

HISTORY OF THE CONSTITUTION OF VIETNAM

HISTÓRIA DA CONSTITUIÇÃO DO VIETNÃ

PH.D ĐỖ VĂN HỌC

University of Social Sciences and Humanities, Vietnam National University, Ho Chi Minh City, Vietnam

hocdovan@hcmussh.edu.vn

Received: 28 Aug 2023

Accepted: 28 Nov 2023

Published: 15 Dec 2023

Corresponding author:

hocdovan@hcmussh.edu.vn



Abstract: The constitution is the highest legal document with a particularly significant position in the legal system and political life of each country; it can also be considered the political declaration of each state. The constitution serves as the legal basis for constructing and perfecting a unified and coherent legal system, as well as for organizing and operating the state machinery. In Vietnam, the constitution is a crucial political and legal document, serving as the foundational law. This article focuses on clarifying the history and nature of the constitutions in Vietnam from the establishment of the country in 1945 to the present.

Keywords: History. Constitution. Vietnam

Resumo: A constituição é o documento jurídico máximo com uma posição particularmente significativa no sistema jurídico e na vida política de cada país; também pode ser considerada a declaração

política de cada estado. A constituição serve de base jurídica para a construção e aperfeiçoamento de um sistema jurídico unificado e coerente, bem como para a organização e funcionamento da máquina estatal. No Vietname, a constituição é um documento político e jurídico crucial, servindo como lei fundamental. Este artigo centra-se em esclarecer a história e a natureza das constituições no Vietname desde a criação do país em 1945 até ao presente.

Palavras-chave: História. Constituição. Vietnã.

1. Introduction

The term "constitution" is commonly used worldwide to refer to the fundamental law (basic law) of a state, possessing the highest legal validity, formulated, promulgated, amended, and supplemented through a specific procedure. The constitution of the Socialist Republic of Vietnam is described as "the most important political and legal document after the Party's platform, serving as the foundational law, regulating the fundamental issues of a state."

As of now, in the history of our country's constitution-making, there have been five constitutions enacted: the 1946 Constitution, the 1959 Constitution, the 1980 Constitution, the 1992 Constitution (amended and supplemented in 2001), and the currently effective 2013 Constitution. Each constitution is closely tied to a specific period in the development of the national revolutionary history. Let us delve into the historical context and the nature of each constitution of Vietnam.

2. Methodology

Throughout the course of this project, the author applies the dialectical and historical materialism methodology with a specific and comprehensive historical perspective. The research methodology involves a simultaneous systemic approach while inheriting the results of previous studies to refine theoretical foundations and evaluations. Additionally, the author employs a combination of interdisciplinary methods in social science research, such as analysis, synthesis, historical method, logic, statistical method, comparison, and more. These methods are coordinated to fulfill the tasks aimed at achieving the research objectives established.

3. Results And Discussion

3.1. *Formation of Constitutional Ideals in Vietnam*

Before the August Revolution in 1945, Vietnam was a colonial country under feudal rule, lacking a constitution. In the early 20th century, under the influence of the revolutionary ideas of the French bourgeois democratic revolution in 1789, the Chinese revolution in 1911, and the modernization policy implemented by Emperor Minh Trị Thiên in Japan, the

intellectual circles in Vietnam began to conceive the idea of constitutionalism. Two main political tendencies emerged during this period.

The first tendency aimed to establish a constitutional monarchy while acknowledging the protective rights of the French government. The second tendency advocated for independence and freedom for the nation, emphasizing the need for a constitution of an independent state since true constitutionality was deemed impossible without independence and freedom.

In early 1919, revolutionary figure Nguyễn Ái Quốc submitted eight points of demand from the people of Annam (Vietnam) to the Versailles Conference of the Allied Powers, clearly expressing his constitutional ideals. In 1922, Nguyễn Ái Quốc translated and delivered the "Demands of the Annamese People" (Ho Chi Minh, Vol. 1, p.469-471), disseminating it among the overseas Vietnamese community in France. Notably, among the eight demands, the seventh emphasized the call for the establishment of a constitution and legislation for the people of Vietnam:

"Seven requests the constitution to be enacted

A hundred things must have the divine spirit of the rule of law."

In 1926, Nguyễn Ái Quốc once again declared another set of demands titled "Appeal to the General Assembly of Nations." This set of demands called for the right to self-determination for the people of Vietnam, demanding immediate and complete independence for the Vietnamese nation. The appeal declared, "If granted immediate independence, Vietnam willingly commits to gradually repaying the portion of the debt that France borrowed from the United States and England during the European war. Vietnam will sign a mutual agreement with France and establish a constitution based on the ideals of democracy."

Deeply ingrained with the idea of an independent and constitutional nation, immediately after the Declaration of Independence, "the Party promptly proceeded with a general election, elected the National Assembly, directed the drafting of the Constitution, and in 1946, the first Constitution of the new Vietnam was passed" (Đỗ Thị Hiện, 2015, p.42). The constitution declared to the world that Vietnam was independent, and the Vietnamese people had the right to freedom.

3.2. From the Constitution of the Democratic Republic of Vietnam in 1946 to the Constitution of the Socialist Republic of Vietnam in 2013

Constitution of the Democratic Republic of Vietnam in 1946 (Adopted by the National Assembly of the Democratic Republic of Vietnam on November 9, 1946)

After proclaiming the "Declaration of Independence" on September 2, 1945, marking the birth of the Democratic Republic of Vietnam, in the first government meeting on September 3, 1945, President Ho Chi Minh outlined six urgent tasks for the government. One of these crucial tasks was to establish a constitution. Regarding the constitutional issue, Ho Chi Minh stated, "Before us, we were ruled by a feudal regime, then by a colonial regime that was no less oppressive, so our country had no constitution, and our people did not enjoy freedom and democracy. We must have a democratic constitution."

On September 20, 1945, the temporary government issued an ordinance to establish a Constitutional Drafting Committee consisting of 7 members, led by President Ho Chi Minh. In November 1945, the Drafting Committee completed its work, and the draft constitution was published for nationwide discussion. Millions of Vietnamese enthusiastically contributed their opinions to the draft constitution, embodying their lifelong aspirations for independence and freedom.

On March 2, 1946, based on the Constitutional Drafting Committee of the government, the First Session of the First National Assembly established a Constitutional Drafting Committee consisting of 11 delegates from various organizations and parties, led by President Ho Chi Minh. On October 28, 1946, the second session of the First National Assembly opened at the Hanoi Opera House. On November 9, 1946, after more than 10 days of urgent work, the National Assembly passed the first constitution of the country with 240 affirmative votes and 2 abstentions.

On December 19, 1946, 10 days after the National Assembly passed the constitution, the nationwide resistance war erupted. Due to the wartime situation, the 1946 constitution was not officially promulgated, and the conditions for organizing a general election for the People's Assembly were not feasible. However, under the leadership of President Ho Chi Minh, the government, along with the Permanent Committee of the National Assembly, always relied on the spirit and content of the 1946 constitution to govern all activities of the state. On September 2, 1945, President Ho Chi Minh read the Declaration of Independence, giving birth to the Democratic Republic of Vietnam – a new-style state. On September 3, 1945, in the first meeting of the provisional government, President Ho Chi Minh raised the necessity of having a democratic constitution for Vietnam.

The 1946 Constitution, consisting of 7 chapters and 70 concise and tightly-knit articles, reflects the real circumstances of the country in the early years of the revolutionary state. The 1946 Constitution strongly affirms the legal sovereignty of the Vietnamese people, the independence, and territorial integrity of the Democratic Republic of Vietnam. However, due to the wartime conditions, the 1946 Constitution was not officially promulgated. Nevertheless, the spirit and content of the 1946 Constitution were consistently applied and implemented by the interim government and the Standing Committee of the National Assembly to govern the country. The constitutional principles of the 1946 Constitution have been inherited and developed in subsequent constitutions.

The preamble defines the national tasks during this period as preserving territorial integrity, achieving complete independence, and building the nation on a democratic foundation. It also establishes three fundamental principles of the Constitution: (i) Unity of the entire population without discrimination based on race, gender, class, or religion; (ii) Ensuring democratic freedoms; (iii) Exercising strong and enlightened people's governance.

All seven chapters of the Constitution are built upon these fundamental principles, which reflect the basic characteristics of the 1946 Constitution. Constructed on the principle of national unity, Article 1 of the 1946 Constitution states: "Vietnam is a Democratic Republic. All state power belongs to the entire Vietnamese people, regardless of race, gender, wealth, class, or religion." This marked a significant milestone in the development of the Vietnamese state. For the first time in Vietnam and Southeast Asia, a democratic state of the people was established, representing a breakthrough in the development of democratic ideas. This provision also emphasizes the national character of the state.

The first constitution of the country, the 1946 Constitution, is a progressive and exemplary democratic constitution. In terms of legislative technique, the 1946 Constitution is concise, precise, coherent, and easily understandable to all. It serves as a model constitution in many aspects.

Constitution of the Democratic Republic of Vietnam in 1959: (Adopted by the National Assembly of the Democratic Republic of Vietnam on December 31, 1959)

By the year 1959, the Democratic Republic of Vietnam had been established and developed for 14 years. This period witnessed significant political events that altered the political, social, and economic landscape of the country.

Immediately after the National Assembly approved the 1946 Constitution, French colonialists instigated another war to invade our country once again. Our people entered a period of arduous and extraordinary resistance. With the victories at Dien Bien Phu and the Geneva Conference, the northern part of our country was fully liberated, but the nation remained temporarily divided into two regions. The revolutionary task in this new phase was to construct socialism in the North and struggle for national reunification. In the years 1955-1957, we healed the wounds of war and restored the economy in the North. In 1958, we commenced the implementation of a 3-year economic plan aimed at developing and transforming the national economy towards socialism. Substantial progress was achieved in both economic and cultural aspects. Alongside these victories, class relations in Northern society underwent transformations, with the feudal landlord class being overthrown. The alliance of the working class and farmers was increasingly consolidated and strengthened.

The 1946 Constitution had fulfilled its mission, but given the evolving situation and the new revolutionary tasks, it needed to be supplemented and modified. Therefore, during the 6th Session, the First National Assembly of the Democratic Republic of Vietnam decided to amend the 1946 Constitution and established a Drafting Committee for the amended Constitution. After completing the first draft in July 1958, the draft was discussed among mid-level and senior officials in military, civilian, political, and party organizations. Following this discussion, the draft was revised, and on April 1, 1959, it was released for nationwide discussion and contributions.

This nationwide discussion lasted for four months, with active participation from various working-class sectors. On December 31, 1959, the National Assembly unanimously approved the amended Constitution, and on January 1, 1960, President Ho Chi Minh signed the decree to officially promulgate the Constitution.

The 1959 Constitution consists of 10 chapters, encompassing 112 articles that clearly articulate the significant revolutionary victories achieved in the past and outline the goals of our people in the new phase. The Constitution of 1959 stipulated the responsibilities and powers of state agencies, the rights, and obligations of citizens, aiming to unleash the immense creativity of our people in the nation-building process, unification, and defense of the Fatherland. This is a truly democratic constitution, simultaneously serving as a motivating force for the entire population of our country to enthusiastically strive for new victories.

Constitution of the Socialist Republic of Vietnam in 1980 (Adopted by the National Assembly of the Socialist Republic of Vietnam on December 18, 1980)

The magnificent victory of the HỒ Chí Minh spring campaign in 1975 marked the beginning of a new era in the history of our nation. The South was completely liberated, and the democratic national revolution was successfully accomplished nationwide. With our country now fully independent and free, the favorable conditions were created to unify the two regions of the North and the South, transitioning the entire nation towards socialism.

In response to this situation, in September 1975, the 24th Congress of the Central Executive Committee of the Vietnamese Workers' Party identified the foremost and crucial task at that moment as completing the reunification of the nation. The resolution of the Congress emphasized: "National reunification is not only the most heartfelt desire of the entire people nationwide but also an objective law of the development of the Vietnamese revolution, of the history of the Vietnamese nation." The Congress decided to convene a Political Consultative Conference for National Unity and unanimously resolved to organize a general election to elect the National Assembly for the entire country. The general election, conducted on April 25, 1976, with the principles of universal suffrage and direct voting, saw the participation of over 23 million voters, accounting for nearly 99% of the total electorate. The total number of National Assembly deputies elected was 492, including 249 deputies from the North and 243 deputies from the South, calculated at a rate of 1 deputy per 1,000 voters.

The National Assembly of the entire country commenced its inaugural session on June 25, 1976, which extended until July 3, 1976. On July 2, 1976, the National Assembly passed crucial resolutions, including the decision that, in the absence of a new constitution, the organization and operation of the state would be based on the 1959 Constitution of the Democratic Republic of Vietnam. Simultaneously, the 6th National Assembly issued a Resolution on amending the 1959 Constitution and established a Constitution Drafting Committee consisting of 36 members, chaired by Comrade TrƯỜng Chinh, the Chairman of the Standing Committee of the National Assembly. After a year and a half of diligent work, the Committee completed the draft, which was then presented for nationwide discussion.

In September 1980, the Central Committee of the Communist Party of Vietnam held a special session to review and provide additional opinions on the draft before presenting it to the National Assembly for discussion and approval. Following a period of discussion, the 6th National Assembly, during its 7th session on December 18, 1980, unanimously approved the Constitution.

Inheriting and developing from the 1946 and 1959 Constitutions, the 1980 Constitution comprises 12 chapters and 147 articles, serving as a comprehensive constitution that summarizes the revolutionary achievements of the Vietnamese people over the past half-century. It reflects the will and aspirations of the Vietnamese people, ensuring the vibrant development of Vietnamese society in the future. As the fundamental law of the state, this Constitution stipulates the political, economic, cultural, and social systems, as well as the basic rights and obligations of citizens. It also outlines the organizational structure and principles of operation of state agencies, demonstrating the relationships between the leadership of the Party, the people as masters, and the state administration in Vietnamese society.

Constitution of the Socialist Republic of Vietnam, 1992 (Adopted by the National Assembly of the Socialist Republic of Vietnam on April 15, 1992)

After a period of effectiveness, many provisions of the 1980 Constitution were found to be incompatible with the economic and social conditions of the country. The practical situation of the nation demanded a new, more suitable constitution to promote social progress and build a prosperous and happy life for the people.

The 6th National Party Congress in 1986 marked the beginning of a renewal era in Vietnam. The Party advocated facing the truth, identifying mistakes of the Party and the State, expanding socialist democracy, and harnessing the independent and creative thinking of the working people. Based on this, new and accurate perceptions of socialism were developed, leading to new strategies and policies aimed at constructing a wealthy, powerful, fair, and civilized society. In the spirit of the 6th National Party Congress Resolution, during the 3rd session on December 22, 1988, the 8th National Assembly issued a Resolution amending the Preamble of the 1980 Constitution. On June 30, 1989, the 8th National Assembly's 5th session passed a Resolution amending 7 Articles: 57, 116, 118, 122, 123, 125, to specify additional rights for candidacy in the National Assembly, People's Councils of citizens, and establish permanent People's Councils within the structure of provincial-level People's Councils, centrally-governed cities, and district-level People's Councils, reinforcing the activities of People's Councils and People's Committees. During this session, the National Assembly also issued a Resolution to establish a Constitutional Amendment Committee to fundamentally and comprehensively amend the Constitution to meet the requirements of the new economic and social situation, especially in the economic sector.

The Constitutional Amendment Committee, chaired by President of the State Council Võ Chí Công, consisted of 28 members. The Committee held numerous sessions to revise, supplement, and approve the entire draft of the amended Constitution.

At the end of 1991 and the beginning of 1992, the third draft of the Constitution was presented for public opinion. Based on the synthesis of people's contributions and the opinions of the Politburo and the Central Committee of the Party, the fourth draft of the Constitution was completed and submitted to the 8th National Assembly for review during its 11th session. After lively discussions with certain revisions and additions, on April 15, 1992, the National Assembly agreed to pass the Constitution. The drafting and issuance of the 1992 Constitution was a democratic and serious process of discussion, filtering the contributions of all classes of the population on all issues from general perspectives to specific matters. This Constitution is the Constitution of Vietnam in the process of renewal. As rightly noted by comrade Đỗ Mười, the General Secretary of the Central Committee of the Communist Party of Vietnam, it is the "intellectual product of the entire population, reflecting the will and aspirations of the entire people."

The 1992 Constitution comprises 12 chapters, 147 articles, regulating the political, economic, cultural, social, defense, security, basic rights and obligations of citizens, the organizational structure and activities of state agencies, institutionalizing the relationship between the Party's leadership, the people's ownership, and state management. The 1992 Constitution laid an important legal foundation for implementing the renewal process in our country.

The 1992 Constitution marks a new stage in the development of Vietnam's constitutional history. This is the constitution for building socialism in the era of comprehensive and profound renewal in economics and steady political progress. It is an inheriting constitution that refines the essence of the 1946, 1959, and 1980 Constitutions, creatively applying the fundamental ideas of Marxism-Leninism and Ho Chi Minh's thoughts on building socialism in the specific context of our country. The 1992 Constitution signifies the revival and development of the economic foundation of Vietnamese society in the final years of the century. It serves as a mirror reflecting the innovations in the constitutional and legislative thinking of the Vietnamese people. It is a constitution that demonstrates independence and autonomy in the development process of Vietnam's legal philosophy, a legal philosophy that reflects the national identity while combining seamlessly with

international and modern aspects, building on the achievements of Vietnam's legal culture, and absorbing the essence of global legal culture.

Constitution of the Socialist Republic of Vietnam, 1992 (Amended in 2001): After nearly 10 years in effect, the 1992 Constitution has proven to be an effective fundamental law of the state, establishing a solid legal foundation for building a market-oriented economy, orienting towards socialism, protecting the legitimate rights and interests of citizens, constructing the state apparatus of the people, by the people, for the people, and implementing policies of peace, friendship, and cooperation with all countries worldwide in line with the trends of globalization in the modern world. However, after a decade, changes in the economic, political, and social situations necessitated amendments to the Constitution to further enhance its effectiveness in regulating social relations.

Under the leadership of the Politburo of the Central Committee of the Communist Party of Vietnam, the 10th National Assembly, 9th session, issued Resolution No. 43/2001/QH10 on June 29, 2001, regarding the establishment of a Drafting Committee to amend and supplement certain provisions of the 1992 Constitution. The draft amendment and supplementation of certain provisions of the 1992 Constitution were extensively discussed among the people. After synthesizing the contributions of the citizens, the draft underwent several revisions and additions. Following a period of diligent work, with democratic and transparent discussions, on December 25, 2001, the 10th National Assembly, 10th session, with an overwhelming majority, agreed to pass Resolution No. 51/2001/QH10 on the amendment and supplementation of certain provisions of the 1992 Constitution.

According to Resolution No. 51/2001/QH10 dated December 25, 2001, there were 24 issues amended and supplemented in the 1992 Constitution. The amendment and supplementation of certain provisions of the 1992 Constitution per Resolution No. 51/2001/QH10 marked a new stage in the constitutional history of Vietnam, signifying a step towards perfecting the political system, economic regime, cultural policies, education, science, and technology, defining the basic rights and obligations of citizens, consolidating the organization, assignment, and coordination of branches of government in the state apparatus towards building a socialist rule-of-law state of the people, by the people, for the people. This is in pursuit of the goal of constructing a prosperous, strong, just, democratic, and civilized society, aligning with the trends of international integration and globalization in the 21st century.

Constitution of the Socialist Republic of Vietnam, 2013 (Adopted by the National Assembly of the Socialist Republic of Vietnam on November 28, 2013)

The institutionalization of the guidelines for building the country during the period of transition to socialism in 1991 (supplemented and developed in 2011) by the Communist Party of Vietnam, along with the practical results after 25 years of implementing the comprehensive renewal of the country, raised the requirement to amend and supplement the 1992 Constitution. This aimed to fully institutionalize and deepen the perspectives of the Party and the State of Vietnam, emphasizing the people's sovereignty, promoting socialist democracy, and ensuring that all state power belongs to the people.

On August 6, 2011, during the first session of the 13th National Assembly, Resolution No. 06/2011/QH13 was passed, establishing the Drafting Committee for amending the 1992 Constitution, consisting of 30 members, chaired by Comrade Nguyen Sinh Hung, the Chairman of the National Assembly. After a period of 9 months (from January to September 2013) collecting opinions from people nationwide and overseas Vietnamese, on November 28, 2013, during the 6th session, the 13th National Assembly officially approved the Constitution of the Socialist Republic of Vietnam in 2013. On December 8, 2013, the President promulgated the Constitution, which took effect on January 1, 2014.

The 2013 Constitution consists of 11 chapters, 120 articles, representing the intellectual crystallization, will, and aspirations of the entire Party and people. It embodies the spirit of innovation towards the goal of a prosperous, strong, democratic, just, and civilized nation.

Thus, to date, following the 1946 Constitution, the Vietnamese National Assembly has enacted the 1959 Constitution, the 1980 Constitution, the 1992 Constitution, and the current Constitution – the Constitution of the Socialist Republic of Vietnam in 2013. In the current era of renewal, under the leadership of the Communist Party of Vietnam, the 2013 Constitution – the current constitution of our country – has entered into life, increasingly demonstrating the superiority of the socialist regime in Vietnam.

With its structure of 11 chapters and 120 articles, reduced by 1 chapter and 27 articles compared to the 1992 Constitution, the 2013 Constitution introduces many new points in terms of content and constitutional drafting techniques. It deeply and comprehensively reflects the synchronized innovations in both economic and political aspects, highlighting the true nature of democracy and progress of our state and regime in the transitional period

towards socialism. It ensures human rights, the fundamental rights, and obligations of citizens, constructing the rule-of-law state of socialist Vietnam, for the people, by the people, and under the leadership of the Communist Party of Vietnam.

4. Conclusion

In the State, the core human values are democracy and human rights, which are defined and guaranteed by law. The essence of the socialist rule-of-law state is manifested in the democratic regime, the people's right to rule, and the respect for and elevation of human rights in all areas of the state and society. Since the establishment of the Democratic Republic of Vietnam, the Constitution of 1946 has had provisions that clearly express these principles. This is the humanistic value of the Constitution, a cultural-legal value that has been consistently demonstrated throughout the constitutional history of Vietnam. The Vietnamese State is determined to fulfill the testament of President Ho Chi Minh: "I have only one desire, the utmost desire is how to make our country completely independent, our people completely free, everyone has food, clothing, and education" (HỒ Chí Minh, Vol. 4, p.161-162). The commitment is to vigorously promote the industrialization and modernization of the country for the goal of a prosperous, strong, democratic, just, civilized, thriving, and happy society.

References

Bùi Ngọc Sơn (2022), "Discussing constitutional drafting," Electronic Information Portal of the National Assembly of the Socialist Republic of Vietnam. Link <https://quochoi.vn/tulieuquochoi/>

Đỗ Thị Hiện (2015), "Issues of human rights in Vietnam during the renovation period," World Publishing House.

Hồ Chí Minh (2011), "Complete Works, Volume 1," National Political Publishing House, Hanoi.

Hồ Chí Minh (2011), "Complete Works, Volume 4," National Political Publishing House, Hanoi.

Mỹ Duyên (2021), "The Constitution of Vietnam is intertwined with the historical milestones of the country," City Press Center, Ho Chi Minh City. Link <https://ttbc-hcm.gov.vn/>

National Assembly of the Democratic Republic of Vietnam (1946), "Constitution of 1946."

National Assembly of the Democratic Republic of Vietnam (1959), "Constitution of 1959."

National Assembly of the Democratic Republic of Vietnam (1980), "Constitution of 1980."

National Assembly of the Socialist Republic of Vietnam (1992), "Constitution of 1992."

National Assembly of the Socialist Republic of Vietnam (2013), "Constitution of 2013."

Nguyễn Trọng Phúc (1998), "The leadership role of the Communist Party of Vietnam in the country's renovation period," National Political Publishing House, Hanoi.

Trần Ngọc Đường (2018), "Promoting the historical, political, and legal values of the 1946 Constitution in the current renovation process," Electronic Information Portal of the National Assembly of the Socialist Republic of Vietnam. Link <https://quochoi.vn/tulieuquochoi/>