



Original Article

The Influence of Soviet Law on the 1959 Vietnamese Constitution

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Abstract: The impact of the Soviet legal culture, particularly on Vietnam, within the socialist bloc, stands as a notable assertion. The incorporation of Soviet legal constructs into Vietnam's legal framework emerged as a vital political necessity during a complex phase of Vietnam's historical trajectory. Illustrated prominently in the 1959 Constitution of the Democratic Republic of Vietnam, this influence embodies a quintessential manifestation of Soviet legal impact on Vietnam. This paper delves into several facets of this influence, encompassing the Constitutional structure, articulation of citizenship rights and duties, confirmation of the Vietnamese Labour Party (now the Communist Party of Vietnam) leadership, configuration of State apparatus and power distribution, formulation of socioeconomic order, and a departure from Western constitutional paradigms. The inquiry primarily draws upon historical and comparative legal methods. Legal records from Vietnam and the Soviet Union have been amassed, scrutinized, and likened. Moreover, this study considers the legal and interdisciplinary insights offered by scholars from Vietnam, the Soviet Union, Russia, and the Western sphere pertaining to the subject matter of this article. These perspectives are not only considered but also assessed and integrated. The outcomes of this examination serve to elucidate: i) the significance of Vietnam's 1959 Constitution in the progression of Vietnam's socialist legal system; ii) the historical connection and contemporary inheritance of shared legacies between the two national legal systems within the overarching socialist legal framework; and iii) valuable insights into incorporating socialist legal norms into the constitutional process.

Keywords: Constitution, influence, law, socialism, Vietnam.

1. Introduction

Among scholars examining Vietnam's constitution, encompassing Western, Russian,

and Vietnamese perspectives, there exists a substantial consensus regarding the impact of Soviet or socialist law on the second constitution of Vietnam - the 1959 Constitution of the

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Democratic Republic of Vietnam (following the initial 1946 Constitution of the Democratic Republic of Vietnam). An Australian scholar, John Gillespie, in his publication *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform*, echoed the consensus held by fellow Western researchers (who also examine the Vietnamese constitution), including William J. Duiker [1], Bernard B. Fall [2], as they all affirmed: “In effect, as the most developed socialist state, Soviet laws and legal institutions were preferred by Vietnamese leaders as a model to *strengthen the role of law*”. The 1959 Constitution declares that Vietnam is “sympathy and support” by the socialist countries.” [3] Moreover, John Gillespie argued “from 1959 to 1976, a subtle change emerged. In effect, socialist conceptions of law were introduced and promoted” [3]. In a different vein, Russian scholar Vlasov E. E. expressed a similar viewpoint: “The 1959 Constitution guarantees Vietnam’s transition into the phase of socialist reform and the establishment of a socialist state” [4].

While delving into Vietnam, Dao Tri Uc, in his study *Vietnam: Basic Information for Legal Research - A Case Study of Vietnam*, highlights two pivotal aspects within the period spanning 1955 to 1975: i) “In 1959, an amended constitution was adopted in the North to replace the 1946 Constitution as a result of significant changes marked by the mass introduction of a public land ownership” and ii) “As the time passed, especially with an expanding relation with the then socialist block and the former Soviet Union, a considerable number of jurists have been trained in these foreign jurisdictions”; Consequently, he posits that “laws introduced in these years were heavily influenced by the socialist-oriented legal system” [5].

Generally, Vietnamese scholars engaged in the study of the constitution assert that the 1959 Constitution was constructed following the framework of the Socialist Constitution, marking the initial adoption of a socialist constitution in our nation. Amidst the array of explorations into the Vietnamese legal structure

from the historical and jurisprudential perspectives by young Vietnamese scholars, a standout contribution is arguably the doctoral thesis by Mai Van Thang, who remarked: “The ideological basis of the Vietnamese legal system, encompassing the Marxist-Leninist doctrine of the state and law and the principles of socialist law, was officially enshrined in the 1959 Constitution” and “the adoption of the Constitution of 1959 is undoubtedly evidence of the influence of Soviet legal ideology on the Vietnamese legal system” [6].

Marking a pivotal juncture, the tangible impact of the Soviet Union’s legal framework (encompassing an array of national documents) on Vietnam became evident with the inception of the Vietnamese Constitution. As the fundamental legislation, this Constitution established the overarching principles governing the nation’s functioning, thereby significantly shaping the broader societal landscape. This perspective stands as a logical and notably transparent approach.

Nevertheless, the sway of socialist legal concepts upon Vietnam predates the 1959 milestone. This aspect finds resonance in discussions surrounding ‘The Influence of Marxism-Leninism on the 1946 Constitution,’ as explored in the article “Constitutionalism in Vietnam” by Bui Ngoc Son [7]. Pham Duy Nghia and Do Hai Ha succinctly encapsulated this notion: “Soviet jurisprudence gained influence in the Democratic Republic of Vietnam from the early 1950s. However, the extensive borrowing of Soviet-style legal principles and institutions merely took place in North Vietnam from the late 1950s, marked by the adoption of a Soviet-style constitution in 1959 and the introduction of Soviet-style people’s courts and procuracies in 1960. This socialist legal system was exported to southern Vietnam after 1975” [8].

The enduring prominence of the 1959 Constitution underscores the profound imprint of the Soviet legal system upon Vietnam’s legal framework. The query of whether ‘Vietnamese law bears the influence of Soviet law’

contextualized within the historical milieu of Vietnamese society during that era, finds resonance in this argument. Examining the circumstances surrounding the signing and subsequent dissolution of the Geneva Agreement and the ensuing division of Vietnam's two regions reveals divergent trajectories adopted by the respective regimes. In this regard, legal scholars present akin explanations. As an example, Dao Tri Uc remarked that "while laws that were introduced since 1945 continued to be in effect in the North, the pro-American puppet regime in the South relied mainly on military laws" [5]. Lawyer Carol V. Rose, when talking about the legal context in the two regions of Vietnam influenced by different legal systems, also made quite satisfactory comments. In North Vietnam, she argues: "After declaring independence from the French, North Vietnam adopted a highly centralized legal system, in accordance with a Soviet-style command economy" [9]. At the same time, the conclusions worth referring to a capitalist legal system in the South are also interpreted by the author: "the French legal system was supplemented when American legal advisers arrived beginning in the early 1960s. U.S. influence was most evident in the adoption of a constitutional framework consisting of a presidential system and separation of powers between the executive, legislative, and judicial branches in South Vietnam. U.S. influence also was extended through legal education, both by U.S. teachers working in Vietnam and by Vietnamese students who traveled to the United States to study law" [9].

During the 6th session of the first term of the National Assembly of the Democratic Republic of Vietnam, a decision was made to amend the 1946 Constitution, leading to the establishment of a committee tasked with crafting the revised Constitution. Upon the completion of the initial draft in July 1958, the draft underwent discussions amongst mid-level cadres and senior-level ones within the Military, People's Parliament, Government, and Party bodies. Following this discourse, the draft was refined.

The draft was made public on April 1, 1959, for further discussion and constructive input. This collaborative dialogue extended for a span of 4 months, with active engagement from the working classes. On December 31, 1959, the National Assembly unanimously ratified the revised Constitution, subsequently endorsed by President Ho Chi Minh through a Decree on January 1, 1960. Notably, the Preamble and Article 9 of the 1959 Democratic Republic of Vietnam Constitution affirmed Vietnam's trajectory towards socialism. This trajectory inherently necessitated the fortification of fundamental socialist tenets, including the legal sphere. Naturally, Vietnam aimed to model its structure after the Soviet Union, the bastion of socialism during that era. Conversely, the Soviet Union aimed to expand its sphere of influence in parallel. Bilveer Singh, in his article *The Soviet Union in Southeast Asia: National Perspectives from the Region* revealed: "Following World War II, the Soviet Union demonstrated scant interest in Southeast Asian affairs. The failure to support either communist or non-communist-led nationalist movements in the region, manifest in its refusal to recognize the Ho Chi Minh government in North Vietnam until January 1950, was one dimension of this policy. By the 1950s, however, a change could be discerned, beginning during the last days of Stalin.1 Khrushchev, Stalin's successor, was principally instrumental in operationalizing the Soviet "new look" towards the region" [10]. Thus, the influence of Soviet law on the 1959 Democratic Republic of Vietnam Constitution is completely grounded.

While numerous works have acknowledged this influence, the cessation of research into legal history remains improbable, given the perpetually expanding array of perspectives being brought forth and the continuous accumulation of historical documents for scrutiny. Within this article, methodologies of legal comparison, historical investigation, and normative formal logic are exhaustively harnessed to illuminate various facets of the impact of Soviet law on the 1959 Vietnamese

Constitution. The substantiation and deductions stem from historical data independently examined by the author, while also drawing from, evaluating, and amalgamating insights from scholars who have delved into this topic, along with pertinent preceding matters. Among these, the legal documents enlisted for comparative analysis primarily encompass the Soviet Constitutions of 1936 and 1977, alongside the Democratic Republic of Vietnam Constitutions of 1946, 1959, and 1980, coupled with pertinent legal documents such as the Constitution of the Republic of Vietnam in 1967. Given the constraints of a scientific article, an all-encompassing examination of matters entwined with this influence proves formidable. Consequently, within the confines of my available knowledge, the author's focus narrows to select facets, which encompass the Constitutional framework, linguistic articulation of citizenship rights and responsibilities, confirmation of the Vietnamese Labour Party leadership, configuration of State apparatus and the division of state power, the formulation of socio-economic structures, and deviations from Western constitutionalism.

2. Vietnam's 1959 Constitutional Issues Were Influenced by Soviet Law

2.1. Regarding Constitutional Structure

Evidently, a distinct shift is observed between the 1959 Constitution and its 1946 counterpart. While the 1946 Constitution comprises a Preamble and 70 articles across 7 chapters, namely Chapter 1 - Political regime, Chapter 2 - Obligations and rights of citizens, Chapter 3 - People's Parliament, Chapter 4 - Government, Chapter 5 - People's Councils and Administrative Committees, Chapter 6 - Judicial Authority, Chapter 7 - Amendment to the Constitution, the structure of the 1959 Constitution encompasses a Preamble and 112 Articles, distributed across 10 chapters: Chapter I - Democratic Republic of Vietnam, Chapter II

- Economic and social system, Chapter III - Fundamental Rights and obligations of Citizenship, Chapter IV - National Assembly, Chapter V - President of the Democratic Republic of Vietnam, Chapter VI - Government Council, Chapter VII - People's Councils and Local Administrative Committees at all levels, Chapter VIII - People's Court and People's Procuracy, Chapter IX - Regulations on the National Flag, National Emblem and Capital, Chapter X - Provisions on Amendments to the Constitution.

At the time of the promulgation of the 1959 Constitution, the Soviet Union was in the phase of implementing the 1936 Soviet Constitution (often referred to as the Stalin Constitution), which had been adopted by the Eighth Extraordinary Congress of Delegates of the Soviet Union on May 5th. During this congress on December 12, 1936, Stalin announced that the Soviet Union had successfully established a socialist regime, eradicating the phenomenon of human exploitation. This constitution encompasses 146 articles, organized into 13 chapters: Chapter I. The Organization of Society, Chapter II. The Organization of the State, Chapter III. The Highest Organs of State Authority of the Union of Soviet Socialist Republics, Chapter IV. The Highest Organs of State Authority of the Union Republics, Chapter V. The Organs of Government of the Union of Soviet Socialist Republics, Chapter VI. The Organs of Government of the Union Republics, Chapter VII. The Highest Organs of State Authority of the Autonomous Soviet Socialist Republics, Chapter VIII. The Local Organs of State Authority, Chapter IX. The Courts and Procurator's Office, Chapter X. Fundamental Rights and Obligations of Citizens, Chapter XI. The Electoral System, Chapter XII. Arms, Flag, Capital, Chapter XIII. Procedure for Amending the Constitution.

Hence, it becomes evident that the structural modifications in the 1959 Constitution, in comparison to the 1946 Constitution, exhibited a discernible trajectory towards aligning with the format of the 1936 Soviet Constitution.

However, this marked merely the initial phase of influence, with more pronounced resemblances highlighting the more substantial sway of the Soviet Constitution on Vietnam emerging in subsequent years, particularly with the 1980 Constitution (pertaining to the Constitution of the Socialist Republic of Vietnam in connection with the Soviet Constitution of 1977). Importantly, it's noteworthy that the legal terminology employed in the 1959 Vietnamese Constitution bears a close relationship with the legal terminology adopted in the 1936 Soviet Constitution.

2.2. *Regarding the Role of the Party's Communists*

In the 1936 Soviet Constitution, the leadership role of the Vietnamese Labour Party was not established with a stringent legal character; instead, it was briefly mentioned within a portion of Article 126 under 'Chapter X - Fundamental Rights and Obligations of Citizens.' Article 126 stipulates that in accordance with the interests of the workers and to enhance the organizational independence and political activism of the masses, Soviet citizens are ensured the right to join social organizations like trade unions, cooperatives, youth associations, sports and defense groups, cultural and scientific societies, and technical associations. Furthermore, the most engaged and enlightened citizens from the ranks of the working class, working peasants, and labor intellectuals, who voluntarily congregate within the Communist Party of the Soviet Union, constitute the advanced contingent of the working populace in the Soviet Union. This party is dedicated to constructing a communist society and serves as the guiding nucleus for all working people's organizations, including both social and state entities. Hence, Article 126 does not explicitly assert that the Vietnamese Labour Party assumes the role of leading the State. Instead, it characterizes the Party as an organization functioning as the guiding nucleus for all other worker unions, encompassing trade unions, labor associations, societal entities like

professional groups and clubs, and state-established mass organizations such as trade unions and youth associations. It was only in the 1977 Soviet Constitution that the leadership position of the Communist Party of the Soviet Union was underscored and meticulously delineated, specifically within Article 6 of "Chapter I - Political System".

A similar pattern unfolds in Vietnam as well. The preamble of the 1959 Constitution recognizes the guiding role of the Vietnamese Labour Party (now the Communist Party of Vietnam), stating: Under the clear-sighted leadership of the Vietnam Lao-Dong Party, the government of the Democratic Republic of Vietnam, and President Ho Chi Minh, our entire people, broadly united within the National United Front, will surely win glorious success in the building of socialism in North Vietnam and the struggle for national reunification. It wasn't until the 1980 Constitution that a distinct provision, specifically Article 4, officially codified the leadership position of the Communist Party of Vietnam.

2.3. *Regarding State Organization and State Power*

A distinguishing aspect lies in the configuration of the State apparatus as established by the 1959 Constitution, which adheres to a centralized model. The reason for this difference is the absorption of socialist state organizational markings [11]. Article 71 of the 1959 Constitution stipulates that the Government Council serves as the foremost executive entity of state power as well as the supreme administrative body of the state. In 'Chapter IV - National Assembly,' 18 Articles govern matters concerning the roles, authority, responsibilities, and structural framework of the National Assembly - the paramount organ of state power. These regulations notably underscore the fundamental principle that state authority is unequivocally vested in the National Assembly - the highest representative institution of the People. Consequently, the organizational paradigm of the Government Council, in

accordance with the 1959 Constitution, adheres to the governmental model observed in socialist nations. Pertaining to the composition of the Government Council, the roles of President, Vice President, and Deputy Ministers, as had been present previously, are absent. The centralized model finds further expression in the divergence from the 1946 Constitution, where solely provincial and communal tiers housed People's Councils. In contrast, the 1959 Constitution mandates the presence of People's Councils at all echelons, encompassing provinces, districts, and communes. Furthermore, the Constitution explicitly designates the People's Council as the authoritative entity for local state affairs. Administrative committees are instituted across province, district, and commune levels, functioning as the executive apparatus of the local People's Councils and serving as the state's administrative arm within the locality. Notably, within the framework streamlined by the 1959 Constitution, the Ministry of Justice underwent dissolution, akin to the Soviet state model, and was only reinstated in 1980.

The stringent central socialist model further precipitates alterations in the State President institution. Chapter V of the 1959 Constitution introduces the President of the Democratic Republic of Vietnam through a dedicated segment spanning 10 Articles (from Article 61 to Article 70). This constitutes a novel chapter in contrast to the 1946 Constitution. Notably, the President and Vice President operate independently of the Government (where the Prime Minister stands as the governmental leader). The President's purview extends solely to domestic and foreign affairs. The selection of the President transpires via the National Assembly election. Compared to the 1946 Constitution, the President's authority within the 1959 Constitution is narrower, as governmental leadership is delegated to the Prime Minister. The President serves as the Head of State, overseeing nationwide armed forces and concurrently acting as the Chairman of the National Defense Council (Article 65). Upon

deeming it necessary, the President holds the authority to convene and preside over a special political conference (Article 67), and also possesses the privilege to attend and preside over sessions of the Government Council (Article 66). Notably, as posited by D. N. Pham and H. H. Do [8], the President within the framework of the 1946 Constitution is not answerable to the National Assembly. Additionally, the President enjoys immunity from prosecution, barring cases involving treason. The President is empowered to withhold the publication of laws promulgated by the National Assembly and may request the National Assembly to revisit discussions on legislation. This particular configuration often evokes parallels with the powers vested in the President according to the U.S. Constitution rather than the tenets of the French parliamentary system. Notably, these attributes underwent a significant reduction in subsequent constitutions influenced by the Soviet model.

In contrast to the 1967 Constitution of the Republic of Vietnam, a significant dichotomy in the configuration of state power is apparent between the Northern and Southern regions. The 1959 Constitution, shaped by the tenets of socialism within a centralized model, diverges notably from the Constitution of the Republic of Vietnam in 1967, wherein the influence of capitalism is distinctly manifested through the concept of the separation of powers [9].

An aspect of particular significance pertains to the domain of law, a subject regulated by the 1959 Constitution within Chapter VIII - People's Court and People's Procuracy, encompassing 15 Articles (from Article 97 to Article 111). This segment, compared to the 1946 Constitution, also undergoes substantial alterations. Our nation's judiciary encompasses the Supreme People's Court, Provincial People's Courts, District People's Courts, and Military Courts. Furthermore, in instances of adjudicating exceptional cases, the National Assembly retains the prerogative to establish specialized courts. The local court framework is structured in alignment with territorial and administrative divisions at the provincial and district levels.

Appellate hearings of first-instance verdicts rendered by district courts and first-instance hearings within their jurisdiction are carried out by the People's Courts of provinces and centrally administered cities. Notably, the system of appointing judges has been replaced by an electoral model for judges. Adjudication within the People's Courts entails the participation of people's jurors, on par with judges as per legal stipulations. Emphasizing this, John Gillespie underscores, "the Supreme People's Court articulated a clear commitment to socialism and socialist legality, which saw law as a vehicle for Party-state policies" [3].

In alignment with the organizational framework observed in state apparatuses of socialist nations, the 1959 Constitution establishes the People's Procuracy system to fulfil the role of supervising legal compliance and exercising prosecutorial rights. This system encompasses the Supreme People's Procuracy, People's Procuracies within provinces and centrally administered cities, District and Provincial City People's Procuracies, Town People's Procuracies, and the Military Procuracy. The People's Procuracy is structured under a hierarchical leadership system. The subordinate procuracies function under the guidance of higher-tier procuracies, with all operating under the unified direction of the Chief Procurator of the Supreme People's Procuracy. This Chief Procurator is elected by the National Assembly and assumes the responsibility of reporting to the National Assembly. During periods when the National Assembly is not in session, the Chief Procurator provides progress updates and is accountable to the National Assembly's Standing Committee.

When delving into the subject of state organization, Western scholars frequently contend that the substantial shifts during the era of the 1959 Constitution are interconnected with a principle deeply ingrained in Vietnam, influenced by the socialist model of the Soviet Union - namely, democratic centralism. Notably, Article 4 of the 1959 Constitution explicitly dictates that the National Assembly, People's

Councils at all levels and other State agencies all practice the principle of democratic centralism. John Gillespie elucidates, "Democratic centralism (*tap trung dan chu*), as conceptualized by Lenin, was an organizational principle binding party and state. A facsimile of the doctrine appeared in the political report delivered by President Ho Chi Minh to the Second National Congress of the Vietnamese Workers Party in 1951. By the time it was formally adopted in the 1959 Constitution, it had matured into a two-pronged doctrine linking popular participation in state activities with centralized party and state power" [3].

2.4. Regarding Citizens' Rights and Obligations

In the 1959 Constitution, within 'Chapter III - Fundamental rights and duties of citizens,' comprising 21 Articles (from Article 22 to Article 42), notable strides are taken in comparison to the 1946 Constitution in terms of framing citizens' rights and responsibilities. Noteworthy advancement is evident in the 1959 Constitution's delineation of citizens' rights and duties, standing as a new progression. Beyond outlining citizens' entitlements, the Constitution also mandates the State's responsibility to safeguard the exercise of those rights. In addition to the rights and duties acknowledged by the 1946 Constitution, the 1959 Constitution introduces novel rights and obligations, such as the entitlement of workers to receive material assistance during periods of old age, illness, infirmity, or death of labor power; the freedom to engage in scientific research, artistic and literary creation, and other cultural undertakings; the right to file complaints and report illicit actions by employees and state entities; and the obligation to uphold and protect public assets.

Per Dao Tri Uc, the result of the event that "in 1959, an amended constitution was adopted in the North to replace the 1946 Constitution" is "numerous liberal and democratic rights were brought to a high level such as the right to education, right to a free residence and freedom of travel of citizens" [5].

A resonance surfaces between the phrase "fundamental rights and obligations of citizens" in the Vietnamese Constitution of 1959 and the Soviet Constitution of 1936. Obviously, socialist constitutions provide for the basic rights of citizens and list a wide range of civil, political, economic, cultural, and social rights. Under this context, citizens' fundamental rights are construed as those bestowed by the established State apparatus. In this regard, Bui Ngoc Son contributes a commentary: "These economic, cultural, and social rights are constituted for the purpose of developing society towards socialism. The citizen's exercise of those rights is not in a nondirectional way but in the socialist direction"; and crucially, "the socialist constitution, unlike Western constitutions, does not regard these rights as natural rights... but as rights established by the state, which must be exercised within the framework of the state's permission" [7].

2.5. Regarding the Economic-Social System

In the 1959 Constitution, Chapter II - Economic and Social System, encompassing 13 articles, addresses matters pertaining to the foundational aspects of the State's socio-economic structure. Central to this subject is the notion of ownership.

As per the provisions of the 1959 Constitution, our State's economic trajectory during this period was oriented towards the transformation of an underdeveloped economy into a modernized socialist economy, integrating advanced industries, agriculture, and cutting-edge science and technology. In the transitional phase towards socialism, the primary modalities of ownership of the means of production are elucidated as follows: State ownership (representing the collective ownership of the populace), cooperative ownership (constituting collective ownership by the labor force); and personal ownership of workers and national bourgeois property (Article 11). The concept of a state-owned economy underscores ownership by the entire population, assuming a pivotal role

in the national economy and being accorded priority for development. Mines, rivers, forests, barren lands, and other natural resources stipulated by law as state possessions are collectively owned by the populace (Article 12). Provisions safeguarding farmers' ownership of land and other means of production by the State (Article 14); protection of the ownership of means of production by artisans and other individual laborers (Article 15); defense of the ownership of means of production and other assets held by the national bourgeoisie (Article 16); preservation of citizens' ownership over legitimate income, savings, housing, and other private possessions (Article 18); and assurance of citizens' right to inherit private property (Article 19) are articulated. In contrast to the 1946 Constitution, Chapter II represents an entirely novel segment. This chapter is fashioned after the blueprint of socialist country constitutions. Consequently, alongside establishing the prominence of the state economy in the national economic framework, the Constitution further mandates that the State supervises economic undertakings in accordance with a unified plan.

The aforementioned stipulations are intricately connected to the implementation of property frameworks aligned with socialist principles. Research by a group of authors (Nguyen Ngoc Ha and Hoang Thuc Lan) has revealed remarkable points about the transformation of the ownership system in the Soviet Union and the US as follows: "In fact, in the period 1936 - 1985, the idea of abolishing private property was successfully realized in the Soviet Union; but during this period the opposite idea was also successfully realized in the US (and some other countries). This proves that the idea of abolishing private property in the same period was suitable in the Soviet Union, while the opposite idea was suitable in the United States" [13]. Therefore, while considering that the abolition of private property was an inevitable consequence of social development in the Soviet Union in the twentieth century, we must also admit that it was not an inevitable

consequence of social development in every other country during this period. Under the influence of the socialist model of the Soviet Union, the changes in the provisions of the property regime in the 1959 Constitution were not without consequences, despite the newness and correctness that it brought to the socio-economic foundation in Vietnam.

2.6. *Regarding Constitutionalism*

In a broader sense, the tenets of Western constitutionalism generally encompass the fundamental pillars that underpin democratic governance in Western nations. These principles encompass the rule of law, separation of powers, checks and balances, and individual rights and freedoms. The rule of law assures that all individuals, as well as government officials are subject to and stand equal before the law. The separation of powers allocates governmental authority among distinct branches like the executive, legislative, and judicial, thwarting undue centralization of power. The mechanism of checks and balances ensures that no single branch becomes overly dominant. In constitutionalism, individual rights and liberties are protected by the Constitution, while the Constitution acts as the supreme law of the country. According to Dao Tri Uc: “Western constitutionalism - ideologies on human and civil rights with their slogans of freedom, equality, fraternity and human rights – were acquired by Vietnamese patriots who propagated them among the people and created revolutionary movements among different strata of the population to carry out their struggle for liberation. It was precisely the Western democratic values which, mixed with traditional patriotism and the historic cultural values of the Vietnamese nation, became an ideological force in the struggle against colonialism for independence, freedom and democratic liberties. Western constitutionalism, the ideologies of human and civil rights, had in these circumstances contributed to the creation of new legal ideologies for Vietnamese

revolutionary forces in their struggle for national liberation” [5]. As summed up by Bui Ngoc Son, “modern Western constitutionalism was introduced to Vietnam with great enthusiasm before the initial Vietnamese Constitution was enacted in 1946” [7].

The above factors, if placed within the framework of the 1946 Constitution and the 1959 Constitution, will reveal a tendency in Vietnam after 1959 - “deviations from Western constitutionalism”. This is also seen as a result of the predominant socialist trend in North Vietnam after 1959. Dao Tri Uc affirmed that “[t]he 1946 Constitution was a skilful expression of values both of constitutionalism and Vietnam. On one hand, it expressed the requirements of a democratic constitution and basic rights for people in the spirit of human and civil rights. On the other, it reflected the specific democratic path followed by the Vietnamese revolution, which was not stereotyped on any Western democratic model” [5]. Agreeing with Dao Tri Uc’s statement, Bui Ngoc Son concludes: “The efforts to introduce constitutionalism in Vietnam, through a process of screening and eliminating positive and negative factors, have been summarized in the 1946 Constitution of Vietnam. The 1946 Constitution is the result of the process of importing and developing constitutionalism in Vietnam. (...) However, the 1946 Constitution established a pattern of state power that was both decentralized and centralized due to the influence of Marxism-Leninism” [7].

It can be seen that the original and characteristic meanings of Western constitutionalism were not expressed from the 1959 Constitution onwards. Instead, the constitution is a created, directional document to regulate the organization of the state to achieve the socialist goal, which is proposed and approved by the ruling Party (in this period, the Vietnamese Labor Party).

A typical example of a departure from Western-style constitutionalism is the last chapter of the 1936 Soviet Union Constitution and the 1959 Vietnamese Constitution. While in

the Soviet Union, the Constitution of the U.S.S.R. may be amended only by decision of the Supreme Soviet of the U.S.S.R. adopted by a majority of not less than two-thirds of the votes cast in each of its Chambers, in Vietnam, a similar provision is established with the following - only the National Assembly has the right to amend the Constitution provided that it is approved by at least two-thirds of the total number of National Assembly deputies. This provision of the 1959 Constitution contrasts with the strict approach of the 1946 Constitution on the issue of constitutional amendment because according to Article 70 of the 1946 Constitution, the amendment of the Constitution must satisfy the following conditions: i) two-thirds of the total number of members requested; ii) Parliament elects a committee to draft the amendments; iii) amendments that have been approved by Parliament must be approved by the whole people. This Constitution embraced a mechanism involving direct citizen participation in constitutional amendments, reflecting the ethos of Western constitutionalism: a constitution cannot be altered unilaterally by the government.

As articulated by Bui Ngoc Son, “when the National Assembly has both legislative and constitutional power without a referendum, then of course that National Assembly is not limited by the constitution” [7]. Pham Duy Nghia holds the perspective that “in 1946, Vietnamese people had the most democratic constitution in Southeast Asia at that time. It’s such a pity that in the next six decades, we did not have the opportunity to experience more in constitutionalism” [12].

3. Conclusions

In summary, considering the aforementioned facets concerning the influence of Soviet law on the 1959 Vietnamese Constitution, several conclusions can be derived as follows.

Firstly, the shaping and advancement of Vietnam’s socialist legal system are intricately intertwined with socialist legal concepts and the

Soviet legal system. A significant juncture in this correlation is marked by the inception of the 1959 Constitution, a period characterized by the propagation of socialism in the North, the struggle for Southern liberation, and eventual national unification. This constitutional juncture represents the culmination of a historical responsibility, bridging the 1946 constitution’s mission with the amalgamated tenets of Western constitutionalism.

Secondly, a symbiotic relationship of national legal systems within the framework of the socialist legal family becomes evident. This connection facilitates the propagation and evolution of Soviet cultural and legal legacies within the realms of socialist countries. The impact of Soviet law on the 1959 Vietnamese Constitution substantiates the tangible reality of this interconnection. This influence leaves an indelible mark, extending its presence across subsequent epochs of Vietnam’s constitutional evolution, persisting even in the present Vietnamese constitution. Noteworthy examples include the delineation and guidelines concerning the role of the Communist Party, the structural arrangement and the exercise of state authority, among others.

Thirdly, the influence of Soviet legal principles on the 1959 Vietnamese Constitution imparts valuable insights into the assimilation of socialist legal tenets within the constitutional framework. Evidently, with the passage of time, the disparities and nuances between the two legal systems (USSR and Vietnam) have become more apparent. This recognition indirectly acknowledges the lessons derived from the process of acquiring and integrating legal concepts from another nation. Although these legal norms may be shared, their manifestations diverge in distinct societies due to the multifaceted influence of various contextual factors in each respective society.

Fourthly, within the global and local milieu spanning the 1950s to 1960s, the sway of socialist legal principles, notably those stemming from Soviet law, upon Vietnamese jurisprudence and legal system, especially the

1959 Constitution, stands as an intrinsic inevitability. This influence is bound by historical realities and carries substantial historical significance and worth. Through this impact, the legal framework of the Democratic Republic of Vietnam underwent a progressive transformation, engendering the establishment of socialist ideals and providing the necessary groundwork for these principles to materialize within the regional context. This catalytic influence ushered the northern part of our nation into a transformative phase amid a tumultuous historical era.

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