

Party Constitutionalization in Socialist Regimes

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This article explores the codification of the communist party in 31 constitutions of former and current socialist regimes. It identifies waves of constitutionalizing party socialism paralleling waves of constitutionalizing party democracy. It explores the constitutionalization of leadership, class nature, ideology, program, and activity of the communist party. The article reveals that the socialist constitutions perceive the communist party as a public entity to realize socialist values and principles. It argues that constitutionalizing party socialism is shaped by political elite's interests: legitimatizing one-party rule, protecting regime security, coordinating party-state-society relations, expressing socialist and nationalist principles and values, and controlling party agencies. However, the contemporary reconstruction of party constitutionalization, as illustrated by the case of Vietnam, suggests that constitutionalizing party socialism is a contentious process involving both top-down control of political elite and bottom-up discursive contestation of the citizens. This article has implications for the historical and continuing influence of the socialist constitutional tradition, the constitutional role of the communist party in current socialist regimes, and a dynamic conception of socialist constitutions.

Introduction

Political parties have become an important constitutional actor in both democracies and authoritarian regimes. Classical liberal constitutions (such as the US Constitution) are silent about political parties due mainly to the perception of political parties as private entities, but the parties have functionally shaped the constitutional separation of the legislative and executive powers.¹ After World War II, modern liberal-democratic constitutions have increasingly acknowledged the relevance of political parties, largely due to the significant role of political parties as the main institutions to organize modern democracies and to express political pluralism. Beginning with Italy and the Federal Republic of Germany in

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¹ Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2312 (2006).

1947 and 1949 respectively, the practice of party constitutionalization was followed by many countries in Europe as a part of the process of democratic reconstruction after colonialism and the fall of the Soviet Union.² Constitutionalizing political parties are also evident in democracies in Asia³ and Africa.⁴

Political parties are also an important constitutional actor in authoritarian regimes, particularly in one-party regimes.⁵ In fact, “one-party regimes have become the most common type of authoritarian rule and have proved to be more stable and to grow faster than other types of authoritarianism.”⁶ New authoritarianism has increasingly relied on constitutional instruments, including written constitutions.⁷ One-party rule is a prominent feature of socialist regimes: the socialist regimes are monopolized by a single communist party. The dominant role of the communist party has been formally entrenched in many former and current socialist constitutions. For example, in 2018, China amended the Constitution to confirm in Article 1 the leadership of the Communist Party of China (CPC) as the “defining feature” of Chinese socialism.⁸ This constitutional recognition stems from the reality that the CPC, as a crucial constitutional actor, “leads all”, from economic to constitutional reform, and operation of the state institutions (e.g., legislature, executive, and judiciary).⁹

² Ingrid van Biezen, *Constitutionalizing Party Democracy: The Constitutive Codification of Political Parties in Post-War Europe*, 42 BRITISH JOURNAL OF POLITICAL SCIENCE 188-9 (2012).

³ Erik Moberg, *Constitutionalization of Political Parties in East and Southeast Asian Democracies*, 18/05 NUS CENTRE FOR ASIAN LEGAL STUDIES WORKING PAPER (2018).

⁴ Charles Fombad, *Political Party Constitutionalisation in Africa: Trends and Prospects for Deepening Constitutionalism*, in COMPARATIVE CONSTITUTIONAL LAW IN AFRICA 109 (Rosalind Dixon, Tom Ginsburg, & Adem Abebe eds., 2022)

⁵ A *one-party regime* refers to a political regime in which power is functionally monopolized by one party regardless of how many political parties formally exist in that regime. In some socialist regimes, power was dominated by a single communist party although there were some minor political parties. LESLIE HOLMES, COMMUNISM: A VERY SHORT INTRODUCTION 53 (2009).

⁶ Beatriz Magaloni & Ruth Kricheli, *Political Order and One-Party Rule*, 13 ANNUAL REVIEW OF POLITICAL SCIENCE 123 (2010).

⁷ See generally, CONSTITUTIONS IN AUTHORITARIAN REGIMES (Tom Ginsburg & Alberto Simpser eds., 2013).

⁸ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA 1982 (amended 2018), art. 1.

⁹ THE PARTY LEADS ALL: THE EVOLVING ROLE OF THE CHINESE COMMUNIST PARTY (Jacques deLisle & Guobin Yang eds., 2022); LAW AND THE PARTY IN CHINA: IDEOLOGY AND ORGANISATION (Rogier J. E. H. Creemers & Susan Trevaskes eds., 2021).

Unfortunately, a recent body of scholarship on party constitutionalization tends to focus on democracies.¹⁰ The constitutional codification of political parties in socialist (communist) regimes has received little academic attention.¹¹ The study of party constitutionalization in socialist regimes is important to understand not only these regimes but also party constitutionalization in democracies. Party constitutionalization in socialist regimes later affected the way post-socialist constitutions codified political parties. In response to the past authoritarian practice, post-authoritarian constitutions regulate political parties to reestablish democracy.¹²

This article complements the study of party constitutionalization by a comparative analysis of the codification of the communist party in 31 constitutions of former and current socialist regimes. Integrating insights from comparative constitutional law and new institutionalism, this article explores and explains how and why the communist party is constitutionalized.

This article identifies waves of constitutionalizing party socialism paralleling waves of constitutionalizing party democracy. It explores the constitutionalization of leadership, class nature, ideology, program, and activity of the communist party. The article reveals that the socialist constitutions perceive the communist party as a public entity to realize socialist values and principles. It argues that constitutionalizing party socialism is shaped by political elite's interests: legitimatizing one-party rule, protecting regime security, coordinating party-state-society relations,

¹⁰ Catarina Santos Botelho & Nuno Garoupa, *Regulating Parties by Constitutional Rules in Liberal Democracies*, 24 GERMAN LAW JOURNAL 1648 (2023); Charles Manga Fombad, *Conceptualising a Framework for Inclusive, Fair and Robust Multiparty Democracy in Africa: The Constitutionalisation of the Rights of Political Parties*, 48 VERFASSUNG UND RECHT IN ÜBERSEE / LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 3 (2015); Gabriela Borz, *Justifying the Constitutional Regulation of Political Parties: A Framework for Analysis*, 38 INTERNATIONAL POLITICAL SCIENCE REVIEW 99 (2017); Ingrid van Biezen & Gabriela Borz, *Models of Party Democracy: Patterns of Party Regulation in Post-War European Constitutions*, 4 EUROPEAN POLITICAL SCIENCE REVIEW 327 (2012); Fransje Molenaar, *Legitimizing Political Party Representation: Party Law Development in Latin America*, 35 INTERNATIONAL POLITICAL SCIENCE REVIEW 324 (2014).

¹¹ For an early collection of essays on the constitutional and legal status of the communist party in former socialist regimes, see RULING COMMUNIST PARTIES AND THEIR STATUS UNDER LAW (D.A. Loeber ed., 1986). For more recent accounts, see Larry Cata Backer, *Party, People, Government and State: On Constitutional Values and the Legitimacy of the Chinese State-Party Rule of Law System*, 30 B.U. INT'L L.J. 331 (2012); Thiem Hai Bui, *Constitutionalizing Single Party Leadership in Vietnam: Dilemmas of Reform*, 11 ASJCL 219 (2016).

¹² Ingrid van Biezen & Fernando Casal Bértoa, *Party Regulation in Post-Authoritarian Contexts: Southern Europe in Comparative Perspective*, 19 SOUTH EUROPEAN SOCIETY AND POLITICS 71, 72 (2014).

expressing socialist and nationalist principles and values, and controlling party agencies. However, the contemporary reconstruction of party constitutionalization, as illustrated by the case of Vietnam, suggests that constitutionalizing party socialism is a contentious process involving both top-down control of political elite and bottom-up discursive contestation of the citizens. This article has implications for the historical and continuing influence of the socialist constitutional tradition, the constitutional role of the communist party in current socialist regimes, and a dynamic conception of socialist constitutions.

This article is structured as below. Part I explains methodology and case selection. Part II considers theories of party constitutionalization. Part III explores and explains constitutionalizing the communist party. Part IV provides the case-study of Vietnam. Part V concludes.

1. Methodology and Case Selection

1.1. A Data Set of Constitutional Provisions on Communist Party

This study adopts a qualitative method. It collects, describes, and analyses provisions on the communist party in 31 socialist constitutions including both former and current ones. A methodological question is how to define the object of this study. Particularly, what do we mean by “communist party”, “socialist constitution”, and “party constitutionalization”?

A *communist party*, according to A. James McAdams, is a revolutionary organization of the working class committed to overturing capitalism and constructing socialism, ideologically weaponed by Marxism-Leninism.¹³ It may have different names, such Communist Party, Workers’ Party, and Socialist Revolutionary Party.

A *socialist constitution* refers to a written constitutional document adopted by a socialist regime. The documents are normally called “constitutions”, but they sometimes have other names, such as “Constitutional Law”, “Fundamental Law”, or “Fundamental Principles”. Substantively, these constitutional documents lay down fundamental principles for political, social-economic order (such as the leadership of the communist party, democratic centralism, citizen’s rights and duties, and public ownership of the means of productions) as the embodiment of

¹³ A. JAMES MCADAMS, VANGUARD OF THE REVOLUTION: THE GLOBAL IDEA OF THE COMMUNIST PARTY 3 (2017).

socialist ideas rooted in Marxism-Leninism and the Soviet constitutional tradition.¹⁴

Party constitutionalization refers to the codification of the political parties in the body of the constitution. This study focuses on the codification of the communist party in the body of the socialist constitutions, not the reference on the party in the preamble of the constitutions. The codification of the communist party in the body of the constitutions has a substantive meaning different from its mention in the constitutional preamble. The codification suggests that the constitutional principle on the party leadership has the effect of legal binding: challenges to the party leadership are illegal.

1.2.The Principle of Case Selection

In addition to the macro exploration of constitutional provisions on communist party, this article offers a micro case study of the contentious process of party constitutionalization in Vietnam in 2013. The rationales of this case selection are both practical and principled. Practically, the author of this study is able to access to the original resources regarding the dynamics of party constitutionalization in Vietnam. On the principle of case selection, the Vietnamese case presents what Ran Hirschl calls “outlier case”¹⁵ which cannot be fully explained by the prevailing instrumental theory of authoritarian law.¹⁶ Instrumentalism explains socialist constitutions as the tool for top-down control of political elite.¹⁷ However, the Vietnamese case suggests that the process of constitutionalization involves both top-down control of political elite and bottom-up discursive contestation of the citizens.

The constitutionalization of the communist party is a part of this broader dynamic. To explore this the discursive dynamic of party constitutionalization in Vietnam, this study uses original materials in Vietnamese language, including a body of data (particularly, petitions, suggestions, letters, newspaper articles, online posts by citizens and their

¹⁴ See Fu Hualing & Zhai Xiaobo, *What Makes the Chinese Constitution Socialist?*, 16 INT’L J. CONST. L. 655 (2018); John N. Hazard, *The Common Core of Marxian Socialist Constitutions* (1982) 19 SAN DIEGO L. REV. 297.

¹⁵ Ran Hirschl, *The Question of Case Selection in Comparative Constitutional Law*, 53 AM. J. COMP. L. 125, 146 (2005).

¹⁶ SHUCHENG WANG, *LAW AS AN INSTRUMENT: SOURCES OF CHINESE LAW FOR AUTHORITARIAN LEGALITY* (2022)

¹⁷ Mark Sidel, *Analytical Models for Understanding Constitutions and Constitutional Dialogue in Socialist Transitional States: Re-Interpreting Constitutional Dialogue in Vietnam*, 6 SING. J. INT’L & COMP. L. 42 (2002).

groups) regarding public constitutional debates on the party. This study applies methods of discourse analysis to reveal the social meanings of constitutional discourse on the Party. The discourse is not merely about words and sentences but expresses the public attitude, sentiments, and aspirations about constitutional codification of the communist party.

2. Theories of Party Constitutionalization

Scholars have theorized about party constitutionalization in democracies. Ingrid Van Biezen's pioneered scholarship generalizes waves, substances, and modes of party constitutionalization. Gabriela Borz further contributes to the scholarship by providing justifications of party constitutionalization in democracies. Drawing on and expanding the works by Van Biezen and Borz, this part explores four theoretical dimensions of party constitutionalization in both democratic and authoritarian regimes: waves, substances, modes, and functions.

2.1.Waves

Constitutional change tends to occur in waves.¹⁸ Van Biezen identifies four waves of constitutional codifications of parties in democracies in Europe. The first wave involved post-war party constitutionalization (e.g., in Iceland, Austria, Italy, and Germany) between the 1940s, and post-colonial party constitutionalization (e.g., in France, Malta and Cyprus) in the 1960s. The second wave includes constitutionalizing parties in the establishment and restoration of democracies (e.g., Greece, Portugal, Spain, Sweden) in the 1970s. The third wave involves constitutionalization of parties in post-communist democracies (e.g., Bulgaria, Romania, Hungary, Ukraine) in the late 1980s and the early 1990s. Finally, in the fourth wave, reconstructing party constitutionalization took place in some established democracies in Western Europe, such as Sweden and Switzerland, in the 2000s.¹⁹

Constitutionalization of parties happens in waves corresponding to constitutional change in both democratic and authoritarian regimes. Party constitutionalization is a part of the broader process of constitutionalization. Countries rarely change the constitution for the sole purpose of codifying the parties. Rather, constitutional change involves various institutional matters including the role of the parties in

¹⁸ Jon Elster, *Forces and Mechanisms in the Constitution-Making Process*, 45 DUKE L.J. 364 (1995).

¹⁹ van Biezen, *supra* note 2, at 198-9.

constitutional order. Consequently, party constitutionalization is connected to the broader institutional trajectory of a polity.

What explains the waves of party constitutionalization generally? To adapt Huntington's formulation of the causes of political wave,²⁰ waves of party constitutionalization can be explained by the logic of same catalysts, parallel development, demonstration effects, and the prevalence of party constitutionalization. First, constitutional codification of political parties can be triggered by the same events, such as the end of wars, the dissolution of colonialist settings, and the collapse of the Soviet Union. Second, party constitutionalization is caused by some factors (e.g. the need to constrain the abuse of party power) within a country, but similar factors occur in other countries, which generates parallel constitutionalization. Third, countries codify parties in their constitutions because other countries have done so. Party constitutionalization in certain countries instigate similar practices in other countries. Fourth, countries constitutionalize political parties because the idea and practice of party constitutionalization has become so prevailing. When constitutional codification of parties has been widely accepted as an appealing idea and practice for various reasons (e.g. democratic and authoritarian consolidation), countries tend to follow the trend to do the same.

2.2.Substances

Drawing on Frankenberg's comparative study of constitutions,²¹ Van Biezen develops a typology of the substantive contents of codification of political parties in democratic constitutions. These include: (1) principles and values: constitutional codification of parties as the embodiment democratic principles and values, such as participation, popular sovereignty, equality and pluralism; (2) rights and duties (constitutional provisions on parties in term of basic rights, such as freedom of association, freedom of assembly, or freedom of speech; and parties' duty to abide by certain rules on its activities and behavior, and parties' ideological and programmatic identity); (3) institutional structures (constitutional provisions on party in electoral capacity, in parliamentary groups, in public offices, and in public resources, such as state funding; and

²⁰ SAMUEL P. HUNGTUNGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 31-34 (1993).

²¹ Gunter Frankenberg, *Comparing Constitution: Ideas, Ideals, and Ideology - Toward a Lawyered Narrative*, 4 INT'L J. CONST. L. 439 (2006).

(4) meta-rules (judicial control of the constitutionality of party activity and identity, and constitutional mandate on secondary legislation on parties).²²

Codification of parties in non-democratic constitutions include similar categories but with different meanings. The constitutional provisions of parties in authoritarian constitutions may embody political monism (principles and values). They may establish the right to rule of a single party and its duty to adhere to certain non-liberal democratic ideology, and political program (rights and duties). They may regulate the institutional relationship of the party with state institutions and other political institutions (institutional structures). Finally, they can require the party to operate within the framework of the constitution and the law (meta-rules).

2.3.Modes

Van Biezen identifies three modes of party constitutionalization depending on how the parties are perceived. The modes determine the substances of party constitutionalization. First, in the mode of established democracies (such as Iceland, Finland, Norway, and Sweden), the constitutions primarily associate parties with electoral capacities and therefore conceive parties as necessary entities of democratic elections and more generally modern representative democracy. Second, in the model of newly established or reestablished democracies (such as Germany), the constitutions envisage the parties as extra-parliamentary entities and seek to curtail the conduct of parties to protect democracy. The third model of party constitutionalization emerged in the third and fourth waves of democratization in which political parties are conceived as public utilities and crucial mechanisms to realize democratic principles, such as participation, representation and to express popular will.²³

As indicated below, the socialist constitutions conceive the communist parties as public utilities but not as mechanisms to realize democratic principles. Rather, the parties are conceived as essential organizations to realize socialist principles.

2.4.Functions

Why do democracies constitutionalize political parties? Borz provides six justifications for party constitutionalization. These include: (1) legitimatizing the role of parties as agents of citizens in democracies; (2)

²² van Biezen, *supra* note 2, at 200-1.

²³ *Id.*, at 207-08.

ensuring organizational survival (e.g., receiving subsidies and resources from the state); (3) differentiating parties from other political groups or associations; (4) restricting competition from undemocratic parties; (5) placing parties under supervision and preventing abuse of power; (6) creating the constitutional base to ensure party's compliance with secondary legislation.²⁴

Borz's justificatory (normative) account can be adapted as a functional (positivist) explanation of party constitutionalization. These elements do not justify why the constitutions should regulate the political parties but explain why they do so. Elements 5 and 6 can be combined as they both seek to limit the party power. Thus, the party provisions in both democratic and authoritarian constitutions have five functions: *legitimizing* the party role in the political system; *protecting* the survival of the party, including by restricting competition and opposition; *coordinating* the work of the party with the state and other political institutions; *expressing* political values and principles; *limiting* the party power within the constitutional and legal framework.

3. Constitutionalizing Party Socialism.

3.1. Waves

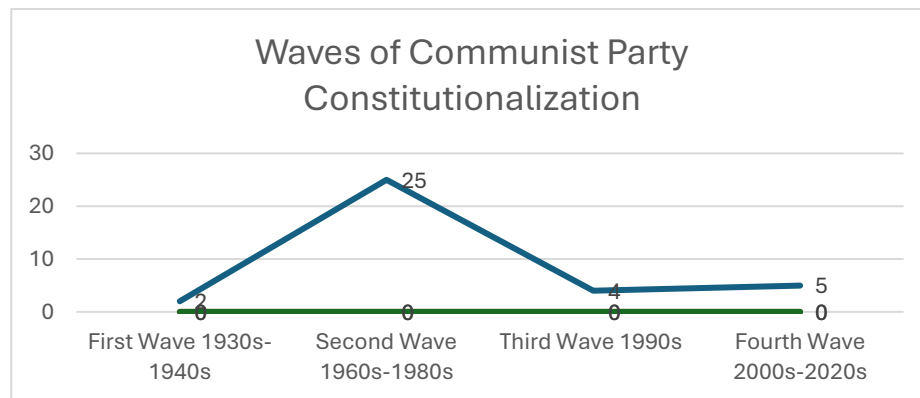
Codification of the communist party in the socialist constitutions occurred in four waves paralleling those in democratic constitutions. These waves can be characterized as formation, diffusion, reform, and consolidation.

The first wave, corresponding to the first wave of codification of parties in democratic constitutions, occurred in the 1930s and 1940s with the formative constitutionalization of the communist party in Soviet Russia and its influence in Mongolia. In the second wave happened in the 1960s and 1980s, paralleling the second wave of constitutionalizing parties in democracies, the Soviet model of party constitutionalization diffused to many other countries in Europe, Asia, and Africa. The collapse of the Soviet Union triggered the third wave of party constitutionalization in transitional democracies and remaining socialist countries. While post-communist constitutions regulate political parties to facilitate democracies, the socialist constitutions retain and reform the provisions on the communist party to adjust the socialist regimes to the new global geopolitical context. In the fourth wave in the twenty-first century, while

²⁴ Borz, *supra* note 11, at 104-105.

some established democracies in Western Europe reconstructed party constitutionalization, the established socialist regimes consolidated the constitutional codification of the communist party.

The numbers of socialist constitutions codifying the communist party vary in different waves. In the first wave, only 2 socialist constitutions of the Soviet Union and Mongolia codified the communist party. In the second wave, the number dramatically increased to 25. The increase is mainly due to the rise of the Soviet Union as a great power and many other countries adopted the Soviet model of party constitutionalization. In the third wave, only 4 socialist constitutions (those of Cuba, Laos, North Korea, and Vietnam) confirmed the leadership of the communist party. The collapse of the Soviet Union and the democratic transitions of former socialist states in Europe led to radical decrease in the number of constitutions mandating the leadership of the communist party. In the fifth wave in the twenty first century, the number slightly increased into 5 as China reinserted the party leadership into the body of its constitution and constitutional change in other four socialist regimes (Cuba, Laos, North Korea, and Vietnam) reconfirm and consolidate the party leadership.



3.1.1. Formation

In the first wave between 1930s and 1940s, constitutionalization of the communist party is connected to the institutional formation of the socialist regime in the Soviet Union and Mongolia. The Bolshevik party led by Vladimir Lenin took over government power in Russia after the October Revolution in 1917, which became the Communist Party of the

Soviet Union (CPSU) and the first ruling communist party in the world.²⁵ However, the 1924 Constitution of the Soviet Union (the "Lenin Constitution"), modelling after the 1918 Russian Constitution, the framework for the transition of the state from capitalism to socialism,²⁶ has not yet codified the communist party leadership. The 1936 Constitution of the Soviet Union ("Stalin Constitution"), the foundation for the construction of the state of advanced socialism,²⁷ entrenches the leadership of the Communist Party for the first time. The Constitution defines that the Communist Party of the Soviet Union (Bolsheviks) "is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organizations of the working people, both public and state."²⁸

Until the 1940s, apart from the Soviet Union, there was only one socialist regime, namely Mongolia, which was under communist control in 1924.²⁹ Like the Lenin Constitution, Mongolia's first socialist constitution in 1924 does not include an article on the communist party. Mongolia's second socialist constitution adopted in 1940, modelling after the Stalin Constitution,³⁰ codified the communist party leadership. Article 82 of the Constitution provides that "the most active and politically conscious citizens in the ranks of the workers, Arat workers, and intelligentsia, are united in the Mongol People's Revolutionary Party, which is the vanguard of the working people in their struggle to strengthen and develop the country along noncapitalistic lines into a party which is the foremost nucleus of all organizations of workers, both public and state."³¹ Thus, the Constitution largely borrows the language of the party provision in the Stalin Constitution.

Table 1: Formation of Communist Party Constitutionalization

Country	Constitution, Party Article	Party Leadership
Soviet Union	1936 Constitution, art.126	Communist Party of the Soviet Union

²⁵ HOLMES, *supra* note 5, at 18

²⁶ Christopher Osakwe, *Theories and Realities of Modern Soviet Constitutional Law: An Analysis of the 1977 USSR Constitution*, 127 U. PA. L. REV. 1350, 1351-2 (1979).

²⁷ *Id.*, at 1352.

²⁸ CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1936), art. 126

²⁹ HOLMES, *supra* note 5, at 24.

³⁰ Marcia R. Ristaino, *Government and Politics*, in MONGOLIA: A COUNTRY STUDY 176 (Robert L. Worden & Andrea Matles Savada eds., 1989).

³¹ CONSTITUTION OF THE MONGOL PEOPLE'S REPUBLIC (1940), art.82.

Mongolia	1940 Constitution, art.82	Mongol People's Revolutionary Party
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3.1.2. *Diffusion*

The Soviet Union adopted a new constitution in 1977 in an attempt to “catapult the Soviet society directly into communism”,³² which mandates that “the leading and guiding force of the Soviet society and the nucleus of its political system, of all state organizations and public organizations, is the Communist Party of the Soviet Union.”³³ After World War II, the Soviet model of communist party constitutionalization diffused into many other socialist allies of the Soviet Union between the 1960s and 1980s in Europe, Asia, Africa, and Americas.

In Europe, the leadership of the communist party over the state and the society was established in the socialist constitutions of Albania, Bulgari, (East) Germany, Hungary, Czechoslovak, Romania, and Poland. In Asia, constitutionalizing communist party took place in Afghanistan, Cambodia, China, Laos, (North) Korea, Mongolia, Myanmar, Syria, Vietnam, and Yemen. In Africa, the constitutional mandate of the communist party leadership was adopted in Angola, Benin, Congo, Ethiopia, Mozambique, and Somalia. In Americas, the Constitution of Cuba entrenches the leadership of the Communist Party of Cuba. Thus, most socialist constitutions during the Soviet era mandated the leadership of the communist party. There are some exceptional cases. China’s first socialist constitution of 1956 and Vietnam’s first socialist constitution of 1959 only mention on the leadership of the communist party in its preamble, which may be due to the existence of different political parties in these countries by the time the constitutions were adopted. The table below reports the codification of the communist party in 25 socialist constitutions between 1960s and 1980s.

Table 2: Diffusion of Communist Party Constitutionalization

Country	Constitution, Party Article	Party Leadership
Afghanistan	Fundamental Principles 1980, art.4	People's Democratic Party of Afghanistan
Albania	Constitution 1976, art. 3	Party of Labor of Albania

³² Osakwe, *supra* note 26, at 1352-53.

³³ CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1977), art. 6.

Angola	Constitutional Law 1975 (amended 1980), art. 2	MPLA-Workers' Party
Benin	Fundamental Law 1977, art.4	Party of the People's Revolution of Benin
Bulgaria	Constitution 1971, art. 1	Bulgarian Communist Party
Cambodia	Constitution 1981, art. 4	Kampuchean Popular Revolutionary Party
China	Constitution 1975, art. 2	Communist Party of China
China	Constitution 1978, art. 2	Communist Party of China
Congo	Constitution 1967 (amended 1972), art.4	People's Revolutionary Movement
Cuba	Constitution 1976, art. 5	Communist Party of Cuba
Czechoslovak	Constitution 1960 Art.4	Communist Party of Czechoslovakia
Ethiopia	Constitution 1987	Workers' Party of Ethiopia
Germany	Constitution 1968 (amended 1974), art.1	a Marxist-Leninist communist party
Hungary	Constitution 1949 (amended through 1972), art.3	a Marxist-Leninist communist party
Korea (North)	Constitution 1972 art. 4	Workers' Party of Korea
Mozambique	Constitution 1975 (amended through 1978), art.3	FRELIMO (Mozambican Liberation Front)
Myanmar	Constitution 1974, art. 11	Burma Socialist Program Party
Mongolia	Constitution 1960, art 82	Mongol People's Revolutionary Party
Romania	Constitution 1965, art. 11	Romanian Communist Party
Poland	Constitution, 1952 (amended 1976), art. 3	Polish United Workers' Party
Somalia	Constitution 1979, art. 3	Somali Revolutionary Socialist Party
Soviet Union	Constitution 1977, art.6	Communist Party of the Soviet Union
Syria	Constitution 1973, art. 8	The Baath Arab Socialist Party
Vietnam	Constitution 1980, art. 4	Communist Party of Vietnam
Yemen	Constitution 1971, art. 2	Yemeni Socialist Party

The second wave of communist party constitutionalization is connected to the global spread of communism animated by Soviet expansionism. The Soviet model of party constitutionalization was transplanted into many socialist constitutions. Particularly, the language used in Soviet constitutions to define the nature of the communist party (“the vanguard of the working people”) and entrench its dominant role (the “leading and guiding force” of the society and “the nucleus” of political system) were widely adopted in many socialist constitutions. Legal transplant theory suggests the reception of foreign law is the matter of political power of the original country.³⁴ The adoption of the Soviet model of party constitutionalization (and the Soviet constitutional model generally) in different socialist countries is largely due to the rise of the Soviet Union as a great power during the Cold War. In addition, the socialist countries adopted the Soviet model of party constitutionalization as they shared the same socialist regime and were military allies of the Soviet Union. The socialist countries also adopted the Soviet model of party constitutionalization due to material interests. Many socialist countries received financial assistance from the Soviet Union, and therefore their adoption of the Soviet constitutional model is animated by the need to obtain and sustain the Soviet Union’s continued support. Beyond material interests, the diffusion of party constitutionalization is also due to substantive beliefs.³⁵ The secondary socialist countries adopted and internalized the constitutional norm of party leadership as the matter of their substantive beliefs in the socialist principle of party leadership articulated by the Soviet’s hegemonic power and adopted by other socialist countries.

3.1.3 *Reform*

The third wave involves the reform of the constitutionalization of the communist party in the 1990s, which is connected to the constitutional reform of the remaining socialist regimes (China, Cuba, Laos, North Korea, and Vietnam) after the fall of the Soviet Union.

Unlike the preceding constitutions of 1975 and 1978, China’s current Constitution adopted in 1982 deleted the provision on the Communist Party of China in response to the concerns on the expansion of party power during the Mao era. However, the Constitution still mentioned on the Party leadership its preamble. In 1993, China introduced

³⁴ ALAN WATSON, *SOCIETY AND LEGAL CHANGE* 99 (2001).

³⁵ G. John Ikenberry & Charles A. Kupchan, *Socialization and Hegemonic Power*, 44 *INTERNATIONAL ORGANIZATION* 283 (1990).

amendments to the 1982 Constitution, which include some changes to the references to the Party in the preamble. The amended constitutional preamble confirmed that “The system of the multi-party cooperation and political consultation led by the Communist Party of China will exist and develop for a long time to come.”³⁶ This system allows the existence of different parties in China but subjects non-communist parties to the hegemony of the Communist Party.

Cuba amended the 1976 Constitution in 1992, which supplemented Martí, along with Marxism-Leninism, as the Communist Party of Cuba’s ideology.³⁷ Laos adopted the first socialist constitution in 1991, which established the Lao People’s Revolutionary Party as the “leading nucleus” of the political system.³⁸ The Constitution, however, does not specify the Party’s ideology. North Korea amended the 1972 socialist constitution in 1992. There are two major changes regarding the Workers’ Party of Korea. First, an amendment to Article 4 deleted Marxism-Leninism as the Party’s ideology.³⁹ Second, Article 11 confirms that “The Democratic People’s Republic of Korea shall conduct all activities under the leadership of the Workers’ Party of Korea.”⁴⁰ Vietnam adopted a new socialist constitution in 1992 which continues but modifies the party provision in the preceding 1980 Constitution, including the addition of Ho Chi Minh’s Thought, along with Marxism-Leninism, as the Party’s ideology.⁴¹

Table 3: Reform of Communist Party Constitutionalization

Country	Constitutional Change	Change to Party Leadership
Cuba	1992 Amendments to 1976 Constitution, art. 5	Adding Martí as the ideology of the Communist Party of Cuba
Laos	Adoption of 1991 Constitution, art. 3	Confirming Lao People’s Revolutionary Party as leading nucleus of the political system
North Korea	1992 Amendments to 1972 Constitution, Article 11:	Confirming Workers’ Party of Korea’s leadership
Vietnam	Adoption of New 1992 Constitution, art. 4	Adding Ho Chi Minh’s Thought as the ideology of the Communist Party of Vietnam.

³⁶ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA 1982 (amended in 1993), preamble.

³⁷ CONSTITUTION OF REPUBLIC OF CUBA (1976) (amended in 1992), art. 5.

³⁸ CONSTITUTION OF THE LAO PEOPLE’S DEMOCRATIC REPUBLIC (1991), article 3

³⁹ SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (1972) (amended in 1992), art. 4.

⁴⁰ Id., art.11.

⁴¹ CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (1992), art. 4.

The reform of communist party constitutionalization indicates two patterns in the institutional trajectory of the remaining socialist regimes after the fall of the Soviet Union. One is the socialist resistance to the third wave of democratization. To resist this political process, the remaining socialist regimes strengthened the leadership of the communist party, the institutional core of the socialist survival, including through constitutional entrenchment. Another institutional pattern is fostering the independence of the socialist states. Without the support of the Soviet Union, the remaining socialist states need to be independent materially and ideologically. The necessity of ideological independence explains the less emphasis on Marxism-Leninism and the resort to the nationalist foundations (e.g. Martí and Ho Chi Minh's Thought) of the party's ideology.

3.1.4 *Consolidation.*

In the fourth wave, established socialist regimes consolidate the constitutionalization of the communist party in the twenty first century. The 2018 constitutional amendments in China under the Xi era restore party constitutionalization, confirming that “leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics.”⁴² The codification of the communist party normally takes the form of constitution-making. The making of a new constitution creates the condition to address fundamental issues at the moments of substantive institutional construction of the socialist states, including the entrenchment of the leadership of the communist party. However, the case of China suggest that the communist party is also codified through constitutional amendments. This raises a conceptual question regarding the nature of amendment power in the socialist constitutions. In contrast to the theoretical underpinnings of the doctrine of unconstitutional constitutional amendments,⁴³ the socialist constitutions normally do not establish legal limitations on the amendment power to enable flexible constitutional adaptation to the changes of material conditions.⁴⁴ This allows the use of the amendment power to establish party leadership as the basic structure of the socialist constitutional system.

⁴² CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (1982) (amended in 2018), art. 1.

⁴³ YANIV ROZNAI, UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS: THE LIMITS OF AMENDMENT POWERS (2019).

⁴⁴ An exceptional case: CONSTITUTION OF THE REPUBLIC OF CUBA (2019), art. 229 (providing that socialism is unamendable.)

Cuba's new Constitution of 2019 continues to confirm the leadership of the Communist Party of Cuba and supplemented local ideologies and nationalist objectives of the Party.⁴⁵ North Korea amended the constitution many times, but the party provision remains intact, reading as follows: "The Democratic People's Republic of Korea shall conduct all activities under the leadership of the Workers' Party of Korea."⁴⁶ Vietnam adopted another new constitution in 2013, which continues and further modifies the party provision with more emphasis on accountability of the party to the public.⁴⁷

Table 4: Consolidation of Communist Party Constitutionalization

Country	Constitutional Change	Change on Party Leadership
China	2018 Amendments to 1982 Constitution, art. 1	Communist Party of China's leadership as the core of Chinese socialism
Cuba	Adoption of new 2019 Constitution, art. 5	Communist Party of Cuba reconfirmed; Fidelista as its new ideology; permanent linkage to the people as its new feature; preserving patriotism and moral values as its new function.
Laos	Adoption of new 2003 Constitution, art.3	No change: The leadership of Lao People's Revolutionary Party reconfirmed
Laos	Adoption of new 2015 Constitution, art.4	No Change: The leadership of Lao People's Revolutionary Party reconfirmed
Korea (North)	Amendments through 2023 to the 1976 Constitution, art.11	No change: the leadership of Workers' Party of Korea reconfirmed.
Vietnam	Adoption of new 2013 Constitution, art.4	Leadership of the Communist Party of Vietnam reconfirmed; accountability to the public as a new feature.

The consolidation of communist party constitutionalization is connected to the broader institutional consolidation of the remaining socialist regimes in response to the rise of globalization and domestic

⁴⁵ CONSTITUTION OF THE REPUBLIC OF CUBA (2019), art. 5.

⁴⁶ SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (1972) (amended through 2023), art. 11.

⁴⁷ CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (2013), art. 4.

social-economic development. Globalization, including the global expansion of multi-party democracy, induces various reactions in the socialist constitutions in terms of the communist party. China's constitutional reaction is resistant: the restoration of the communist party constitutionalization signals the regime's strong objection to multi-party regimes. Vietnam's constitutional reaction seems more positive. While multi-party regime is rejected, the party constitutionalization is sensitive to the party's accountability to the public and the public supervision of the party. Domestic social-economic transitions also contribute to the consolidation of communist party constitutionalization. To illustrate, social and economic development as the consequence of four decades of reforms renders China confident in its one-party regime, which is embodied in the constitutional re-recognition of the communist party leadership.

3.2.Contents of Party Constitutionalization

The essence of party constitutionalization in the socialist regimes is the inclusion of a single principal article (hereinafter, the party article) in the body of the constitution establishing the leadership of the communist party.⁴⁸ Particularly, the party article is normally placed at the prominent part (such as in the first articles) of the constitutions to signal the significance of party leadership. The party article includes a constitutional principle or a set of constitutional principles of the communist party. These principles are foundational, general statements underpinning the nature and role of the communist party in the constitutional order. The party articles share common contents, but they are divergent at the same time. Many party articles are extensive, dealing with various dimensions of the party, while other party articles are more concise, dealing with lesser aspects of the party. To specify Van Biezen's typology, the content of the party articles in socialist constitutions can be classified as including five elements namely: leadership (rights and duties), class nature (values and principles), ideology (values and principles), program (rights and duties), and activity (meta-rules). Among these elements, leadership is essential, while the other elements are supplementary. The essential element is included in all party articles of the socialist constitutions, while the supplementary elements may or may not be present in the articles.

3.2.1. Entrenchment of Leadership

⁴⁸ To be sure, the communist party is also mentioned in the preamble or other related articles of the socialist constitutions.

The party articles in the socialist constitutions include an essential statement establishing the leadership of the communist party. There are two aspects of such a statement: the reference to the party and the entrenchment of its leadership. On the first aspect, most of the party articles specify the reference to *the* communist party (e.g., the Communist Party of the Soviet Union, the Communist Party of China, the Communist Party of Cuba.) In exceptional cases, the party articles in the socialist constitutions of Germany and Hungary do not specify the communist party but generally mention on *a* Marxist-Leninist party. On the second aspect, the common formula of the leadership statement in the party articles is that the communist party is the leading force of the state and the society.

For example, the 1971 Constitution of the Republic of Bulgaria provides that “The guiding force in society and the state is the Bulgarian Communist Party.”⁴⁹ The 1974 Constitution of the Socialist Republic of the Union of Burma confirms that the Burma Socialist Program Party “shall lead the State.”⁵⁰ The 1979 Constitution of the Somali Democratic Republic mandates that “the Somali Revolutionary Socialist Party shall have supreme authority of political and socio-economic leadership in the Somali Democratic Republic.”⁵¹ The 1975 Constitution of the People's Republic of China entrenches the Communist Party of China as “the core of leadership of the whole Chinese people.”⁵² The 1981 Constitution of the Popular Republic of Kampuchea establishes the Kampuchean Popular Revolutionary Party as “the directing force for all the revolutionary work of the Popular Republic of Kampuchea.”⁵³

Comparatively, a liberal-democratic constitution of a multiparty-political system cannot entrench the leading role of any political party due to the conceptual underpinning of political pluralism in liberal democracies. For example, Portugal has a highest degree of party constitutionalization in Europe, with its constitution’s referring to political parties in 23 separate articles.⁵⁴ The extensive constitutional regulations of political parties seek to establish “obligation of political parties to respect democratic principles”⁵⁵ rather than entrenching the monology of any political party. Functionally, in a liberal constitutional democracy, a

⁴⁹ CONSTITUTION OF THE REPUBLIC OF BULGARIA (1971), art. 1

⁵⁰ CONSTITUTION OF THE SOCIALIST REPUBLIC OF THE UNION OF BURMA (1974), art. 11

⁵¹ CONSTITUTION OF THE SOMALI DEMOCRATIC REPUBLIC (1979), art. 7

⁵² CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (1975), art. 2

⁵³ CONSTITUTION OF THE POPULAR REPUBLIC OF KAMPUCHEA (1981), art. 4

⁵⁴ Ingrid van Biezen & Fernando Casal Bértoa, *Plus Ça Change? Party Regulation in Portugal (1974–2020)*, in *THE OXFORD HANDBOOK OF PORTUGUESE POLITICS* 389 (Jorge M. Fernandes, Pedro C. Magalhães, & António Costa Pinto (eds., 2022).

⁵⁵ *Id.*, 391.

political party comes to power through democratic elections, and hence constitutional mandate of the leadership of a political party is impossible. Differently, the socialist constitutions do not conceive the communist party as an electoral institution. The socialist regime is a single-party regime, and the leading role of the communist party is not determined by electoral competitions but by revolutionary struggles and subsequent constitutional entrenchment. The constitutional entrenchment of the communist party leadership is the constitutional protection of the pre-existing party leadership.

3.2.2. *Definition of Class Nature*

After the essential element of the party leadership, the most common element in the party articles in the socialist constitutions is a statement about the class nature of the communist party. The common feature is the definition of the communist party as the vanguard of the working class. This is consistent with the Leninist vanguard conception. The Leninist notion of vanguardism perceives the communist party as the body of the most ideologically and politically advanced sections of the working class, and other social classes, and therefore the force that leads the state and the society in a struggle against capitalism to achieve socialism and eventually communism.⁵⁶ This party vanguardism is embodied in the socialist constitutions. The perception of the communist party as a vanguard body constituted by the most advanced people is the ideational underpinning of the constitutional entrenchment of the party leadership.

Many socialist constitutions explicitly recognize the vanguard nature of the communist party. There are, however, two variations of the constitutional statements of the nature of the communist party: differentiating and integrating. The *differentiating statements*, which are more common than the latter, characterize the communist party as the vanguard body of the working class. For example, Albania's 1976 Constitution defines the Party of Labor of Albania as "the vanguard of the working class."⁵⁷ The *integrating statements* define the party as the vanguard body of the working class and of the broader population, which may stem from the need to amass the support of the mass for revolutionary struggle. For example, Czechoslovak's 1960 Constitution defines the Communist Party of Czechoslovakia as "the vanguard of the working class,

⁵⁶ Erwin Marquit, *Dictatorship of the Proletariat and Vanguard Party in Historical Context*, 18 NATURE, SOCIETY, AND THOUGHT 549 (2005).

⁵⁷ CONSTITUTION OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA (1976), art. 3.

a voluntary militant alliance of the most active and most politically conscious citizens from the ranks of the workers, farmers and intelligentsia.”⁵⁸ Afghanistan’s 1980 Fundamental Principles defines that the People’s Democratic Party of Afghanistan as “the party of the working class and all the toilers of the country.”⁵⁹ Some party articles are silent about the class nature of the party.

3.2.3. *Expression of Ideology*

The third element in the content of the party articles in the socialist constitutions is a statement expressing the ideology of the communist party. A communist party is ideologically equipped with Marxism-Leninism. Therefore, many party articles in the socialist constitutions formally specify Marxism-Leninism as the communist party’s ideology. For example, Article 6 of Constitution of the People’s Democratic Republic of Ethiopia of 1987 provides that the Workers’ Party of Ethiopia “is guided by Marxism-Leninism.”⁶⁰ Other socialist constitutions confirming in their party articles Marxism-Leninism as the ideology of the communist party include the 1976 Constitution of Albania (article 3), 1975 Constitution of Angola (article 2), 1975 Constitution of China (article 2), 1976 Constitution of Cuba (article 5), 1968 Constitution of Germany (article 1), 1949 Constitution of Hungary as amended in 1972 (article 3), 1972 Constitution of North Korea (article 4), and 1980 Constitution of Vietnam (article 4).

Apart from the specification of Marxist-Leninist ideology, there are three other variations regarding party ideology: generalization, localization, and silence. The party article in the Yemen’s 1971 Constitution generally refers to the “socialism theory”⁶¹ as the party’s ideology rather than specifies Marxism-Leninism. Some socialist constitutions, however, supplement Marxism-Leninism with the ideology of local leaders (such as Mao Tsetung Thought in China; Martian, Fidelista in Cuba; *Juche* idea in North Korea; and Ho Chi Minh’s Thought in Vietnam). Some party articles are silent about the ideology of the communist party.

3.2.4. *Articulation of Program.*

⁵⁸ CONSTITUTION OF THE CZECHOSLOVAK SOCIALIST REPUBLIC (1960), art. 4.

⁵⁹ FUNDAMENTAL PRINCIPLES OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN (1980), art. 4.

⁶⁰ CONSTITUTION OF THE PEOPLE’S DEMOCRATIC REPUBLIC OF ETHIOPIA (1987), art. 6.

⁶¹ CONSTITUTION OF THE PEOPLE’S DEMOCRATIC REPUBLIC OF YEMEN (1971), art. 2.

The fourth element in the content of the party articles of the socialist constitutions is the articulation of the program of the communist party. Many party articles include a statement about common goals (such as the general interests of the broader population and construction of socialism) that the communist party seeks to achieve. For example, the constitutional goal of the Bulgarian Communist Party is to construct “an advanced socialist society.”⁶² The Polish United Workers' Party's constitutional goal is “building socialism.”⁶³ The party articles in the Soviet Constitution of 1977 and the Cuba's constitutions of 1976 and 2019 even establish the achievement of communism as the party's ultimate goals.⁶⁴ Some party articles address specific programs which are connected to national revolutions and conditions, such as implementing the objectives of the Saur Revolution in Afghanistan's Fundamental Principles of 1980 and preserving and to fortifying the patriotic unity and moral values in Cuba's 2019 Constitution. Some party articles are silent about the program of the communist party.

3.2.5. *Regulation of Activity.*

The fifth element in the party articles in the socialist constitutions is the regulation of the party's activity. The party articles establish constitutional duties and norms in the party's activities. A common party's constitutional duty is *direction*: leading revolutionary struggle and guiding policy. For example, the People's Democratic Party of Afghanistan is responsible for “guiding the struggle of all the people of Afghanistan.”⁶⁵ The Yemeni Socialist Party is required to “lead the struggle of the people and their mass organizations towards the absolute victory of the Yemeni revolution's strategy.”⁶⁶ The FRELINO [Liberation Front of Mozambique] shall lay down “the basic political orientation of the state and direct and supervise the works of state organs.”⁶⁷ Another party's constitutional duty is *cooperation*: working with other political organs. For example, the

⁶² CONSTITUTION OF THE REPUBLIC OF BULGARIA (1971), art. 1.

⁶³ CONSTITUTION OF THE POLISH PEOPLE'S REPUBLIC (1952) (amended through 1976), art. 3.

⁶⁴ CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1977), art. 6; CONSTITUTION OF THE REPUBLIC OF CUBA (1976), art. 5; CONSTITUTION OF THE REPUBLIC OF CUBA (2019), art. 5.

⁶⁵ FUNDAMENTAL PRINCIPLES OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN (1980), art. 4.

⁶⁶ CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN (1971), art. 2.

⁶⁷ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF MOZAMBIQUE 1975 (amended through 1978), art. 3.

Bulgarian Communist Party is required to work “in close fraternal cooperation with the Bulgarian Agrarian Union”.⁶⁸ The Polish United Workers' Party shall co-operate with the United Peasants' Party and the Democratic Party.⁶⁹

A common constitutional norm for party activity is *legality*: working within the framework of the constitution and the law. For example, the 1977 Soviet Constitution provides that “All party organizations shall function within the framework of the Constitution of the USSR.”⁷⁰ Similar statements on the legality in party activity can be found in the constitutions of Ethiopia, Vietnam and Yemen.⁷¹ A recent norm developed in the process of reconstructing party constitutionalization is *accountability*: the party is subject to public supervision and accountable to the public. The Communist Party of Vietnam is required to “submit to the supervision of the People” and “accountable to the People for its decisions.”⁷² The Communist Party of Cuba is required to sustain “its democratic character as well as its permanent linkage to the people.”⁷³ Some party articles are silent about regulatory duties of the party.

3.3.Modes

The socialist constitutions do not see the communist party as an electoral institution. In the socialist regimes, the communist party is not a political entity created to compete for power through elections because it had been a ruling party before the elections. The communist party in the socialist regimes is also not an extra-parliamentary entity because the socialist legislatures are normally dominated by communist party members. Rather, the socialist constitutions conceive the communist party as a public entity but in a very different sense compared with the democratic constitutions. The socialist constitutions perceive the communist party as an instrument to realize socialist values and principles. Its leadership is considered essential to achieve socialism. Therefore, its leadership is formally endorsed by the constitution and the state is willing to subordinate to its leadership. The consequence is the party embodies in

⁶⁸ CONSTITUTION OF THE REPUBLIC OF BULGARIA (1971), art. 1

⁶⁹ CONSTITUTION OF THE POLISH PEOPLE'S REPUBLIC (1952) (as amended through 1976), art. 3

⁷⁰ CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1977), art. 6.

⁷¹ CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ETHIOPIA (1987), art. 6; CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (2013), art. 4; CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN (1971), art. 2.

⁷² CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (2013), art. 4.

⁷³ CONSTITUTION OF REPUBLIC OF CUBA (2019), art. 5.

the state and society. Party leaders hold key positions in the state institutions. State law in the institutional expression of party policy. Party units can be even set up in social and economic organizations, such state-owned enterprises, labor unions, associations of lawyers, to ensure party leadership over the society.⁷⁴

There are two different modes of communist party as a public entity. First, the communist party was conceived as the *revolutionary party* of the working class to overturn the capitalist society and state. Second, the communist party is considered a *reformative party* leading the state to undertake social and economic reforms. In the reformative mode, class struggle is de-emphasized. The party's reform policy may support some capitalist elements, such as institutions of market economy. Particularly, in China, as private economic sectors have growth, the capitalists have been allowed to join the Communist Party since 2001.⁷⁵

The mode of revolutionary party is prominent in the soviet era, while the mode of reformative party is the feature of the post-soviet era. However, some legacies of the mode of revolutionary party can be retained in the post-soviet era. Larry Cata Backer argues that in the post-soviet period, the Communist Party of China acts more like a ruling (reformative) party looking forward to achieving socialist goals by undertaking reform policy, while the Communist Party of Cuba “remains very much a revolutionary party” which “assumes that its role is to *preserve* the communist society it achieved at the moment of revolutionary triumph.”⁷⁶ While preservation of the achievement of the Revolution remains strong in Cuba, recent reform policy, including the cautious policy to liberalize the economy, indicates that Communist Party of Cuba is moving toward the mode of a reformative party leading social and economic development. The new 2019 Constitution of Cuba provides that the Communist Party of Cuba “organizes and orients the communal forces towards the construction of socialism and its progress toward a communist society.”⁷⁷ Thus, the party is conceived as a reformative, ruling party working forward to achieving the socialist and ultimately communist goals.

⁷⁴ See, for example, the case of China, Patricia M. Thornton, *From Frame of Steel to Iron Cage: The Chinese Communist Party and China's Voluntary Sector*, 51 JOURNAL OF CURRENT CHINESE AFFAIRS 412 (2023).

⁷⁵ Jia Hepeng, *The Three Represents Campaign: Reform the Party or Indoctrinate The Capitalists?* 24 CATO JOURNAL 261 (2004).

⁷⁶ Larry Cata Backer, *The Cuban Communist Party at the Center of Political and Economic Reform: Current Status and Future Reform*, 8 NW. INTERDISC. L. REV. 71, 109-10 (2015).

⁷⁷ CONSTITUTION OF REPUBLIC OF CUBA (2019), art. 5.

3.4.Functions.

In general, socialist constitutions are an instrument for the communist party and the socialist state to pursue political interests. In particular, as the communist party dominates the process of socialist constitution-making, the codification of the party in the constitution serves the party's instrumental interests: political legitimacy, regime security, institutional coordination, ideological expression, and power control.

3.4.1. *Legitimizing One-Party-Rule*

Constitutions generally have a legitimizing function. After World War II, a written constitution was increasingly conceived as the common standard for the legitimacy of an independent state, leading to the global expansion of constitution-making in both democratic and authoritarian regimes.⁷⁸ The socialist constitutions are also adopted to legitimize the socialist states. The constitutionalization of the communist party is to legitimize the domination of the communist party in the socialist regimes. Given the prominent role of the constitutions in the national legal system, their mandate is a powerful way to make the party leadership acceptable to the population. The constitutional entrenchment of the party leadership creates the legitimate base for the party to control the creation of state institutions (e.g., elections), to nominate senior party members to hold key state posts, and to formulate general directions for law-making and social-economic development.

3.4.2. *Protecting Regime Security*

As Jacques Delisle states, “for an authoritarian regime, legality can offer promising means to fulfill the most indispensable function: regime survival.”⁷⁹ Authoritarian constitutions, including the socialist ones, are an instrument for political elites to protect the existing regime. Party constitutionalization is an instrument to address the threats to the socialist regime. The constitutional protection of the leadership of the communist party, the essence of the socialist political regime, is a powerful way to protect the regime. Some socialist constitutions mandate the sole leadership

⁷⁸ Julian Go, *A Globalizing Constitutionalism?: Views from the Postcolony, 1945-2000* 16 INTERNATIONAL SOCIOLOGY 71-95 (2003).

⁷⁹ Jacques Delisle, *Authoritarian Legality in East Asia: What, Why, and Whither?* in AUTHORITARIAN LEGALITY IN ASIA: FORMATION, DEVELOPMENT AND TRANSITION 27 (Weitseng Chen & Hualing Fu eds., 2020).

of the communist party and explicitly exclude the creation of any other political parties. For example, the 1979 Constitution of the Somali Democratic Republic provides that “The Somali Revolutionary Socialist Party shall be the only party existing in the Somali Democratic Republic, no other party or political organization may be established.”⁸⁰

Even when the socialist constitutions do not exclude the creation of political parties other than the dominant communist party, their entrenchment of the leadership of the communist party is the base to prevent political oppositions. Non-communist parties may exist, but they cannot challenge the leadership of the communist party and the socialist system. To illustrate, China’s Constitution defines leadership by the Communist Party of China and bans “any organization or individual to damage the socialist system.”⁸¹ This means partisan and individual oppositions to the leadership of the Communist party and to Chinese socialism is constitutionally prohibited. The entrenchment of the party leadership in fundamental law also creates the legitimate base for secondary law, such as criminal law, to punish individuals opposing the communist party leadership and the socialist regime.

3.4.3. *Coordinating Party-State-Society Relations*

An authoritarian constitution can function as an “operating manual” in the sense that it “describes how government is to function, allowing various players to cooperate by following its instructions.”⁸² The socialist constitutions include the extensive descriptions of the functions of different political actors, including the party, the state, and social-political organizations. In this sense, they provide the framework for coordinating the work of these actors. Particularly, the constitutionalization of the communist party creates the base to coordinate the work of the party, the state institutions, and other social-political institutions. Accordingly, the party plays a leading role in the political order; the state makes and implements law; and social-political institutions (such as the peasants and women associations), the alliances of the party, constitute the mass base for the political order.

3.4.4. *Expressing Socialist Principles and Values*

⁸⁰ CONSTITUTION OF THE SOMALI DEMOCRATIC REPUBLIC (1979), art. 7

⁸¹ CONSTITUTION OF THE REPUBLIC OF CHINA (1982) (amended in 2018), art. 1.

⁸² Tom Ginsburg & Alberto Simpser, *Introduction: Constitutions in Authoritarian Regimes*, in CONSTITUTIONS IN AUTHORITARIAN REGIMES 6 (Tom Ginsburg & Alberto Simpser eds., 2013).

Law has expressive function: making statements about certain principles and values.⁸³ Constitutions are also expressive values and national character.⁸⁴ The socialist constitutions are replete with expressive statements. Particularly, the constitutional statements on the communist party express socialist and nationalist principles and values, such as class struggle, mass representation, Marxism-Leninism, and patriotism. Statements on the party ideology and its class nature and program are the prominent expressions of the socialist and nationalist values and principles. The expressive function of the party provision in socialist constitutions is both constitutive and transformative. It defines the identity of the communist party (the vanguard body of the working class) and articulates aspirational commitments to socialism which would inform the future program and activities of the party.

3.4.5. *Controlling Party Agencies*

Authoritarian leaders may adhere to legality to control the lower agencies to ensure the implementation of their law, direction, and policy,⁸⁵ the phenomenon sometimes characterized as “authoritarian rule of law.”⁸⁶ The constitutionalization of the communist party also seeks to control the legality of party agencies: party organizations and its members. This controlling function is particularly prominent in the constitutional requirement of legality in the activities of party bodies and members. The abuse of power by communist party members and organizations may undermine the legitimacy of the party rule and impede the implementation of the party policy. Therefore, top party leaders have the incentive to prevent such power abuse by requiring party members and organizations to work within the constitutional and legal framework. The fundamental law’s requirement of legality may be the base for secondary law to punish legal violations and abuse of power (e.g. corruption) committed by party members.

3.4.6. *Discursive Functions*

⁸³ Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996).

⁸⁴ Mark Tushnet, *The Possibilities of Comparative Constitutional Law*, 108 YALE L.J. 1225, 1269-70 (1999).

⁸⁵ Taisu Zhang & Tom Ginsburg, *China’s Turn toward Law* 59 VA. J. INT’L L. 306 (2019).

⁸⁶ JENS MEIERHENRICH, *THE REMNANTS OF THE RECHTSSTAAT: AN ETHNOGRAPHY OF NAZI LAW* 225-252 (2018) (chapter 9: Authoritarian Rule of law); JOTHIE RAJAH, *AUTHORITARIAN RULE OF LAW: LEGISLATION, DISCOURSE AND LEGITIMACY IN SINGAPORE* (2012).

The consolidation of party constitutionalization in the current socialist states (particularly China, Cuba, and Vietnam) is a part of the broader dynamics of the socialist constitutions, the communist party, and the society at large.

First, unlike the socialist constitutions in the Soviet era, the socialist constitutions in the reforming countries like China, Cuba, and Vietnam, are not merely a political tool for revolutionary struggle but the framework for legal, social and economic reforms. Therefore, they have become more relevant to society and hence attracted social attention.

Second, the communist party is also changing in the reforming socialist countries. Unlike the communist parties in the Soviet era, the communist parties in the reforming socialist countries are now not primarily a revolutionary party leading class struggle but a ruling party leading reform.⁸⁷ Therefore, it may be more sensitive to the social dynamics and demands of reform.

Third, the society in the reforming socialist countries, particularly China and Vietnam, has also transformed significantly since these countries carried out market reform policies in the last four decades. New social groups, new and competing ideas, and diverse interests have emerged in these transitional societies. Consequently, the citizens may have more concerns about the way the socialist regime works, including the constitutionalization of the communist party.

Due to these three dynamics, as the case of Vietnam suggests,⁸⁸ the process of consolidating communist party constitutionalization may not be entirely controlled by the communist elite. Rather, it is a contentious, dynamic process involving top-down control of communist elite and bottom-up contestation of the citizens.

The functions of reconstructing communist party constitutionalization may not be entirely instrumental. The constitutional provision on the communist party may both serve political elite's interests and function as the site for social contestation. The party article may be the base for the citizens to assert the people's power as opposed to the party power, to challenge the legitimacy of the party rule and the

⁸⁷ For China, see Feng Lin, *The 2018 Constitutional Amendments*, 1 CHINA PERSPECTIVES 13 (2019). For Vietnam, see Le Hong Hiep, *Performance-Based Legitimacy: The Case of the Communist Party of Vietnam and "Doi Moi"*, 34 CONTEMPORARY SOUTHEAST ASIA 145 (2012).

⁸⁸ For the case of China, see Ryan Mitchell, "State Form" in the Theory and Practice of Constitutional Change in Modern China' in THE LAW AND POLITICS OF UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS IN ASIA 62-3 (Rehan Abeyratne & Ngoc Son Bui eds., 2021).

constitutionalization of the party rule, to interpret the party rule and the party constitutionalization differently, and articulate norms for a better constitutional order, including the discursive advocacy for reform of the single party socialism and even its replacement by multi-party democracy.

4. Case Study: Party Constitutionalization in Vietnam

4.1. The Discursive Dynamics of Party Constitutionalization

In 2013, Vietnam engaged in comprehensive constitutional reform. In February, the government released the draft of a new constitution for public consultation. Seeking this opportunity, the public engaged in unusual debate on constitutional issues, including the people's constituent power, state power, party power, human rights, and constitutional review. The public discourse involved numerous individuals, (such as retired politicians, lawyers, intellectuals, journalists, religious leaders, activists, dissidents, and other individuals), and their social groups and organizations, such as the *Cùng Viết Hiến pháp (Let's Draw up the Constitution)* group (hereinafter CVHP), the group of 72 intellectuals, nine alumni of the Hanoi Law University, the *Free Citizens* group, the Catholic Bishops' Conference of Vietnam, seventeen social organizations working for the rights of seven vulnerable groups, thirty-five organizations of the Vietnamese civil society, and an LGBT group.⁸⁹

The constitutionalization of the Communist Party of Vietnam is one of the most controversial issues in the public debate. For several decades, the constitutional mandate of party leadership was a taboo in Vietnamese public discourse. Things changed in the 2013 constitutional reform. Article 4 in the draft constitution released to the public in 2013 continued to confirm the leadership of the Party, which triggered contentious debate. In a press conference Mr Phan Trung Lý, Head of the editorial board of the draft amendments to the 1992 Constitution, stated that "people can comment on Article 4 of the Constitution as with all other contents in the draft, there is nothing taboo."⁹⁰ This commitment enabled the public to debate on Party constitutionalization. I identify three approaches in the public discourse on Article 4 in the 1992 Constitution and in the draft

⁸⁹ For more details on these groups, see Bui Ngoc Son, *Constitutional Mobilization*, 17 WASH. U. GLOBAL STUD. L. REV. 113 (2018).

⁹⁰ Chung Hoàng, *Không Có Cấm Kỵ Khi Góp Ý Sửa Hiến Pháp [There Is No Taboo When Commenting On Amendments To The Constitution]*, CVHP (Feb. 1 2013), <https://hienphap.wordpress.com/2013/02/01/khong-co-cam-ky-khi-gop-y-sua-hien-phap/>

constitution, characterized here as: revolutionary abolitionism, reformist abolitionism, and revisionism.

4.1.1. Revolutionary Abolitionism

Revolutionary abolitionism argues for the abolition of the constitutional mandate of the Party leadership (or deletion of Article 4) to allow for the transition of the socialist single-party regime into a multi-party liberal democracy in Vietnam. Its arguments are mainly rested on normative-legal grounds: constitutionalizing Party leadership goes against the basic principles of a liberal constitution, such as popular sovereignty, representative government, protection of fundamental rights, and the rule of law. Revolutionary abolitionism, in fact, considers abolition of Article 4 to be the condition for a constitutional revolution: the transformation of the socialist regime into a liberal constitutional democracy. However, revolutionary abolitionism does not reject the role of Communist Party (including its leading role) in the project of constitutional revolution. Despite revolutionary aspirations, it dialogically engages with the Party. Revolutionary abolitionism maintains that without constitutional mandate the Party may still assume the leadership if the Party wins in multiparty and free elections. Revolutionary abolitionism, therefore, stresses the Party's legal legitimacy: the public approval of the Party leadership through the legal process of free and multiparty elections. This legal process of free elections is the institutional expression of democratic ideals (e.g., popular sovereignty and liberal rights) which conceptually underpin revolutionary abolitionism.

Due to its radical nature, revolutionary abolitionism could mainly be expressed in unofficial venues. Several collective petitions supported revolutionary abolitionism. To illustrate, the Petition of 72 intellectuals (known as Petition 72, signed by over 10,000 people) rejected the constitutionalization of Party leadership on normative grounds. It contends that the constitutional mandate of the leadership of a political party is inconsistent with normative values, such as a democratic constitution, popular sovereignty, fundamental rights, and the rule of law. Petition 72 deployed comparative experience to argue for political competition in democratic and free elections. It believes that the ruling party's acceptance of political competition is a historical trend. It reasons that the entrenchment of the Communist Party's leadership in the 1977 Soviet Constitution failed to protect the Soviet regime from collapse. It also based the call for political competition on national grounds: the condition for the country's development, people's need, and the support of some party

members. Petition 72 supported the deletion of the constitutionalization of party leadership to allow for a multiparty system. However, it does not completely reject the leadership and the role of the Communist Party in the constitutional project of multi-party democratization. The Party may become the leading force if it wins in the free and democratic elections.⁹¹

Apart from collective efforts, several individuals published their writings in unofficial venues arguing for constitutional abolition of party leadership as a part of revolutionary change to a liberal democracy. For example, mathematician Hoàng Xuân Phú condemned that constitutionalizing Party leadership is ironically the socialist regime's death grave: "The provisions in the Constitution on the natural leadership of the Communist Party of Vietnam over the State and society seem to keep the party alive, but it is the provision of the death of the Communist Party of Vietnam, the death from the hearts of the People, and death from political life."⁹² This is because, he believes, the party's constitutionalized monopolization of power resulted in corruption, human rights violations, suffocation of democracy in the society (citizens' participation), which in turn undermines the people's trust in the Party. He said: "The one-party state has destroyed the party's fighting strength and healthy living instincts. Letting go of the monopoly position, the CPV is corrupting itself, self-destructing, like a chariot without brakes, going downhill, heading straight for the abyss."⁹³ Therefore, to rescue the Party, he suggested deleting Article 4 from the Constitution to allow for multi-party system: "If it turns to democratic competition in a multi-party, pluralistic society, the Communist Party of Vietnam will be forced to choose leaders of the best kind, and will definitely choose a leader that is many times better than the incumbent squad, both in talent and virtue. All corruptions and corrupted members will be exposed and eliminated."⁹⁴

In the same vein, activist lawyer and dissident Cù Huy Hà Vũ called for abolition of Article 4 and creating multiparty democracy in Vietnam. He points out five reasons to support his revolutionary abolitionism. First, as the draft constitution still confirms people's sovereignty, constitutionalizing party leadership means the party's taking the people's power. Second, Article 4 turns Vietnam into an authoritarian regime, and to establish a democracy the abolition of the Article is inevitable. Third,

⁹¹ *Kiến nghị về sửa đổi Hiến pháp 1992* [Petitions on Amending the 1992 Constitution] CVHP (Feb. 2, 2013), <https://hienphap.wordpress.com/2013/02/03/kien-nghi-ve-sua-doi-hien-phap-1992-2/>

⁹² Hoàng Xuân Phú, *Hai Tử Huyệt Của Chế Độ* [Two Death Graves Of The Regime] CVHP (1 Feb. 1 2013), <https://hienphap.wordpress.com/2013/02/01/hai-tu-huyet-cua-che-do/>

⁹³ *Id.*

⁹⁴ *Id.*

the ideology of class struggle underpinning Article 4 goes against democracy because democracy requires the people to express their views through elections and referendums, not through imposition of the will of a social class. Fourth, constitutionalizing the Party leadership contradicts the rule of law commitment confirmed in the draft Constitution. Fifth, multi-party system was practiced in Vietnamese history: there were different political parties in the past, including the ruling Communist Party, and the Democratic Party, and the Social Party. Cù Huy Hà Vũ then advocated for a multiparty democracy. He did not reject the role of the Party in the multi-party system. Drawing on comparative experience, he said Singapore has different political parties, but the Action People's Party acts as the ruling party as it always holds the majority of seats in parliament; and in the US, there are more than 100 parties, but only the Democratic Party and the Republican Party alternately have a candidate elected for presidency. Turning to Vietnam, he stated the Communist Party can compete with other parties (through elections) to become a ruling party.⁹⁵

4.1.2. *Reformist Abolitionism*

Reformist abolitionism calls for removing Article 4 from the Constitution while maintaining the leadership of the Communist Party within the socialist regime. Reformist abolitionists contrast formalism with functionalism. Accordingly, formal constitutional imposition of Party leadership is not essential to the Party's actual leadership; rather, the functional acceptance of the Party leadership is crucial to the actual leadership. Reformist and revolutionary abolitionism share some features: they both support the constitutional deletion of Article 4, and they both place the Communist Party in the project of constitutional change. However, one key difference is that reformist abolitionists support the Party's leadership within the existing socialist regime, while the revolutionary abolitionists advocate for the transformation into multiparty liberal democracy. Consequently, reformist abolitionism attempts to consolidate the Party's sociological and moral legitimacy, while revolutionary abolitionism accentuates the Party's legal legitimacy. The Party's sociological and moral legitimacy refers to the people's actual approval of the Party leadership depending on the Party's social performance and party members' morality. Therefore, unlike revolutionary

⁹⁵ TS Cù Huy Hà Vũ *Góp Ý Cho Dự Thảo Sửa Đổi Hiến Pháp 1992* [Dr. Cu Huy Ha Vu Commented On The Draft Amendment To The 1992 Constitution], CVHP (Nov. 18, 2013), <https://hienphap.wordpress.com/2013/11/18/ts-cu-huy-ha-vu-gop-y-cho-du-thao-sua-doi-hien-phap-1992/>

abolitionism, reformist abolitionism underlines not the legal process of free elections but Party's actual serving the people and the nation, combating against corruption, and eliminating corrupted members from the Party.

There are two forms of reformist abolitionism: indirect and direct. The indirect form does not explicitly argue for the abolition of Article 4 but suggests the Article is not necessary. This position was expressed in official venues. Reformist abolitionism takes the indirect form to avoid censorship on official platforms. The direct form explicitly argues for abolition of Article 4 and could only be expressed in unofficial venues as the censorship mechanism would not allow such view to appear in official media. Reformist abolitionists were mainly retired figures. As they used to work for the party or the government, they were able to offer an inside view about Article 4. As they retired, there was more space for them to express their critical views about the Article without the fear of punishment.

Consider first the indirect discourse on reformist abolitionism. For example, Bùi Đức Lại, a retired senior expert of the Party's Central Organizing Committee, implicitly supported this approach in his piece surprisingly published in the official online media, Vietnamnet. Drawing on national and comparative constitutional law, he argues that constitutionalizing the communist party makes no difference. He points out that before 1980, there was no constitutionalization of the Communist Party in Vietnam although the Party was the leading party. He further said party constitutionalization in Soviet Union and Eastern Europe could not save the collapse of the social regimes. Although he suggested some revisions of Article 4 to ensure that the Party leadership will base on the law, he ambiguously questioned whether there are legitimate reasons to retain Article 4 because it is difficult to ensure the legality of Party leadership.⁹⁶ Bùi Đức Lại's view implies that the formal legal-constitutional mandate of Party leadership is not necessary; rather, the actual social approval of the Party leadership is essential for Party leadership in the socialist state in Vietnam. This view echoes reformist abolitionism as it questions the legitimacy of retaining Article 4. Bùi Đức Lại could not explicitly advocate for reformist abolitionism because he was contesting Article 4 in one of the most popular official online newspapers in Vietnam.

In unofficial venues, reformist abolitionism was explicitly expressed. To illustrate, in a piece published in a personal blog, retired

⁹⁶ Bùi Đức Lại, '*Hiến Pháp Nên Đề Cập Về Đảng Thế Nào?*' [*How Should the Constitution Mention On The Party?*], CVHP (Feb. 1 2013), <https://hienphap.wordpress.com/2013/02/01/hien-phap-nen-de-cap-ve-dang-the-nao/>

Major General Nguyễn Trọng Vĩnh,⁹⁷ argues party leadership depends on party performance, not its constitutionalization. He then suggests that there is no need for constitutionalizing the Party but to reform the Party (eradicating corruption, abolishing group interests, connecting with the people, employing genuine talents) to restore the public trust in the Party leadership. If there are no such reforms, despite constitutionalizing the Party power, the Party still loses the trust of the people.⁹⁸

4.1.3. Revisionism

Revisionism argues for retaining and amending Article 4 to commit the Party to legality and accountability. Its argument for the retaining is drawn on normative and instrumental grounds: socialist ideals and the necessity of political continuity and stability. In addition, it supports revising Article 4 to subject the Party leadership to constitutional-legal restraints and public supervision. Like reformist abolitionism, revisionism supports the reformation of Party leadership within the existing socialist constitutional order. However, different from reformist abolitionism, revisionism stresses legal formalism (legitimizing Article 4) over functionalism (the Party's actual leadership). Revisionism attempts to consolidate the legal foundations of Party's leadership (not through legal process of free elections as revolutionary abolitionism) through legal formalism: the formal requirements of legality and accountability in Party leadership.

Revisionism is the mainstream approach to Article 4. Revisionism dominated the public discourse in official platforms partially because it is supported by the Party, political leaders, and mainstream intellectuals, and partially because alternative approaches were excluded or precluded in formal venues.

One strand in revisionism tried to seek for institutional mechanisms to realize the draft Constitution's new commitment to Party's accountability. For example, in a workshop, some party scholars proposed that the Party can be questioned by the National Assembly about its leadership, while other contested that as National Assembly deputies are normally concurrently leaders of the Party Committee, it would be difficult

⁹⁷ On Nguyễn Trọng Vĩnh and his reformist discourse, see BENEDICT J. TRIA KERKVLIT, *SPEAKING OUT IN VIETNAM: PUBLIC POLITICAL CRITICISM IN A COMMUNIST PARTY* 79 (2019).

⁹⁸ Nguyễn Trọng Vĩnh, *Lực Lượng Vũ Trang Phải Trung Thành Với Tổ Quốc* [*Armed Forces Must Be Loyal To The Fatherland*], CVHP (Mar. 27, 2013), <https://hienphap.wordpress.com/2013/03/27/luc-luong-vu-trang-phai-trung-thanh-voi-to-quoc-nguyen-trong-vinh/>

for them to supervise and question the Party's responsibility.⁹⁹ The addition of the constitutional promise to Party's accountability triggered the debate on the institutional control of Party's leadership. As the National Assembly is the only body elected by the entire people and already drew the public attention thanks to its sessions questioning government members, it is understandable that the institution was invoked as the main platform for the public to hold the Party accountable.

Other revisionists called for the enactment of a Party law to enforce the constitutional commitment to Party's accountability and legality. The calls for a Party law were forceful in several official forums and drew the attention of official media. It is argued that it is necessary to enact a law to specify the Party's powers and duties and to avoid the Party's abuse of powers, and to provide the mechanism for the people to supervise the party power.¹⁰⁰ The addition of the constitutional commitment to the Party's accountability generated space for the revisionist debate on legislating Party leadership. Revisionists, therefore, align with the proposed amendment to Article 4 and move further to call for legislative change to realize a constitutional promise. In addition, they adhered to the idea of "rule of law state" which the regime attempted to construct to advocate for a legal framework for Party leadership. The call for a Party law was also animated by the concern of legal limitations on Party's power.

The revisionist discourse on a Party law indicates that legality in Party leadership is a normative value appealed by the Vietnamese intellectual community. In addition, the normative discourse on a Party law attempts to subject the Party power to the legislative power which in theory represents the people's power. While mainstream intellectuals agree with constitutionalizing Party leadership, they emphasize the people's power and their representatives' power over the Party's power. This emphasis is due to possible concerns: Party leadership may render people not the real source of political power as the Constitution stipulates, and Party leadership may also turn the legislature – the highest body of state power into a symbolic institution. However, the space for the revisionist discourse on institutional and legal framework for Party leadership is narrow. The discourse focused mainly on justifying the need for mechanisms to hold party accountable and for the enactment of a Party law. Except for the call for legislative sessions questioning the Party,

⁹⁹ *Id.*

¹⁰⁰ Lê Nhung, *Thời Điểm Chín Muội Xây Dựng Luật Về Đảng [The Time Is Ripe For Making A Law On The Party]*, VIETNAMNET (Feb. 25 2013), <https://vietnamnet.vn/vn/thoi-su/thoi-diem-chin-muoi-xay-dung-luat-ve-dang-109835.html>.

revisionists could not articulate concrete mechanisms to hold Party accountable and how a Party law looks like.

4.1.4. Consolidation of Party Constitutionalization

Eventually, the National Assembly adopted a new constitution in 2013. Article 4 of the Constitution codifies the Communist Party of Vietnam as below:

“1. The Communist Party of Vietnam - the Vanguard of the working class, concurrently the vanguard of the laboring people and Vietnamese nation, faithfully representing the interests of the working class, laboring people and entire nation, and acting upon the Marxist-Leninist doctrine and Ho Chi Minh Thought, is the force leading the State and society.

2. The Communist Party of Vietnam is closely associated with the People, shall serve the People, shall submit to the supervision of the People, and is accountable to the People for its decisions.

3. Organizations and members of the Communist Party of Vietnam shall operate within the framework of the Constitution and law.”

This Article retains the essential statement (the Party as the leading force of the state and society) and the ideological statement (Marxist-Leninist doctrine and Ho Chi Minh Thought) of Article 4 of the 1992 Constitution. The 2013 version of the party article, however, includes some changes to supplementary statements. First, the statement on the class nature of the Party is changed from differentiation to integration: the Party is defined as the vanguard of the working class and the laboring people and nation. This may stem from the need to court the support of the broader population for the implementation of the Party’s reform policy. Second, a new constitutional norm of Party activity, namely accountability, is introduced to respond to the public concerns of Party corruption and other forms of power abuse. Third, the constitutional requirement on the legality in Party activity is extended to both party organizations and individual party members. This meta rule seeks to prevent the abuse of power by both party entities and individual members.

4.2. Analysis.

The party constitutionalization is a part of the process of consolidating the Vietnamese socialist party-state in the context of global integration. Constitutionalizing the party is not an independent issue but is connected to broader institutional efforts to strengthen the party-state, such as anti-corruption campaign, controlling the abuse of public power

committed by both state and party agencies, enhancing political accountability, and fostering the legality in the use of the public power under the rubric called “socialist rule of law state.”

The party constitutionalization in Vietnam is a contentious process involving both political control and social discursive dynamics. On one hand, the process is controlled by political elite. Political elite designs the new contents of party constitutionalization, uses mechanisms of propaganda to indoctrinate the public and justify the legitimacy of these contents, employs mechanisms of censorship to limit the spread of critical views about party constitutionalization in official venues, and eventually finalizes the party constitutionalization. On the other hand, the political elite is committed to public discussion on party constitutionalization and even tolerates critical discussions. The citizens deploy discursive mechanisms (communicative exchanges of their views in official and unofficial platforms) to contest party constitutionalization. The political elite engages in dialogue with the public on party constitutionalization. Consequently, the reconstruction of party constitutionalization is not merely the one-side acquiescent imposition of political elite but a contentious process involving top-down political design and legitimatization and bottom-up contestation and de-legitimatization.

4.2.1. *Driving Forces*

The public constitutional discourse on Article 4 is first driven by the demand for recognition of people’s power and fundamental political rights. Discursive actors indicate that the constitutional mandate of the party’s monopoly power renders the people not the sovereign of power. This triggers the public engagement in constitutional discourse to demand for the party-state’s recognition of the people’s power. Constitutionalizing the Party’s dominant power also results in constraints of fundamental rights, such as the right to freedom of speech and the right to elections. The people contest this constitutionalization to demand for the party-state’s recognition of the people’s fundamental political freedom. The public demand for recognition stems from the public constitutional resentment: public disappointment and anger about constitutional and social problems associated with the party’s leadership. Particularly, the discursive labels of Article 4 as the socialist regime’s “death grave” and corruptions as “internal enemies” aggressively indicate the public indignation of party’s constitutionalized monopoly power.

The public engagement in the discourse on Party’s constitutionalized power is also animated by the attraction of democratic

norms. Democratic ideals, such as popular sovereignty, free elections, government's accountability are attractive to the social actors who are struggling against authoritarian power.

In addition, the public constitutional contestation of constitutional mandate of Party's power is shaped by the need to release institutional constraints on social and economic development in Vietnam. This belief is connected to an academic study which indicates that the single leadership of the communist party is the institutional obstacle for sustained social-economic development in the country.¹⁰¹ This argument is connected to the broader literature which argues that authoritarianism impedes development while democracy causes growth.¹⁰²

4.2.2. *Discursive Use of Comparative Constitutional Law*

Vietnamese citizens draw on a wide range of resources in comparative constitutional law to frame their arguments about abolishing or reforming the party leadership. These include comparative constitutional experiences in western democracies, the socialist regime in Soviet Union, and the hybrid regime in Singapore.

The posture of comparativism in Vietnamese constitutional discourse on the party is convergence. Vicki Jackson defines convergence as "a posture that might view domestic constitutional law as a site for the implementation of international legal norms."¹⁰³ She explores the convergence postures adopted by constitution-makers, courts, and judges. I contend that convergence can be a posture of public constitutional discourse adopted by ordinary people. In popular convergence, citizens, through public discourse, see domestic constitution as the site to implement transnational constitutional norms.

Jackson explores several justifications of the convergence postures, including universal commitments, "right answers", legitimacy, and external checks.¹⁰⁴ These reasons can explain the convergence postures of not only judicial but also social actors. First, the connection of democratic norms with human's universal aspirations (such as freedom, justice, and dignity) renders comparative constitutional experience of multiple democracy attractive source of framing in Vietnamese public constitutional discourse on the Party. Second, Vietnamese people draw on comparative constitutional law to consolidate the legitimacy of their constitutional proposals. For example, foreign experiences of multi-party democracy are invoked to legitimize the call for abolishing the

¹⁰¹ Khuong M. Vu; *The Institutional Root Causes of the Challenges to Vietnam's Long-Term Economic Growth*, 13 ASIAN ECONOMIC PAPERS 159 (2014).

¹⁰² Daron Acemoglu, Suresh Naidu, Pascual Restrepo, & James A. Robinson, *Democracy Does Cause Growth*, 127 JOURNAL OF POLITICAL ECONOMY 47 (2019).

¹⁰³ VICKI JACKSON, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA 8 (2013).

¹⁰⁴ *Id.*, at 45.

constitutional mandate of the communist party leadership in Vietnam. Third, the success of liberal constitutional institutions and practice (e.g. multi-party elections) in developed countries incentivizes the attempt to converge with such institutions and practice. Fourth, Vietnamese people draw on comparative constitutional law to constraint political monology of constitutional discourse on the Party. The discursive use of comparative constitutional law enables the emergence of diverse views about party constitutionalization in Vietnam.

4.2.3. *Functions*

The political elite may allow public discussion to legitimize Party constitutionalization. However, the public engages in the debate not to legitimize but to challenge the legitimacy of the constitutional mandate of Party power. More generally, the public discourse on party constitutionalization has four functions: assertive, critical, interpretative, and normative.

First, through public constitutional discourse, social actors assert popular sovereignty. Both reformists and revolutionaries challenge the constitutional mandate of the Party leadership as at odd with the principle of popular sovereignty recognized in the 1992 Constitution as well as in the draft constitution. The public constitutional discourse therefore seeks to claim that people, not the Party, are the source of political power. That means the public discourse asserts the people's right to rule the country. In addition, the public discourse on Party's accountability aims to claim the people's legitimate right to supervise the Party's power. While constitutionalizing the Party power subjects the society to the Party's control, the social actors, through public constitutional discourse, seek to assert a reversion in the Party and society relationship: The Party must be subjected to the social control.

Second, the public constitutional discourse criticizes constitutional and social problems associated with constitutionalizing the monopoly of Party power. Social actors, through public discourse, bring up the constitutional problems associated with Article 4. Revolutionary and reformist abolitionists indicate that constitutionalizing party's leadership goes against the regime's other fundamental constitutional commitments, including popular sovereignty, the supremacy of the National Assembly, and the protection of fundamental rights, including the citizens' equal rights to elections and to participate in state management. Revisionists demonstrate a dilemma: it is difficult to simultaneously ensure the Party leadership over the legislature and the legislative restraints on the Party power. Both reformist and revolutionary discourse disclose the negative

social consequences of constitutionalizing the Party leadership: the lack of public trust in the party's leadership, corruption, moral decay, group interests, and institutional impediments for economic development.

Third, the public constitutional discourse interprets Article 4 and the Party leadership differently. Through civic discourse, ordinary people advance competing understandings about the meaning of Article 4 which are different from the official construction of the party-state. The regime's dominant interpretation of Article 4 emphasizes its legitimacy based on the historical role of the Party in leading the struggles for national independence and social and economic reform. Reformist abolitionists advance different interpretations: the Party's historical role does not depend on constitutionalizing its leadership; and the abolition of Article 4 may facilitate better socio-economic development. The regime's prevailing view of Article 4 underlines that the Party should lead the state and the society according to the law. Social actors construe Article 4's commitment to the Party's legality as to mean enacting a law on the Party or even a law on political parties. The public call for legislating Party and political parties departs from the regime's dominant understanding of Article 4's commitment to party's legality.

Fourth, the public discourse advances constitutional norms about the Party and political parties. For revolutionaries, these are norms associated with liberal democracy, such as multi-party elections, popular sovereignty, and the protection of liberal rights necessary for political pluralism. For reformists, these are norms about accountability and legality in the Party's leadership.

4.2.4 Impact

The discourse did not result in institutional change to the formal Constitution. The official Constitution adopted in 2013 includes Article 4 as provided in the draft constitution. Several proposals by revisionists are not accepted. Some of the revisionist proposals are too detailed and technical to be included in the Constitution. Institutional mechanisms to ensure Party's accountability (if possible) can be dealt with at a legislative rather than constitutional level. The abolitionist discourse by both revolutionaries and reformists are radical as the implementation of their proposals may lead to regime's change, which explains why the regime forcefully employs the propaganda mechanisms to reject and resist the abolitionist discourse.

However, this does not mean the public discourse is meaningless. The public constitutional discourse on Article 4 challenges the

constitutional, sociological, and moral legitimacy of the Party's leadership. The revolutionary discourse invokes democratic ideals to challenge the constitutional mandate of Party leadership. By advancing alternative understandings of the party's historical role, the revolutionary discourse also challenges the sociological legitimacy of the party's leadership. By revealing corruption and moral degeneration, the reformist discourse challenges the moral foundations of the party's leadership. Consequently, although the formal constitutional confirmation of Party leadership does not change, the actual performance of the Party may change in response to the challenges of the public constitutional discourse. To illustrate, the Party's ongoing vehement anti-corruption campaign can be understood as a response to the public concern of Party corruption during the 2013 constitutional debate.

In addition, the public discourse raises popular awareness about constitutional and social problems associated with the constitutional mandate of Party leadership. The discourse also diffuses new constitutional norms related to the Party and political parties among the public. In addition, the discourse may arouse the public awareness of the people's role in supervising party's power, the necessity of legality in Party activity. Public awareness of constitutional problems and norms may inspire the people to continue debate on Party leadership and Party activity.

5. Conclusion

This article has examined party constitutionalization in the former and current socialist regimes. This study has implications for the constitutional role of the communist party in the current socialist constitutional systems. A single constitutional article on party leadership affects the broader socialist constitutional system. With its constitutional mandate, the communist party is not merely a political actor: it is a constitutional actor, integrates in the state institutions, and shapes the formation and operation of state institutions. Therefore, account of major constitutional issues in the current socialist regimes (e.g., constitution-making, constitutional amendments, human rights, distribution of power, constitutional supervision) would be incomplete without taking into account the omnipresent role of the communist party.

This study also has implications for the historical and contemporary influences of the socialist constitutional tradition. The Soviet Union is over, but its constitutional legacy is still present in the current socialist regimes. Despite reforms (with different levels) in the last four decades, constitutional development in the five current socialist regimes (China,

Cuba, Laos, North Korea, and Vietnam) is constrained by the Soviet legacy, including the tradition of constitutional entrenchment of the communist party. Understanding the socialist constitutional history is, therefore, important to comprehend contemporary development of socialist constitutional systems. In addition, the case of Vietnam indicates that comparative constitutional history in the Soviet Union and former socialist states in Europe still inform contemporary constitutional debates.

This study has implications for a dynamic approach to socialist constitutions and perhaps more generally authoritarian constitutions. Despite one-party rule, the socialist constitutions are now operating in a dynamic context influenced by comparative constitutional ideas, globalization of the world economy, and domestic social-economic transitions. Consequently, the making, changing, and operating of the socialist constitutions may not be entirely controlled by domestic elite. The socialist constitutions serve political interests, but they can also operate as a site for society to contest the single-party rule and struggle for a better constitutional order.

