VNU Journal of Science: Legal Studies, Vol. 41, No. 1 (2025) 9-19

VNU Journal of Science: Legal Studies

Journal homepage: https://js.vnu.edu.vn/LS

Original Article

The Perception of Public Law-Private Law Divide and the Effect of Constitutional Rights on Private Law in the New Context

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Received 24th January 2025
Revised 15th January 2025; Accepted 25th March 2025

Abstract: This article analyzes the historical aspects of developing the perception of the division between public and private law. It examines several theories and perspectives on the impact of constitutional rights on private law. Based on these findings, the article clarifies new developments and emerging issues in classifying public and private law in the new context. The article also proposes some insights into the perception of the classification of public law and private law, as well as the structure of the legal system, in the context of building and improving the socialist rule-of-law state in Vietnam in the current period.

Keywords: Public law, private law, effect of constitutional rights, constitution, socialist rule-of-law state.

1. Introduction

The perception of the division between public and private law is a hallmark of the Continental European legal tradition. Ulpian, an ancient Roman jurist, is best known for proposing the criteria for classifying public and private law in his renowned work Institutes [1 - 4]. By the 17th and 18th centuries, with the emergence and development of the classical natural law school, the theory of the division between public and private law was truly established and became widely known as it is today [5].

However, the division between public and private law remains a topic of much debate today. Even in countries with the Continental European legal tradition, classifying many specific areas of law into public or private law is

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https://doi.org/10.25073/2588-1167/vnuls.4742

still not convincing and lacks consensus. Differences in perspectives and understanding of the role and core values of law, the order of priority in protecting interests in specific contexts and conditions, or the goals pursued by society and communities have caused considerable difficulties in classifying public law and private law within the Continental European legal tradition.

The "constitutionalizing private law" or the “effect of constitutional rights on private law" is a contemporary topic that has garnered significant attention from the academic community [6]. Private law is often considered the domain of private interests, associated with fundamental principles such as equality, freedom of contract, freedom of will, and legal decentralization. Therefore, the interference of the constitution in general or the constitutional rights in particular, representing public law, is seen as inappropriate and contrary to the perception or theory of the division between public and private law. However, many viewpoints argue that the impact or effectiveness of constitutional provisions or constitutional rights on private law is necessary, reasonable, and increasingly common in the modern world [6 - 9]. To support this reasonable trend, many scholars have made efforts to explain the necessity, seek solutions, and establish models and conditions for the impact or effectiveness of the constitution on private law.

This article will further clarify the historical development aspects of the perception of the division between public and private law, analyze certain aspects of the classification criteria, and examine some theories on the impact of constitutional rights on private law. Based on the historical materialist methodology as well as an understanding of the role of the constitution and law in the rule of law era, the article will assess and argue to present perspectives and suggestions on the classification of legal fields and the renewal of the understanding of the structure of the legal system in the new context in Vietnam during the current period.

2. An Overview of the History of the Perception of the Division Between Public and Private Law

The first foundation for the perception of the division between public and private law was established by the thinkers and jurists of ancient Rome and Greece. Ulpian, the ancient Roman jurist, is widely known for his assertion that: "Publicum ius est, quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem" [10], meaning "public law is that which concerns the interests of the Roman state, private law is that which concerns the interests of individual citizens." Accordingly, "private law is divided into three parts: those provisions of nature, those of nations, or those of citizens" [11]. This has been widely recognized in the legal academic community. However, the scientific basis and classification criteria remain issues that need further discussion. The classification mindset of the ancient period was primarily based on observation and practical reflection of that time, lacking scientific foundations or theoretical academic approaches. In contrast, the nature of the division between public and private law is cognitive and inherently academic. If interests protected by legal fields are considered as the classification criterion, it would be difficult, not only today but even in ancient times, to clearly and convincingly distinguish which areas of law belong to public law and which belong to private law. Interests are always intertwined, and the compromise of interests, the balance between the public and the private, is often a solution to seek consensus to establish diverse and complex legal rules in a society. In the public interest, there is also the private interest, and vice versa. Laws are sometimes created to harmonize interests and maximize the protection of interests within society. There have been many convincing viewpoints and arguments critiquing Ulpian's classification based on interests, and within this article's scope, the author agrees with these opinions and arguments [5].

Moreover, in ancient Roman times, it was challenging to find the development of public

law, and the achievements of the field of private law were primarily inherited from ancient Rome. In ancient times, the Emperor and the Church were the sources of public law; therefore, discussing and critiquing the rules of public law was very difficult [11].

The theory of the division between public and private law was initiated and promoted with the emergence of the classical natural law school in the 17th and 18th centuries in Continental Europe. To protect the natural rights of individuals, the thinkers of this doctrine proposed new approaches related to public power in order to safeguard human natural rights. They argued that, alongside the revival of Roman private law in universities, scholars needed to establish new principles, rules, and institutions in the public law domain to control power and thereby protect freedom, human dignity, and individual rights [5]. Classical natural law school thinkers did not make new contributions to private law; rather, they detailed and modernized the system inherited from Roman law. However, they contributed significantly to the emergence and transmission of new ideas about public law. In fact, even among the thinkers of classical natural law school, there were two groups: one focused on the study of private law, and the other consisted of philosophical thinkers on public law. Public law, therefore, truly became a distinct field of legal study alongside private law, thanks to the contributions of classical natural law school thinkers. Thus, while practical jurists and true legal scholars developed private law, political thinkers developed public law, which is closely associated with political science.

Returning to Ulpian's classification mindset, it can be seen that Ulpian's division was based on the interests the law protects. However, in practice, the classification of private and public law has limited practical significance, as lawyers, judges, and legal practitioners often pay little attention to the division between public and private law [5]. The perception of the division between public and private law holds more significance in cognition, academics, and the system's organisation. From this perspective, the perception of the division between public and private law proposed by classical natural law school is reasonable and appropriate. Accordingly, the highest goal of the law is to protect and guarantee individuals' rights, freedoms, and dignity. For that supreme goal, it is necessary to divide the law into two types to allow for two different approaches in order to achieve the objective. Therefore, the law needs to be divided into public and private law.

Private law has natural origins, arising from the fundamental needs of individuals and society. They are collected and recognized as general rules of conduct. Therefore, private law acknowledges freedom of will and freedom of contract to protect and ensure the rights, freedoms, and legitimate interests of individuals. Public power only intervenes in the realm of private law when individuals, in order to protect private interests or personal rights, infringe upon public order and public interests or when private parties require the intervention or arbitration of public authority.

Public law does not have natural origins but is artificial, created by public authorities, interest groups, and communities to organize, operate, and hold political power to protect public interests and maintain public order. In contrast to private law, where relationships create norms, in public law, norms must be created to establish and regulate relationships. In that relationship, the central domain of public law is state power. Because certain entities hold state power, there is a high risk of its abuse for personal gain, which often leads to the violation of individuals' rights, freedoms, and legitimate interests. For this reason, it is necessary to place these norms and regulations into a category called public law to establish appropriate ways of behaving that effectively protect the rights, freedoms, and legitimate interests of individuals in relation to public power and public interests. Therefore, the principles of public law must differ from those of private law and ensure that those who hold power acting on behalf of that power are controlled. This control allows individuals to be equal in

negotiations and discussions and protects their rights and interests while preventing abuse and violations from public authority.

In addition to the main viewpoints of Ulpian and the classical natural law school's thinkers, from ancient times to the Enlightenment and modern period, there were many different approaches to classifying the history of the development of the division between public and private law. It can be summarized and grouped into the following main viewpoints and ideas [12]:

i) The group of viewpoints classifying public and private law based on content is also known as the "Content-based Approach Theory" [2, 3]. It is the largest group, encompassing many viewpoints and ideas from ancient times to the present day. According to this group, public and private law differ in terms of public and private interests. Public law serves public interests, while private law protects private interests and individual rights[1]. Even within the content-based approach theory, scholars and thinkers in this group hold various divergent viewpoints. For example, the Russian scholar L. I. Petrazhisky, the founder of the school of legal psychology, argued that the distinction between public law and private law depends on the subjective perception of the legal subject. He also agreed with the idea of basing the distinction on the factor of interests, but whether it is a public or private interest is not determined objectively but rather by the subjective perception of the authority with the power to decide [1 - 4]. Meanwhile, Meyer D.I.[2] argued that private law regulates the material interests of individual persons, while the non-material interests of individuals fall under the scope of public law [2, 3].

ii) The group of viewpoints classifying public and private law based on formality is known as the "Formal Approach Theory". This group also exhibits a significant division in viewpoints and explanations, even though they all agree on what is known as the formal approach theory. The common point among all the viewpoints in this group is that they believe the basis for distinguishing between public law and private law lies in the methods or ways of regulating or establishing legal relations.

Some scholars argue that the distinction between public and private law is not based on the interests they protect or regulate. Instead, it depends on which entity the law grants the authority to initiate or commence the process of protecting the infringed interests[3]. Suppose a state agency (authorized individuals or institutions) is granted the authority to initiate the process of protecting infringed interests, regardless of the will or interests of the affected party, and it is carried out according to criminal or administrative procedures. In that case, it is considered public law. On the other hand, if the law grants the right to file a lawsuit to the individual whose legitimate rights and interests have been violated, and it follows civil litigation procedures, it is considered private law [2, 3].

Some others argue that the distinction between public law and private law depends on the position of the legal subject. Suppose the subject is an individual acting as an independent entity. In that case, it falls under private law, whereas if the subject is a member of a society or an organized community, it falls under public law [2, 3]. Some thinkers use the legal relationship itself as the basis for classification. In contrast, others use both the legal relationship and the subject's status within the legal relationship as the basis for classification. If the subject possesses state power and can impose its will on other subjects in a top-down manner, it falls under public law. Conversely, if the subjects have an equal relationship within the legal framework, it falls under private law [1 - 4].

[1] Some notable figures include Aristotle, Demosthenes, Upian, Friedrich Carl von Savigny, Ahrens, and several Russian legal scholars such as G. F. Shershenevich and L. I. Petrazhisky

[2] M. D. Ivanovich (1819 - 1856), a Russian legal scholar, social activist and Doctor of Law.

[3] Representatives of this group are Jhering and two Russian legal scholars, A. Ton and C.A. Muromsev.

Some other perspectives use the nature of "legal decentralization" or "legal centralization" in regulating legal relationships to distinguish between public law and private law. Accordingly, private law is characterized by legal decentralization due to the diversity and multi-centred nature of the subjects, as well as their equality in rights and status. In contrast, public law is characterized by "legal centralization," the state is the central entity in legal regulation, and relationships are vertical and centripetal [1 - 4].

iii) The last group is a mixed group or mixed theory. Those who follow this theory argue that the distinction between public law and private law should be based on substantive criteria, such as interests, benefits, etc., and formal criteria, such as the methods of regulation or the creation of legal relationships. For example, Jhering, in his work on analyzing the theory of rights in the private sector, used both the criterion of private interest (substantive criterion) and the criterion of the right to protect private rights and interests that have been infringed (the right to file a civil lawsuit, formal criterion) to distinguish between public law and private law [2, 3].

Currently, this mixed perspective is also relatively common. In Vietnam, there is more focus on classifying law into public law and private law, and the classification criteria are quite consistent, mainly based on the subject or nature of the interests (substantive criterion) and the method (formal criterion) by which the branch of law regulates [13].

Thus, the perception behind the division of public law and private law has a long history with many debates over different historical periods and in many countries, especially in countries with a Continental European tradition. However, as stated, until now, no theory or approach has received absolute consensus or is more convincing than the others. The debates or counterarguments for each theory and approach have been presented in many works [1-5] and are considered quite persuasive.

Due to the influence of Far Eastern legal tradition and Soviet legal thought, the distinction between public law and private law in Vietnam has received little attention. The influence of French law on Vietnam during a particular historical period introduced the Vietnamese to this classification mindset. Still, it quickly faded with the adoption of Soviet legal thought [13]. Recently, alongside renovation, integration, legal reform, and establishing a socialist rule-of-law state, the distinction between public law and private law has become increasingly urgent in the new context and is being discussed more extensively in Vietnam.

3. The Division Between Public and Private Law in the Era of the Rule-of-Law and its Impacts on the Effect of Constitutional Rights on Private Law in Vietnam

Although still subject to much debate, legal scholars generally agree that constitutional law, administrative law, and criminal law are areas of public law. In contrast, civil and commercial law are quintessential areas of private law. However, there is no such consensus regarding the classification of other areas of law within the legal system, such as land law, financial law, social security law, environmental law, and others.

This indicates that the classification approach has challenges and requires a reevaluation for greater appropriateness, particularly in the context of the rule of law. Before arriving at a specific approach to the division between public law and private law, some main findings should be affirmed as below:

Firstly, the formation and development of the classification mindset between public and private law can be divided into three main periods: Ancient, Modern, and the Era of Modern Rule of Law.

In the Ancient period, the law lacked unity and was not indeed a system in the proper sense of the term. Based on the origin, the interests the law protects, or the way it regulates legal relationships, it is observed that there are two

types of law: private law originating from life, creating norms to protect private interests based on principles of equality, freedom of will, and freedom of agreement, and public law originating from the will of the Emperor, the ruling power, or the Church, characterized by authority, imposition, inequality, and protecting the interests of the ruling power, public interests, and public order.

In the Modern period, along with the emergence and development of classical natural law theory, it was believed that the centre and ultimate purpose of the law was the natural rights of individuals. Therefore, the thinkers of this theory proposed new principles, rules, and models for organizing power to control, limit, and divide power to protect individuals' natural rights. As a result, public law gained new momentum and developed strongly across continental Europe. Along with the contributions and achievements of the revival and development of private law by the Scholastic, Post-Scholastic, and Humanist schools during the Renaissance, continental European legal scholarship became known for the division between public law and private law, but with a different approach. Public law refers to legal fields that regulate relationships related to public power, public order, and public interests. And since public power, which is the main legal subject of public law, holds significant power and can impose on other subjects, if this power is not controlled or divided, there is a high risk of power abuse and human rights violations. Public law is separately designed to ensure human rights, including specific principles related to limitation, control, and division of power. As a result, public authorities are only allowed to do what the law permits. Meanwhile, private law, originating from the people's will, is characterized by its focus on private interests, equality, freedom of will, and freedom of agreement. Therefore, to ensure human rights and freedom of will, private law is designed with principles different from those of public law, including the emphasis on autonomy, freedom of agreement, equality, and the limitation of public power intervention unless there is a legitimate reason.

However, in the modern period, despite the introduction of the social contract theory, the division, control, and balance of power, as well as the spirit of freedom, democracy, and human rights, the concept of the position and role of the Constitution within the legal system was not yet clearly defined. The first constitutions were almost entirely documents concerning the organization, operation, and control of state power. The idea of the Constitution as the fundamental law, the embodiment of popular sovereignty with the highest legal effect, and the central foundation of the entire legal system was not yet clearly defined. In some countries, the Constitution is still regarded as a document concerning power organization created by state authorities. The Constitution is sometimes the fundamental and most important source of "State Law." To this day, many people still believe that the Constitution is only a source of public law, while the Civil Code is considered the "constitution of private law." This means that each area of law has its centre. While the Constitution is the cornerstone or foundation of public law, the Civil Code is the cornerstone or foundation of private law.

Thus, an overview of the history of the development of the thinking on the division between public law and private law shows that due to different historical contexts and approaches, the understanding of the division between public law and private law varies, even though the perception of dividing public law and private law still exists in continental Europe legal tradition. However, with the development of modern society and the rule of law era, the constitution's position, role, and mission as the fundamental law, the cornerstone and foundation of the entire legal system, and the embodiment of popular sovereignty have been accurately repositioned. As a result, the approach and mindset regarding the classification of public law and private law also need to be reassessed to be truly objective and scientific.

Secondly, in each different historical period,

the nature and purpose of law are not the same. Today, the law must always be a unified system. The systematic nature of law helps create a logical order, hierarchy, effectiveness, and feasibility. Therefore, the centre, the cornerstone, or the backbone of the modern legal system can only be one-the Constitution. The Constitution is the fundamental law, the foundation, and the basis of the national legal system of a country or territory. The Constitution of developed democracies embodies the will and sovereignty of the people, establishes general legal rules and principles for the entire community, and serves as the foundation for the entire legal system. Therefore, even though private law is the most natural area of law and the result of the natural development of community rules, it must still adhere to the general principles of "Fundamental Law" or "Primary Law".

The Constitution contains provisions related to state power, but this does not mean it is solely a source of public law or only regulates relationships involving public authority. The Constitution establishes the values and general principles for the entire legal system, granting the state the powers and duties to protect, guarantee, and promote human rights, ensuring the progress and sustainable development of the country, community, and society. The Constitution establishes principles to resolve conflicts between public and private law, determining cases of priority in protection. Therefore, it is certainly not just a source of public law but the centre and fundamental law of the entire legal system of the country or territory.

Thus, the Constitution is not only a source of public law but also the centre of the entire legal system, the fundamental law, the foundation for both public and private law, and the pillar that ensures the unity of the entire modern legal system. This perception of the Constitution is even more accurate and fitting in the philosophy of the rule of law, as the supremacy of law requires the supremacy of the Constitution, regardless of the form in which it exists.

Thirdly, there is a question of whether the Constitution is a source of private law and has the nature of private law. Some viewpoints, based on the "social contract" nature of the Constitution, argue that the Constitution is an agreement between equals and free individuals to create standard rules for the community. Therefore, the Constitution is considered to have the nature of private law.

In essence, a constitution in the rule of law must be a product of an agreement, a social contract [14], but it is not a typical civil contract. Instead, it is a social consensus or agreement of the entire society regarding interests to ensure the existence and sustainable development of the community as a whole. The Constitution is a compromise where a standard solution or rule is found to preserve peace, resolve conflicts between individual and community interests, between the public and the private, and define the community's shared values that need to be collectively preserved and developed. This document is not merely an agreement to satisfy only private interests or the interests of individuals. In a community where people discuss to reach a consensus, some entities struggle solely for private interests, while others fight for the common good without considering personal benefits. Naturally, some organizations and individuals consider the common good and their private interests, and vice versa. In this process of compromise, they ultimately reach a consensus or agreement, and as a result, the Constitution is born. It contains common values, shared interests, public institutions, state power, and principles for the organization and operation of power. Still, it also includes principles, rules, and values that ensure equality, freedom of will, and the interests of each individual. The Constitution is a social contract, not a private civil agreement; therefore, it possesses the nature of an agreement among equals. However, its purpose is to protect common values, shared interests, and private interests, safeguarding rights, freedom, and human dignity while maintaining a sustainable balance between public order and the public interest of the community, nation, and state. Therefore, the

Constitution is not only the cornerstone of public law but also solely the cornerstone of private law. The Constitution belongs to everyone, to both public law and private law.

Fourthly, the supreme law, or modern rule of law, has the highest purpose of protecting the rights, freedom, and dignity of individuals. Consequently, in modern constitutions, human rights are always a key and fundamental component. The constitutional recognition of human rights means that the people specifically identify which rights are fundamental, and the state, as a body derived from the constitution, has the duty and responsibility to protect, guarantee, and promote these rights.

The primary goal of the rule of law or a state governed by law is human rights, and to protect and guarantee human rights, the rule of law is needed with its requirements for the separation of powers, control of power, judicial independence, and constitutional protection. Indeed, all of these requirements aim towards the supreme goal of protecting and guaranteeing human rights. This means that the highest value and goal of law is human rights. The Constitution must primarily focus on protecting and sustaining human rights. The human rights enshrined in the Constitution are fundamental rights inherent to individuals throughout their lives, in any capacity, such as a solitary individual or a member of a specific community. With its position and role, the Constitution recognizes general principles of conduct and fundamental rights to serve as the foundation for the entire legal system. For this reason, the constitutionally enshrined rights and the protection, guarantee, or implementation of those rights will be acknowledged, interpreted, or specified in legal sub-constitutional documents.

There has been more recent discussion in Vietnam about constitutionally enshrined rights and their effectiveness in private law because Vietnam has recognized fundamental human rights and enshrined them in the constitution. This is not only in line with the context of integration, but more importantly, it aligns with the direction of building a socialist law-governed state in our country during the new phase [15].

Fifthly, human rights are both a value and, simultaneously, the highest goal of modern law. As a value, human rights are, however, understood in a non-uniform way. In the West, influenced by philosophy, religion, culture, tradition, and thinking patterns, human rights are often viewed from an individualistic perspective. Human rights in the West are often recognized as individual rights. In contrast, in the East, human rights are not necessarily individual rights but a synthesis of the individual, community, state, and nation [16]. Consequently, in some regions or legal systems, even though it pertains to human rights, lawmakers or public authorities may still intervene or influence these rights due to public interest factors. However, without a legal foundation that serves as a cornerstone, allowing cultural and traditional factors to dominate too much may lead to distortions. They may become too focused on the private sphere, losing sight of community values and public interests, or too focused on the public sphere, leading to the infringement of private rights and creating a basis for abuse and human rights violations. In that context, there needs to be a single pillar, the constitution, with values and principles that have been agreed upon or compromised.

Sixthly, the constitution and constitutional law are closely related but not identical. The constitution is the source of constitutional law, a form of law that typically exists in the form of a written document and is a positive law created by an authorized body through the constitutional drafting process. Constitutional law is a field of law and a content of law. Still, it is a product of academic understanding rather than a product of an authorized body like the constitution. Constitutional law is a field that contains numerous norms regulating social relations related to the organization and operation of state power, such as government structure, state apparatus, elections, citizenship regime, and fundamental rights. Because it is a product of academic understanding, constitutional law can

be classified as public law, but the constitution differs. The division between public and private law is a product of classificatory thinking and an academic mindset. Therefore, while constitutional law can be placed within public law as it shares a standard reference system, the constitution itself cannot be categorized as public law. This is because the Constitution is a form of law, a document enacted by an authorized body, and it carries the fundamental nature of primary law, the foundational law of the entire legal system, with supreme legal authority. The content of the constitution is the foundation for the entire legal system of a country or territory. Therefore, the impact of constitutional rules on private law is evident and poses no issues in philosophy or logic. The constitution is not merely a part of or confined to the domain of public law.

These insights show that the classification of public and private law is a product of academic understanding, serving the purpose of cognition, education, and scientific enquiry. In turn, this perception also has a reciprocal impact on the process of lawmaking and the implementation of laws. However, as a product of cognition, the division between public and private law is influenced by specific historical contexts. It does not affect the Constitution's position in the modern legal system. The constitution's provisions can impact the entire legal system, and therefore, the influence of constitutional rights on private law is evident and justified.

However, to prevent excessive and sometimes arbitrary interference by public power in private relationships and to help ensure the right to self-determination and freedom in civil life, business, trade, and civil society, it is necessary, appropriate, and legitimate to clarify the limits of public authority's influence on private relations. This clarification is significant in the case of Vietnam, especially given the limited awareness of the rule of law among public authorities and the general public and the increasing risk of abuse of power by public authorities in private matters under the legitimate pretexts of "guidelines", "strategic objectives", or the "public-centred" culture in contemporary Vietnam.

Based on the analysis above, it should be noted that the division between public law and private law still holds significant value in the current period in Vietnam, especially as Vietnam strives to build and fulfil the socialist rule of law state. In this context, the division between public law and private law needs to be unified on several fundamental points, as follows:

i) In modern society, the legal system of each country or territory cannot be divided into two separate fields of public law and private law existing alongside each other. Still, it must be a unified whole with a logical, dialectical, and organic relationship between them. In the era of the rule of law, the constitutional values, principles, and provisions must serve as the legal system's foundation, basis, and cornerstone. Systemically, the constitution is the cornerstone of the entire legal system and holds the highest legal authority. The division of law into two fields, public law and private law, is academic in nature, with significance for understanding and scientific purposes. From this perspective, constitutional law, as a branch or field of law and a product of academic understanding, can be classified under public law. In contrast, as the fundamental law with the highest legal effect, the constitution cannot be classified under either public law or private law. The consolidation of the constitution and constitutional law may lead to subjective judgments regarding the distinction between public law and private law, as well as the impact of constitutional rights on private law. In the era of the rule of law, the provisions and principles of the constitution can undoubtedly be applied to resolve private law relationships simply because these provisions are at the highest level in the hierarchy of the national legal system.

ii) Public law refers to legal fields that regulate relationships related to the establishment, organization, and operation of state power; the establishment, protection, and guarantee of public order and public interest; the

key principles of public law include democracy, limitation, control, separation of powers, openness, transparency, accountability, and the principle that public authorities can only do what the law permits. Private law refers to legal fields that regulate relationships to promote civil life, business, and commerce, as well as protect and ensure private interests, equality, free will, and freedom of contract. Therefore, to guarantee human rights and free will, the principles of private law are based on autonomy, freedom of will, freedom of contract, equality, and the limitation of public authority intervention unless there is a legitimate reason (as established in the constitution). The division between public law and private law today is increasingly significant in the context of the rule of law, as it helps clarify the appropriate ways to protect and ensure individuals' rights, freedoms, and dignity in each specific type of relationship.

iii) The presence or influence of constitutionally guaranteed rights in private law is appropriate and necessary in modern society. The appropriateness lies in the fact that the Constitution is the fundamental law with the highest legal authority, so naturally, constitutional provisions are applied to regulate legal relationships. The Constitution's direct applicability has become one of the common standards of a rule-of-law society. The impact of constitutional rights on the field of private law is necessary because when constitutional provisions and principles are applied to resolve private legal relationships, they contribute to the unity of the legal system. This unity helps prevent the risk of private law diverging from constitutional values and standards, which could obscure the constitution and lead private law down a separate path based on the belief that private law is unrelated to politics, focusing solely on freedom, equality, autonomy, self-determination, and serving private interests. The necessity of applying constitutional provisions to private law is also reflected in its ability to harmoniously resolve conflicts of interest in modern society. Because relationships of interest are inherently diverse and intertwined. In private interests, there are public interests, and vice versa. Therefore, applying constitutional provisions is essential to handle relationships or conflicts of interest effectively and will also be the most effective tool. This is because, by nature, these provisions hold a significant position in the legal system, which was created to address major conflicts of interest in society.

However, other guarantees are necessary to effectively and appropriately apply constitutional rights, or more broadly, constitutional rules, in the private sector. One of the essential guarantees is the presence of an independent constitutional protection mechanism within the country's power and legal system. This constitutional protection mechanism, in addition to its role in protecting the constitution, with the function of interpreting the constitution or through the rulings of the constitutional judiciary, will contribute to clarifying the values, principles, and provisions of the constitution in practice. As a result, when real-life situations require the presence of the constitution, applying its provisions to resolve specific legal issues, including private legal relations, will be more accurate, appropriate, consistent, and effective.

4. Concluding Remarks

The civil law tradition has led to the idea of a separation between public and private law. This idea has a long history that goes back to ancient Roman law and has significantly impacted the development of law throughout history.

Given the significant transformations in the contemporary social context, it is necessary to reevaluate the understanding of public and private law and their distinctions to uphold the rule of law and the systematic nature of the legal framework. As the role of fundamental law or original law of the entire legal system, the constitution has shifted its domain from public law to become a pillar of the entire legal system. As a result, the impact of the constitution on the entire legal system is inevitable and objective.

Along with the development and convergence of major legal systems in the world, the demand for legal development in the new era and the perception of the distinction between public and private law should be reconsidered. This reconsideration ensures the scientific and logical nature of the law and affirms its function as the most essential tool and means to recognize, protect, and guarantee human rights effectively. Especially, this reconsideration also ensures the objectivity, comprehensiveness, and systematic nature of the law in the era of the rule of law, integration, and sustainable development.

Acknowledgments

This research is funded by Vietnam National Foundation for Science and Technology Development (NAFOSTED) under grant number: 18/2022/TN.

References

[1] B. B. Trerepakhin, Discussion on Public and Private Law. Yrkutsk, 1926, pp. 5.

[2] K. M. Mashtakov, Theoretical Issues on the Separation of Public and Private Law, Doctoral Thesis in Law, Volgagrad, 2001, pp. b12.

[3] John Henry Merryman & Rogelio Perez-Perdomo, The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America, 3rd ed, Standford University Press, 2007, pp. 92.

[4] N. T. Q. Anh, Civil law in public law and private law systems, VNU Journal of Science, Legal Studies, 25, 2009, pp. 221.

[5] A. M. Mikhailov, Issues in Perception about the Separation of Public and Private Law: Myth and Reality, Scientific journal of the Faculty of Law, Voronezh State University, No. 1, 2015 (in Russian).

[6] B. T Dat, D. G. Nam, The Effectiveness of Constitutional Rights in the Field of Private Law: Research Trends in the World and Prospects in Vietnam, Journal of State and Law, No. 1 (421) 2024.

[7] Collins, Hugh, The Constitutionalization of European Private Law as a Path to Social Justice? In The Constitutionalization of European Private Law, ed. Hans-Wolfgang Micklitz, 26-60. Oxford: OUP (2014).

[8] M. Chantal, Fundamental Rights in European Contract Law: A Comparison of The Impact of Fundamental Rights on Contractual Rela-Tionships in Germany, The Netherlands, Italy and England, Alphen an den Rijn: Kluwer Law International (2008).

[9] T. Barkhuysen, S. Lindenbergh, Constitutionalisation of Private Law, Brill, (2006).

[10] Дигесты Юстиниана : пер. с лат. / отв. ред. Л. Л. Кофанов. Т. 1, кн. 1 - 4. М., 2002. С. 82 (Digests of Justinian: trans. from Latin/ed. L. L. Kofanov. Vol.1, Books. 1 - 4. M., 2002. pp. 82.

[11] Hanoi Law University, Textbook on Comparative Law, People's Police Publishing House, 2017, pp.118.

[12] N. M. Tuan, Demarcating the Boundary Between Public and Private Law in Germany: History, Debate and Suggestions, Tia Sang Magazine, Published on December 31st, 2012. See at: https://tuanhsl.blogspot.com/2012/12/phan-inh-ranh-gioi-giua-luat-cong-va.html (accessed on: January 12th, 2024).

[13] N. H. Cuong, The Influence of French Law on Private Law in Vietnam, Journal of Legislative Studies, No.12 (316), June 2016. See at: http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=208600. (accessed on: January 12th, 2024).

[14] V. K. Vinh, Strategy on the Development of the Vietnamese Legal System to 2030 with Vision to 2045: Theoretical and Practical Issues (Monograph), Truth National Political Publishing House, Hanoi, 2022, pp. 268.

[15] Resolution No.27-NQ/TW on Continuing to Build and Perfect the Socialist Republic of Vietnam's Rule of Law State in the New Period. See at: https://xaydungchinhsach.chinhphu.vn/toan-van-nghi-quyet-27-nq-tw-tiep-tuc-xay-dung-va-hoan-thien-nha-nuoc-phap-quyen-119221126114455251.htm. (accessed on: January 12th, 2024).

[16] M. V. Thang, The Socialist Republic of Vietnam's rule of law state: Fundamental Characteristics and new Developments, Journal of Procuracy, No. 9, 2023.