



The 1946 Vietnamese Constitution: An Early Postcolonial Experiment in Global Constitutionalism

Pham Van Think¹

Abstract

This article re-examines the 1946 Vietnamese Constitution from a postcolonial and normative-political perspective, situating it within the emerging global legal order in the aftermath of the Second World War and prior to the full institutionalization of international human rights norms in 1948. Contrary to conventional approaches that treat the 1946 Constitution primarily as a foundational document of Vietnam's national constitutional history, the article argues that this text functioned as a deliberate constitutional strategy aimed at simultaneously constructing internal political legitimacy and negotiating the position of a postcolonial state within an asymmetrical international order. Drawing on a combined theoretical framework of critical international law, the sociology of constitutions, and contemporary approaches to global constitutionalism, the study analyzes how the 1946 Constitution integrated human rights, popular sovereignty, representative democracy, and the rule of law into a coherent normative framework. The article demonstrates that pre-1948 postcolonial constitutions should not be understood merely as passive recipients of universal values, but rather as political-legal practices that actively contributed to shaping the content and meaning of emerging global constitutional norms.

Keywords: Global constitutionalism, Human rights, Postcolonial constitutionalism, Vietnamese constitution

Introduction

In studies of constitutionalism and human rights, the year 1948 is commonly regarded as a decisive watershed, marking the emergence of a global normative order centered on the Universal Declaration of Human Rights (Lauren, 2013; Moyn, 2010). While this perspective highlights the role of post-Second World War international institutions, it tends to reduce the history of global constitutionalism to a Western-centered trajectory, in which postcolonial states appear largely as passive recipients of pre-established norms (Koskeniemi, 2001; Moyn, 2014). This article adopts a different approach by re-examining the 1946 Vietnamese Constitution as an early postcolonial experiment in global constitutionalism.

Promulgated at a moment when the postwar international legal order was still being reconfigured and international human rights norms had not yet been fully institutionalized, the 1946 Vietnamese Constitution performed not

¹ Library and Learning Resources Department, Thu Dau Mot University, Vietnam; Email: thinkpv@tdmu.edu.vn; ORCID: <https://orcid.org/0009-0005-4514-191X>

only the conventional function of organizing state power but also operated as an outward-looking normative declaration. The constitutionalization of fundamental freedoms, popular sovereignty, representative democracy, and the rule of law took place prior to the adoption of the Universal Declaration of Human Rights, indicating that Vietnam actively engaged with an emerging international normative space rather than awaiting standardization from global centers of power (United Nations, 1945; National Assembly, 1946).

From the perspective of critical international law, constitutions in postcolonial contexts may be understood as strategic legal practices through which newly independent states negotiate their position and legitimacy within an inherently asymmetrical global order (Anghie, 2005; Koskenniemi, 2009). At the same time, scholarship on global constitutionalism emphasizes that constitutions are no longer confined to the domestic sphere but increasingly participate in the construction and circulation of norms concerning human rights, democracy, and the rule of law at transnational levels (Walker, 2008; Wiener et al., 2012; Thornhill, 2013).

On this basis, the article argues that the 1946 Vietnamese Constitution should be situated within global constitutional history as a distinctive postcolonial case in which human rights and sovereignty are not positioned in opposition but articulated as parallel foundations of state legitimacy. This approach not only repositions the 1946 Constitution within Vietnam's constitutional history but also contributes to contemporary debates on global constitutionalism by advancing a more polycentric and historically grounded understanding of the formation of constitutional norms.

Theoretical Framework and Methodology

This study is grounded in an interdisciplinary theoretical framework that brings together (i) critical and postcolonial international law, (ii) the sociology of constitutions, and (iii) contemporary theories of global constitutionalism. This combination makes it possible to approach the 1946 Vietnamese Constitution not merely as a domestic legal text, but as a strategic normative practice deployed in a period when the post-Second World War international legal order was undergoing profound reconfiguration.

First, the study draws on insights from critical international law to analyze the relationship between sovereignty, norms, and power within the global order. As Anghie (2005) and Koskenniemi (2001, 2009) argue, modern international law is not a neutral system but one historically constituted through its entanglement with imperialism, in which criteria such as "civilized statehood," sovereignty, and human rights have often been used to hierarchize international subjects. In this context, postcolonial states have been compelled to mobilize the normative language of international law itself in order to assert legal personality and political legitimacy. This theoretical perspective allows constitutions to be understood as instruments of intervention in international legal discourse rather than as passive receptions of exogenous models.

Second, the study engages sociological approaches to constitutionalism, particularly Thornhill's (2013) account of constitutions as

mechanisms for constructing and sustaining state legitimacy in contexts of profound political transition. From this perspective, the constitutionalization of human rights, representative democracy, and the rule of law serves not only to organize domestic authority but also to articulate normative commitments oriented beyond the state. This argument is reinforced by comparative scholarship on constitution-making, which emphasizes that both the process and the substance of constitutions play a decisive role in securing international recognition of statehood (Ginsburg et al., 2009).

Third, the study situates the 1946 Constitution in dialogue with theories of global and post-national constitutionalism. The works of Walker (2008), Wiener et al. (2012), Kumm (2013), and Teubner (2012) conceptualize constitutions as elements of a multi-layered normative space in which values such as human rights and the rule of law are articulated and reconfigured beyond the boundaries of the nation-state. On this basis, the article proposes to understand the 1946 Vietnamese Constitution as an early postcolonial experiment in global constitutionalism, undertaken prior to the full international institutionalization of these norms.

Methodologically, the study employs a combination of constitutional text analysis (National Assembly, 1946), historical-contextual analysis linked to the 1945 United Nations Charter (United Nations, 1945), and broad comparative reference to postcolonial constitutional trajectories. This integrated approach seeks to clarify the normative logic and theoretical significance of the 1946 Constitution within the global history of human rights and constitutionalism.

Results and Discussion

The Pre-1948 Global Constitutional Context and the Post-Second World War Normative Space

The first central finding of this study is that the pre-1948 period should not be understood as a “constitutional vacuum” in global history, but rather as an emerging normative space in which the core values of modern constitutionalism – human rights, popular sovereignty, the rule of law, and representative democracy – already existed in an incompletely institutionalized form, yet were sufficiently stable to function as a shared legal language of international legitimacy.

In the aftermath of the Second World War, the international legal order entered a period of profound transition. The collapse of European empires, the large-scale atrocities of the war, and the imperative of postwar reconstruction undermined the moral foundations of the old international system. The 1945 United Nations Charter marked a crucial turning point by, for the first time, explicitly linking international peace to values of human dignity, equality, and human rights (United Nations, 1945). However, as numerous studies have noted, these values were articulated largely at the level of principle, lacking binding enforcement mechanisms and not yet standardized as subjective rights in the modern legal sense (Lauren, 2013; Moyn, 2010).

The second finding indicates that it was precisely the “incompleteness” of the post-1945 normative order that created a distinctive interpretive space for newly independent states. Whereas Western powers tended to approach human rights primarily as a matter internal to sovereign states, postcolonial movements and states increasingly linked these values to claims of self-determination and international legitimacy. As Anghie (2005) demonstrates, postwar international law continued to operate within an asymmetrical structure in which universal norms were frequently deployed to preserve older hierarchies of power. In this context, engagement with the normative language of human rights and constitutionalism was not merely a moral gesture but a legal strategy aimed at challenging colonial discourses that denied the capacity for self-government.

From the perspective of the history of international law, the pre-1948 period may thus be understood as a phase of “pre-institutionalization” of global constitutionalism. As Koskeniemi (2001, 2009) argues, international norms during this period existed in a state of tension between claims of universality and historical contingency. Human rights had not yet become the “ultimate moral language” of global politics (Moyn, 2010), but they were already sufficiently potent to be mobilized as criteria for assessing state civilization, legality, and legitimacy.

A key analytical claim of this article is that within this pre-1948 normative space, national constitutions emerged as a distinctive point of intersection between domestic governance and external legitimacy. Research in the sociology of constitutions shows that in contexts of political transition, constitutions do not merely organize state authority but also operate as instruments for articulating normative commitments in pursuit of international recognition (Thornhill, 2013; Ginsburg et al., 2009). This dynamic was particularly pronounced for postcolonial states, for which international institutional channels were still limited or not yet fully accessible.

From the perspective of global constitutionalism, contemporary theories emphasize that constitutional norms are not produced solely “from above” through international treaties, but also “from below” through national legal practices (Walker, 2008; Wiener et al., 2012). In this sense, constitutions promulgated before 1948 may be regarded as “early constitutional fragments” in the formation of a global normative order, even in the absence of a fully developed international legal framework.

Taken together, these findings affirm that the pre-1948 global constitutional context constituted an open, contested, and unstable normative field. Yet it was precisely this condition that enabled postcolonial states to participate actively in shaping the content of modern constitutionalism. Within this space, the 1946 Vietnamese Constitution should not be understood as a historical anomaly, but rather as a conscious constitutional response to the postwar international legal order – one that was simultaneously receptive to existing norms and creatively engaged in normative innovation.

The 1946 Vietnamese Constitution as an Early Postcolonial Experiment in Global Constitutionalism

Building on the pre-1948 global constitutional context analyzed in Section 4.1, this study identifies the 1946 Vietnamese Constitution as an early postcolonial experiment in the formation of global constitutionalism. This experiment lies not only in the substantive rights and institutional arrangements enshrined in the Constitution, but more importantly in the manner in which the constitution itself was deployed as a conscious normative practice, intended to intervene in the international legal space undergoing reconfiguration after the Second World War. Four principal findings emerge from this analysis.

First, the 1946 Constitution transcended the logic of purely “domestic” constitution-making.

The first central finding is that the 1946 Vietnamese Constitution cannot be fully understood if it is confined to the analytical frameworks of national political history or Ho Chi Minh’s political thought, as is common in much domestic scholarship that has emphasized its foundational role in Vietnam’s constitutional development (Mai, 2007; Hai, 2009; Kien, 2013). Rather, in the pre-1948 context, the text exhibited a distinctly outward-oriented logic, in which the constitution was used to articulate universal normative commitments that exceeded the traditional function of organizing state power. Domestic scholarship has likewise emphasized that the democratic rights constitutionalized in 1946 continued to shape subsequent Vietnamese constitutional developments, underscoring their foundational and enduring character (Son, 2010).

The early and relatively comprehensive recognition of fundamental freedoms – freedom of speech, press, religion, and assembly; the inviolability of the person and domicile; and political rights grounded in universal suffrage – occurred at a time when the Universal Declaration of Human Rights had not yet been adopted (National Assembly, 1946). This indicates that the rights provisions of the 1946 Constitution were not the product of a completed process of international standardization, but rather the result of an active domestic appropriation of values circulating within the post-1945 global normative space (Lauren, 2013). From the perspective of global constitutionalism, this constitutes an important signal: constitutional norms are not transmitted solely from international centers of power, but are also generated through national legal practices, particularly in postcolonial contexts (Walker, 2008; Wiener et al., 2012).

Second, the 1946 Constitution functioned as a postcolonial legal strategy.

The second finding suggests that the 1946 Constitution may be understood as a deliberate legal strategy aimed at engaging with the asymmetrical postwar international legal order. As Anghie (2005) argues, modern international law has been shaped through its close relationship with imperialism, in which norms of sovereignty, civilization, and human rights have often been deployed

to distinguish between subjects deemed “capable” and “incapable” of self-government.

In this context, Vietnam’s proactive constitutionalization of human rights and representative democracy was not merely a matter of internal reform, but a form of normative contestation. The 1946 Constitution directly challenged colonial discourses that portrayed colonized societies as unprepared for individual freedom, the rule of law, and constitutional governance. Through constitutional language, the newly independent Vietnamese state asserted that it met the normative criteria of a modern state, capable of self-rule and deserving of recognition within the international community (Koskenniemi, 2001, 2009).

In this sense, the 1946 Constitution operated as an internationally oriented “constitutional declaration,” even though it did not generate international legal obligations in the strict sense. This understanding resonates with Allott’s (2001) argument that constitutional law and international law constitute interwoven normative spaces, within which political communities seek to position themselves in a continuously evolving legal order.

Third, the integration of human rights and popular sovereignty as a normative experiment.

Another significant contribution of the 1946 Constitution lies in its integration of human rights with popular sovereignty. In many international discourses – particularly within Western liberal thought – the sovereignty of postcolonial states has often been positioned in tension with individual rights. Conversely, from the perspective of newly independent states, human rights have sometimes been viewed with suspicion as instruments of external intervention (Allott, 2001). This understanding of popular sovereignty is consistent with Vietnamese interpretations that link the 1946 Constitution closely to Ho Chi Minh’s conception of people-centred state authority (Mai, 2007).

The 1946 Constitution articulated an alternative normative model. The affirmation that “all powers in the country belong to the entire Vietnamese people” did not entail the sacrifice of individual rights; rather, it served as the foundation for the constitutionalization of civil liberties and political rights (National Assembly, 1946). This approach represents a postcolonial experiment in reconciling sovereignty with universality – a question that continues to generate intense debate in contemporary global constitutionalism (Sen, 2004; Walker, 2008).

From a theoretical standpoint, this integration suggests that universal values need not stand in opposition to national political projects, but can be reconfigured to serve dual objectives: the assertion of independence and the protection of human rights. The Vietnamese case thus offers an important contribution to multi-centered theories of global constitutionalism.

Fourth, the 1946 Constitution as an “early constitutional fragment” of the global order.

Synthesizing these findings, the study argues that the 1946 Vietnamese Constitution may be understood as an “early constitutional fragment” in the formation of global constitutionalism. Following Teubner’s (2012) approach, the global constitutional order does not emerge from a single center, but through the accumulation and interaction of diverse normative practices across different levels and spaces.

In this sense, the 1946 Constitution not only reflected the influence of Western constitutional models, but also demonstrated how a postcolonial state actively participated in shaping the content of modern constitutional values. This perspective challenges linear accounts of global constitutional history that tend to regard non-Western constitutions as belated copies or peripheral adaptations.

Based on these findings, the article affirms that the 1946 Vietnamese Constitution constitutes an early postcolonial experiment in global constitutionalism, in which human rights, democracy, and the rule of law were mobilized as normative instruments to simultaneously construct domestic political order and negotiate international standing within an emerging legal framework. This experiment was not a form of passive imitation of exogenous models, but a conscious, creative, and strategic constitutional practice. Viewed in this light, the 1946 Constitution belongs not only to Vietnam’s constitutional history, but also represents a case of broader theoretical significance for studies of global constitutionalism, postcolonial statehood, and human rights before 1948.

Human Rights, Representative Democracy, and the Rule of Law in the 1946 Constitution from a Global Constitutional Perspective

If Section 4.2 established the 1946 Vietnamese Constitution as an early postcolonial experiment in global constitutionalism, Section 4.3 advances the analysis by clarifying the theoretical contributions of this experiment to contemporary understandings of human rights, representative democracy, and the rule of law within a constitutional space that extends beyond the nation-state. The analytical focus here does not lie in identifying which rights and principles the 1946 Constitution “contained,” but rather in examining how those rights and principles were structured and operated as a coherent normative configuration capable of engaging with emerging theories of global constitutionalism.

First, human rights as a constitutional foundation rather than a product of international standardization.

From a global constitutional perspective, a common assumption holds that human rights only became a constitutional foundation after their international standardization, particularly with the adoption of the Universal Declaration of Human Rights in 1948 (United Nations, 1948; Lauren, 2013). The 1946 Constitution directly challenges this assumption. Fundamental freedoms and political rights were constitutionalized not as reflections of pre-existing international obligations, but as autonomous constitutional commitments

arising from the need to construct a legitimate political order for a newly independent state (National Assembly, 1946).

Theoretically, this suggests that human rights in global constitutionalism should not be understood solely through a “top-down” logic – from international law to national constitutions. Instead, the Vietnamese case demonstrates the existence of a “bottom-up” logic, whereby postcolonial constitutions directly participated in shaping the content and meaning of human rights, even in the absence of binding international frameworks (Sen, 2004; Moyn, 2014).

Second, representative democracy as a constitutional language of international legitimacy.

Another significant theoretical contribution of the 1946 Constitution lies in the way representative democracy was constitutionalized and closely integrated with human rights. In many postcolonial contexts, democracy has often been regarded as an “imported” model, poorly aligned with local political and social conditions. The 1946 Constitution, however, did not approach representative democracy as a neutral institutional technique, but as a constitutional language of legitimacy oriented both inward and outward.

The organization of nationwide elections based on universal suffrage, the establishment of the National Assembly as the central representative institution, and the constitutionalization of basic political rights reveal a high degree of self-awareness regarding the normative criteria associated with the “modern state” in the postwar international order (Ginsburg et al., 2009). From a global constitutional perspective, this indicates that representative democracy functioned not only as a mechanism of domestic governance, but also as an outward-facing normative practice employed to negotiate recognition within the international community (Walker, 2008).

The Vietnamese case thus enriches theories of democracy within global constitutionalism by demonstrating that democracy can be reconfigured in postcolonial contexts as a constitutional strategy, rather than merely as the application of pre-existing Western models.

Third, the rule of law as a point of intersection between sovereignty and universality.

In debates on global constitutionalism, the rule of law is often regarded as an intermediary value that connects national sovereignty with universal norms of human rights and governance (Wiener et al., 2012). The 1946 Constitution provides an early illustration of this logic. Principles concerning the limitation of state power, the protection of individual rights, and the organization of authority through law were designed not only to establish domestic order, but also to signal a normative commitment to forms of power exercise recognized as “legitimate” by the international community. This constitutional commitment to the limitation and organization of state power has also been noted in Vietnamese constitutional scholarship as an early articulation of

principles akin to the separation of powers and legal accountability (Hung, 2011; Thai, 2007).

From a postcolonial perspective, the emphasis on the rule of law in the 1946 Constitution carried particular critical significance. As Anghie (2005) and Koskenniemi (2001) have shown, colonial discourses frequently deployed the rule of law as an exclusionary criterion to deny colonized societies the capacity for self-government. In this context, the 1946 Constitution reappropriated this very language, using the rule of law as an instrument to assert sovereignty and legal equality within the international order.

Fourth, theoretical contributions to a polycentric global constitutionalism.

By integrating three pillars – human rights, representative democracy, and the rule of law – the 1946 Constitution reveals an integrated constitutional model in which universal values were not imposed from outside, but reconfigured from within a postcolonial political project. This has significant theoretical implications for global constitutionalism. The Vietnamese case reinforces polycentric approaches that emphasize that constitutional norms do not originate solely from international institutions or major powers, but are also formed through national constitutional practices at the “periphery” of the international system (Teubner, 2012; Tully, 2008). The 1946 Constitution demonstrates that postcolonial constitutions are not merely objects of global constitutionalism, but constitutive agents of it. The rights and principles they enshrine do not simply reflect emerging global norms; they also contribute to shaping how those norms are understood – particularly in relation to human rights, sovereignty, and state legitimacy.

From a global constitutional perspective, the 1946 Vietnamese Constitution should therefore be understood not only as a historical experiment, but as an early theoretical contribution to a non-linear account of the formation of modern constitutional norms. Human rights, representative democracy, and the rule of law in the 1946 Constitution point to the possibility of an alternative constitutional pathway, in which universal values are constructed simultaneously with the process of asserting postcolonial sovereignty.

In this sense, the 1946 Constitution compels a rethinking not only of Vietnam’s constitutional history, but also of the foundational assumptions of global constitutionalism itself – particularly assumptions concerning center and periphery, as well as the sequencing through which universal constitutional norms are presumed to emerge.

Discussion

Challenging Western-Centric Constitutional Discourse

The analyses presented in Section 4 demonstrate that the 1946 Vietnamese Constitution poses a significant challenge to Western-centric constitutional discourse, which has long dominated much of the theoretical literature on constitutionalism and global constitutionalism. In classical approaches, the history of modern constitutionalism is often narrated as a

linear process of diffusion: originating in European and North American centers – where values such as human rights, representative democracy, and the rule of law were first articulated and standardized – and subsequently being “exported” or “applied” to non-Western contexts. While institutionally persuasive, this mode of historical narration tends to obscure the active role of postcolonial societies in the construction and reconfiguration of constitutional norms.

The case of the 1946 Constitution reveals a different trajectory. The constitutionalization of human rights, the organization of representative democracy, and the affirmation of the rule of law took place at a time when Vietnam had not yet achieved broad international recognition and before these norms were fully standardized at the global level. This directly challenges the assumption that universal constitutional values can only emerge as the outcome of Western-led international mechanisms. Instead, the 1946 Constitution illustrates how constitutional norms may be generated from the “peripheries” of the international order, as part of a political–legal strategy aimed at asserting sovereignty and legitimacy.

From a theoretical perspective, this insight calls into question conventional understandings of universality in constitutionalism. Rather than conceiving universality as a fixed set of values defined in advance and diffused outward from the center, the 1946 Constitution suggests a more dynamic conception, in which universality is constructed through diverse constitutional practices, with postcolonial actors actively participating in shaping the content and meaning of shared values. This approach aligns with postcolonial critiques of international law, which emphasize that so-called “universal” norms are often historically embedded in asymmetrical power relations and only become genuinely universal when they are reinterpreted from multiple positionalities.

Situated within the framework of global constitutionalism, the 1946 Vietnamese Constitution demonstrates that postcolonial constitutions should not be regarded as incomplete replicas of Western models, but rather as spaces of normative experimentation. These experiments simultaneously receive and transform modern constitutional values, producing new configurations attuned to specific political and historical contexts. In this sense, the 1946 Constitution does not stand at the margins of global constitutional history, but constitutes an integral part of it.

Finally, recognizing the role of the 1946 Constitution in challenging Western-centric constitutional discourse has broader implications for comparative constitutional studies and global constitutionalism. It compels these fields to move from evaluative logics grounded in central norms toward polycentric dialogues, in which postcolonial constitutional experiences are treated as sources of theoretical insight rather than as mere “exceptional cases.” It is precisely through such diversity and non-uniformity that global constitutionalism fully reveals its historical contingency, political character, and contested nature.

Postcolonial Constitutions as Normative Strategies in the Global Legal Order

An important implication drawn from the analysis of the 1946 Vietnamese Constitution is the reconceptualization of postcolonial constitutions as normative strategies within the global legal order, rather than merely as instruments for organizing state power. In the post–Second World War context, when the international legal order was undergoing reconstruction yet remained deeply asymmetrical, newly independent states faced a fundamental paradox: they were politically recognized as sovereign subjects, but lacked effective international legal mechanisms to secure that recognition in practice. Under these conditions, constitutions emerged as key legal instruments through which postcolonial states negotiated their position within an evolving global order.

The case of the 1946 Vietnamese Constitution clearly illustrates this logic. The constitutionalization of human rights, representative democracy, and the rule of law was not limited to addressing the internal requirements of a newly established state; it also reflected a conscious effort to deploy the normative language of modern international law itself in order to assert legal personality and the capacity for self-government. In this sense, the constitution functioned as an “institutionalized legal declaration,” signaling to the international community that the Vietnamese state met the normative criteria of modern statehood, despite the absence of widespread diplomatic recognition.

From the perspective of critical international law, this strategy can be understood as a form of postcolonial normative reinterpretation. As Anghie and Koskeniemi have argued, the so-called universal norms of international law were often forged in historical contexts shaped by imperialism and unequal power structures. Within such a framework, the proactive domestication of these norms by postcolonial states does not necessarily imply passive compliance, but may instead constitute a critical engagement. By integrating universal values with Vietnam’s specific political and social context, the 1946 Constitution demonstrates how global norms are translated, reworked, and reconfigured as they pass through postcolonial spaces.

This approach also extends scholarship on global constitutionalism. Rather than treating national constitutions and the international legal order as analytically separate levels, the Vietnamese case highlights their close interaction. Constitutions are not only shaped by emerging global norms; they also contribute to shaping the content and meaning of those norms through concrete constitutional practices. In this sense, postcolonial constitutions may be understood as intermediary nodes in the formation of the global legal order, where norms are tested, adapted, and legitimated “from below.”

Finally, viewing postcolonial constitutions as normative strategies allows scholars to move beyond binary assessments of constitutional “success” or “failure.” Instead, it foregrounds the strategic, historical, and contested character of constitutions in a global context. Understood in this way, the 1946 Vietnamese Constitution is not merely a document of national history, but a

conscious normative intervention in the postwar global legal order – one that demonstrates how postcolonial states can be both subjects of, and agents in, the making of global constitutionalism.

Sovereignty, Human Rights, and the Possibility of Reconciliation in Postcolonial Constitutions

One of the most enduring points of contention in global legal and political theory concerns the relationship between national sovereignty and human rights. In many Western-centered liberal discourses, sovereignty – particularly the sovereignty of postcolonial states – is often portrayed as an obstacle to the protection of universal individual rights. Conversely, from the perspective of newly independent states, human rights have not infrequently been viewed with suspicion as an interventionist discourse tied to asymmetrical international power structures. The case of the 1946 Vietnamese Constitution allows us to move beyond this dichotomy by demonstrating the possibility of reconciling sovereignty and human rights within a postcolonial constitutional framework.

The core of this reconciliation lies in the concept of popular sovereignty. The 1946 Constitution did not approach sovereignty as an abstract attribute of the state, but rather as a foundational principle directly linked to the rights and freedoms of citizens. According to this logic, the affirmation of sovereignty does not stand in opposition to human rights; instead, it constitutes the very condition for their protection and legitimation. This approach challenges the common assumption that sovereignty and human rights are necessarily locked in an irreconcilable tension, and instead suggests a constitutional model in which these two values are structured in a mutually reinforcing relationship.

From a historical-normative perspective, this mode of reconciliation was particularly significant in the pre-1948 context, when human rights had not yet been institutionalized as binding international legal obligations. Vietnam's proactive constitutionalization of fundamental freedoms demonstrates that human rights were not merely the product of external pressure or normative diffusion from international institutions, but also emerged from the internal needs of national liberation movements to establish political legitimacy and a stable social order. In this sense, human rights within postcolonial constitutions are not opposed to the project of sovereignty; they are constitutive elements of that project.

The approach embodied in the 1946 Constitution also enriches contemporary debates on global constitutionalism. Rather than conceiving the universality of human rights as a set of norms imposed from outside, the Vietnamese case illustrates how universality can be constructed through concrete constitutional practices embedded in diverse historical and political contexts. This perspective aligns with arguments emphasizing the polycentric and interactive character of the global legal order, in which postcolonial states do not merely "receive" universal norms but actively participate in shaping their content and meaning.

Finally, analyzing the relationship between sovereignty and human rights in the 1946 Vietnamese Constitution enables a reconceptualization of the role of postcolonial constitutions as intermediary spaces in which tensions between national independence and global normative integration are negotiated rather than eliminated. This case demonstrates that postcolonial constitutions can operate as forms of “constitutional reconciliation,” in which human rights function simultaneously as instruments for asserting sovereignty and as means of connecting the nation to an emerging international legal order. In this respect, the 1946 Constitution carries significance not only as a historical document, but also as a theoretical model of enduring relevance for contemporary studies of sovereignty, human rights, and constitutionalism in a world marked by ongoing globalization and persistent power asymmetries.

Conclusion

This article has proposed a new approach to the 1946 Vietnamese Constitution, treating it not merely as a milestone in Vietnam’s national constitutional history but as an early postcolonial experiment in global constitutionalism. By situating the 1946 Constitution within the pre-1948 constitutional context and the emerging normative order of the post-Second World War period, the study demonstrates that principles of human rights, representative democracy, and the rule of law were constitutionalized as a deliberate normative practice, oriented simultaneously toward state-building and the negotiation of international standing within an evolving global legal order.

Theoretically, the article contributes to three major strands of debate. First, it challenges linear and Western-centric approaches to the history of human rights and constitutionalism, which conventionally treat 1948 as a decisive point of origin. The Vietnamese case shows that postcolonial states participated early and proactively in shaping global normative content, even in the absence of supportive international institutional frameworks. Second, the study conceptualizes postcolonial constitutions as outward-oriented normative strategies, thereby extending comparative constitutional scholarship beyond its predominant focus on domestic effectiveness. Third, the article advances a model of reconciliation between sovereignty and human rights, in which the constitution functions as an intermediary space for reconfiguring the relationship between national independence and universality.

These findings carry important implications for contemporary studies of global constitutionalism. They suggest that the global constitutional order is not produced solely by legal centers of power, but also through constitutional practices located at the “peripheries” of the international system. Accordingly, integrating postcolonial cases such as Vietnam in 1946 does more than enrich the historical record; it contributes to a rethinking of the theoretical foundations of global constitutionalism in a more polycentric, historically grounded, and power-sensitive direction.

References

- Allott, P. (2001). *Eunomia: New order for a new world*. Oxford University Press.
- Anghie, A. (2005). *Imperialism, sovereignty and the making of international law*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511614262>
- Ginsburg, T., Elkins, Z., & Blount, J. (2009). Does the process of constitution-making matter? *Annual Review of Law and Social Science*, 5(5). <https://doi.org/10.1146/annurev.lawsocsci.093008.131605>
- Hai, D. N. (2009). *Hiến pháp 1946 – Bản hiến pháp đặt nền móng cho nền lập hiến Nhà nước Việt Nam [The 1946 Constitution: Laying the foundation for Vietnam's constitutional system]*. National Political Publishing House.
- Hung, N. M. (2011). Tư tưởng phân chia quyền lực nhà nước trong Hiến pháp 1946 [The idea of separation of state powers in the 1946 Constitution]. *Vietnamese Journal of Legal Sciences*, 4, 9-14.
- Kien, N. N. (2013). Ý nghĩa và giá trị cơ bản của Hiến pháp 1946 [The significance and fundamental values of the 1946 Constitution]. *Nghiên cứu Lập pháp (Journal Of Legislative Studies)*. <https://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=207240>.
- Koskenniemi, M. (2001). *The gentle civilizer of nations: The rise and fall of international law 1870–1960*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511494222>
- Koskenniemi, M. (2009). *The gentle civilizer of nations: The rise and fall of international law 1870–1960*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511494222>.
- Kumm, Mattias (2013). The Cosmopolitan Turn in Constitutionalism: An Integrated Conception of Public Law. *Indiana Journal of Global Legal Studies*, 20 (2), Article 4. Available at: <https://www.repository.law.indiana.edu/ijgls/vol20/iss2/4>.
- Lauren, P. G. (2013). *The evolution of international human rights: Visions seen* (2nd ed.). University of Pennsylvania Press.
- Mai, V. T. T. (2007). Hiến pháp 1946 – Hiến pháp mang đậm dấu ấn tư tưởng Hồ Chí Minh về quyền lực nhà nước thuộc về nhân dân [The 1946 Constitution: A constitution deeply reflecting Ho Chi Minh's thought on popular sovereignty]. *Journal of Democracy and Law*, 8(185), 2–6.
- Moyn, S. (2010). *The last utopia: Human rights in history*. Harvard University Press.
- Moyn, S. (2014). *Human rights and the uses of history*. London ; Brooklyn, NY : Verso.
- National Assembly (1946). Hiến pháp Nước Việt Nam Dân chủ Cộng hòa năm 1946 [The 1946 Constitution of the Democratic Republic of Vietnam]. Ministry of Justice. https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=536

- Sen, A. (2004). Elements of a theory of human rights. *Philosophy & Public Affairs*, 32(4), 315–356. <https://doi.org/10.1111/j.1088-4963.2004.00017.x>.
- Son, N. V. (2010). Quyền dân chủ trong đời sống chính trị từ Hiến pháp 1946 đến Hiến pháp 1992 [Democratic rights in political life from the 1946 Constitution to the 1992 Constitution]. *Journal of Human Resource Development*, (1), 25–28.
- Teubner, G. (2012). *Constitutional fragments: Societal constitutionalism and globalization*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199644674.001.0001>.
- Thai, P. H. (2007). Tổ chức quyền lực nhà nước trong Hiến pháp 1946 – Giá trị mang tính thời đại [The organization of state power in the 1946 Constitution: Enduring contemporary values]. *Journal of State Management*, 9, 4–7.
- Thornhill, C. (2013). *A sociology of constitutions: Constitutions and state legitimacy in historical-sociological perspective*. Cambridge University Press.
- Tully, J. (2008). *Public philosophy in a new key, Vol. II: Imperialism and civic freedom*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511790744>
- United Nations (1945). *United Nations Charter*. United Nations. <https://www.un.org/en/about-us/un-charter>
- United Nations (1948). *Universal Declaration of Human Rights*. United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- Walker, N. (2008). Taking constitutionalism beyond the state. *Political Studies*, 56(3), 519–543. <https://doi.org/10.1111/j.1467-9248.2008.00749.x>
- Wiener, A., et al. (2012). *Global constitutionalism: Human rights, democracy and the rule of law*. Cambridge University Press. <https://doi.org/10.1017/S2045381711000098>