



MELBOURNE FORUM

on Constitution-Building



CONSTITUTION
TRANSFORMATION
NETWORK

‘Societal Culture and Constitutions: The case of Vietnam’

Dr Bui Ngoc Son

Vietnam is a socialist country ruled by a single communist party. This report focuses on the significance of societal culture to the making, substance, and implementation of the current 2013 Constitution.

How does culture (values, tradition, material factors and emotional attachments) affect choices about constitution making process and the substance of constitutional change?

Culture and the participatory constitution making process

Previous constitution-making processes were under the control of the communist party, but the 2013 process witnessed an unprecedented level of public participation. This is due to three determinants. First, Vietnam has a long the Confucian tradition of scholastic activism in which intellectuals often engage in public discourse on public affairs. The constitutional petition signed by 72 intellectuals, which triggered a wave of social mobilisation for constitutional change, is the current embodiment of the Confucian scholastic constitutionalism. The second concerns the emergence of cyber space which has allowed ‘netizens’ to use online forums to engage in constitutional debate while the middle class consolidates the public participation. Thirdly, Vietnam is a small country in terms of economic power and needs the support of the international community. As such, the country adopts international norms, such as public participation in public affairs, including constitution-making.

Cultural Constitutional Change

A culture of constitutional dialogue is emerging albeit under the party’s control and in circumstances in which the outcome of the dialogue is determined by the party. Yet, this controlled constitutional dialogue does indicate a more civilized way in which the government treat its citizens in constitutional matters.

Who makes claims to culture? How is culture used to further a constitution building project? Can the concept of culture be misused or abused in this context?

The increasingly pluralist society

Different actors (constitution-makers, legislators, government officers, lawyers, NGOs, religious organizations, activists, and citizens) make competing claims to culture during the constitution-making process.

Constitutional Nationalism

There was a movement to return to democratic and liberal constitutional values (judicial independence, liberal rights, referendums) created by the founding generations embodied in the 1946 Constitution.

Constitutional traditionalism

Vietnamese traditional culture is used to justify some constitutional projects. For example, a constitutional petition by seven vulnerable groups calls for a new constitution whose 'essential spirit' must be rooted in the pluralist nature of Vietnamese society, which includes different social groups, communities and nationalities. A Letter of the Catholic Bishop's Conference of Vietnam addressed to the Constitutional Amendment Committee argues that Marxist ideology should not be constitutionally established as the official ideology; instead, they call for the Vietnamese culture with its richness and diversity as the intellectual foundation of the society.

Culture and constitutional balancing

Some constitution-makers argue that human rights must be restricted in the name of national culture and moral values. Social actors contest this, arguing that this would provide a constitutionally legitimate basis for human rights violations.

How do concepts of culture intersect with other more specific identity issues such as religion, gender and socio-economic status?

Culture and religious identity: The Letter of the Catholic Bishop's Conference of Vietnam locates their concerns for religious freedom within the broader context of Vietnamese pluralist culture. The implication is the call for a constitutional accommodation of diversity of religious identities.

Culture and gender identity: LGBT groups argue that constitutional recognition of same sex marriage would not undermine national social, moral, and cultural values.

Culture and equality: The seven vulnerable groups' constitutional petition called for constitutional recognition of equality among citizens, groups, and communities, which is consistent with the pluralist nature of Vietnamese culture.

Do aspects of culture provide points of constitutional continuity? If so, how?

Textual change and socialist constitutional culture

The text of the Vietnamese Constitution has been amended or remade quite often, in 1946, 1959, 1980, 1992, 2001, and 2013. This is influenced by the socialist constitutional culture which views a constitution as an embodiment of the communist party's social, economic, culture policies, which is in turn determined by the social dynamics. Despite textual change, the *continuity in the constitutional substance* is evident. in the socialist constitutional system and rights and duties of citizens. Apart from political and economic determinants, there are cultural determinants, in particular the relatively homogeneous nature of the population (the King people) and the tradition of Confucian communitarianism (which explains citizen's constitutional duties to the society).

What impact does constitution building have on the evolution of culture within communities?

Constitutional-building processes raise the popular awareness of constitutionalist values (constitutionalism, constitutional review and universal human rights), although these values are not substantively embodied in the constitution and do not substantively inform constitutional practice. Constitutional building also raises the popular awareness of the relevance of the constitution in the society. Two recent developments exemplify this. First, lawyers, and citizens now cite the Constitution more often (especially the human rights provisions) to argue against governmental actions. Legislators

are now more constrained by the Constitution: there is a real pressure among legislators that legislation (especially human rights related laws) must conform to the Constitution.

In what ways is culture reflected in the substance of a Constitution, including constitutional text? What are the implications (both positive and negative) of this, for example for local ownership, national identity, constitutional interpretation? Where culture is not reflected in the substance of a Constitution, how do the two co-exist?

Constitutional forms

There are three forms that reflect culture in the Constitution: the preamble, directive principles and the bill of rights.

- The first sentence of the preamble confirms ‘a tradition of patriotism, solidarity, humanity, justice, resilience and indomitableness’ and the creation of ‘the civilization and culture of Vietnam’.
- Chapter III sets out directive principles on the economy, society, culture, education and technology. Article 60 captures the directive cultural principles:
 1. The State and society shall care for the creation and development of an advanced Vietnamese culture that is deeply imbued with the national identity and has absorbed the cultural quintessence of humanity.
 2. The State and society shall develop literature and the arts in order to meet the diverse and healthy spiritual needs of the People; and develop the mass media to meet the People's demands for information and to serve national construction and defense.
 3. The State and society shall create an environment for building prosperous, progressive and happy Vietnamese families, and developing Vietnamese people with good health, cultural qualities, patriotism, a spirit of solidarity, a sense of mastery and civic responsibility.
- The bill of rights (chapter 2) includes several cultural rights, namely: the right to enjoy and access cultural values, participate in cultural life, and use cultural facilities (article 41) and the right to determine one's own ethnicity, use one's mother tongue and to choose language of communication (article 42).

Function - constitutional expressivism

The main function of the constitutional statements on culture is not to regulate the state and citizens' actions but to express the shared fundamental values, hopes, aspirations that the Vietnamese community tries to achieve for the long-term future. These statements are not normally judicially enforced, nor do they command specific governmental actions. However, the expression of these cultural statements in constitutional terms has generated at least three effects. First, they operate as a kind of constitutional nationalism, tying Vietnamese strangers together by indicating at the constitutional level that they share a common culture and cultural commitments. Second, these constitutional statements on culture have informed the programs of law-making and policy-making. Third, to some extent, these statements provide the language for public discourse of legislators, governmental officers, and citizens.

What are the implications of culture for (i) inclusive constitution building processes and (ii) the effectiveness of external assistance?

Inclusive constitution building as constitutional culture

Inclusive constitution building can be understood on its own merits as a constitutional culture. Inclusive constitution-making may not create a better constitution, but it is valuable if it indicates a better culture in the relationship between the government and the people. This also means that abusive constitutionalism (the political elite's use of inclusive constitution-making to consolidate their power and undermine constitutionalism) is not a constitutional culture.

Culture and external assistance

A bottom-up approach may make external assistance to domestic constitution-making effective, because the successful creation of constitutional institutions depends on whether these institutions are supported by local culture. The bottom-up approach requires actors providing international constitutional assistance to study local culture carefully and engage in dialogues with local scholars and constitutional builders.

Bui Ngoc Son

Bui Ngoc Son is an Assistant Professor at the Chinese University of Hong Kong Faculty of Law. He writes on comparative constitutional law and comparative law. He is currently writing a monograph on Constitutional Change in the Contemporary Socialist World (to be published by Oxford University Press). He has published the monograph [Confucian Constitutionalism in East Asia](#) (Routledge 2016) and articles on constitutional mobilisation, globalisation of constitutional identity, constitution-making, popular constitutionalism, debates on constitutional review, law and development theory, and legal systems in the Confucian and socialist contexts.