

## Constitutional Debate in Vietnam

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### Paper Abstracts

#### **Constitutionalizing Single Party Leadership in Vietnam: Dilemmas of Reform**

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The supremacy and leadership of the Communist Party of Vietnam (CPV) has been the basic norm in Vietnam's Constitution since 1980. While it was not changed in the final amendments in 2013, that this *grundnorm* was subject to a serious and legitimate debate during the constitutional reform process between 2010-13 was in itself a shift in the constitutional dialogue. This article traces the history of this basic norm throughout constitutional amendments of the Socialist Republic of Vietnam (SRV). The article assesses how the basic norm has become increasingly contested. Contestations over this basic norm had played out markedly over the recent constitutional reform process. The discursive power in these contestations has shaken the rationality-based legitimacy of this basic norm to its root. The continuing dominance of this norm depends to a large extent on how the Vietnamese party-state's practical policy-making and implementation address the increasing tension between this norm and others in the Constitution.

#### **Integration the principle of separation of power into the Constitution Amendment 2013 within the "keeping face" cultural context**

**Vo Tri Hao, University of Economics Ho Chi Minh City Law School**

Separation of power – e key principle of constitutionalism has found the way to adapt and peaceful live with Marxism in the Vietnamese Constitution Amendment 2013. This strange marriage brings ambiguous and contradictory provisions, at first look, in the Constitution; but it works at least. When we deeper analyzing recent changes of political power structure, interaction between players in constitutional dialogue from 2011 to 2015, we can explain why albeit contradictory provisions work. Whether these contradictory provisions hide a good art of compromise for "keeping face" of innovative politician and drafters? How do the ambiguous provisions work after passing the Constitution Amendment 2013? Which pattern players interact with each other in the Constitutional Amendment 2013 process in Vietnam? This article aims to answer above research questions.

#### **Human Rights Perspective in Vietnam: Reflection from the development of the 2013 Constitution**

**Vu Cong Giao, Vietnam National University-Hanoi School of Law**

This paper analyzes situation, prospects and challenges in promoting constitutional rights in Vietnam during and after the development of its 2013 Constitution. The paper begins with an overview of the amendment of the last 1992 Constitution of Vietnam (which resulted the current 2013 Constitution) then, by examining official documents publicized by the State Commission for Draft Amendment of the 1992 Constitution and other related documents from various sources gained in the process of the development of 2013 Constitution (from May 2011 to November 2013),

the author analyses dynamics, key proposals and debates on new human and citizen's rights provisions in the 2013 Constitution and evaluates prospects and challenges in implementing those rights in Vietnam in coming years. The author demonstrates that the chapter of human and citizens' rights is most comprehensively revised part of the 2013 Constitution, and amendments indicate a new approach of Vietnamese constitution makers associated with international human rights standards. However, as argues by the author, the constitutional rights development is still limited by ideological barriers and there are challenges for ensuring human and citizen's rights in the 2013 Constitution of Vietnam that relate to, *inter alia*, the lack of provision for immediate effect, and a legal mechanism for protecting constitutional rights including a constitution review system.

### **The Procuracy as a Subject of Constitutional Debates: Controversial and Unresolved Issues**

***Pham Lan Phuong*, PhD Candidate, Melbourne Law School**

The people's procuracy is a transplanted Soviet-style institution in Vietnam, which currently exercises the public prosecution function along with the supervision of judicial activities. Debates on the procuracy started as early as the *1992 Constitution* was drafted and were fostered by the judicial reform policy. In the process of revising the *1992 Constitution*, debates on the procuracy continued to be heated. Topics of debates included almost every fundamental aspect of the procuracy such as its institutional location, functions, duties, organisation and operation. This article reviews the constitutional debates on the procuracy from 2010 to 2013. It analyses the developments of the debates in this period as compared to the past debates and highlights key issues that remain unresolved. It argues that the controversy is caused by the complexity of historical context and interdependence of constitutional provisions including the provisions on the procuracy and other unsettled institutional issues.

### **From Marx to Market: The Debates on Economic System in Vietnam's Revised Constitution**

***Pham Duy Nghia***

***Professor of Law, Dean of University of Economics Ho Chi Minh City Law School***

The article analyzes the socio-economic and political context, in which demand for deeper institutional reform emerges in Vietnam, and explains the constitutional discourse on economic order. As stipulated by the 2013 Constitution, the provisions on the economic order in Vietnam are ideological compromise, to which the Party and newly emerged stakeholders could reach after almost three years of vibrant debates. The Constitution is a reflection of the growing forces within the Party and society in Vietnam, which demand for more active role of the market, private property and the freedom to conduct business. As a compromise with pro-market, liberal and progressive forces within the Party, and in responding to the public expectation of the demanding Vietnam society, the Constitution inches further toward free market by recognizing the decisive role of the market to govern the national economy. It recognized the importance of the private sector and promised fairness and competition in treatment of private and state owned economic sector. At the same time, the 2013 Constitution inherits much from its socialist past. It could not free the country from the dominance of the state business and of the uncertain public ownership on land and natural resources. Continuously bearing this ambiguity, the 2013 Constitution is by no means a radical step to clarify the uncertain socialist orientation of Vietnam economy.

### **Interpreting the Constitutional Debate Over Land Ownership in The Socialist Republic of Vietnam (2011-2013)**

***Le Toan*, Lecturer, Monash University, Department of Business Law and Taxation**

The people of Vietnam recently participated in a lengthy process of public consultation to amend the Constitution and Land Law in 2011-2013. This paper analyses the approach that the State took

during the 2013 constitutional consultation and law making process as it responded to the submissions calling for fundamental reform of constitutional and legal arrangement of land ownership. This analysis will provide insights into the extent to which there has been a change in underlying thinking of the State on key land ownership issues and the factors that lead to the evolutionary changes made to the constitutional and legal arrangement of land ownership in Vietnam. In addition, this analysis will provide insights into the development of rights of citizens in relation to land in Vietnam. The article argues that the State has showed a willingness to consider citizen rights in land ownership. The analysis shows that top Vietnamese leaders are prepared to introduce safeguard procedures to reduce the risk of abuse in the exercise of administrative powers, especially when land is taken from the land-users for the purpose of economic development. However, the underlying thinking of top leaders on the issues that are perceived to be important to the public, including on the need to abolish the 'people' land ownership system, the recognition of private land ownership in the socialist system and need to abolish the right of the State to recover land for the specific purpose of economic development has not changed and the tendency of the State to engage in repressive actions is a consequence of the lack of change in underlying thinking.