

Activism and Popular Constitutionalism in Contemporary Vietnam

Bui Ngoc Son and Pip Nicholson

Based on Chinese constitutional analysis, political science, and law and society studies, we argue that work extending the application of popular constitutionalism to authoritarian states applies in Vietnam, as popular constitutionalism targets sites relevant to constitutional reform. We contend that popular constitutionalism located in authoritarian states requires three factors: a tradition of activism, space for reformist and pragmatic dialogue targeting constitutional change, and the political need for legitimacy. This article analyses activism in Vietnam, focusing on the lodging of Petition 72 with the Constitutional Amendment Drafting Commission in 2013, and the resulting responses. We conclude that this activism was pivotal in advocating for new constitutional norms, evidencing popular constitutionalism in Vietnam. The long history of Vietnamese scholar activism, the relative space for governance debates, and the political need for legitimacy made this possible. We also note that popular constitutionalism faces constraints in authoritarian states, which may shape its trajectory.

I. INTRODUCTION

On February 4, 2012, Nguyễn Đình Lộc, a distinguished constitutional law scholar and former Minister of Justice, submitted a petition to the Vietnam's Constitutional Amendment Commission. The petition, initially signed by seventy-two Vietnamese intellectuals, responded to calls from the leadership of the Socialist Republic of Vietnam for comments on the draft new national constitution. By April 2013 around 14,000 people, inside and outside Vietnam, had signed it. Petition 72 (as it is now called) requested a radical transformation of the current Vietnamese socialist system into a Western-style liberal constitutionalist state. It contained proposals for free elections, eliminating the constitutional entrenchment of the exclusive leadership of the Communist Party of Vietnam (CPV), the separation of powers and checks and balances, a constitutional court, universal human rights, a constitutional referendum, and endorsement of other liberal values (Nguyễn Huệ Chi et al. 2013b, 1).

Bui Ngoc Son is a Senior Research Fellow at the Centre for Asian Legal Studies, National University of Singapore Faculty of Law. He can be contacted at lawbns@nus.edu.sg.

Pip Nicholson is a Professor of Law and Director, Asian Law Centre, Melbourne Law School, Australia. She can be contacted at p.nicholson@unimelb.edu.au.

The authors would like to thank Allan Myers AC QC and Maria Myers AC for their generous support which enabled Dr. Bui to visit Melbourne Law School supported by the Melbourne Law School-Asia Research Fund. Each author also thanks their universities for their ongoing support. The authors also would like to thank the editors and anonymous reviewers of the *Law & Social Inquiry* for their constructive comments.

While public discourse on constitutional and legal reforms is not unfamiliar within socialist Vietnam, the public call for such substantial changes is unusual, and in need of scholarly attention. This article explores what the activism of Petition 72 represents and its possible impact on popular constitutionalism in Vietnam.

Whether popular constitutionalism exists in Vietnam has not been explored in either Vietnamese or English-language commentary. English-language scholarship on Vietnamese constitutions in the last 20 years has largely taken two forms. First, Bui Ngoc Son has considered Confucianism and constitutionalism. Bui has asked whether there are constitutional roots in Confucianism (Bui 2012) and explored the “practice of Confucian constitutionalism” in imperial Vietnam (Bui 2013a; cf. Ngô Bá Thành 1993). The second strain of scholarship explores liberal constitutional elements and influences in Vietnam. Bui has argued that restoration constitutionalism—the revival of past liberal constitutional precepts to reform the Vietnamese socialist constitution—circulates in Vietnam, largely as a result of Ho Chi Minh’s legacy and the 1946 liberal constitution of the Democratic Republic of Vietnam (Bui 2015b). He has also chronicled the recent defeat of the introduction of constitutional review in Vietnam, while noting the space for discussion of this reform within Vietnam (Bui 2015a). Mark Sidel has written at length about Vietnamese constitutional history, noting the increasing robustness of constitutional debates and the prospects of liberalizing reforms (Sidel 2002, 2009). Sidel’s work does not examine the constitutional reform debates of 2013.

Epistemologically, our study builds on constitutional studies scholarship, political science, and law and society studies, particularly those concerning popular constitutionalism, constitutions, deliberative democracy, and collective mobilization in authoritarian regimes. We develop a theoretical framework to understand popular constitutionalism beyond the Anglo-American context, which posits it as in opposition to judicial constitutionalism. Popular constitutionalists insist that the people play an ongoing, central, active, and self-conscious role in the articulation, contestation, and codification of constitutional norms, and we draw on this work (Pozen 2010, 2061).

Unlike in liberal constitutional regimes, judicial review is either absent or manipulated in authoritarian regimes, and civil-political rights are often restricted by authoritarian power. Is popular constitutionalism possible in these contexts? Our answer is positive. Through an analysis of the Vietnamese experience, we argue that given certain necessary conditions popular constitutionalism can manifest in authoritarian contexts with particular forms and strategies, and with a different focus from that exhibited in the Anglo-American context. This does not diminish its core tenet: the role of mobilized people in the creation and the transformation of constitutionalism. We argue that Vietnamese popular constitutionalism manifests through the activism of Petition 72 and its creation of a strategic discourse arguing for liberalizing constitutional reform and mobilization. This was made possible by a long history of (elite) activism and social movements, constitution-making dynamics, and problems with current political legitimacy.

Methodologically, we draw on empirical analysis of Vietnamese sources, including documents by the seventy-two petitioners, together with party and state documents and other local material. This article does not draw on field work. This

was not possible given the Vietnamese political environment. One co-author is active in constitutional circles in Vietnam as a scholar and commentator. He has attended workshops held inside Vietnam on constitutional issues where he has met and talked to constitutional scholars and some of those involved in Petition 72. This material informs this article, but can be contextual only.

Part II discusses relevant theories in political science, law and society studies, and constitutional studies. Part III elaborates a theoretical framework of popular constitutionalism in authoritarian regimes. Part IV considers the conditions in which Vietnamese popular constitutionalism arose and describes in detail the discourse and mobilization of the seventy-two petitioners. Part V analyzes and interprets this discourse and mobilization characterizing it as the manifestation of Vietnamese popular constitutionalism. Part VI concludes by anticipating the challenges for the development of popular constitutionalism in Vietnam.

II. ACTIVISM, AUTHORITARIANISM, AND POPULAR CONSTITUTIONALISM

As noted, our theoretical framework is informed by relevant theories in political science, law and society studies, and constitutional studies. First, our inquiry is sparked by political scientists who reflect on the role of and possibilities for deliberation in authoritarian regimes. There is a rich, China-focused literature exploring how authoritarian regimes engage with their citizens to legitimize rule (He and Warren 2011). He and Warren (2011) articulate a mode of authoritarianism that authorizes participatory and consultative practice to produce “authoritarian deliberation and its associated ideal-type regime as deliberative authoritarianism” (269). They offer a sophisticated analysis of the ways in which authoritarian states consult to generate stakeholders in dialogue, and manufacture consent through shared deliberation as the bedrock of change management. They note that this ideal-type regime, deliberative authoritarianism, seeks to marginalize protest and foster deliberation to buttress its hold on power. Their theory is a possible account of Chinese practice, but it has significant methodological issues (He and Warren 2011, 279). How can the observer conclude that the deliberation is formative or relevant to leaders’ decision making? Causes and consequences cannot be neatly mapped or identified. That said, their insight that enabling *voice* is an “option for controlling dissent and maintaining order” is cogent (He and Warren 2011, 281).

We suggest that voice has consequences which, while hard to identify and predict, will have reform consequences. The Vietnamese party-state exhibited this mode of authoritarianism when it offered constitutional consultation in 2012–2013. We argue, however, that the moment crystallized popular constitutionalism over and above any deliberative space manufactured by the party-state.

Second, this inquiry into the potential of popular constitutionalism in authoritarian regimes relates to law and society studies, particularly those that focus on how social mobilization occurs in authoritarian states. In particular, a case study of Singaporean gay mobilization suggests that to survive in an authoritarian environment, in which civil-political rights are restricted, activists adopt the strategy of

“pragmatic resistance” (Chua 2012, 714). This account emphasizes that “they [activists] aspire toward legal reform, they refrain from tactics that directly confront the state, such as street protests, and [they] avoid being seen as a threat to existing formal arrangements of power” (Chua 2012, 714).

This account of strategic activism resonates in the Vietnamese authoritarian context. Constitutional mobilization, however, is different than single issue activism. Constitutional mobilization involves collective social struggle, not targeting a single issue, but striving to change the polity and its rules as a whole. Inevitably, constitutional activists directly confront existing power arrangements. Chua’s study highlights pragmatic resistance and, we ask, is this present in the inevitable direct confrontation in constitutional debate in authoritarian states?

Third, there is a rich body of constitutional scholarship that considers constitutionalism in authoritarian regimes. These studies note that, although constitutionalism in such states does not enable liberalism, it can nevertheless play an ordering function. More particularly, authoritarian constitutions establish “focal points, procedures, and institutions, thereby addressing problems of coordination and problems of commitment” (Ginsburg and Simpser 2014, 2).

In this vein, the Vietnamese Constitution can be characterized as the core instrument of political and legal principle, providing the basic structure of government and setting out its relationship with party leadership. The constitution offers a narrative about party–citizen relations, albeit in many ways an aspirational one.

Other studies on constitutional practice in authoritarian regimes in Asia suggest that, whether transitional or stable, levels of constitutionalism exist within authoritarian polities (Chen 2010, 880; Tushnet 2015, 391). Constitutionalism is a matter of degree: it never is but always becomes. A sharp line between constitutionalism and authoritarianism is illusory. These studies have not canvassed the roots of constitutional change, placing their emphasis on whether constitutionalism is apparent and/or real.

There is, however, a group that focuses on the study of constitutional change. This fourth group of scholars directly addresses the issue of popular constitutionalism in China (Cai 2005; Dowdle 2012; Hand 2012). Hand (2012) argues that to understand the Chinese Constitution, we must shift our focus from individual legal action to the “collective political dimension” of the constitution (51). He suggests reducing the focus on court-based legal disputes and analyzing instead the many ways the party-state and its citizenry interact, with an emphasis on “patterns of bargaining, consulting and mediating across a range of both intrastate and citizen–state constitutional disputes” (Hand 2012, 57). Hand describes bargaining across many contentious spaces in China, constitutional and administrative. While we agree there cannot be a focus on litigation to determine the contours of Chinese constitutionalism, we do not characterize the Vietnamese party-state’s actions as an enactment of “grand mediation” (Hand 2012, 53–59).

The Vietnamese and Chinese experiences of constitutionalism differ in several critical ways. First, the constitutional histories of Vietnam and China, while sharing the imperial legacy and Confucian constitutional norms, considerably diverged in the twentieth century. Vietnam did not experience the repressive excesses of China’s revolutionary leaders, for example the Cultural Revolution, in such a

sustained way. The Chinese focus on stability over rights (Biddulph 2015), arguably a part of its grand mediation, is less present in Vietnam.

A further distinction lies in the advent of the 1945 Democratic Republic of Vietnam, when Ho Chi Minh courted democratic and socialist ideals, in the service of the nationalist cause (Marr 1995). While acknowledging that this needs further scholarly attention, the current invocation of socialism with Ho Chi Minh characteristics is a discourse that leaves space for a particularly Vietnamese discussion about socialism and its reform.

As we argue below, Vietnam had, and continues to have, a relatively open space for governance debates, including constitutional debate, when compared with China. Some argue that Vietnam's modern authoritarianism is softer than that of China, and this appears to be the case when one compares the Chinese response to Charter 08 (highly repressive) with the Vietnamese party-state response to Petition 72. Further, we argue that Vietnam's smaller population density and high levels of literacy create greater resonance between the activism of elites and their mobilization of activism in new actors. We do not see the Vietnamese constitutional narrative as likely to culminate in the "grand mediation" that Hand suggests may take root in China, where the party-state monopolizes constitutional controversies in this way (Hand 2012, 153).

Unlike Hand, Dowdle (2012), writing on China's Charter 08, argues that constitutional theory extends to the analysis of the constitutional meaning of social mobilization in other jurisdictions. He suggests the Czechoslovakian Charter 77 informed the development of China's Charter 08 (Dowdle 2012). Dowdle contends that Charter 08, later signed by more than 10,000 people within and beyond China, was a political manifesto (Dowdle 2012). Charter 08 called for a new political order in China, featuring multiparty elections, separation of powers, human rights, judicial review, and other fundamental elements of Western liberal constitutionalism (Béja, Fu, and Pils 2012). Charter 08, Dowdle explains, was an expression of Chinese popular constitutionalism (Dowdle 2012).

In developing this argument, Dowdle (2012) focuses on the intellectual authority of Chinese popular constitutionalism, and its dialogical relationship with institutional authority. He argues that popular constitutionalism can manifest where there is dialogue "between the popular and formal component of constitutionalism" and that dialogue is "not unilateral" (Dowdle 2012, 210). Consequently, popular constitutionalism can exist in authoritarian states. Dowdle explains that Chinese popular constitutionalism rests on two features. First, this social constitutionalism is based on "intellectual rather than institutional authority" (Dowdle 2012, 209). "Norms and understandings" that circulate or are understood in the "polis" are the bedrock of social constitutionalism, rather than legal or political form (Dowdle 2012, 209). Second, popular constitutionalism is in dialogue with the formal system, thus "its terms both shape and *are shaped* by the institutional authority that comprises the formal constitutional system" (Dowdle 2012, 210). To illustrate this point, Dowdle demonstrates that modern constitutionalism partly grew out of new political understandings brought about by the Enlightenment (Dowdle 2012, 206).

This builds on his earlier compelling critique of Western liberal analyses of Chinese constitutionalism (Dowdle 2002), in which he argues that

constitutionalism is innately and historically incremental and dialogical. It is not to be identified through electoral mechanisms (22) or judicial review (26), for example. Dowdle (2002) argues the need to abandon “equating particular political values with particular constitutional architectures,” because that approach “recognizes a limited range of constitutionally legitimate structural possibilities” (199). In this earlier work, Dowdle calls for a focus on a “pragmatic conception of development that focuses on processes of constitutional learning rather than on constitutional structure *per se*” (Dowdle 2002, 200).

Dowdle’s important contribution demands that scholars look beyond whether or not there has been the adoption of dominant models of liberal constitutionalism to provoke analysis of constitutional dialogue. His version of popular constitutionalism correctly places emphasis on the intellectual authority of popular constitutional discourse. However, the intellectual power of constitutional ideas alone cannot explain the rise of popular constitutionalism. We suggest there must also be the space to enable a dialogue between social intellectual authority and formal institutional authorities. Dowdle’s theory of popular constitutionalism is developed in the Chinese context, but without a broader appraisal of the constitution-making possibilities of the particular action in which he locates popular constitutionalism—Charter 08. Arguably the analysis of the site was undertaken in his earlier 2002 work. The two papers, however, while reshaping our understanding of the possibilities for Chinese constitutional reform, have not been brought together as explicitly as they are here. In other words, the reader is to understand from Dowdle’s 2002 paper that focusing on what emerges rather than what is not present is a better indicator of constitutional dynamics. Further, Charter 08 made it possible to characterize Chinese constitutional activism as popular constitutionalism. Developing this synthesis of Dowdle’s paper, we explain that students of the possibilities for popular constitutionalism in authoritarian states must examine what space there is for constitutional dialogue and what legitimacy deficits exist within the leadership to provoke greater reforms.

Finally, focusing on the 2001 constitutional amendment process in Vietnam, Sidel argues that process served as a platform for constitutional dialogue between the party and constitutionalists, dissidents, and others (Sidel 2002, 86). Sidel persuasively challenges the instrumentalist view of the Vietnamese constitution and constitutional processes in authoritarian contexts like Vietnam and China. The constitutional amendment process is no longer totally controlled by the authoritarian power, argues Sidel, but also enables constitutional dialogue between authoritarian authority and reformist forces. The experience of the Vietnamese 2013 constitution making offers new and more substantial data. The dialogue of 2001 was extended to bedrock constitutionalist questions, such as the introduction of democratic elections, a separation of powers, and judicial review, all of which were sensitive in 2001. Public engagement, however, was more forceful in 2012 and 2013: Vietnam witnessed the rise of public constitutional discussion and collective activism and mobilization, producing the phenomenon of Petition 72. This dialogue allows us to develop a theory of popular constitutionalism in authoritarian regimes.

In short, the existing theories provide a range of approaches to locate and analyze constitutional change in authoritarian states. Let us now turn to explain and defend our account of popular constitutionalism in contemporary Vietnam.

III. DEVELOPING A THEORETICAL FRAMEWORK

A. Defining Popular Constitutionalism

Popular constitutionalism is nowhere authoritatively defined. Yet, it is possible to identify its core idea and observable criteria. The essential idea of popular constitutionalism involves the people playing a central role in public discourse and public mobilization to facilitate constitutional change. As stated, theories of popular constitutionalism emerged in the Anglo-American context as an alternative to judicial constitutionalism.¹ These theories focus mainly on the central role of the people in defining the meaning of the US Constitution as opposed to the role played by US courts through their judicial review power (Ackerman 1991, 1998; Tushnet 1999; Kramer 2004). These theories share a core idea: sustained popular mobilization can culminate in constitutional change. Yet, the American popular constitutionalists focus mainly on the change in judicial constitutional interpretation, not formal constitution making or constitutional amendment. This stems from the firmly established tradition of judicial review and the tremendous impediment to formal constitutional change in the United States.

We submit that in a general theory of popular constitutionalism, constitutional change must not be limited to change in judicial constitutional interpretation, but must also extend to formal constitutional changes through constitution making, including constitutional creation, constitutional amendment, and constitutional replacement, and in this we echo Dowdle (2002, 2012). In this general picture of popular constitutionalism, the American experience is a particular variant.

Popular constitutionalism can be conceived as including two components: the popular and the constitutionalist. Popular constitutionalism is *popular* in the sense that constitutionalism is promoted by mobilized people. Two observable criteria of this popular feature can be identified. First, popular constitutionalism involves the people, including activists, public intellectuals, civil society, and ordinary people. Second, the public is mobilized. The public employs different forms of discourse and mobilization such as petitions, demonstrations, public speeches, and letters. The mobilization can be oral, written, enacted, or a combination of these. The mobilization involves some collective forms of action, such as organizations, groups, or networks.

Second, popular constitutionalism is *constitutionalist* in the sense that the public articulates constitutional arguments and mobilizes to embed constitutionalism, understood as a limited government responsible to the public. These constitutionalist values include a constitution as a prescriptive and supreme law, government ruled by law and governed by democratic principles, separation of powers or other checks and balances, constitutional review, human rights, and judicial independence (Henkin 1993, 535–36).

1. This article has not pursued an analysis of civic constitutionalism as proffered by Beaumont (2014) or other alternative theories to judicial constitutionalism. The capacity of Beaumont's thesis to resonate in authoritarian contexts needs further study.

Popular constitutional mobilization aspires to realize these values in the national constitution and to inform political behavior and actions, even though that aspiration may not be realized. In other words, constitutionalism, like popular constitutionalism, is a matter of degree. Evolving popular constitutionalism may produce limited forms of mobilization and have limited effects.

B. Critical Elements: History, Constitution-Making Space, and Practice and Legitimacy

We argue that popular constitutionalism is possible in authoritarian regimes, but we have yet to explain why it arises in some spaces and not in others. We contend that popular constitutionalism in socialist states requires at least three conditions: a historical condition or pattern of activism and social movements, a constitution-making space allowing at least pragmatic and opportunistic resistance and advocacy, and a political need for legitimacy.

Let us first consider the historical condition. Accounts of popular constitutionalism in the Anglo-American context have traced its long history to the colonial period (Kramer 2004; Dowdle 2012). Accordingly, if an authoritarian regime has a substantial history of activism and social movements, popular constitutionalism can arise as the natural continuation of the historical evolution. To illustrate, in China Charter 08 was based on a long history of imperial Confucian scholar activism and previous social movements in the modern era (Dowdle 2012). Similarly, as we illustrate later, Vietnam's Petition 72 was the continuation of a long history of scholar activism and constitutional movements.

The second important condition for popular constitutionalism is a constitution-making space and practice. In authoritarian regimes, judicial review is not the main catalyst of constitutional change. It is ordinarily absent or weak. If judicial review is available and playing an active role in authoritarian regimes, it consolidates rather than creates constitutional change (Chang, 2005). Instead, authoritarian states, at least socialist ones, tend to employ constitution making as the means of state-building and incremental constitutional changes (Yeh and Chang, 2009). Constitution making creates the space for activism and the emergence of popular constitutionalism. We suggest that the seventy-two petitioners seized space created by the constitution-making process in Vietnam to mobilize the public to engage in a constitutional dialogue with Vietnamese political leaders, leading to the rise of popular constitutionalism.

Further, in an atmosphere in which political and civil rights are lacking or restricted, popular constitutionalism develops differently to its counterpart activism in liberal states. Law and society studies remind us about strategic mobilization in authoritarian regimes that can be applied in mobilizing for constitutional change. Yet, as constitutional activists are mobilizing for change, not in policy but polity, they inevitably confront the existing constitutional powers. Pragmatism demands that the direct confrontation be tolerated by the existing powers/leadership. The consequence is a strategic popular constitutionalism, which we argue below manifested in Vietnam with Petition 72, leveraging out of the available space for debate.

The third condition relates to the legitimacy of the regime. There must be an incentive for an authoritarian leadership to engage in constitutional dialogue with constitutional activists. Otherwise the activists will be punished, and the constitution-making process will be a constitutional monologue, and repressive rather than enabling (Landau 2013). Authoritarian regimes may open the door for constitutional dialogue when their legitimacy is challenged or in need of reinvigoration.

In this regard, Richard H. Fallon's (2005) theory of triple constitutional legitimacy is instructive. Fallon distinguishes three criteria which, in turn, support three concepts of legitimacy: legal, sociological, and moral legitimacy. As Fallon notes, "when legitimacy functions as a legal concept, legitimacy or illegitimacy is measured by legal norms" (Fallon 2005, 1790). As measured by a sociological standard, constitutional legitimacy depends on public acceptance or acquiescence, "as deserving of respect or obedience . . . beyond fear of sanctions or mere hope for personal reward" (Fallon 2005, 1790–96). When functioning as a moral concept, "legitimacy inheres in the moral justification" (Fallon 2005, 1792). Among these three types of legitimacy, Fallon argues, constitutional legitimacy depends most on sociological acceptance (Fallon 2005, 1792). When authoritarian regimes lack legal, sociological, and moral foundations for their legitimacy, constitutional dialogue can be employed to regain legitimacy, and this can create the condition for the rise of popular constitutionalism. In this article, we test this legitimacy deficit notion in the context of Vietnam. As we will see, all three foundations of the legitimacy of Vietnamese socialist leadership had been challenged, which compelled the party-state to engage in constitutional dialogue with the public and its resulting tolerance of popular constitutionalism.

The question now is to what extent these enablers were and continue to be present in Vietnam.

IV. ENABLERS: HISTORY, CONSTITUTION-MAKING, AND LEGITIMACY

Let us now analyze in the Vietnamese context the three conditions that we say must exist for popular constitutionalism in authoritarian states: a tradition of activism; space for reformist constitutional dialogue, informed by pragmatic resistance; and the political need for legitimacy.

A. Historical Condition

Traditional Scholastic Constitutionalism

Scholars' criticism of the organization and use of public power has a long cultural tradition in imperial government in Vietnam. This so-called scholastic constitutionalism has its roots in Confucianism (Bui 2012). In Confucian teachings, scholars, whether free scholars or scholar-officials, are advised to remonstrate

against the misconduct of the ruler and provide suggestions for rectification. These teachings were practiced in imperial Vietnam (Bui 2013a).

Prerevolutionary Constitutional Movements

In modern Vietnamese history, popular political mobilizations are also common. In the first half of the twentieth century, when Vietnam was dominated by France, there were numerous popular political movements led by diverse intellectuals that struggled for national independence and constitutional government. Most notable was the Restoration Movement (1906–08) led by Confucian intellectuals like Phan Chu Trinh, Huỳnh Thúc Kháng, and other Confucian scholars of the Tonkin Free School. In addition, Western-style nationalist intellectuals initiated fora to struggle for national liberation and constitutionalist values, such as Nguyễn An Ninh, Phan Văn Trường, the *La Cloche Fêlée* (1923–26) and *L'Annam* (1926–28) newspapers, and the Thanh Nghị group (see Phan Đăng 2006). The Thanh Nghị group was led by Phan Anh, a famous lawyer educated in France, and Vũ Đình Hòe, who later became the first Minister of Justice in Ho Chi Minh's government after the 1945 August Revolution. The group created its own magazine, *Thanh Nghị* (literally, “pure discussion”), and Vũ Đình Hòe served as its chief editor. Phan Anh's discussions in the magazine helped to arouse popular awareness of Western liberal constitutional ideas and institutions. Vũ Đình Hòe wrote in his memoirs that “Phan Anh's writings on Democracy and Constitution in the United States and European nations help the Thanh Nghị group and Thanh Nghị's audiences ponder about the future political regime in our nation” (Vũ Đình 2000, 237–38).

The Francophiles also called for reform of colonial governance by enactment of a Western-style constitution in Vietnam under the tutelage of the French. The activism of Nguyễn Văn Vĩnh and the *Đông Dương* magazine (1913–19) group, Phạm Quỳnh and the *Nam Phong* magazine (1917–33) group, and Bùi Quang Chiêu and the Constitutionalist Party, exemplify this (see Smith 1969; Cook 1977; Hue-Tam Ho 1984; Sasges 2010).

The first constitution, adopted in November 1946 after the August 1945 Revolution led by the Indochina Communist Party (now the CPV), was the denouement of various popular constitutional movements, rather than the exclusive product of communist power (Marr 1995). Although the constitution was drafted after the triumph of communist power, it included several Western liberal constitutional values, reflecting multiple popular constitutional mobilizations (see Bach and Vũ Đình 1984; Vũ Đình 1995; cf. Fall 1956, 13–14).

In the northern Democratic Republic of Vietnam, a popular political movement, known as Nhân Văn-Giai Phẩm, emerged in opposition to communist rule in the late 1950s (Boudarel 1990). Through the *Nhân Văn* paper and the *Giai Phẩm* periodical, Vietnamese intellectuals demanded political reforms to introduce democracy and human rights (Nicholson 2007, 42). The movement included prominent Vietnamese intellectuals at the time, including journalist Phan Khôi, lawyer Nguyễn Mạnh Tường, historian Đào Duy Anh, philosopher Trần Đức Thảo, music composer Văn Cao, writer Phùng Quán, poet Hoàng Cầm, painter Bùi Xuân Phái,

and others. In late 1956, the CPV quelled the movement: some members were imprisoned, and some were sent to “reeducation camp” (Boudarel 1990, 165). After the renovation reforms in the late 1980s, imprisoned intellectuals were rehabilitated. Members of the movement were recognized by the government with state awards, mostly posthumously, in the late 1990s and 2000s (see BBC 2007).

The Nhân Văn-Giai Phẩm movement was an expression of Vietnamese popular constitutionalism. As a popular mobilization, it advanced constitutional arguments independent of the communist constitutional ideology, raised popular awareness of liberal constitutional rights, and challenged the existing communist constitutional order. Much of its rhetoric connected political change to rights. As we see today, this rights focus is present both in abstract constitutional consultations, and in grassroots issues about entitlements to own motorbikes (Sidel 2008) and resistance of abuses of power (Nguyen Huong 2014). There has not been a vacuum of constitutional activism in Vietnam. Throughout the construction of the socialist constitution in Vietnam, introduced in 1959, other constitutional visions, including popular constitutionalism, have had support.

Previous Petitions

After the 1975 national unification, the Socialist Republic of Vietnam enacted a new constitution in December 1980 (Duiker 1992), which was later replaced by another constitution in April 1992 (Heng Hiang Khng 1992; Ngô Bá Thành 1993; Sidel 2002, 2008; Hill 2008; Tran and Duong 2008). These documents were both influenced by the Soviet model, with the latter incorporating more liberal values to facilitate economic reform as a consequence of the party’s 1986 *doi moi* program. During the implementation of the post-*doi moi* constitution, Vietnamese intellectuals, many of whom were later authors of Petition 72, submitted several petitions to the government. These earlier petitions are discussed below.

Anti-bauxite petition. Vietnam holds the third largest bauxite resources in the world, estimated at 5.4 to 8.3 billion tons, mostly found in the Central Highlands (Thayer 2009). At its tenth national congress in April 2006, the CPV decided to make the exploitation of bauxite an integral part of the nation’s economic development plan. In November of that year, an agreement on bauxite exploitation was signed between the China Aluminum Company and the Vietnam National Coal Mineral Industries Group. Although in 2008 there were criticisms from some environmentalists about the lack of environmental impact assessments, it was not until January 2009, when General Võ Nguyên Giáp wrote an open letter, that the issue of bauxite mining triggered widespread popular disquiet. According to Thayer, General Giáp argued that

bauxite mining would ruin the environment, displace indigenous ethnic minorities and, most significantly, threaten national security with the influx of Chinese workers into the strategic Central Highland and by providing China with economic leverage. (Thayer 2009, 50)

When the government convened a national seminar on the bauxite issue on April 9, 2009, General Giáp publicly addressed a second letter to Vietnam's leadership.

Underpinned by General Giáp's letters, on April 12, 2009, 132 intellectuals submitted an anti-bauxite petition to the National Assembly, the President of the State, and the government. They created the *boxitvn* website and blog, with a picture of General Giáp used as the symbol, to disseminate the petition and gather more supporters (Nguyễn Huệ Chi et al. 2013b). As Thayer observed,

By May 2009, the anti-bauxite network of 2008 had grown into a national coalition including environmentalists, local residents, scientists, economists, retired military officers and veterans, retired state officials, social scientists, other academics and intellectuals, elements of the media, and National Assembly deputies. These critics were all mainstream elite. (Thayer 2009, 51)

The anti-bauxite petition was later signed by 2,746 people both inside and outside Vietnam (Nguyễn Huệ Chi et al. 2010a). After the Ajka alumina sludge spill happened in Hungary on October 4, 2010, the anti-bauxite group addressed a second petition on October 9, 2010, to the CPV and the government, calling for the termination of the bauxite project to avoid a similar accident. The second anti-bauxite petition was signed by 2,765 people a month later, according to the group's website (Nguyễn Huệ Chi et al. 2010b).

Petition on the defense and development of the country in the current situation. The concerns of the anti-bauxite group moved beyond bauxite and reached into more substantial national affairs. At the first session of National Assembly Term XIII, the group addressed a petition to the National Assembly and the CPV entitled the "Petition on the Defense and Development of the Country in the Current Situation," dated July 10, 2011, and made it public on its anti-bauxite website (Nguyễn Huệ Chi et al. 2011). The petition argued that Vietnam's independence, self-determination, and territorial integrity were under serious threat from rising Chinese power. Domestically, it argued that the nation faced multiple challenges: an underdeveloped economy with lasting crises and little prospect of change, cultural and social deterioration, and contradictions within the political system acting as a barrier to national development.

Based on this analysis, the petition demanded that Vietnam make transparent its real relationship with China; that it provide constitutionally protected fundamental rights; that all citizens, all Vietnamese inside and outside of Vietnam, without any distinction as to political belief, religion, ethnic background, or social position, be allowed to work to accomplish national harmony and reconciliation and to unify the nation in the spirit of patriotism, fraternity, and tolerance; and that the leaders of the CPV take total responsibility for today's national condition (Nguyễn Huệ Chi et al. 2011). According to the website of the group, by July 28, 2011, the petition had been signed by 1,919 people (Nguyễn Huệ Chi et al. 2011).

This sustained tradition of protest and activism is bedrock to enabling the characterization of Petition 72 as an act of popular constitutionalism.

B. The Constitution-Making Space and Activism

We turn next to identify the space available for constitutional dialogue and activism. After 25 years of *Đổi mới* or economic renovation, on August 4, 2011, the National Assembly Term XIII decided to establish the Constitutional Amendment Commission to consider comprehensively revising the 1992 constitution. This was undertaken to establish a framework for a new phase of “comprehensive renovation.” This party-state constitution-making moment opened the door for the rise of popular constitutionalism in Vietnam.

In early 2013, the Vietnamese government released the draft revised constitution to the public for comment. In response to a query on Article 4, which mandates the exclusive leadership of the CPV, Phan Trung Lý, a member of the Constitutional Amendment Commission and Head of the Legal Committee of the National Assembly, said: “The people can comment on Article 4 as well as all other issues in the draft; there is no taboo” [*nhân dân có thể cho ý kiến đối với điều 4 Hiến pháp như với tất cả các nội dung khác trong dự thảo, không có gì cấm kỵ cả*] (Chung Hồng 2012). The public consultation process took place nationwide from January 2 to March 31, 2013. Popular constitutional debate in early 2013 was the most open and participatory to occur in independent Vietnam, albeit under political management. This moment or space was a vital precondition to the subsequent ways in which the petition was mobilized.

Petition 72

On January 19, 2013, in the midst of the declared public constitutional consultation period, seventy-two intellectuals, some of whom had participated in the two petitions mentioned above, submitted the petition calling for fundamental constitutional change. The petition eventually gained more than 14,000 signatures (London 2013).

Personnel. The petition and the names of the seventy-two scholars—members of the well educated mainstream elite in Vietnam—were first published on the anti-bauxite website. Most notable among them was Nguyễn Đình Lộc, a distinguished constitutional law scholar and former Minister of Justice. Other prominent members included Nguyễn Quang A (economist), Lại Nguyên Ân (cultural studies scholar), Nguyễn Huệ Chi (cultural studies scholar), Lê Đăng Doanh (economist), Hồ Ngọc Đại (pedagogue), Trương Lai (sociologist), Phạm Chi Lan (economist), Nguyễn Ngọc (writer), Nguyễn Trọng Tạo (writer), Hoàng Tụy (mathematician), and Nguyễn Đức Xuân (specialist in ancient Hue studies). Many other petitioners had served in the government or pro-party sociopolitical organizations, such as Lê Hiếu Đằng (former Vice-President of the Fatherland Front of Ho Chi Minh City), Lê Công Giàu (former Vice-President of the Communist Youth Union of Ho Chi Minh City), Chu Hảo (former Vice-Minister of Science, Technology, and Environment), Hồ Uy Liêm (former Vice-President of Vietnam Union of Science and Technology Associations), and Nguyễn Minh Thuyết (former Vice-Chairman of a special committee for culture and education under the National Assembly). The

group also included writers, journalists, university professors, music composers, retired officers, and religious activists (for the list of seventy-two scholars, see Nguyễn Huệ Chi et al. 2013a).

Substance of the discourse. Petition 72 included an introduction that set out the conceptual framework and seven detailed points, which we consider in turn. We describe the petition in detail, partly because it has not been extensively debated in English-language legal analysis of Vietnam's constitutional developments.

Conceptual framework. In its introductory section, Petition 72 articulated the nature of a democratic constitution. According to the group, a democratic constitution must guarantee authentic popular sovereignty and must be created by the consensus of various societal forces. It must also establish external and internal limits on public power. Internal limits are achieved by institutional checks and balances, while external limits are guaranteed by rights to freedom of speech, press, assembly, association, and demonstration. The petition criticized the draft revised constitution for failing to embody this conception of a democratic constitution.

Next, the petition provided standards by which to evaluate the legitimacy of a constitution. First, it stipulated that a legitimate constitution must protect independent sovereignty and promote freedom, democracy, equality, and happiness. At the same time, it must unify the entire people and eliminate division and economic depression to ensure stable development of the nation. Second, a legitimate constitution must express popular will and popular consensus in creating state bodies. Third, a legitimate constitution must be created in accordance with universal principles of the civilized world and international commitments to which Vietnam is a signatory.²

"We the people": Popular constituent power and party leadership. Petition 72 contended that the constitutional preamble was not the place to extol the achievements of any organization, implicitly attacking the preambles of the 1992 constitution and the draft revised constitution, which celebrated the achievements of the CPV. Instead, Petition 72 suggested that the preamble must state the constitution's goals of protecting people's security, freedom, and happiness, to limit governmental power, and to provide a framework for political, economic, social, and cultural activities to proceed effectively and peacefully with a forward-looking orientation seeking the happiness of future generations. The petition also insisted on the popular authorship of constituent power. It reasoned that constituent power creates the powers of the state (legislative, executive, and judicial), which must belong to the people, not to state bodies.

On the basis of the conception of popular constituent power, Petition 72 questioned the constitutional mandate of CPV leadership. If the constitution is created

2. Vietnam is a signatory to the International Covenant on Civil and Political Rights (ICCPR) (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Suppression and Punishment of the Crime of Apartheid (1973), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the Convention on the Rights of the Child (1989). Vietnam was a signatory in 1982 to the ICCPR, but has not signed the 1984 or 1989 second optional protocols to the ICCPR (Government of the Socialist Republic of Vietnam 2013).

by the people, the petition reasoned, providing a political organization with a guaranteed role in leading society and the state undermined the principles of popular sovereignty, human rights, and the rule of law. It insisted that the leadership of society should be decided by the people through free, democratic, and periodic elections. Petition 72 implicitly called for the removal of the constitutional confirmation of the leadership of the CPV and the creation of a multiparty system, but did not explicitly deny the leadership of the CPV. Rather, it suggested that the party had lost, but could restore, popular trust and lead society legitimately by accepting “competitive politics.” In other words, the legitimate leadership of the CPV should not be constitutionally confirmed in advance, but should be decided politically by elections.

Human rights. Petition 72’s second point concerned human rights. It criticized the human rights provisions in the draft constitution, which allowed restrictions on human rights for reasons of national defense, security, social order, and social morality. The petitioners believed that these restrictions would enable “human rights violations and repression of citizens’ freedom as has happened in the past in our nation” (Petition 72, quoted in Nguyễn Huệ Chi et al. 2013a). The group of seventy-two then called for a constitutional human rights regime in accordance with the 1948 Universal Declaration of Human Rights and other international human rights treaties to which Vietnam is a signatory. To guarantee the protection of constitutional rights, the group proposed an independent national committee on human rights.

Land ownership. Petition 72 condemned the regime of “the people’s ownership” of land established in Vietnam since 1980 that effectively gives the state exclusive ownership of all lands. The petition argued that this regime violated citizens’ fundamental rights to property and offered reasons as to why it should be dismantled. First, it noted that the state’s ownership of land was the cause of popular petitions regarding land. Second, and more seriously, the state’s exclusive ownership of land results in corruption in land acquisition and allocation. This corruption, the petition warned, may cause social chaos (see Gillespie, Fu, and Phạm 2014, 63 on how aggrieved farmers reacted). The group then criticized the draft revised constitution’s provision on land, which aimed to legitimize governmental powers to acquire land for socioeconomic development projects constitutionally.

Petition 72 called for a return to multi-ownership of land, as established in 1946 and 1959. It also suggested there should be a mechanism for state compulsory acquisition of land with compensation, and no special mechanism for socioeconomic developments.

State apparatus. The fourth point concerned the state apparatus. The petition argued for constitutionality and legality in the actions of all state institutions. Three suggestions were provided to guarantee this: the separation of powers, institutional checks and balances to avoid “the monopoly of powers by any organization and individuals” (implicitly referring to the CPV and communists), and a constitutional court with the power of judicial review. This latter proposal was suggested as superior to the proposed constitutional council with advisory powers set out in the draft

revised constitution. These suggestions reflected the petitioners' concern for institutionalized constraints on public power as a response to serious corruption cases and other abuses of power within authoritarian Vietnam.

Armed forces. The fifth point called for the elimination of the provision of the draft revised constitution that required the military to be loyal to the CPV. The armed forces, the group argued, were to defend the national territory and serve the people. Therefore, the military must be loyal to the Fatherland and the people, not to any one organization. Petition 72 hence proposed a civil military.

Constitutional referendum. The sixth point called for a constitutional referendum to endorse the new constitution. The petitioners reasoned that the constituent power belonged to the entire people, which was different to the legislative power of the National Assembly. They argued that a national referendum must be organized to allow the people to ratify the new constitution. It should be transparent and supervised by the people and the mass media.

Extension of the period of constitutional consultation. The final point asked for more time for people to comment on the draft revised constitution. According to the resolution by the National Assembly, constitutional consultation was to last for three months: from January 2 to March 31, 2013. The group of seventy-two argued that the three-month period was insufficient, because the collection of popular opinion would impact the nation and should not be conducted perfunctorily. The petitioners suggested public constitutional consultation should be extended to the end of 2013, and encouraged the public to propose alternative constitutional drafts. The group itself proposed a draft constitution modeled on a Western liberal constitution (the group's draft constitution is available at Nguyễn Huệ Chi et al. 2013b).

Activism and Mobilization

This section of the article traces the activism and mobilization of the group of seventy-two and the party-state's response. We highlight the activism and commitment to popularizing the petition. The dynamics of the consultation reveal the group's tenacity, particularly when the party-state sought to divide the group and render the document marginal and subversive. The fact that the party-state sought to minimize the impact of the petition, however, does not reduce the petition's intellectual roots or its innate popular constitutionalism. Paradoxically, the contest reveals the resilience of the popular constitutional moment, particularly when interpreted in the context of populist rights protests and a history of popular constitutionalism.

Hospitable dialogue. Initially, there was a hospitable dialogue between the constitution-makers and the group of seventy-two. On February 4, 2013, a deputation of fifteen scholars, led by former Minister of Justice Nguyễn Đình Lộc, submitted the petition to the Constitutional Amendment Drafting Committee at a formal meeting. It had received around 2,000 signatures at the time. In submitting the petition, the scholars clarified the three objectives of Petition 72: first, to provide practical suggestions to create a better constitution; second, to provide a wide forum

for debating constitutional issues; and third, to arouse popular awareness of constitutional values and their significance. Nguyễn Đình Lộc said the intellectuals submitted the petition to create “a constitution of the people and for the people,” and to disseminate “constitutional knowledge” and “constitutional culture” to the people (Thành Văn 2013). Nguyễn Trung, another member of the group, suggested that

Constitutional revision is a great chance to create the power of the nation to deal with its difficulties. Therefore, we passionately suggest creating a public and open forum to promote people’s intelligence to comment on the constitution. (Quoted in Thành Văn 2013)

The implication is that, by submitting this petition, the group hoped to trigger further and wider conversations on constitutional issues. In that meeting, Lê Minh Thông, Vice-President of the Constitutional Amendment Drafting Committee, who received the petition, stated that the Committee welcomed the contributions of the intellectuals and would report to the Constitutional Amendment Commission on the submission of the petition (Thành Văn 2013).

On February 7, 2013, the Constitutional Amendment Commission issued a document in reply to Petition 72, addressed personally to Nguyễn Đình Lộc, rather than to the group as a whole (Nguyễn Huệ Chi et al. 2013d). It stated that different perspectives would be collected during the constitutional revision process, but that public comment must be in accordance with the resolution of the National Assembly, which implicitly meant that the public could not propose different constitutional drafts. The public could only comment on the draft proposed by the Constitutional Amendment Commission.

On February 18, 2013, by which time the signatures to the petition had increased to 4,000, the group of seventy-two published a response to the Constitutional Amendment Commission’s reply on the anti-bauxite website (Nguyễn Huệ Chi et al. 2013d). It insisted that the constituent power belonged to the people, not to the National Assembly, and hence, the people could propose different constitutional drafts. Second, it called on the Constitutional Amendment Commission to publicize and disseminate the contents of Petition 72 and other popular constitutional suggestions officially, to stimulate public debate of constitutional issues.

Hostile dialogue. Petition 72 was officially publicized, but also subjected to a campaign of criticism initiated by the party-state. The state-owned media were summoned to counter its main contents publicly. Party scholars appeared frequently in the television news, and party-controlled newspapers like the *People’s Newspaper* (Báo Nhân dân), *People’s Military Newspaper* (Báo Quân đội Nhân dân), and the *Great Solidarity Newspaper* (Báo Đại Đoàn Kết), criticized the calls for a multiparty system, Western-style separation of power and checks and balances, a military accountable to civilians, and multi-ownership of land. At the same time, these publications justified the legitimacy of the single leadership of the CPV, the concentration of state power, the loyalty of military to the party, and the state’s ownership of land (Thời sự 2013). Ironically, the criticisms contained in the official mass media indirectly helped to publicize and disseminate the key contents of Petition 72.

Thanks to this media exposure, Petition 72 gained public attention, and arguably at least some laypeople became aware of the key liberal constitutional elements articulated by a group of public intellectuals.

The most notable criticism of the group was led by the General Secretary of the Communist Party, Nguyễn Phú Trọng. He attacked Petition 72 when meeting the Vĩnh Phúc Party's Standing Committee on February 25, 2013, broadcast on the national TV News:

Recently there have been currents of ideas that can be considered as political, ideological, and moral deterioration. [For instance] is there anyone who wants to remove Article 4 from the Constitution? [Anyone] who wants to deny the Communist Party's leading role? [Anyone] who wants pluralism and multiparty system? [Anyone] who wants the separation of powers? [Anyone] who wants to depoliticize the military? There have been people with such opinions, and their opinions have been disseminated by the mass media. This must be nothing else but deterioration! What else can group petition, demonstration and class action lawsuit be? (Anonymous 2013)

The scholars of the group of seventy-two and others pushed back against Nguyễn Phú Trọng's statement on personal websites, blogs, and Facebook. On the same day as the statement, Nguyễn Đắc Kiên, a junior correspondent of the state-owned *Family & Society Newspaper* (*Báo Gia đình & Xã hội*) published an article on his personal blog (which was subsequently disseminated on the Internet) in which he overtly criticized the general secretary.

Kiên then "declared" his constitutional petition, calling for a constitutional convention, removal of Article 4 and establishment of a multiparty system, separation of state powers vertically and horizontally, and depoliticization of the military. Kiên concluded that by making this declaration, he was practicing the liberal rights of any Vietnamese citizen, namely the natural rights to freedom of expression and thought, which are respected by the Vietnamese people and cannot be taken away by the CPV (Nguyễn Đắc Kiên 2013). Kiên lost his job the following day (*Báo Gia đình and Xã hội* 2013), but his action was supported by many citizens, resulting in another movement named the Declaration of Free Citizens. Committing to "being side by side with journalist Nguyễn Đắc Kiên," this organization widely shared the declaration on the Internet and received 8,000 signatures by mid-March 2013.

After Nguyễn Đắc Kiên's article, on February 28, 2013, Professor Trương Lai, a prominent member of the group of seventy-two intellectuals, wrote a long letter published on the anti-bauxite website attacking Nguyễn Phú Trọng's criticism of the group (Nguyễn Huệ Chi et al. 2013e). Trương Lai condemned the general secretary's description of the constitutional petition as representing "political, ideological, and moral deterioration" as obscure. He noted that Petition 72 was officially submitted and the constitution makers had committed to consider the petition. As a result, the general secretary's imputation that it reflected moral deterioration was offensive to the intellectuals and the people. Trương Lai asked the general secretary to apologize to the intellectuals and the people.

Other prominent scholars of the group also resisted the general secretary's criticism (Thành Văn 2013). Professor Hoàng Xuân Phú stated on his personal blog that the general secretary's statement was disdainful, and seriously undermined the constitutional right to freedom of speech (quoted in Thành Văn 2013). Nguyễn Quang A restated the case of Nguyễn Đắc Kiên, criticizing the general secretary's statement as "irrational," praising Kiên for his timely and coherent criticism, and calling for protection of Kiên by the press (quoted in Thành Văn 2013).

Nguyễn Đình Lộc. Petition 72 is often associated with former Minister of Justice Nguyễn Đình Lộc, who acted as leader and public face of the delegation that officially submitted Petition 72 to the constitution makers (see, e.g., Bui 2013b). This was evident in both international and local media reporting at the time (see Gillespie 2014, 138; Thành Văn 2013). Holding a doctorate, Nguyễn Đình Lộc specializes in constitutional law and is well recognized in Vietnam as a distinguished scholar in this field. Nguyễn Đình Lộc's participation influenced the circulation of news about Petition 72. To reduce the influence of the group, the party-state sought to separate Nguyễn Đình Lộc from the group, diminishing his participation and casting him as a reluctant advocate, at least from the public's vantage point.

On March 22, 2013, when the period of public constitutional consultation neared its close, Nguyễn Đình Lộc appeared on the official VTV News to explain his role in the group of seventy-two (Nguyễn Đình Lộc 2013). In the interview, Nguyễn Đình Lộc said that he did not participate in drafting the petition, but confirmed that he studied it and signed it. He stated that he wished to revise some points in the petition before its submission, but because other scholars stated that it had already been published on the group's website and it was not possible to revise it, he accepted it without revision. As to his alleged leading role in the presentation of the submission, Nguyễn Đình Lộc explained that this role was not planned in advance and that it came about only when the delegation gathered at the National Assembly in Hanoi to submit the petition.

Nguyễn Đình Lộc's interview was controversial. Official mass media tried to explain that Nguyễn Đình Lộc had not been pressured to reject his role in the group of seventy-two (G. L. 2013). In unofficial venues, many criticized him for betraying the group by denying or downplaying his role. Members of the group offered different views. Professor Trương Lai stated that Nguyễn Đình Lộc's statement was ambiguous (whether it was deliberately so was not discussed). Trương Lai verified that no one in the group forced Nguyễn Đình Lộc to lead the delegation, but Nguyễn Đình Lộc was very pleased to take on this role and performed it in an outstanding way (BBC 2013a). Nguyễn Huệ Chi, a prominent scholar in the group, sympathized with Nguyễn Đình Lộc in an interview with the BBC, stating that Lộc was pressured by the authorities to appear on television to clarify his role. But Chi restated that Nguyễn Đình Lộc accepted the petition and did not withdraw his signature (BBC 2013b).

Nguyễn Đình Lộc's television appearance was meant to distinguish him from the rest of the group and limit his personal influence. But Nguyễn Đình Lộc did not deny his signature on the petition or his role as leader of the delegation. Whether he had debated the petition with other scholars and whether his

leadership role was previously arranged were relatively minor points. The television comments, made subsequent to the delivery of the petition, do not diminish the fact that Nguyễn Đình Lộc signed the petition and agreed to act as leader of the delegation. Nguyễn Đình Lộc agreed with proposing fundamental constitutional change and was prepared to act publicly to advance it.

The call for postponement of constitutional ratification. The public consultation was terminated at the end of April 2013, according to the approved official agenda. In response to calls for an extension, the Constitutional Amendment Commission issued a document stating that although the official time for public constitutional consultation had passed, people could continue to comment on the draft revised constitution until September 30, 2013, when the National Assembly would meet to approve the new constitution (Government of the Socialist Republic of Vietnam, National Assembly Constitutional Amendment Commission 2013).

The third draft, which was presented and debated in the National Assembly on June 3–4, 2013, explicitly rejected the main points of Petition 72. There was wide agreement among the national deputies on the constitutional mandate of party leadership, the concentration of power, the military's loyalty to the party, and the state's exclusive ownership of land. These comments formed the basis of much reporting, which worked to propagandize them to the public (Nguyễn Quang Thông 2013; Mai Anh Tuấn-Nguyễn Tiến 2013).

In late October 2013, the fourth draft of the revised constitution was presented with no substantial changes and debated again in the National Assembly. On October 16, 2013, disappointed with the latest draft of the revised constitution, the group of seventy-two called for suspension of the adoption of the new constitution. They published a statement on the anti-bauxite website, addressed to the National Assembly and signed by 165 intellectuals, but not including Nguyễn Đình Lộc (Nguyễn Huệ Chi et al. 2013c).

The group explained that the draft revised constitution proposed (and later adopted) by the National Assembly contained no substantial changes from the existing 1992 constitution. The group argued that the adoption of such a constitution precluded the peaceful transformation of Vietnam from totalitarianism into a democracy, and would lead the nation and the people into a more disastrous situation. The group called for more participatory constitutional deliberation and, eventually, ratification of a new constitution by popular referendum. If the vote on the final draft of the 2013 revised constitution took place, the group called for National Assembly deputies to vote against it.

Some articles published in the party-controlled media, such as *Quân đội Nhân dân* (Army News) and *Công an Nhân dân* (People's News), characterized the call to postpone adoption of the new constitution as a strategy for "peaceful evolution" against the party and the state (see, for example, Linh Nghĩa 2013; Nguyễn Văn Minh 2013).

Declaration of the revised constitution. On November 28, 2013, the National Assembly adopted the new constitution. Fundamental political principles, the overall institutional structure, and basic state policies remain intact. One day after the new constitution was approved, the group of seventy-two issued a declaration

(Nguyễn Huệ Chi et al. 2013f) stating that the National Assembly had shown disdain for the popular wish for a new constitutional foundation for democracy and rule of law in Vietnam. The group argued that since the new constitution was not truly a constitution of the people, the people could practice civil disobedience. But, the petitioners were forward-looking. They called for the party-state's respect for civil and political rights, an "authentic" election to create a new National Assembly, which would truly represent the people's will, and the patient and peaceful popular mobilization for human rights and political reforms.

As this chronicle reveals, the space afforded to constitutional dialogue in 2012–2013 was the largest to date in contemporary Vietnam, and it existed specifically to engage with ideas about constitution making. That said, it was not an uncontested space. As we have seen, the leadership sought to disrupt the momentum and arguments of Petition 72. In the face of the leadership's containment strategy, the petitioners remained consistently focused on legitimate constitutional debate, avoiding the illegitimate: political protest. The dynamics within the space, however, do not diminish its significance to enabling popular constitutionalism.

C. Legitimacy

As noted earlier, assessed against Fallon's (2005) theory, all three notions of constitutional legitimacy had been challenged in Vietnam: legal, sociological, and moral. Characterizing the leadership as suffering a legitimacy deficit across all bases instigated the rise of popular constitutionalism.

Focusing on legal legitimacy, Cheryl Saunders (2012) notes that "there is now, effectively, universal acceptance that the authority of a constitution must derive, in one way or another, from the people of the state concerned" (2). Rooted in the idea of popular constituent power, which in turn derives from the theory of social contract, the popular constitution-making model (allowing the people to deliberate and ratify the constitution, often by referendum) is accepted as the legal standard of a legitimate constitution.

Saunders effectively posits a legal means by which Fallon's (2005) concept of legal legitimacy can be tested. The idea of popular constituent power, and popular constitutional ratification, has spread widely in Vietnam in the early twenty-first century, especially during the period of constitutional revision (Chung Hoàng 2013; Nguyễn Lê 2013). The reinforced social awareness of popular authorship of the constitution, and popular constitutional ratification, challenges the current Constitution of Vietnam—the product and instrument of the party-state, made by a party-led legislature without formal acceptance from the people. A particular implication is that without formal popular ratification of the constitution, the leadership of the CPV, albeit constitutionally authorized, is illegitimate because of the lack of formal confirmation by the people.

That is why the call for constitutional referendum was such a strong feature of Petition 72 and was repeatedly underlined in the group's discourse. The petition for a constitutional referendum had a practical aim also. The call for people to vote on

the constitution implicitly required a mobilization of the people to determine the nature of the political system, and particularly the role of the CPV in Vietnam.

Next, constitutional legitimacy in Vietnam faces a more serious challenge when assessed against Fallon's (2005) notion of sociological legitimacy. Despite the absence of formal popular approval, since 1986 constitutional legitimacy in Vietnam has been guaranteed by sociological acceptance which, according to Thayer,

has rested on multiple sources such as the charismatic leadership and legacy of Ho Chi Minh, success in defending Vietnam from foreign domination, and performance legitimacy through poverty reduction and high economic growth rates. (Thayer 2009, 48)

Since the early 2010s, however, serious domestic and international problems have emerged and called into question the sociological legitimacy of the Vietnamese political leadership. Notable domestic problems include economic degeneration and serious corruption, most seriously the *Vinashin* and *VinaLines* cases (*Saigon Times Daily* 2012). In its 2011 XI National Congress, the party itself articulated the gravity of the domestic situation (CPV 2011, 185). In an interview with official media, State President Trương Tấn Sang acknowledged that the people's trust of the party and the regime had been challenged and had declined (TTXVN 2013). China's claim of disputed islands (Hoàng Sa and Trường Sa) in the East Sea also posed challenges to the Vietnamese peoples' acceptance of their political leadership.

Finally, moral justification as a bedrock of Vietnamese constitutional legitimacy is questioned. Constitutional regimes are normally morally associated with universally accepted human rights. The Vietnamese state actively promotes social, economic, and cultural rights, and this confers legitimacy on its leadership. However, restrictions on political and civil rights, particularly the arrest, trial, and punishment of human rights activists, political dissidents, and bloggers, cause disquiet, which is taking its toll on the constitution's moral legitimacy (Thayer 2009, 55–60). This was repeatedly underlined by the group of seventy-two, who argued that the lack of moral legitimacy opened the window for a new constitutional order that was more morally justified because of its greater protection and promotion of civil liberties.

The party-state realized the challenges to its legitimacy and has initiated remedies to cope with the problem. It resolved to strengthen the national economy and to promote the third generation of human rights to enhance the sociological and moral legitimacy of the constitution. Concurrently, constitutional revision served to intensify legal legitimacy. This is window dressing at the very least, according to Ginsburg and Simpsen (2014), and perhaps instigates He and Warren's (2011) deliberative authoritarianism. Popular constitutional ratification in the future remains unlikely, possibly because of fears that radical forces will appropriate the mechanism to replace the political regime peacefully, as media commentary has suggested (Nhân Dân 2012).

Although legitimacy in China has also been challenged, especially in the wake of corruption and mental health problems (Biddulph 2015), it has its own responses. To begin with, the "quiet transformation" of China's constitution

through legislation as Yan Lin (2015, 61) argues may ensure the legal legitimacy without the need for formal constitution making. Moreover, the Chinese government's capacity to deliver economic growth and its forceful discipline of politburo members, like Bo Xilai and Zhou Yongkang, shore up its sociological legitimacy. This provides a base for the Chinese government's containment of liberal voices calling for political and constitutional reforms. This explains the Chinese government's success in containing the constitutionalism (*xianzheng*) debate in 2013 (Creemers 2014), which coincidentally happened at the same time as the Vietnamese government's public constitutional consultations and engagement with activists like the group of seventy-two.

V. ANALYSIS: VIETNAM AS A NEW SITE OF POPULAR CONSTITUTIONALISM

A. Necessary Conditions

We argue that the necessary conditions for the rise of popular constitutionalism existed in Vietnam in 2012 and 2013. First, representations to government for change have their roots, as we have seen, in Vietnamese history. The rise of popular constitutionalism in Vietnam is connected with the tradition of Vietnamese scholar constitutionalism. In Vietnam, public scholars have routinely called on their intellectual authority to rectify the use of public power and challenge regime legitimacy. Confucian scholars drew on the Confucian philosophy to challenge, criticize, and remonstrate against imperial rulers. To be sure, the traditional rationalist discourse against arbitrary and irrational power was limited to a narrow community of Confucian scholars and did not result in the mobilization of the people. This elite discourse was the result of the limits on and abuses of civil liberties by the imperial powers.³ Yet, this tradition of scholar constitutionalism laid the foundations for the contemporary development of constitutionalist discourse, such as that generated by Petition 72. Over time, Petition 72 may or may not lead to mass mobilization of the people.

In addition, Petition 72 was the natural continuation of rationalist discourse and popular mobilization in modern Vietnam. Modern public intellectuals, largely invoking modern liberal values mostly circulating in the Western world, called for reform of colonial or contemporary communist governance. This is evident in constitutional movements in the prerevolutionary period and the Nhân văn-Giai Phẩm movement in northern communist Vietnam mentioned above. Different from traditional rationalist discourse, modern rationalist discourse has extended to popular mobilization. Public intellectuals have not only advanced constitutional argument, but also facilitated popular engagement in the struggle for political and constitutional reform. Petition 72 was therefore not an exceptional or singular phenomenon, but a logical development of Vietnamese rationalist activism against irrational

3. For example, Emperor Tự Đức of the Nguyen dynasty directed the construction of his Mausoleum at the cost of other peoples' lives, despite elite criticism (see Bui 2013a, 420).

and arbitrary governance, instigated during imperial times and continued through the colonial period.

Moreover, and in the current period, Petition 72 is closely connected to contemporary rationalist activism undertaken by largely the same intellectuals as those involved in earlier petitions. Before the initiation of Petition 72, prominent figures, later located within the group of seventy-two (except Nguyễn Đình Lộc), had been concerned with what they saw as the serious problems of the nation. Originating in the anti-bauxite campaign, their rationalist activism was extended to more fundamental and comprehensive political, social, economic, and cultural issues of the nation. The anti-bauxite website and blog remain the fora for intellectuals to communicate with the public and the party-state on substantial national issues, including constitutional issues. Petition 72 aimed to contribute politically to constitutional revision, reflecting the intellectuals' broader and lasting aspirations for comprehensive and fundamental transformation of Vietnamese society. In many ways, the party-state's invitation to contribute to the constitutional debate enabled a public performance, locally and globally, of a popular constitutionalism that had percolated in Vietnam since earlier times.

Second, the chance of constitution making and public constitutional consultation created the space for Petition 72 and enabled the rise of popular constitutionalism in Vietnam. The condition of constitution making is closely connected to the legitimacy of Vietnamese socialist leadership.

Third, to secure and enhance the legitimacy of the constitution, the party leadership, political institutions, and the current regime, the party-state allowed a "no taboos" deliberation about constitutional change, which could provide a more open platform for the party, the state, and the people to engage in open dialogue on issues of state building. In state building, the party-state aspires to modernization, democratization, and industrialization and hence needs to engage with the public. The constitutional space for deliberation seized by the seventy-two petitioners was the direct result of the legitimacy deficit perceived by the party-state.

B. Petition 72 as the Manifestation of Vietnamese Popular Constitutionalism

Let us now consider whether Petition 72 can be considered the manifestation of Vietnamese popular constitutionalism assessed against the essential idea and observable criteria of popular constitutionalism previously articulated. We contend that through the activism of the seventy-two petitioners, popular constitutionalism has been developed in Vietnam as an alternative, not to judicial review, but to the party-state leadership of the socialist system. It does not challenge courts; rather, it targets the political system associated with authoritarianism, just as popular constitutionalism did historically (Dowdle 2012, 207–08). This is the general feature of popular constitutionalism within authoritarian regimes.

Vietnamese popular constitutionalism is *popular* in that it involves the discourse and mobilization of different sectors of the public. It is not the case that it is driven by a narrow elite group, because the seventy-two petitioners mobilized the support of thousands of Vietnamese through petitions, public letters, online

discussions, and mobilization of other intellectuals. Vietnamese popular constitutionalism is *constitutionalist* in the sense that the seventy-two petitioners and their public supporters mobilized for substantial change of Vietnam into a constitutionalist state, focusing on constitutionalist values such as democratic elections, a constitutional referendum, separation of powers, greater checks and balances, human rights, and judicial review.

Popular constitutionalism in Vietnam is sustained by particular modes of popular mobilization. Today, in Vietnam, various Western constitutionalist ideas are widely discussed in mainstream academic fora, among the legal community, and especially by Vietnamese constitutional law scholars (Phạm Văn Hùng 2010; Phạm Hồng Thái 2012). Legal scholars advanced these ideas in academic and popular fora during the constitution-making process. The group of seventy-two was instrumental not in inventing, but in popularizing, a new constitutional vision through its collective action. By officially submitting the petition to the constitution makers, engaging with the party-state, and gathering popular support with 14,000 signatures, the group enhanced popular cognition of and engagement with constitutional arguments. They also facilitated collective demands for constitutional change. The group's media presence was a significant factor in its reach, despite efforts to quarantine it.

In calling for change of the regime, the seventy-two petitioners had to confront existing powers directly. Yet none of them were jailed. To survive, the group of seventy-two adopted a strategic approach to reform evident in their realistic pragmatism.

First, the group channeled its action into targeting the mainstream constitutional process. It waited until the government released the draft constitution to the public for comment to launch the petition. This forestalled any government accusations of subversion.

Second, the group maintained a dialogue with the party-state. It officially submitted the petition and public letters to political leaders. It did not seek to mobilize the public to protest against the existing regime. The maintaining of constitutional dialogue ensured its survival. Although the party-state rejected most of Petition 72, it did not do so by silencing dialogue entirely and it did not incarcerate members of the group. The party-state engaged in constitutional dialogue with the group of seventy-two. In other words, Petition 72 was formally dealt with. The party-state rejected major points of the petition, but not in a completely authoritarian manner, and it sought to justify its approach. As other political scientists and constitutional scholars have noted—particularly He and Warren (2011), Ginsburg and Simpsen (2011), and Hand (2012)—the party-state benefits from this dialogue. While an authoritarian rejection of petitions for substantial constitutional change risks triggering more activism, engagement in constitutional conversations can confer legitimacy on the leadership. This is especially the case where the legal, sociological, and moral foundations of the current leaders' legitimacy have been seriously challenged. Repression of the group of seventy-two might only have aggravated the situation.

That said, the constitutional dialogue between the party-state and the group was skewed. The party-state controlled and made use of the official mass media to

attack the group, while the group could only respond to these attacks in unofficial fora. This imbalanced dialogue illustrates the authoritarian nature of the socialist constitution-making model practiced in Vietnam. Still, it did not repress the reform voice in the constitutional consultation process, or make impossible a claim of popular constitutionalism.

Third, the group sought to avoid illegal action. It refrained from creating a political organization and demonstrating publicly. Instead, it acted as a group and network. As state censorship did not allow its voice expression in official media, it mobilized public support through the Internet, blogs, and Facebook. In this way, it managed the state's hostility to its activism, outlined above.

Fourth, the group had personal links to the regime, which ensured its survival. The leadership offered by Nguyễn Đình Lộc, together with former senior National Assembly officials, such as Vũ Đức Khiển and Nguyễn Minh Thuyết, was instrumental in this regard.

Fifth, the group balanced global and local constitutional discourse. Petition 72 presented both universalist and nationalist contextual approaches to constitutional questions. In effect, and borrowing from Pitman Potter's analysis of Charter 08, Petition 72 adopted discourse from both Western liberal constitutionalism and official Vietnamese nationalist constitutionalism in advancing its suggestions (Potter 2012, 56–57). At the outset, the petitioners called for a Vietnamese constitution consistent with international constitutional standards which, in turn, are shaped by Western liberal constitutionalism. Western ideas of limited government and a contractual constitution were formative to the petitioners' articulation of the nature and function of the constitution and standards of constitutional legitimacy. More detailed constitutional arguments of the group of seventy-two on free and democratic elections, the separation of powers, checks and balances, a civil military, human rights protection, judicial review, and a constitutional referendum resonated with fundamental precepts of universal constitutionalism. In addition to echoing near-universal constitutional aspirations, Petition 72 also presented nationalist contextual constitutional considerations. This was evident in its emphasis on the function of the constitution in protecting independent sovereignty, promoting social cohesion, and eliminating social segregation. This nationalist conception of the constitution reflects concerns about rising Chinese power, which threatened Vietnamese independence when it claimed sovereignty over islands in the East Sea.⁴ These articulations echoed concerns in the Vietnamese state-run media, but this does not diminish their evident popular constitutionalism.

Petition 72 advocated liberal rights and the protection of private ownership, both reflecting near-universal aspirations and contextual considerations. Its rejection of the communitarian regime of human rights in favor of a liberal one emerged from a consideration of the local context, in which human rights activists and dissidents have been arrested, tried, and punished for their alleged abuse of their civil rights and their threat to national security and public order. The petition's call for multi-ownership of lands also reflected concerns about corruption with exclusive

4. Remember that in the preceding petition, the anti-bauxite group had warned also of the threat to national sovereignty posed by Chinese power (see Nguyễn Huệ Chi et al. 2011).

state ownership of land. But in venting the concerns about land publicly, the petition articulated a critique of corruption that had publicly circulated in Vietnam (Nguyễn Lâm 2012). The rejection of collective rights was perhaps less publicly circulated, but it resonated with the call for human rights protection evident in various spaces, including better protection of socioeconomic rights in the context of labor law (Lê Thị Hoài Thu 2013) and individual rights protection in criminal trials (Nguyễn Thị Bích Mai 2012).

Finally, the group was pragmatic. Petition 72 substantially challenged essential features of the Vietnamese socialist constitutional regime, and the group was no doubt aware of its rejection by the party-state. It is unlikely that the CPV was ready to accept the official existence of and potential for political rivals, who publicly challenged its power and competed with it in leading society and state in Vietnam. The party realized the limits of its leadership, but used its power to restore popular trust in it by reforming the party itself to ameliorate the situation, rather than accept competing parties.

Although it is difficult to gauge the exact impact of Petition 72 on the Vietnamese constitution-making process and its outcome, the 2013 constitution does resonate with at least some of the group's discourse and mobilization. For example, while the mobilization for popular constitutionalism failed to achieve a constitutional referendum, it put pressure on the state, which made the constitution-making process unconventionally participatory. While the ideas of popular constituents and a referendum have not yet been meaningfully articulated by the party-state and adopted, they are reflected rhetorically in the preamble of the constitution. For the first time in Vietnam, the constitution affirms the people as its author: "The Vietnamese People make, implement, and protect this Constitution" (Hiến pháp năm [Constitution] of 2013, preamble). Further, the call for extension of time for constitutional consultation assisted in generating debate pending the approval of the constitution.

Some might argue that there is no evidence of popular constitutionalism in Vietnam because the discourse and mobilization did not successfully result in the creation of a constitutionalist state in Vietnam. Our response is that even in the Anglo-American liberal context, public mobilization needed to be sustained over time before it culminated in constitutional change. Popular constitutionalism is comprised of different levels of circulation and acceptance. It is not explained by the binary present or absent. These different levels of circulation and acceptance are made real through the birth of the idea, greater discourse, and mobilization of groups of people, culminating in mass appeal and constitutional change. The Vietnamese experience of popular constitutionalism is nascent, demonstrating initiation introduction, increasing discourse, limited mobilization, and limited change.

VI. CONCLUSION: THE FUTURE OF POPULAR CONSTITUTIONALISM IN VIETNAM

The conclusion that there is popular constitutionalism evident in Vietnam cannot predict the Vietnamese constitutional future. There are several challenges for the future of popular constitutionalism in Vietnam.

The first concerns the nature of the regime. In authoritarian regimes, popular constitutional movements are vulnerable to repression by those in power. That said, there are local and global factors that we suggest compel authoritarian leaders, at least socialist ones committed to the constitutionalist space, to allow popular constitutionalist discourse and mobilization. Whether this space can be shaped by the leadership to co-opt and/or render the agitators mute remains unclear. Whatever the party-state motivation in Vietnam, when the domestic legitimacy of the authoritarian regime is challenged, power holders may be compelled to afford popular constitutional activism.

Second, the inevitable globalization of constitutional law also has an impact and may create more momentum for a space for deliberation and protest (Tushnet 2009, 987–95). This needs further study.

Third, even authoritarian rulers “feel compelled at least to pretend to be exercising their power within the constitutional framework” (Grimm 2010, 3). Global constitutionalism, therefore, may compel authoritarian leaders to accommodate certain levels of popular constitutionalist discourse and mobilization so as to maintain their international and local legitimacy.

Fourth, given the recent enactment of a new constitution, Vietnamese constitution making is not about to be revisited in the near future. This presents a less enabling future for ongoing development of popular constitutionalism in Vietnam. Past Vietnamese constitutional experience of activism, however, indicates that there may be episodes where strategic deployment of constitutional activism, amounting to popular constitutionalism, can continue. We have seen this in the recent past when the public, often led by activist lawyers, has invoked the constitution to oppose the policy proposals of different ministries on the basis they infringe constitutional rights (Sidel 2008, 88–89; Xuân Tùng 2009). This has also been evident since the passage of the 2013 constitution (Nguyen Huong 2014, 109).

Fifth, the 2013 constitution implemented various reforms, some of which arguably enable popular constitutionalism. The preamble provides that “we the people” frame and enforce the constitution, providing a base for the long march of Vietnamese popular constitutionalism. People and their representatives, lawyers, legal scholars, and activists may invoke this commitment in the constitutional preamble and articulate the meaning of constitutional norms, especially human rights norms, also introduced into the constitution.

Sixth, there is a need to distinguish constitutional consciousness from constitutional awareness, as the latter may buttress ongoing popular constitutionalism. Lack of constitutional awareness, while suboptimal, is not fatal to popular constitutionalism. Popular constitutional consciousness is low in Vietnam, and this inevitably constrains the potential to develop popular constitutionalism. In Vietnam, constitutional discourse and awareness varies substantially throughout the country. In a study published in 2013 (although the data were collected in 2012 before the advent of Petition 72) supported by the United Nations Development Programme (UNDP), researchers sought to ascertain levels of constitutional awareness. People in 21 randomly selected provinces were asked if they knew about the constitution (UNDP 2013, 16–17, 64–70) or the ongoing constitutional amendment and drafting process. Of those surveyed, 42.4 percent “had never heard of or did not know about the Constitution” (UNDP 2013, 17). Of those who knew of the constitution, 23

percent stated that they were “unaware of the ongoing constitutional revision process” (UNDP 2013, 17). These figures are national aggregates controlled for population variables; poverty, educational level, and gender were noted as impacting on answers (UNDP 2013, 16). In regional areas such as An Giang, Trà Vinh, and Tây Ninh constitutional awareness was much lower: between 63 percent and 71 percent of respondents indicated they were unaware of the constitution (UNDP 2013, 65).

Though the data were collected before the official period for constitutional consultation and predated Petition 72, they highlight the divide between elite scholars and governmental officials and the broader, particularly rural, population. These dynamics suggest that the dissemination of intellectually grounded popular constitutionalism may be a challenge in Vietnam.

There is, however, a distinction between popular constitutionalism and constitutional consciousness. While the former might ferment and be expressed covertly, or openly when space permits, the latter is part of the terrain for the popular constitutional energy. Inquiry about the consciousness of the constitution as an abstract phenomenon will underestimate levels of popular engagement with rights issues important to people’s daily lives. For example, the urban and rural poor might protest about rights to land, compensation, livelihood, and/or residency, but still might not connect the complaint or petition to a constitutional right (Gillespie, Fu, and Phạm 2014, 51–74; see also Transformation and Change Management Consulting and Gillespie 2014, 21–23)

The question is whether Vietnam’s low constitutional awareness forecloses the prospects for popular constitutionalism to take root or spread. Is there a possibility that popular constitutionalism is limited to the elite in authoritarian states? We agree with Dowdle that the question concerns the intellectual roots of popular constitutionalism and is not resolved by data on constitutional awareness, as the history of constitutionalism in nineteenth-century England and France demonstrates (Dowdle 2010, 982).

The crucial question becomes: Are there agents for constitutional dialogue for a different conception of constitutionalism who seek to engage the broader population in Vietnam? We suggest that Petition 72 signals that there are intellectual roots and a historical precedent for popular constitutionalism in Vietnam today.

We have offered an account of how an elite group of Vietnamese intellectuals seized the constitutional consultation moment and wrestled with the party-state. In doing so, they built on an historical continuum of argument seeking bedrock reform and leveraged out of the fragility of the party-state’s legitimacy. Elite scholars and political agitators, together with those seeking policy and law reform, are playing a pivotal role in articulating and seeking the adoption of new constitutional norms: performing popular constitutionalism through discourse and mobilization and evidencing strategic approaches.

REFERENCES

- Ackerman, Bruce. 1991. *We the People, Volume 1: Foundations*. Cambridge, MA: Harvard University Press.

- 1998. *We the People, Volume 2: Transformations*. Cambridge, MA: Harvard University Press.
- Anonymous. 2013. Tổng bí thư Nguyễn Phú Trọng nói về góp ý sửa đổi Hiến pháp [General Secretary Nguyen Phu Trong Speaks on Constitutional Revision]. <https://hienphap.wordpress.com/2013/03/08/tong-bi-thu-nguyen-phu-trong-noi-ve-gop-y-sua-doi-hien-phap-vtv1/> (accessed June 2, 2016).
- Bach, Pham Van, and Vũ Đình Hòa. 1984. The Three Successive Constitutions of Vietnam. *International Review of Contemporary Law* 1:105–18.
- Báo Gia đình, and Xã hội. 2013. Anh Nguyễn Đắc Kiên không còn tư cách là phóng viên Báo Gia đình & Xã hội [Mr. Nguyễn Đắc Kiên Is No Longer a Correspondent of the Family & Society Newspaper]. <http://giadinh.net.vn/xa-hoi/anh-nguyen-dac-kien-khong-con-tu-cach-la-phong-vien-bao-gia-dinh-xa-hoi-20130226054736172.htm> (accessed October 20, 2014).
- Beaumont, Elizabeth. 2014. *The Civic Constitution: Civic Visions and Struggles in the Path Toward Constitutional Democracy*. New York: Oxford University Press.
- Béja, Jean-Philippe, Fu Hualing, and Eva Pils, eds. 2012. *Liu Xiaobo, Charter 08, and the Challenges of Political Reform in China*. Hong Kong: Hong Kong University Press.
- Biddulph, Sarah. 2015. *The Stability Imperative: Human Rights and Law in China*. Vancouver, Canada: University of British Columbia Press.
- Boudarel, Georges. 1990. Intellectual Dissidence in the 1950s: The Nhan Van Giai Pham Affair. *Vietnam Forum* 13:154–74.
- British Broadcasting Corporation (BBC). 2007. Nhân Văn-Giai Phẩm được tặng giải [Nhân Văn-Giai Phẩm Was Awarded]. *Tiếng Việt*. http://www.bbc.co.uk/vietnamese/vietnam/story/2007/02/070222_state_awards.shtml (accessed February 2, 2014).
- . 2013a. Ông Nguyễn Đình Lộc nói về Kiến nghị 72 [Mr. Nguyễn Đình Lộc Speaking about Petition 72]. *Tiếng Việt*. http://www.bbc.co.uk/vietnamese/vietnam/2013/03/130323_nguyendinhloc_kienngghi72.shtml (accessed October 20, 2014).
- . 2013b. Ông Nguyễn Đình Lộc bị sức ép [Mr. Nguyễn Đình Lộc Is Under Pressure]. *Tiếng Việt*. http://www.bbc.co.uk/vietnamese/multimedia/2013/03/130323_huechi_nguyendinhloc_audio.shtml (accessed October 20, 2014).
- Bui Ngoc Son. 2012. Confucian Constitutionalism: Classical Foundations. *Australian Journal of Legal Philosophy* 37:61–98.
- . 2013a. Confucian Constitutionalism in Imperial Vietnam. *National Taiwan University Law Review* 8:373–435.
- . 2013b. *Petition 72: The Struggle for Constitutional Reforms in Vietnam*. <http://www.icconnect-blog.com/2013/03/petition-72-the-struggle-for-constitutional-reforms-in-vietnam/> (accessed October 20, 2014).
- . 2015a. The Discourse of Constitutional Review in Vietnam. *Journal of Comparative Law* 9 (2): 191–221.
- . 2015b. Restoration Constitutionalism and Socialist Asia. *Loyola of Los Angeles International and Comparative Law Review* 37 (1): 1–48.
- Cai, Dinghian. 2005. The Development of Constitutionalism in the Transition of Chinese Society. *Columbia Journal of Asian Law* 19 (1): 1–29.
- Chang, Wen-Chen. 2005. The Role of Judicial Review in Consolidating Democracy: The Case of Taiwan. *Asia Law Review* 2 (2): 73–88.
- Chen, Albert H. 2010. Pathways of Western Liberal Constitutional Development in Asia: A Comparative Study of Five Major Nations. *International Journal of Constitutional Law* 8: 849–84.
- Chua, Lynette. 2012. Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore. *Law & Society Review* 46:713–48.
- Chung Hoàng. 2013. Đề xuất quyền phúc quyết của dân với Hiến pháp [The Suggestion on the People's Right to Constitutional Referendum]. <http://vietnamnet.vn/vn/chinh-tri/104410/de-xuat-quyen-phuc-quyet-cua-dan-voi-hien-phap.html> (accessed October 16, 2014).
- Chung Hồng. 2012. Không có Cấm kỵ trong Góp ý Sửa Hiến pháp [There Is No Taboo Against Commenting on Constitution Revision]. <http://vietnamnet.vn/vn/chinh-tri/103205/khong-co-cam-ky-khi-gop-y-sua-hien-phap.html> (accessed October 16, 2014).

- Communist Party of Vietnam (CPV). 2011. Văn kiện Đại hội Đại biểu Toàn quốc lần thứ XI [Documents of XIth National Congress]. Hanoi, Vietnam: National Political Publishing House.
- Cook, Megan. 1977. *The Constitutionalist Party in Cochinchina: The Years of Decline, 1930–1942*. Clayton, Australia: Center of Southeast Asian Studies, Monash University.
- Creemers, Rogier. 2014. China's Constitutionalism Debate: Content, Context and Implications. *China Journal* 74:91–109.
- Dowdle, Michael W. 2002. Of Parliaments, Pragmatism, and the Dynamics of Constitutional Development: The Curious Case of China. *NYU Journal of International Law and Politics* 35 (1): 1–200.
- . 2010. Of Comparative Constitutional Monocropping: A Reply to Qianfan Zhang. *International Journal of Constitutional Law* 8:977–84.
- . 2012. Popular Constitutionalism and the Constitutional Meaning of Charter 08. In *Liu Xiaobo, Charter 08, and the Challenges of Political Reform in China*, ed. Jean-Philippe Béja, Fu Hualing, and Eva Pils, 205–28. Hong Kong: Hong Kong University Press.
- Duiker, William J. 1992. The Constitutional System of the Socialist Republic of Vietnam. In *Constitutional Systems in Late Twentieth Century Asia*, ed. Lawrence W. Beer, 331–62. Seattle, WA: University of Washington Press.
- Fall, Bernard B. 1956. *The Viet-Minh Regime: Government and Administration in the Democratic Republic of Vietnam*. New York: Institute of Pacific Relations.
- Fallon, Richard H. 2005. Legitimacy and the Constitution. *Harvard Law Review* 118:1787–1853.
- Gillespie, John. 2014. Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam. *Harvard Human Rights Journal* 27 (1): 107–49.
- Gillespie, John, Fu Hualing, and Pham Duy Nghĩa. 2014. *Land-Taking Disputes in East Asia: A Comparative Analysis and Implications for Vietnam*. Hanoi, Vietnam: United Nations Development Programme. http://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/land_taking_disputes_in_east_asia/ (accessed October 20, 2014).
- Ginsburg, Tom, and Alberto Simpser. 2014. Introduction: Constitutions in Authoritarian Regimes. In *Constitutions in Authoritarian Regimes*, ed. Tom Ginsburg and Alberto Simpser, 1–18. New York: Cambridge University Press.
- G. L. 2013. Ông Nguyễn Đình Lộc với Kiến Nghị 72 và quyền công dân [Mr. Nguyễn Đình Lộc, Petition 72, and Citizen's Rights]. <http://truongtansang.net/ong-nguyen-dinh-loc-ve-kien-nghi-72.html> (accessed October 20, 2014).
- Government of the Socialist Republic of Vietnam. 2013. Việt Nam tham gia hầu hết các Công ước về quyền con người [Vietnam Has Accepted Most Covenants on Human Rights]. <http://baodientu.chinhphu.vn/The-gioi-va-Viet-Nam/Viet-Nam-tham-gia-hau-het-cac-Cong-uoc-ve-quyen-con-nguoi/184765.vgp> (accessed October 16, 2014).
- Government of the Socialist Republic of Vietnam, National Assembly, Constitutional Amendment Commission. 2013. Số: 250/UBDTSĐHP v/v tiếp tục triển khai Nghị quyết của Quốc hội lấy ý kiến nhân dân về Dự thảo sửa đổi Hiến pháp [No: 250/UBDTSĐHP on Maintaining Conduction of National Assembly's Resolution on Collecting People's Opinion on the Draft of Revised Constitution]. Hanoi, Vietnam: Government of the Socialist Republic of Vietnam.
- Grimm, Dieter. 2010. The Achievement of Constitutionalism and Its Prospects in a Changed World. In *The Twilight of Constitutionalism?*, ed. Petra Dobner and Martin Loughlin, 3–22. Oxford: Oxford University Press.
- Hand, Keith. 2012. Resolving Constitutional Disputes in Contemporary China. *East Asia Law Review* 7 (1): 51–159.
- He, Baogang, and Mark E. Warren. 2011. Authoritarian Deliberation: The Deliberative Turn in Chinese Political Development. *Perspectives in Politics* 9 (2): 269–89.
- Henkin, Louis. 1993. A New Birth of Constitutionalism: Genetic Influences and Genetic Defects. *Cardozo Law Review* 14:533–47.
- Heng Hiang Khng, Russell. 1992. The Revised Constitution of Vietnam: Background and Scope of Changes. *Contemporary Southeast Asia* 14 (3): 221–30.

- Hill, Clauspeter. 2008. Vietnam – Constitutional Development in a Reunited Country. In *Constitutionalism in Southeast Asia: Volume 2: Reports on National Constitutions*, ed. Clauspeter Hill and Jörg Menzel, 327–54. Singapore: Konrad-Adenauer-Stiftung.
- Hue-Tam Ho, Tai. 1984. The Politics of Compromise: The Constitutional Party and the Electoral Reforms of 1922 in French Cochinchina. *Modern Asian Studies* 18 (3): 371–91.
- Kramer, Larry D. 2004. *The People Themselves: Popular Constitutionalism and Judicial Review*. New York: Oxford University Press.
- Landau, David. 2013. Abusive Constitutionalism. *U.C. Davis Law Review* 46:189–260.
- Lê Thị Hoài Thu, ed. 2013. *Bảo đảm quyền con người trong pháp luật lao động Việt Nam [Protection of Human Rights in Vietnamese Labor Law]*. Hanoi, Vietnam: Vietnam National University–Hanoi Publishing House.
- Linh Nghĩa. 2013. Cảnh giác với Thủ Thuật Chính trị Phá hoại việc Thông qua Hiến pháp [One Should Be Cautious Before Political Tricks Ruining the Adoption of the Constitution]. <http://www.cand.com.vn/vi-VN/binhluan/2013/11/213795.cand> (accessed October 22, 2014).
- London, Jonathan. 2013. Vietnam's bloggers challenging one-party rule. <http://www.bbc.com/news/world-asia-23605050> (accessed October 15, 2015).
- Mai Anh Tuân-Nguyễn Tiến. 2013. Đại biểu Quốc hội Đinh Xuân Thảo góp ý sửa đổi hiến pháp [National Deputy Dinh Xuan Thao commented on the Constitution revision]. <http://vietq.vn/dai-bieu-quoc-hoi-dinh-xuan-thao-gop-y-sua-doi-hien-phap-d14743.html> (accessed October 20, 2014).
- Marr, David. 1995. Ho Chi Minh's Independence Declaration. In *Essays into Vietnamese Pasts*, ed. K. W. Taylor and John K. Whitmore, 221–31. Ithaca, NY: Southeast Asia Program, Cornell University.
- Ngô Bá Thành. 1993. The 1992 Constitution and the Rule of Law. In *Vietnam and the Rule of Law*, ed. Carlyle A. Thayer and David G. Marr, 81–115. Canberra, Australia: Department of Political and Social Change, Research School of Pacific Studies, Australian National University.
- Nguyễn Đắc Kiên. 2013. Vài lời với TBT ĐCS VN Nguyễn Phú Trọng [Some Words to the General Secretary of the Communist Party of Vietnam Nguyễn Phú Trọng]. *Cùng Viết Hiến Pháp*. <https://hienphap.wordpress.com/2013/02/26/vai-loi-voi-tbt-dcs-vn-nguyen-phu-trong-nguyen-dac-kien/> (accessed June 2, 2016).
- Nguyễn Đình Lộc (interviewee). 2013. Ông Nguyễn Đình Lộc nói về Kiến Nghị 72. *VTV1 News*. <http://www.youtube.com/watch?v=bmx6GX1PJWM> (accessed October 20, 2014).
- Nguyễn Huệ Chi et al. 2010a. Danh sách chữ ký đợt 9 [The Ninth List of Signatures]. <http://www.boxitvn.net/kien-nghi/danh-sach-9> (accessed October 16, 2014).
- . 2010b. Danh sách ký Kiến nghị (2) tính đến ngày 9/11/2010 (2765 người) [The List of Signatures to 11 September 2010 (2,765 People)]. <http://www.boxitvn.net/ki%E1%BA%BFn-ngh%E1%BB%8B-2010/danh-sach-ky-ki%E1%BA%BFn-ngh%E1%BB%8B-2-tinh-d%E1%BA%BFn-ngay-22102010-1829-ng%C6%B0%E1%BB%9Di> (accessed October 16, 2014).
- . 2011. Kiến nghị về bảo vệ và phát triển đất nước trong tình hình hiện nay [Petition on the Defense and Development of the Country in the Current Situation]. http://boxitvn.blogspot.com.au/2011/07/toan-van-ban-kien-nghi-ve-bao-ve-va_18.html (accessed October 16, 2014).
- . 2013a. Danh sách người ký kiến nghị sửa đổi hiến pháp 1992 [List of Petitioners for the 1992 Constitution Revision]. <http://boxitvn.blogspot.com.au/2013/01/kien-nghi-ve-sua-oi-hien-phap-1992.html> (accessed October 16, 2014).
- . 2013b. Kiến nghị về sửa đổi hiến pháp 1992 [Petitions on Amending the 1992 Constitution]. <http://boxitvn.blogspot.com/2013/01/kien-nghi-ve-sua-oi-hien-phap-1992.html> (accessed October 16, 2014).
- . 2013c. Lời Kêu Gợi Dừng Việc Thông Qua Dự Thảo Hiến Pháp Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam Năm 1992 [The Call for Postponing the Adoption of the Draft Constitution of the Socialist Republic of Vietnam] (Stra Đồi 2013). <http://boxitvn.blogspot.com.au/2013/11/loi-keu-goi-dung-viec-thong-qua-du-thao.html> (accessed October 20, 2014).

- . 2013d. Thông báo của Nhóm soạn thảo và ký đầu tiên Kiến nghị 72 về công văn trả lời của Ủy ban Dự thảo sửa đổi Hiến pháp 1992 [Announcement of the 72 Group on the Response from the Constitutional Amendment Commission]. <http://boxitvn.blogspot.com/2013/02/thong-bao-cua-nhom-soan-thao-va-ky-au.html> (accessed October 20, 2014).
- . 2013e. Thư ngỏ gửi ông Nguyễn Phú Trọng [The Open Letter Addressing to Mr. Nguyen Phu Trong]. <http://boxitvn.blogspot.com.au/2013/03/thu-ngo-gui-ong-nguyen-phu-trong.html> (accessed October 20, 2014).
- . 2013f. Tuyên bố về Hiến pháp sửa đổi [The Declaration of the Revised Constitution]. <http://boxitvn.blogspot.com.au/2013/11/tuyen-bo-ve-hien-phap-sua-oi.html#more> (accessed October 20, 2014).
- Nguyen Huong Thi. 2014. Constitutional Rights and Dialogic Process in Socialist Vietnam: Protecting Rural-to Urban Migrants Without a Constitutional Court. In *Social Difference and Constitutionalism in Pan-Asia*, ed. Susan H. Williams, 109–35. New York: Cambridge University Press.
- Nguyễn Lâm. 2012. Hiến pháp nhìn từ Tiên Lãng [The Constitution Viewed from the Tiên Lãng Case]. *Tạp chí Tia sáng* [Light Magazine]. <http://tiasang.com.vn/Default.aspx?tabid=62&CategoryID=42&News=4891> (accessed October 15, 2014).
- Nguyễn Lê. 2013. Lập hiến là quyền trực tiếp của nhân dân [Constitution Making Is the Direct Right of the People]. *VnEconomy*. <http://vneconomy.vn/thoi-su/lap-hien-la-quyen-truc-tiep-cua-nhan-dan-20130219030752355.htm>.
- Nguyễn Quang Thông, ed. 2013. Đại biểu Quốc hội góp ý Điều 4 Dự thảo sửa đổi Hiến pháp [National Deputies Commented on Article 4 of the Draft Revised Constitution]. *Thanh Niên Online*. <http://www.thanhnien.com.vn/pages/20130527/dai-bieu-quoc-hoi-gop-y-dieu-4-du-thao-sua-doi-hien-phap.aspx> (accessed October 20, 2014).
- Nguyễn Thị Bích Mai. 2012. Sửa đổi Hiến pháp 1992 về các quyền trong tư pháp hình sự [Amending the 1992 Constitution's Provisions on Rights in Criminal Procedure]. *Viện Nghiên cứu lập pháp*. http://vnclp.gov.vn/ct/cms/tintuc/Lists/NhaNuocVaPhapLuat/View_detail.aspx?ItemID=186 (accessed February 2, 2015).
- Nguyễn Văn Minh. 2013. Cảnh giác trước lời kêu gọi “tạm dừng” sửa đổi Hiến pháp [One Should Be Cautious Before Calling for “Suspending” Amending the Constitution]. <http://www.qdnd.vn/qdndsite/vi-vn/61/43/chong-dien-bien-hoa-binh/canh-giac-truoc-loi-keu-goi-tam-dung-sua-doi-hien-phap/268656.html> (accessed October 21, 2014).
- Nhân Dân. 2012. Xã hội dân sự – một thủ đoạn của diễn biến hòa bình [Civil Societies: A Trick of Peaceful Evolution], August 31. http://www.nhandan.com.vn/mobile/_mobile_chinhtri/_mobile_tintucsukien/item/1252402.html (accessed May 15, 2015).
- Nicholson, Pip. 2007. *Borrowing Court Systems: The Experience of Socialist Vietnam*. Leiden, The Netherlands: Martinus Nijhoff.
- Phạm Hồng Thái, ed. 2012. *Sửa đổi Bộ Song Hiến pháp 1992: Những Vấn đề Lý luận và Thực tiễn* [Amending the 1992 Constitution: Practical and Theoretical Issues (Two Volumes)]. Hanoi, Vietnam: Hồng Đức Publishing House.
- Phạm Văn Hùng, ed. 2010. *Bàn về Lập hiến* [Discussions on Constitution Making]. Hanoi, Vietnam: Labor Publishing House.
- Phan Đăng, Thanh. 2006. *Tư tưởng Lập hiến Việt Nam nửa đầu Thế kỷ 20* [Vietnamese Constitutional Thoughts in the First Half of the Twentieth Century]. Hanoi, Vietnam: Judicial Publishing House.
- Potter, Pitman B. 2012. International and Domestic Selective Adaptation: The Case of Charter 08. In *Law and Development and the Global Discourses of Legal Transfers*, ed. John Gillespie and Pip Nicholson, 56–81. Cambridge: Cambridge University Press.
- Pozen, David E. 2010. Judicial Elections as Popular Constitutionalism. *Columbia Law Review* 110: 2047–2134.
- Saigon Times Daily. 2012. The Unlearned Lesson. May 26. <http://english.thesaigontimes.vn/Home/features/friday/23653/> (accessed September 30, 2016).
- Sasges, Gerard. 2010. “Indigenous Representation Is Hostile to All Monopolies”: Phạm Quỳnh and the End of the Alcohol Monopoly in Colonial Vietnam. *Journal of Vietnamese Studies* 5 (1): 1–36.

- Saunders, Cheryl. 2012. Constitution-Making in the 21st Century. *International Review of Law* 4:1–10.
- Sidel, Mark. 2002. Analytical Models for Understanding Constitutions and Constitutional Dialogues in Socialist Transitional States: Re-Interpreting Constitutional Dialogues in Vietnam. *Singapore Journal of International and Comparative Law* 6 (1): 42–89.
- . 2008. *Law and Society in Vietnam*. Cambridge: Cambridge University Press.
- . 2009. *The Constitution of Vietnam: A Contextual Analysis*. Cambridge: Cambridge University Press.
- Smith, R. B. 1969. Bui Quang Chieu and the Constitutionalist Party in French Cochinchina, 1917–1930. *Modern Asian Studies* 3 (2): 131–50.
- Thành Văn. 2013. Nguyễn Bộ Trưởng Nguyễn Đình Lộc Trao Kiến nghị Sửa đổi Hiến pháp [Ex-Minister of Justice Submits the Petition on Constitutional Amendment]. <http://dantri.com.vn/chinh-tri/nguyen-bo-truong-nguyen-dinh-loc-trao-kien-nghi-sua-hien-phap-693528.htm> (accessed October 20, 2014).
- Thayer, Carlyle A. 2009. Political Legitimacy of Vietnam's One-Party State: Challenges and Responses. *Journal of Current Southeast Asian Affairs* 28 (4): 47–70. <http://journals.sub.uni-hamburg.de/giga/files/journals/4/articles/170/public/170-170-1-PB.pdf> (accessed October 16, 2014).
- Thời sự. 2013. Sự thật đằng sau bản kiến nghị sửa đổi Hiến pháp trên một số trang mạng: Sự ngụy tạo có chủ đích! [The Reality Behind the Petition on Constitutional Amendment on Some Websites: An Intentional Fabrication!]. <http://daidoanket.vn/index.aspx?Menu=1366&Chitiet=61951&Style=1> (accessed October 20, 2014).
- Tran Thanh Huong, and Duong Anh Son. 2008. Economic Development and Constitutional Reforms in Vietnam. In *Constitutionalism in Southeast Asia: Volume 3: Cross-Cutting Issues*, ed. Clauspeter Hill and Jörg Menzel, 311–20. Singapore: Konrad-Adenauer-Stiftung.
- Transformation and Change Management Consulting and John Gillespie. 2014. *Public Land Disputes in Viet Nam: A Multi-Actor Analysis of Five Case Studies with an East Asian Comparative*. Hanoi, Vietnam: Asia Foundation.
- TTXVN, Theo. 2013. Niềm tin với Đảng đang bị Thách thức [The Trust in the Party Has Been Challenged]. <http://vnexpress.net/tin-tuc/xa-hoi/niem-tin-voi-dang-dang-bi-thach-thuc-2416524.html> (accessed October 24, 2014).
- Tushnet, Mark. 1999. *Taking the Constitution away from the Courts*. Princeton, NJ: Princeton University Press.
- . 2009. The Inevitable Globalization of Constitutional Law. *Virginia Journal of International Law* 49:985–1006.
- . 2015. Authoritarian Constitutionalism. *Cornell Law Review* 100:391–461.
- United Nations Development Programme (UNDP). 2013. *Justice Index – Assessment of Distributive Justice and Equality from a Citizen-Based Survey in 2012*. Hanoi, Vietnam: UNDP.
- Vũ Đình Hòa. 1995. Les Quatres Constitutions du Vietnam. *Vietnamese Law Journal* 1:28–37.
- . 2000. *Hồi Ký Thanh Nghị [Thanh Nghị's Memoirs]*. Hanoi, Vietnam: Literature Publishing House.
- Xuân Tùng. 2009. Bộ Tư pháp Phản bác Bộ giao thông về Đề nghị xử phạt [The Ministry of Justice Opposes the Penalty Suggestion of the Ministry of Transport]. <http://vnexpress.net/GL/Xa-hoi/2009/08/3BA127BC/> (accessed October 15, 2014).
- Yan, Lin. (2015). Constitutional Evolution through Legislation: The Quiet Transformation of China's Constitution. *International Journal of Constitutional Law* 13:610–89.
- Yeh, Jiunn-Rong, and Chang, Wen-Chen. 2009. The Changing Landscape of Modern Constitutionalism: Transitional Perspective. *National Taiwan University Law Review* 4 (1): 145–83.

STATUTES CITED

Hiến pháp năm [Constitution] 2013 (Viet.)