



**Discussion Paper No.22**

**The Constitution of Vietnam through  
the Lenses of Cognitive Constitutionalism**

Edited by Ismatov Aziz and Obata Kaoru

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## PREFACE

In November 2021, the Center for Asian Legal Exchange (CALE) Nagoya University and the Hanoi Law University conducted a joint workshop on the 2013 Constitution of the Socialist Republic of Vietnam (hereinafter the 2013 Constitution of Vietnam) between academics and practitioners interested in Asian constitutionalism. This event was hosted under the frame of the JSPS Core-to-Core Program: Asia-Africa Science Platforms ‘Advancing Research in Asian Constitutionalism – Establishing a Transnational Research Network to Promote Human Rights and Legal System’. This volume is a compilation of workshop reports authored by local Vietnamese scholars who either participated directly in the *travaux preparatoire* of the 2013 Constitution or currently conduct research on and teach constitutional law in Vietnam. The workshop organizers initially planned to examine the drafting process (*travaux preparatoire*), nature, and the role of the 2013 Constitution that was elaborated and adopted within complex political and nationwide debates. However, in the workshop discussion, involved scholars went beyond just history. They touched upon the critical issues that emerged not only during the elaboration process, but also currently emerging challenges of the 2013 Constitution and Vietnamese constitutionalism.

Upon finalizing the workshop, the organizers felt a necessity to work further on balancing the discussion and publishing this Discussion Paper mainly to the comparative constitutional law audience with the importance of explaining the 2013 Constitution on its own terms and specifics and in the way it speaks to the local context. As an example, some papers in this volume argue that the text of the 2013 Constitution has transformed the Constitution from the fundamental law of the state to the fundamental law of the country (or entire society). In this regard, one may argue that the previous constitution was merely a law that established the state structure, whereas the 2013 Constitution has become the fundamental law of the entire society and, thus, a supreme law expected to protect the population (or the society). In line with such a logic of changing traditional approaches towards the socialist concept of constitutionalism, one of the key questions we had in our mind was how constitutionalism was defined or evaluated in Vietnam. Constitutionalism was negatively evaluated under the traditional (Soviet) socialist legal theory as a concept that constrained people’s power. Considering this significant thesis, we tried to shed more light on how the 2013 Constitution tried to diverge or converge with such an approach. Apart from this example, we tried to discover and discuss other essential areas that would enable readers to understand the core principles and their origins, structure, and substance of the 2013 Constitution. The organizers did not think it proper to simply accept a critique from the top-down international perspective and suggested that there was own unique logic that is not necessarily based on liberal ideals. Therefore, we mainly invited outstanding local Vietnamese constitutionalists to discover and discuss essential internal logic. We

also invited Kevin Tan of Singapore National University, who provided valuable feedback as a discussant of one of the workshop sessions. His suggestions led to significant improvements in workshop reports.

In this volume, the authors intend to offer exploratory descriptions and analyses from the perspectives of socialist and hybrid constitution-making. Therefore, reports inter alia discuss how the Constitution was drafted and what moments were considered as key challenges. Another focus is how the questions on the essence of the rule of law were debated and reflected in the text, and how the positivist concept of citizens' rights and obligations gravitated towards human rights. Authors also try to shed light on people, popular sovereignty, emergency powers, and rights, including science, technology, and the environment.

Within this volume, though often indirectly, there are also certain excerpts pointing to the internal and external factors surrounding making and adopting the 2013 Constitution. Some sections point to or at least leave to the consideration of readers certain key historical moments, including anti-colonial struggle, unification, socialist and ideological settings based on Marxism-Leninist doctrine, local customary and traditional practices which recently re-gain their popularity, cultural and religious patterns, ethnic diversity, and economic condition. The main idea here is to trace the link with socialist constitutionalism eventually transforming into a hybrid one. Simultaneously, although not the main focus in this volume, some authors try to discuss external factors in the form of a comparative perspective with foreign constitutions or concepts, including conceptual conflicts, such as natural rights doctrine vs. positivist stance.

This volume also offers a discussion on the current challenges occurring in the context of the 2013 Constitution. Certainly, given a limited scope, editors cannot reflect all issues of the volume here. Many brilliant scholars who participated in the workshop and contributed their pieces to this edited volume made specific claims and arguments regarding Vietnamese constitutionalism, which we highly recommend considering in detail for those interested in comparative constitutional and Asian law and politics.

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