fundamental constitutional change. Given the context of Vietnam in the early 2000s, when economic success was seemingly on the way and social policies had been working well enough to accommodate the increasing needs of the people, the party-state managed to close down the process quickly. By December 2001, the NA had passed final amendments.²⁷

The process of constitutional amendments in 2001 ended with unsatisfactory results as many important issues such as constitutional enforcement/protection and local governance had been left out, even as the party-state recognized their significance. Former NA Chairman Nguyễn Văn An lamented that “we have amended the Constitution many times but it has not measured up to requirements.”²⁸ What was stirred up in the 2001 deliberations has proven to have long-lasting effects. These critical issues included, but were not limited to a clearer delineation of authorities among state institutions; control within and devolution to local government; party leadership over the state; judiciary institutions; options for constitutional review; and confidence votes. It is the party-state that then took up the issues of constitutional protection and local governance again during the first decade of the 2000s.²⁹ It was still struggling with these issues when it re-initiated a new round of constitutional amendments in 2011 following deliberations throughout 2010 among party-state officials, and legal scholars from state-owned research institutions and the NA.

As a rule, any constitutional reform is subject to close leadership and supervision by the party. The Eleventh National Congress of the CPV held in January 2011 authorized a constitutional reform to “promptly conduct research, amend, and supplement the 1992 Constitution in line with new realities.”³⁰ Upon the official green light given by the Second Plenum of the CPV Central Committee in early July 2011, relevant state institutions followed suit. In its first session, the thirteenth term NA decided to set up the 1992 Constitution Amending Committee (CAC) chaired by the newly elected NA Chairman Nguyễn Sinh Hùng.³¹ The NA set a timeframe for the CAC to conclude the whole process by November 2013, when the final draft of the amendments would be adopted. Earlier, in a preparatory arrangement, a major state-level research project chaired by Ông Chu Lưu,

Vice Chairman of the NA, was approved for the period between March 2011 and March 2013. This extensive research project involved efforts and personnel from party-state sponsored institutions such as the NA (Institute for Legislative Studies), the Vietnam Academy of Social Science (Institute of State and Law), the Hồ Chí Minh Academy of Politics and Administration, the Vietnam Union of Science and Technology Associations, the Ministry of Justice (Institute of Legal Science), the Vietnam National University-Hà Nội (School of Law), and the Office of the CPV Central Committee. Most prominent legal scholars from this research project served on the editorial board that assisted the 1992 CAC.

The whole process was supposed to be heavily guarded by the Party. The 2011 to 2012 period was intended for a review of the implementation of the 1992 Constitution at all levels nationwide and for the 1992 CAC to prepare the groundwork. The CAC produced a draft dated October 18, 2012 for deliberation at the NA meeting. The draft, which had 124 articles containing about 13,800 words, was released on January 2, 2013 for public consultation until the end of March 2013. The process of public consultation was managed under the framework of Resolution No. 38/2012/QH13, issued by the NA and dated November 23, 2012. Accordingly, there were four forms of soliciting public consultation: (a) comments in writing sent to competent authorities as stipulated in Article 6 of the Resolution; (b) discussion at meetings, conferences, and workshops; (c) comments submitted to the electronic portal of the NA and the mass media; and (d) other relevant channels. The whole exercise of soliciting public consultation reflects the long-standing tradition of mass mobilization. For example, in Hồ Chí Minh City, the authorities organized 32,253 meetings for this purpose and delivered 2,641,677 printed sheets of comments to households and workers.³² The sheet had only two options: full agreement with the draft or agreement with some contents and some specific contributions. According to a report by Hồ Chí Minh City authorities, 4,356,738 individuals submitted comments, approximating 91 percent of the entire electorate of the city in the 2011 election, and 96.27 percent of them indicated full agreement with the draft.³³

It is important to note that in parallel with public consultation, various official drafts had been produced for relevant party-state actors that were not made available for public viewing. After collecting public comments, the

Committee prepared another draft dated April 11, 2013, and submitted it to the NA Standing Committee, and then submitted a revised draft to the Seventh Plenum of the CPV Central Committee in early May 2013. Several drafts were revised and released for discussion within the NA. A draft dated May 17, 2013 was intended for the National Assembly meeting and another one dated August 26, 2013, based on comments from NA deputies, was intended for the NA Standing Committee and the Eighth Plenum of the CPV Central Committee in early October 2013. After the Eighth Plenum, the CAC submitted a revised draft dated October 17, 2013 to the NA plenary meeting as a basis for the final round of deliberation and subsequent passage. The final draft of the amendments was approved by the NA on November 28, 2013 with a near-absolute support of 99.59 percent.³⁴

The 2012 to 2013 Constitutional Reform Process: Old Guards and New Players

As the constitutional reform process played out amid poor economic performance and increased political infighting between different rival factions, the party leaders made every effort to tread carefully and control the debates for the purposes of consensus and unity. Party leadership and discipline were exercised through eighty-one senior politicians from the 175-member Central Committee of the CPV, including all members of the Politburo and Secretariat who hold seats in the 498-member NA,³⁵ to ensure a compliant legislature over the course of the constitutional amendments. The sheer fact that the Politburo assigned eight out of its fourteen members to the CAC indicates the high caution by the party to guard the constitutional reform process. All principal drafts were carefully considered by the CAC, the NA Standing Committee, the Politburo and the CPV Central Committee before being released to the NA for deliberation.

The process was fixed at the outset by the party leaders. The Fifth Plenum of the CPV Central Committee in May 2013 delivered a conclusion on the scope and level of constitutional amendments. Accordingly, amendments were acceptable only for those issues where clarity and maturity had been reached, their relevance had been confirmed by realities, and there was a high level of consensus.³⁶ This instruction was repeatedly asserted by the CPV Secretary General Nguyễn Phú Trọng throughout the constitutional reform

process.³⁷ This move to pre-determine the scope of amendments indicates the reactive mentality prevailing among party-state leaders, and promised little space for any visionary changes or breakthrough in the constitutional amendment process. The instruction served as a prompt for both the CAC and the NA to rein in public discussions.

Despite the party's close control of the process, new players and new forums for discussing constitutional amendments emerged and voiced strident calls for change. Upon the release of the draft amendments to the public in early 2013, the amendment process was widely embraced and elicited immense political participation from a variety of groups representing plural identities and interests.

The blogosphere emerged as a major battleground for contested ideas and norms in the amendment consultation process. Social media, particularly Facebook, was another important forum for dissent over the party's control of the process. According to the Vietnam Internet Centre under the Ministry of Information and Communication, 31.3 million people, accounting for 35.58 percent of the population, had become Internet users by November 2012, and this number was growing fast.³⁸ According to Socialbakers, a social-media analysis company, Vietnam's Facebook users reached thirteen million in 2013.³⁹ As most of these Internet and Facebook users are young, urban and educated, they are an important audience for emerging players in the constitutional reform process. All new players took advantage of the blogosphere and social media to circulate their contestations and dissent over the constitutional ideas and norms.

In a move to challenge the dominant narratives in the draft constitutional amendments, a seven-point petition was initiated by a group of seventy-two intellectuals, retired government officials, professors and independent activists on the well-known blog, *Bauxite Việt Nam*, on January 19, 2013.⁴⁰ The emergence of the petition had significant meanings; such a collective action was unprecedented in any constitutional reform process in terms of scope and level of participation outside the party-state sanctioned outlets. The petition contained critical contestations over key constitutional ideas and norms that stood to test the limits of toleration by the party-state. It was heavily influenced by liberal ideas, with bold recommendations for the removal of Article 4 of the 1992 Constitution regarding party domination,

the separation of power, the recognition of private and community land ownership, stricter abidance by international human rights law, the neutral position of the armed forces, people's right to a referendum over the Constitution, and extension of the date for public consultation on the draft constitutional amendment.

Most of the seventy-two members possessed long-established credentials recognized by the party-state and society at large. People like Trương Lai, Nguyễn Trung, Đào Xuân Sâm, Phạm Chi Lan, Trần Đức Nguyên, and Lê Đăng Doanh had served on the advisory boards for former Prime Minister Võ Văn Kiệt and Phan Văn Khải. High-ranking officials like Nguyễn Đình Lộc, former Minister of Justice, and Chu Hào, former Vice Minister of Science, Technology and Environment, Nguyễn Minh Thuyết, former Vice Chairman of the NA Committee for Culture, Education, Adolescents and Children Affairs, and Hồ Uy Liêm, former Vice President of the Vietnam Union of Science and Technology Associations (VUSTA) also joined them. Well-respected public figures such as Nguyễn Quang A, Hoàng Tụy, Hoàng Xuân Phú, Nguyễn Ngọc, Nguyễn Huệ Chi, Tống Văn Công, and Lê Hiếu Đằng added intellectual force to the petition. Together, they were in a strong position to enter into dialogue with the party-state on the one hand and appeal to a wider audience for support on the other. On February 4, 2013, fifteen members representing the group handed over the petition to the 1992 CAC at the Office of the NA, where they had a brief meeting with the CAC representatives. The petition had attracted more than fourteen thousand signatures.

Petition 72 was soon echoed by various other initiatives: *Cùng viết Hiến pháp* [Let's Draw up the Constitution], a project managed by public figures like Ngô Bảo Châu, Đàm Thanh Sơn and Nguyễn Anh Tuấn on February 1, 2013; the "Petition for the 1992 Constitutional Amendments" by a group of Hà Nội Law University alumni on February 21, 2013; the "Declaration of Free Citizens" on the blog *Dân Làm Báo* [Citizen Journalist] on February 28, 2013; and the official letter from the Hội đồng Giám mục Việt Nam [Vietnam Episcopal Council] (VEC) to the 1992 CAC on March 1, 2013. Also in March, representatives of thirty-five Vietnamese non-governmental organizations (VNGOs) and disadvantaged people collectively submitted to the CAC a critique of some provisions of the constitutional amendments and

their own proposals. The diversity of collective interests in this process was the first of its kind in the history of the party-state.

The party-state responded in an effort to protect the hegemonic discourse, but they used old-style techniques of propaganda and mass mobilization. The party-state was represented by the Politburo members who hold office in party institutions and state agencies and presents a façade of a unified voice via its official mouthpieces. A large-scale propaganda campaign was conducted on the Vietnam Television (VTV) and a series of conservative state-owned newspapers such as *Nhân Dân* [People's Daily], *Quân Đội Nhân Dân* [People's Army Daily], *Công An Nhân Dân* [People's Public Security], *Đại Đoàn Kết* [Great Unity], and *Hà Nội Mới* [New Hà Nội] with coordination from the CPV Commission for Popularization and Education to play down or marginalize the voices differing from the orthodox narratives during the constitutional consultation process. The 1992 CAC took another step to instruct local authorities to disseminate the draft constitutional amendments to each household throughout the country for their feedback. According to a report to the NA Standing Committee, more than twenty-six million contributory comments had been collected and 28,140 seminars and meetings held during the three months of public consultation, of which an absolute majority indicated general agreement with the draft.⁴¹ This exercise is reminiscent of the same tactics used for the preparation of the 1980 Constitution and 1992 Constitution. The draft circulated for public feedback in 1980 claimed to receive twenty million contributory comments, and in Hà Nội alone half a million people participated in 3,600 meetings and contributed 1.4 million ideas on the 1992 draft Constitution.⁴²

Party Domination

The issue of party domination has been central to the process of constitutional amendment in Vietnam. It subsumes almost every other important theme throughout the Constitution and the politics of constitutional reform. As early as 1990, Nguyễn Kiến Giang pointed out how Article 4 of the Constitution, on party domination, is a root cause of Vietnam's governance problems.⁴³ At a March 12, 1992 meeting of the Central Committee of the Vietnam Fatherland Front (VFF) on the draft constitutional amendments, Phan Đình Diệu rigorously questioned the validity of Article 4.⁴⁴ The issue

of party dominance was raised again from different perspectives in the 2001 discussion on constitutional revision.⁴⁵ Although party-state leaders have always vehemently opposed the removal of Article 4 in the Constitution,⁴⁶ ongoing discussions on the role of the party and revisions to this article have characterized all new approaches to the legal status of party institutions and members.

The discourse on the role of the CPV in relation to the rule of law, to a law-based state, and to all state institutions and mass organizations stipulated in the Constitution including the NA, the State President, the Government, the Court, the Procuracy, the military, VFF, and the Vietnam General Confederation of Labour (VGCL) is of utmost importance to understanding the politics of constitutional reform. All actors and institutions involved in constitutional politics, whether from the party-state institutions and mass organizations or from societal groups, independent bloggers or dissidents at home and overseas are subject to a different degree to the power of this discourse as it serves a foundational basis that structures and coordinates their positions, views, and actions. However, different actors with their own identities and interests have different assumptions and give different meanings to the discourse of party dominance.

Leaders of the party-state have long asserted that CPV domination is responsible for all glorious victories over enemies,⁴⁷ notably colonial and imperialist powers, for winning independence for the country and re-uniting the country, for the success of *Đổi Mới* and international integration, for bringing about people's economic prosperity and social justice, and for demonstrating moral righteousness and intellectual superiority. On such grounds, the CPV seems to have established a sublime legitimacy to rule. One-party rule is cast as the meaning of leadership, with the CPV as 'the force leading the state and society.' The slogan that "the leadership of the party is the decisive determinant of all victories of the Vietnamese Revolution," which has become obligatory in every discourse, speaks to the fundamentally rhetorical underpinnings of CPV legitimacy.

The principle of party leadership or supremacy is codified into rules and norms, both explicitly and implicitly, in the Constitution. The most explicit rule is Article 4 of the 1992 Constitution, which implicitly overshadows almost every other article. This rule has become an absolute truth to be

tightly securitized so that no attack on it can exert any effect or be legitimated at all. Thus, besides the regulative meaning (what discourse/behavior is permitted and what is prohibited), it acts as a constitutive norm in the sense that it shapes what kind of actor that actor actually is.⁴⁸ In this line of logic, the CPV claims to command the absolute allegiance of the military in the Constitution. However this crucial claim to paramountcy is not fixed in meaning; during the process of constitutional amendment it was challenged and defied, and hence has undergone subtle shifts.

The proposed amendment to Article 4 of the 1992 Constitution in the draft released for public consultation saw significant changes even though the effects might still be in question. The crucial change is that in a sense the leaders have accepted that the party's leadership is no longer taken for granted but *contingent* on its fulfillment of responsibilities before the people. The new version added two important stipulations (the accountability of the party to the people in its decision-making and the subjugation of party members to the Constitution and law). These changes reflect a rough consensus after long deliberation within the party-state about the role of the party and its responsibilities. The 1992 Constitution is silent on a clear role and relationship between the party as an entity toward the law and all other state institutions. Sidel makes a pertinent point on this vagueness:

At each juncture, whether voiced formally or not, a key problem has been that the party is predominant in all of these institutions but that the Constitution does not spell out the party's full or detailed role, making structural change through constitutional revision an even more complicated matter than it otherwise naturally is.⁴⁹

There have been mounting pressures on holding the party accountable before the people and party members before law. In the months leading up to the Eleventh National Congress of the CPV, former NA Chairman Nguyễn Văn An, in an unusual interview with *Vietnamnet*, expressed his deep dissatisfaction with the the constitutional constraints on the party's power and called for a law on the party to fix "systemic problems." At a meeting organized by the VFF in February 2013, Hoàng Thái, a former standing member of the VFF Central Committee, made a very sharp comment: "There are laws all on the State, the NA, the VFF, but no law on the party.

There must be a law on the party to ensure openness and transparency as well as to avoid arbitrariness.”⁵⁰ At the same meeting, Nguyễn Khánh, former Deputy Prime Minister, requested to provide for the people exercise of a power of oversight over the party in accordance with a law on social oversight and feedback. These comments reflected an official view by the VFF, which submitted a proposal in June 2012 for amending Article 4 on the accountability of the party and every party member to prevent party members’ tendencies of operating outside the law and committing rampant corruption without due punishment.⁵¹ This bold proposal surprised many observers since it deviated from the traditional notion of a VFF compliant to the party. The proposed amendment to Article 4 has in fact incorporated substantive concessions by the party-state leaders to produce consent among the official circle and the people. This indicates the recognition of a new language game that has been enlarged for wider participation and contestation.

At the NA meeting on November 19, 2012 for deliberation of the constitutional amendments, Trương Trọng Nghĩa, Vice Chairman of the Vietnam Bar Federation (VBF) and an NA deputy, explained the delicate meaning of the new addition on the accountability of the party:

Concerning Article 4 and the Party, we have three different entities: first is the Communist Party of Vietnam, second is party organizations, and third is party members. Designing Article 4, we ignore the most important entity, that is the Party as a whole, thus we stipulate that only Party organizations and members operate within the framework of the Constitution and law. Concerning Article 4, I add just one more word at the forefront, namely “the Party, Party organizations and members operate within the framework of the Constitution and law.”⁵²

As a lawyer, Trương Trọng Nghĩa understood very well the implication of a legal entity and implicitly pointed to the role of the CPV in relation to the rule of law. He represented the fundamental interest of lawyers as a professional association despite VBF’s structural ties to the party-state.

Meanwhile Petition 72, representing the efforts of “the newly empowered agents of modernity,” questioned the pre-determination of the leadership of a particular political organization and requested that the leadership be elected by the people. Unlike radical political dissidents inside Vietnam and abroad, this group did not reject the leadership of the party but tried to tie it

to the conditions of a free and fair election in the context of political competition. In an open challenge to the party-state's securitization of Article 4, Hoàng Xuân Phú, a mathematics professor and a signatory to Petition 72, entered the language game with a highly critical analysis of the linguistic logic and wording tactics in various Articles of the 1992 Constitution:

The above cited articles demonstrate that wherever necessary, Constitution drafters remember to use the word "must" or equivalent to stress the "requirement." They intentionally "forget" to use the word "must" in Article 4. Therefore, the Constitution grants the CPV absolute power without requiring it to implement anything, including the obligation "to strictly abide by the Constitution and law" as stipulated in Article 12 for the society and societal members.⁵³

The collective view of Group 72 and Hoàng Xuân Phú was shared by other prominent members of the group, such as Trương Lai, Nguyễn Trung, Tống Văn Công, and Lê Hiếu Đằng, all formerly in the elite ranks of the party-state. They have also all been prolific writers on the urgency for a "peaceful evolution" of the party-state into a democratic institution, advocating a new order in which the willing agency of representatives of the old order plays a crucial role through a political reform embraced in the process of amending the 1992 Constitution.⁵⁴ Nguyễn Trung strongly challenged the principle of party paramountcy on the basis of rule of law and insisted on the paramountcy of the Constitution.⁵⁵ Tống Văn Công also pointed out the inherent tension between the rule of law, or a law-based state, with party paramountcy and the inextricable link between the separation of power and democracy.⁵⁶ Lê Hiếu Đằng argued for the urgent need for political competition. Their discursive power was strong enough to shape the counter-hegemonic narrative of party domination both in the blogosphere and in the public.

Other groups such as the VEC, a significant religious interest group, and the group Các Công dân Tự do [Free Citizens], representing a large blogosphere interest group, raised similar contestations with different layers of meanings concerning party domination and the concentration of power. In March 2013, the the VEC wrote:

The root cause is a lack of distinction between the ruling party and the law-based state. This is reflected in the 1992 Constitution and the draft

constitutional amendments continue that line [of vagueness]. On the one hand, Article 74 confirms that the NA is “the highest state power body,” and on the other hand, Article 4 asserts that the ruling party is “the force leading the state and society.” Is the NA a tool of the ruling party? If so, what is the meaning of the people electing NA deputies? A truly free choice or a sort of democracy in formality?⁵⁷

The *Cùng viết Hiến pháp* group had an ambivalent view about party dominance. While they acknowledged the irrelevance of Article 4, they were concerned about the consequences of removing it:

We think that the inclusion of Article 4 in the 1980 Constitution on the Party’s leadership is not really necessary, however, it is a historical reality. We believe that in the current circumstance, the removal of Article 4 might result in unpredictable consequences for the country’s development and stability.⁵⁸

Meanwhile the VNGOs and representatives of disadvantaged groups such as lesbians, gays, bisexuals and transgenders, people with disabilities, and those with HIV/AIDS, participated in the discourse from a different angle. They did not explicitly contest the principle of party paramountcy, but instead offered a human rights-based approach to the Constitution and appealed to international human rights law as their basis of legitimacy in the constitutional dialogue with the party-state. In effect, their identity-based claim for the supremacy of human rights, especially the rights of vulnerable and disadvantaged groups, challenged some critical aspects of party domination. They adopted measures that were more accommodating and less confrontational to the party-state. The NGOs mainly took advantage of the invited space to sell their approach to reform. For example, they organized meetings and conferences, collected comments and used the official channels to convey the ideas for reforms. In March 2013, representatives from thirty-five VNGOs met with the CAC representatives to submit their petition.

These societal groups and individuals were trying to illustrate alternatives to orthodox narratives on party-state dominance of the governance system and the kind of power that the party holds. Their message is that the party-state mistakes power for influence. Influence, which is relative and situation-specific, is a psychological relationship based on ties that transcend momentary interests.⁵⁹ Party-state leaders interpret this meaning by

employing strategies and tactics to transform the raw attributes of power into political influence through generating rationalities and consensus.

The response from the party-state was a mixture of concession, coercion, and co-optation. In the first major reaction, CPV General Secretary Nguyễn Phú Trọng labelled those demanding the removal of Article 4, non-politicization of the military, and separation of powers as politically and ideologically retrograde.⁶⁰ However, the party-state did accommodate some of the demands of these societal groups. Approaching the end of the timeline for public consultation, the CAC urged all state institutions at the central and local levels to extend the date until the end of September 2013. The CAC also designated more options for important articles in later versions of the draft constitutional amendments to be subject to discussion. In the end, there were some alterations to Article 4 with regards to the relationship between the party and the people, the accountability of the party to the people for its decision-making, and the legal framework for party members. Significantly, despite an assertion of the unified nature of state power, the finally amended Constitution for the first time formally recognized key elements such as division, coordination and checks between legislative, executive, and judiciary powers which belong clearly to the NA, the Government, and the Courts. In fact, such syncretism is generating substantive conditions for the separation of power.

Constitutional Review

The theme of constitutional review has been influential in the political and legal discourse for more than a decade. It prominently emerged in the 2001 process of constitutional amendment, was silenced thereafter and re-emerged throughout the decade with its pinnacle at the 2006 National Congress of the CPV.⁶¹ However, it was almost abandoned by the party in the late 2000s before regaining prominence in the constitutional amendment process. It is worth noting that the discourse of constitutional review is of special interest to many legal scholars and officials within the party-state and mass organizations though it attracts little attention from other societal groups except for the VNGOs. Contestations and struggle for power in the discourse of constitutional review mostly have taken place in limited official legal and political circles.

The core issue in this discourse is to what extent party-state leaders accept to recognize and practice self-restraint in terms of power, or “control power” as re-worded in the description of the “socialist law-based state” approved by the Eleventh National Congress of the CPV. It has been the contestations of those who have urged the party to transfer some formal and substantive power to state institutions that have driven the discourse of constitutional review. Their argument is that the party should focus on strategic leadership, control from a distance, and refrain from intervening directly into those affairs under the mandate of state institutions. A key question should be asked: why is it necessary to have some constitutional review mechanism, of any model, in a one-party rule?

An institution empowered with constitutional review capacities would be granted with judiciary power of some sort. At least three models of constitutional review (i.e., the US Court system, the Federal Constitutional Court of Germany and the Constitutional Council of France) have been carefully studied and put on the table for discussion.⁶² There have been heated debates among those supporting different models and those seriously questioning the need for such models in Vietnam at all. In theory, a constitutional review body functions first as an arbiter of disputes and conflicts between state institutions in the grey area between the legislative, executive and judiciary branches, and second as a guarantor of the rules of the game codified in the Constitution about state-society relations, namely the protection of human rights. All these functions historically have been exercised by the CPV even though some specific tasks of ensuring the constitutionality and legality in the legal system and in practices have been delegated to various state institutions. In fact, all major controversial cases of constitutional violation by state institutions are reported to the CPV Politburo for instructions and a final decision.⁶³ A specialized and centralized body of constitutional review would take that formal mandate and require a mechanism of power-sharing from the CPV, both in formal and substantive terms. Whether such a body would have adjudicative or only advisory power, it would definitely add complexity to power relations and be an important player in Vietnamese politics; whether it can transform its power into influence is a different question.

A critical examination of three different versions of the draft constitutional amendments released sequentially by the CAC can shed clearer light

on the dynamics of contestation and change in this discourse. The January 2013 version for public consultation proposed a new article, numbered 120, on the Constitutional Council; its proposed mandate, which allows the Council to make recommendations only, is basically an advisory power and is subject to the NA. The provision is short and simple with three items. A strong critique of that proposal is that it does not look any different from a committee under the NA and the Law Committee is already doing that job. However, the mere appearance of such an institution in the Constitution has a significant meaning. It indicates certain compromise within the party-state circle about its necessity and a formal recognition of a norm. It was a positive signal for many, given the fact that the idea of constitutional review was almost set aside by the party leaders in 2009.

But this positive step hit a backlash in May 2013 when a revised version was submitted to the NA after some months of public consultation, internal debates of the CAC, and deliberation at the Eighth Plenum of the CPV Central Committee. Two options in the new draft clearly showed the revisionist turn: the first was the abolition of Article 120, or its inclusion without any constitutional review body; the second option was to include Article 120, but with revised wording. There is little doubt that the May version prioritizes the first option, which reflects the prevailing view of those who are concerned that a constitutional review body could eclipse the discretionary power of the party and their freedom to act, and therefore oppose the inception of such an institution. The second option was countered with considerable resistance from within official inner circles.

The August 2013 version of the constitutional amendments saw another sharp change in course. There no longer existed two options. A new proposal was made in Article 117 of the draft, which confirmed the inception of the Constitutional Council and stressed its independence. The more detailed and clearer role of the Council was spelled out in seven items. Accordingly, the Council was now granted with more substantive adjudicative powers. It could adjudicate and make conclusive rulings on all the legal documents issued by the NA, the NA Standing Committee, the State President, the Government, the Prime Minister, Ministers, the People's Supreme Court, and the People's Procuracy, and review the constitutionality of signed international treaties before ratification. This proposal for an even more powerful

constitutional review is phenomenal, indicating complex dynamics of contestations and change in the discourse. It received conspicuous support from a number of full-time NA deputies.⁶⁴

This radical version of a constitutional review mechanism was quickly subsumed by the conservative view about the exclusive power of the party. An abrupt high-level volte-face was seen in the October 2013 draft after the conclusion of the Eighth Plenum of the CPV Central Committee. The final amended Constitution rejects any inclusion of a Constitutional Council and continues with the existing model of constitutional protection by all relevant state institutions despite the recognized flaws. After all, there was no change with regard to constitutional review in the 2013 Constitution, which reflected the prevailing influence of the old guards in the party-state to protect their perceived vested interests. The avoidance of embracing new solutions for an age-old problem indicates a high level of ambivalence over constitutional review. It means that the problem is left unsettled and the issue seems set to recur sooner or later. The discourse of constitutional review has established a firm place for shaping and coordinating views and behaviors of different actors and institutions in Vietnamese politics.

Popular Sovereignty over the Constitution

A parallel discourse is of the people's constitutional sovereignty. In Vietnam, people's sovereignty [*chủ quyền nhân dân*] has strong rhetorical power to which the party-state and every societal group appeal in order to lay foundations for their legitimacy. However, each group represents their interests and constructs its meaning in a different way. Legal scholars of liberal thinking often trace this notion back to the writings of John Locke and Jean Jacques Rousseau on the fictional social contract between the people and the state to challenge tyrannical rule.⁶⁵ According to this influential strand of thought, state power originates from the people and a constitution could be comparable to a social contract in which the people hold supreme power over the making and amending of the constitution. Therefore, constitution making and amending is an original power of the people and it can never be deprived by the state. This notion of people's constitutional sovereignty has influenced the view of many in legal academia, activists, intellectuals, VNGOs, religious organizations and even the government circle.

Various non-state actors vigorously supported a referendum on the constitutional amendments. Petition 72 was among the first collective efforts to assert the people's sovereignty in the process of making and amending the Constitution by returning the constituent power from the NA to the people: "The constituent power (making, enacting, or amending the Constitution) is the original power from which derives other powers (legislative, executive, and judiciary), thus it belongs to the entire people and cannot belong to any institution, even the NA."⁶⁶ The VEC in its letter to the CAC had a similar argument. The proposal by the thirty-five VNGOs to the CAC also emphasized that "ensuring the constitution making and amending power belonging to the people is a key element to implement the people's right to participation in governance of the state and society."⁶⁷ A survey conducted by the Vietnam Lawyers Association (VLA) and the United Nations Development Program (UNDP) in Vietnam revealed that 316 out of 345 professional and social organizations (PSOs), twenty-five out of thirty-six civil society organizations (CSOs), and four out of nine religious organizations subscribed to a vote on the amended constitution.⁶⁸

Officials from the party-state also recognized the common language of popular sovereignty manifested through a referendum on constitutional amendments. Nguyễn Văn Thuận, standing member of the editorial board of the 1992 CAC and former Chairman of the NA Law Committee, commented on the significance of the first-time inclusion of the term "people's sovereignty" in the draft Constitution's preamble and the removal of the assertion that "the NA is the only body with constitution making and amending power."⁶⁹ He considered them important changes that accommodate the demand for exercise of the people's constitutional sovereignty. In a collective proposal on the constitutional amendments as an executive branch, the government confirmed that the constitution making and amending power is the highest representation of the people's sovereignty.⁷⁰ The core practical connotation in the discourse of people's sovereignty was a referendum on the final draft of the constitutional amendments. There has been a strong emphasis on direct democracy over representative democracy in exercising a referendum for a Constitution.

However, objections to a popular vote on constitutional amendments through a referendum came from both within and without the party-state

establishment. A number of interviewees from PSOs and CSOs in the VLA-UNDP survey questioned the meaning of such a referendum, maintaining that the general public's lack of sufficient knowledge and expertise on such a technically sophisticated legal text would make the referendum costly, cosmetic and meaningless.⁷¹ In an article on *Cùng viết Hiến pháp*, Mai Thái Lĩnh disputed the idea that constituent power directly exercised by the people in a referendum should qualify for people's sovereignty and argued that popular sovereignty over the Constitution must, first and foremost, be exercised by democratically electing a constituent institution.⁷² On different grounds, the CAC itself did not support the idea of a referendum on the amended constitution, reasoning that the people have participated in all constituent processes ranging from reviewing the Constitution's implementation to commenting on the draft, which essentially reflects the will and intellect of the people, thus the NA's approval of the Constitution is in accordance with the principle of popular sovereignty.⁷³

The radical demand for a referendum on the amended constitution was compromised by the party-state leaders. In fact, it was mediated through the construction of language in the draft constitutional amendments: "The Constitution is passed with affirmative votes of at least two-thirds of NA deputies. The referendum on the Constitution shall be decided by the NA." This provision placed the possibility of organizing a referendum at the discretion of the NA. It implicitly meant that the CPV still held firm control on such a decision and that a referendum would not be organized for this round of the 1992 constitutional amendments. The proposed provision received consensus among the party-state leaders and it remained unchanged in the final version of the amended Constitution.

Conclusion

This paper has demonstrated how discourses across key themes in the process of amending the Constitution are enlarging the political space for plural interests and identity claims to find expression. These discourses are inter-related and interactive, and are subsumed by the encompassing discourse of party domination, which runs through all these sets of debate. As seen through these discourses, the process of amending the Constitution in the period between 2011 and 2013 could no longer be a showcase of broad

social consensus around amendments to a key political and legal document; nor could it fulfill the wishful thinking of the party-state for a public spectacle of ideological stability and harmonious integration. The party-state leaders found themselves struggling to manage the diverse and strident calls for change and to accommodate wider political participation from emerging players.

Across these discourses, meanings and power relations are not as fixed as assumed in the dominant orthodox narrative, but are changing because they are constantly constructed, reconstructed and deconstructed by the representatives of different societal interest groups. Owing to this kind of contestatory pluralism, overt disputes and challenges now broadly characterize constitutional reform discourse. They come in various forms of defiance to rules and norms both codified in the existing Constitution and constitutive of the view and practices of the party-state. The party leaders' resistance to major reforms of the Constitution reflects a defensive position and an ambivalent view about dealing with critical governance problems. However, the very robustness of the process suggests that it might be impossible to defer indefinitely key reform proposals if the political regime is to survive.

It should be noted that dialogues, debates and clashes in constitutional politics are not a new phenomenon in Vietnam or elsewhere; however, what is unprecedented in Vietnam is their visibility, scope and intensity. What makes contemporary constitutional debates in Vietnam so interesting are the dynamics of the discourses, which show how conflict is openly driving significant change in public thinking about foundational political principles. Contestations and conflict accumulated since *Đổi Mới* have been raised to such a level and scope that it has become extremely difficult for fixed dominant orthodox narratives to maintain hegemonic entitlement without recognizing differences and co-opting new elements. The party-state is now struggling to maintain hegemony in these discourses by ideational coercion or propaganda strategies. The establishment also has been compelled to employ concessions to produce consent across the wide spectrum of these key discourses and embrace new instrumental rationalities to legitimize their identity claims. Inevitably, elite interest groups are making efforts to accommodate the diverse interests of other society groups and broader political participation. However, the tacit recognition of plural interests and identities

by the party-state has not resulted in a long-awaited democratic transition or a pluralist political system; they have only brought about changes with ambiguous implications for democratization. What is more certain is that the gradualism and syncretism embedded in Vietnamese constitutional politics are giving way to more publicly conflictual drivers of change.

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ABSTRACT

The paper explores contestations playing out in constitutional debates around the 1992 constitutional amendments with a focal point in the exercise of discursive power and struggles for change. The paper discusses the significance of conflict in the constitutional reform process re-initiated in 2011. It demonstrates how the emphasis on stability and harmonious integration in initial constitutional amendment proposals has been compromised and renegotiated in the face of sustained criticisms of the constitution that draw on non-orthodox ideological foundations. The contestations that characterize constitutional reform discourse reveals how conflict is a significant driver of the changes presently underway in Vietnam.

KEYWORDS: *Constitution, Communist Party of Vietnam, National Assembly, politics, discourse*

Notes

1. According to the World Bank statistics on Vietnam's GDP, the economic growth rate fell to 6.4 percent in 2010, 6.2 percent in 2011, and 5.2 percent in 2012, and 5.4 percent for 2013. The average rate is much lower than that of the previous years and falls short of the 6.5 to 7 percent goal set in the five-year socio-economic plan

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 45. Sidel, *The Constitution of Vietnam*, 128.
 46. State President Nguyễn Minh Triết said at a meeting with the Central Military Commission in 2007 that abolishing Article 4 of the Constitution means committing suicide; CPV Secretary General Nguyễn Phú Trọng echoed that idea in 2013.
 47. Tuong Vu attributes the persistence of the single-party rule to a number of factors, the most decisive of which being revolutionary violence. See Tuong Vu, “The Persistence of Single-Party Dictatorships: The Case of Vietnam” (Working Papers Series, City University of Hong Kong, January 2012), 18-19.
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 49. Sidel, *The Constitution of Vietnam*, 6.
 50. “Góp ý sửa Hiến pháp: Phải có luật về sự lãnh đạo của Đảng” [Contribution to the Constitutional Amendments: There Must be a Law on the Party's Leadership], *VnEconomy*, February 19, 2013, <http://vneconomy.vn/20130219100153156PoC9920/gop-y-sua-hien-phap-phai-co-luat-ve-su-lanh-dao-cua-dang.htm>, (accessed September 22, 2013).
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