

Vietnam's 1946 Constitution and the Making of Legitimacy for a Newly Independent State

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Abstract

This article examines the 1946 Constitution of Vietnam from the perspectives of international law and postcolonial constitutionalism, with the aim of elucidating the international character and normative foundations of Vietnam's first constitution. Rather than approaching the 1946 Constitution as a purely domestic legal document or merely a product of national political history, the study argues that it functioned as a deliberate normative statement, reflecting Vietnam's efforts to assert legal personality and political legitimacy within the post – World War II international legal order. Drawing on constitutional text analysis, combined with a historical – contextual approach and selective comparative constitutional analysis, the article demonstrates that key principles – such as popular sovereignty, representative democracy, human rights, the rule of law, and equality – were internalized at an early stage in the 1946 Constitution, even before these norms were fully institutionalized at the international level. On this basis, the Vietnamese case is advanced as a representative example of how postcolonial states not only received international norms but also actively interpreted and participated in the construction of the universal values underpinning modern constitutional law and international law.

Article History

Received 26 April 2026

Revised 27 June 2026

Accepted 27 June 2026

Published 27 June 2026

OPEN ACCESS

Keywords

Constitutional legitimacy,
International legal order,
Self-determination,
Postcolonial
constitutionalism.

Introduction

The 1946 Constitution of Vietnam represents a foundational legal milestone marking the beginning of the construction of the modern Vietnamese state following the August Revolution of 1945. In most domestic scholarship, this constitutional text has been approached primarily from the perspectives of political history, Ho Chi Minh's political thought, or the formation of a nascent revolutionary state (Hai, 2009; Kien, 2013; Uong, 2017). These approaches have successfully illuminated the historical value and profound political significance of the 1946 Constitution in Vietnam's struggle for and defense of national independence. However, they have not fully explored a critical dimension of the document: its international character and the global normative foundations that were consciously integrated into its constitutional design.

The 1946 Constitution was adopted at a moment when the international legal order was undergoing a profound restructuring in the aftermath of World War II. The establishment of the United Nations in 1945 laid the groundwork for a new international order based on principles such as sovereign equality, the prohibition of the use of force, and, most notably, the right of

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peoples to self-determination (United Nations, 1945). At the same time, the emerging wave of decolonization across Asia and Africa intensified legal and political disputes concerning international legitimacy and the capacity for self-government of newly independent states (Anghie, 2005; Koskeniemi, 2001). In this context, the promulgation of a constitution was not merely an instrument for organizing state power internally, but also functioned as a normative statement directed outward, aimed at asserting statehood within the international community.

From this perspective, the 1946 Constitution of Vietnam may be read as a constitutional text that went “beyond national independence.” As stated explicitly in its Preamble, the Constitution affirmed the objective of building a democratic state “in step with the progressive currents of the world” (National Assembly, 1946). Provisions concerning popular sovereignty, universal suffrage, the protection of fundamental freedoms, gender equality, and the safeguarding of minority groups reflect a clear reception of the universal norms of modern constitutionalism and contemporary international law (Thai, 2007; Hung, 2011; Thuat, 2017).

This article argues that Vietnam’s 1946 Constitution was not only a legal instrument for establishing national sovereignty after colonial rule, but also a constitutional strategy aimed at positioning Vietnam as a state capable of self-government in accordance with emerging values of democracy, the rule of law, and human rights in the post-1945 international order. Approaching the 1946 Constitution through the lenses of international law and decolonization allows Vietnam to be understood not merely as an object of global historical processes, but as an active participant in the construction and interpretation of international legal norms during a critical transitional period of the twentieth century.

Literature Review

Research on constitutions in the context of decolonization has become an important line of inquiry in international legal studies and political science. A substantial body of scholarship argues that the constitutions of newly independent states are not merely instruments for organizing state power, but also vehicles for asserting sovereignty and seeking legitimacy within the modern international legal order (Anghie, 2005; Koskeniemi, 2001). From this perspective, constitutions are understood as integral to the process through which postcolonial states are “normalized” according to universal values such as democracy, the rule of law, and human rights.

Within international legal scholarship, many authors emphasize that the post-World War II order opened a new normative space in which decolonizing actors could participate in the interpretation and shaping of global norms, rather than passively receiving them (Anghie, 2005). The right of peoples to self-determination, enshrined in the United Nations Charter of 1945, became a crucial legal foundation for national liberation movements, while simultaneously imposing expectations regarding the construction of state institutions compatible with international standards (United Nations, 1945). In this context, constitutions increasingly came to be understood as outward-facing “legal statements,” reflecting the capacity for self-government and normative commitments of newly independent states (Klabbers, 2009).

From a comparative perspective, studies on constitution-making demonstrate that constitutional design and content have a significant impact on state stability and legitimacy in postcolonial settings (Ginsburg, Elkins, & Blount, 2009). This literature highlights democratic elections, the protection of human rights, and mechanisms of checks and balances as key factors enabling newly independent states to consolidate their position within the international order. Nevertheless, most comparative analyses have focused on cases from South Asia, Africa, or Latin

America, while Southeast Asia – and Vietnam in particular – has received comparatively limited attention in global constitutional history (Thornhill, 2016).

In Vietnam, scholarship on the 1946 Constitution has largely concentrated on its historical value, Hồ Chí Minh's constitutional thought, and the role of the First National Assembly in the formation of the new state (Hai, 2009; Kien, 2013; Uong, 2017). Although some studies have addressed issues such as human rights, popular sovereignty, and the rule of law in the 1946 Constitution, these elements are typically situated within a national historical – political framework rather than analyzed in relation to international law and decolonization (Thai, 2007; Hung, 2011; Thuat, 2017). This gap points to the need for an approach that situates Vietnam's 1946 Constitution in direct relation to contemporary international norms, thereby contributing to and enriching the broader scholarly discourse on postcolonial constitutionalism.

Theory And Methodology

Theoretical Framework

This study is grounded in an interdisciplinary framework that brings together comparative constitutional law, international law, and postcolonial constitutional theory. At the outset, the article approaches the 1946 Constitution of Vietnam as a constitutional text performing a dual normative function: it both regulates the internal organization of state power and operates as an outward-facing legal statement aimed at seeking and consolidating international legitimacy. This approach is consistent with scholarship that conceptualizes constitutions as constitutive elements of the global normative order, particularly in the context of postwar and postcolonial state formation (Koskeniemi, 2001; Thornhill, 2016).

From the perspective of international law, the study draws on postcolonial theory to analyze the relationship between sovereignty, norms, and power within the post – World War II international legal order. As Anghie (2005) argues, modern international law is not merely a neutral system of rules, but a contested space in which postcolonial states are simultaneously shaped by, and actively seek to redefine, the norms that govern them. Within this framework, the 1946 Constitution is understood not simply as the outcome of normative reception, but as an effort to participate in the interpretation and internalization of universal values such as democracy, the rule of law, and human rights.

In addition, the study engages with scholarship on constitution-making and constitutional design to clarify the role of constitutions in constructing state legitimacy, particularly in contexts of profound political transition (Ginsburg, Elkins, & Blount, 2009). From this perspective, the 1946 Constitution of Vietnam is situated in a comparative relationship with modern constitutional models, not to assess its degree of “Westernization,” but to highlight the selective and creative ways in which international norms were received and adapted.

Methodology

Methodologically, the article employs a combination of legal textual analysis, historical – contextual analysis, and selective comparative constitutional analysis. First, textual analysis is applied to the 1946 Constitution of Vietnam, with particular attention to the Preamble and provisions concerning popular sovereignty, human rights, the organization of state power, and the guarantees of the rule of law. These provisions are examined not only within the internal logic of the national legal system, but also in relation to contemporary international legal norms (United Nations, 1945).

Second, a historical – contextual approach is used to situate the 1946 Constitution within the political and legal environment of the 1945–1946 period, when the international order was undergoing fundamental restructuring and the wave of decolonization was beginning to intensify. This approach helps explain why certain constitutional choices – such as the emphasis on national self-determination, universal suffrage, and the protection of fundamental freedoms – carried significance beyond the realm of domestic governance.

Finally, comparative analysis is employed at a general level to juxtapose the 1946 Constitution with prevailing trends in modern constitutionalism, thereby clarifying Vietnam's distinctive position in the history of postcolonial constitutional development. The combination of these methods ensures that the analysis moves beyond historical description to make a direct contribution to theoretical debates on constitutionalism, international law, and decolonization.

Results

Historical Context And The International Legal Order (1945–1946)

After World War II, the world entered a critical transitional moment in the international legal order. The collapse of European colonial empires, the establishment of the United Nations, and the emergence of new principles concerning peace, sovereign equality, and the right of peoples to self-determination profoundly transformed the normative foundations of modern international law. Within this dynamic context, decolonization was not merely a political phenomenon but a complex legal process involving contested claims over legitimacy, capacity for self-government, and the international status of newly independent states. Analyzing this context helps clarify the normative conditions, opportunities, and constraints confronting Vietnam during the drafting of its first constitution, while also highlighting the organic relationship between national constitution-making and the postwar international legal order.

Within this global transition, the restructuring of the international legal order after World War II played a decisive role in shaping both the possibilities and limitations of decolonization. Changes in principles, institutions, and legal language at the international level not only generated a new normative framework for relations among states but also directly influenced how colonized peoples interpreted and exercised their right to self-determination. Accordingly, to fully understand the constitutional logic of Vietnam in 1946, it is necessary to examine the core features of this restructuring, beginning with the formation of foundational principles in the postwar international legal order.

First, the post – World War II restructuring of the international legal order marked a major turning point in the history of international law and global political organization. The end of the war did not merely terminate a large-scale military conflict; it also destabilized the legal and moral foundations of colonialism that had structured the world order for centuries. In this context, international law entered a period of profound transformation, oriented toward the construction of a new order grounded in more universal principles of peace, sovereign equality, and respect for human dignity (Koskeniemi, 2001).

The establishment of the United Nations in 1945 constituted the most visible institutional expression of this shift. For the first time, the United Nations Charter systematically articulated principles such as the sovereign equality of states, the prohibition of the threat or use of force in international relations, and, most notably, the right of peoples to self-determination (United Nations, 1945). Although self-determination was formulated in relatively general terms and lacked concrete enforcement mechanisms, its elevation to a central principle of the new legal

order provided a crucial normative foundation for emerging national liberation movements across Asia and Africa.

Second, decolonization after 1945 unfolded as a contested legal space rather than a purely administrative transfer of power (Manby, 2023)). European colonial powers, including France, though severely weakened by the war, continued to seek control over their colonies by invoking legal arguments concerning the “capacity for self-government” or the “insufficient preparedness” of colonial societies (Anghie, 2005). Within this logic, independence was not treated as an inherent right but as the outcome of a gradual process of “maturation” under the supervision of former imperial centers.

In response to such arguments, national liberation movements were compelled to engage the very language of modern international law in order to rebut colonial claims and assert their own legality. Organizing elections, establishing representative institutions, and promulgating constitutions became key instruments for demonstrating that newly independent states possessed the capacity for self-government in accordance with the universal standards of the modern state (Thornhill, 2016). In this context, constitutions functioned not merely as domestic legal texts but as vehicles for participation in a global debate over sovereignty, legitimacy, and international legal order.

In Vietnam, the August Revolution of 1945 produced a new political reality with the establishment of the Democratic Republic of Vietnam. However, *de facto* political independence did not automatically translate into legal recognition within the international order. During the period 1945–1946, Vietnam confronted multiple, overlapping challenges: the presence of foreign military forces, efforts by French colonial authorities to reassert control, and the absence of effective international mechanisms to safeguard the right of colonized peoples to self-determination (Hai, 2009; Uong, 2017).

Against this backdrop, the rapid organization of general elections and the formation of the First National Assembly carried significance beyond the internal organization of state power. The National Assembly, elected through universal suffrage, embodied not only the principle of popular sovereignty but also served as a legal signal to the international community, asserting that Vietnam met the basic criteria of a democratic state under modern normative standards (Kien, 2013). Constitution-making thus unfolded in parallel with diplomatic efforts, reflecting a close interconnection between constitutional development and strategies for securing international legitimacy.

The 1946 Constitution of Vietnam must therefore be understood in direct relation to the normative demands of the postwar international legal order. From the outset, the Preamble’s declaration of the goal of building a democratic state “in step with the progressive currents of the world” reveals a clear awareness of Vietnam’s positioning within a global normative space (National Assembly, 1946). This statement was not merely symbolic but represented a strategic choice in constitutional language.

Provisions concerning popular sovereignty, universal suffrage, the protection of fundamental freedoms, gender equality, and the safeguarding of minority groups can be interpreted as “legal signals” designed to demonstrate Vietnam’s capacity for self-government in accordance with contemporary standards of constitutional and international law (Thai, 2007; Hung, 2011; Thuat, 2017). At a time when many liberation movements were dismissed as lacking legal foundations or administrative competence, the 1946 Constitution functioned as an institutionalized legal argument – a normative declaration directed outward to the international community.

Despite its normative potential, the international legal order of 1945–1946 was marked by fundamental limitations. The right to self-determination had not yet been translated into effective enforcement mechanisms, while the power structure of the United Nations continued to reflect the dominance of the victorious great powers (United Nations, 1945). In practice, many postcolonial states, including Vietnam, remained excluded from key international decision-making structures.

Within this constrained environment, the 1946 Constitution of Vietnam can be viewed as a forward-looking effort to employ constitutional instruments to narrow the gap between *de facto* political independence and *de jure* international recognition. Although these efforts did not immediately result in widespread international acknowledgment, they nonetheless demonstrate Vietnam's active role in engaging with and reinterpreting global legal norms during the formative phase of postcolonial transformation.

International Norms In The 1946 Constitution Of Vietnam

The 1946 Constitution of Vietnam was not merely the foundational legal document of a newly independent state; it also represented a deliberate effort to incorporate and domesticate key international norms emerging from the post – World War II legal order. At a time when the right of peoples to self-determination had not yet been secured through effective international mechanisms, the constitutional recognition of universal norms functioned as a legal strategy aimed at asserting both international legal personality and capacity for self-government (Anghie, 2005; Koskeniemi, 2001). This section examines the core international norms institutionalized in the 1946 Constitution, focusing on popular sovereignty, representative democracy, human rights, the rule of law, and equality.

First, one of the most significant international norms reflected in the 1946 Constitution is the principle of popular sovereignty, which is closely linked to the right of peoples to self-determination in modern international law. Although the 1945 United Nations Charter did not yet translate self-determination into clearly enforceable legal obligations, its recognition created a normative space within which postcolonial states could assert their legitimacy (United Nations, 1945).

The 1946 Constitution unequivocally affirms that all state power belongs to the people of Vietnam. This principle carries not only domestic constitutional significance but also an outward-facing legal argument: the Vietnamese state exists as an expression of the collective will of its people, rather than as an entity endowed with authority by any colonial power (Hai, 2009; Uong, 2017). In a context where colonial powers frequently denied the capacity for self-determination of colonized peoples, the constitutionalization of popular sovereignty functioned as a direct rebuttal to the legal discourse of colonialism (Anghie, 2005).

Second, the norm of representative democracy is consistently embodied in the constitutional structure of state power under the 1946 Constitution. The designation of the National Assembly as the highest organ of state authority, elected through universal suffrage, reflects a direct adoption of core principles of modern constitutional democracy (Kien, 2013). In the context of 1946 – when many countries in Asia and Africa had yet to implement universal elections – this choice carried particular normative significance.

From the perspective of international law, representative democracy was increasingly regarded as an indicator of a “civilized” or legitimate state within the modern legal order, even if it had not yet crystallized into a binding legal obligation (Thornhill, 2016). By organizing general elections and constitutionally guaranteeing voting rights without discrimination based on gender,

social status, or religion, Vietnam proactively positioned itself within the trajectory of universal democratic norms. This approach strengthened the argument that the newly independent Vietnamese state possessed the institutional capacity for self-government according to criteria considered legitimate by the contemporary international community (Ginsburg et al., 2009).

Third, a particularly distinctive feature of the 1946 Constitution is its early and relatively comprehensive recognition of fundamental human rights, at a time when the Universal Declaration of Human Rights had not yet been adopted (1948). Rights such as freedom of expression, freedom of the press, freedom of belief, freedom of assembly, and the inviolability of the person and domicile are clearly articulated, reflecting the reception of universal values associated with liberal constitutional traditions (Thai, 2007; Hung, 2011).

From an international legal perspective, the constitutional recognition of these rights may be understood as an effort to move ahead of the global process of human rights norm institutionalization. Although these rights were not yet guaranteed by binding international mechanisms, their constitutional entrenchment conveyed a clear legal message regarding Vietnam's commitment to universal humanistic values (Koskenniemi, 2001). At a time when many national liberation movements were portrayed as prioritizing sovereignty at the expense of individual rights, the 1946 Constitution disrupted this dichotomy by closely integrating national independence with the protection of human rights.

Fourth, the principle of the rule of law constitutes another central norm of the modern constitutional order clearly reflected in the 1946 Constitution. The text establishes legal constraints on the exercise of state power, affirming that all public authorities must operate within the framework of the constitution and the law. This approach aligns with international trends that increasingly regarded the rule of law as a necessary condition for state legitimacy (Thornhill, 2016).

The constitutionalization of the rule of law also carried important external implications. Within colonial discourse, colonized societies were often depicted as lacking the capacity to construct a stable and rational legal order. By institutionalizing rule-of-law principles, the 1946 Constitution directly challenged this assumption and asserted that Vietnam could function as a law-governed state in accordance with widely recognized standards (Hai, 2009; Thuat, 2017).

Fifth, the 1946 Constitution also clearly reflects international norms of equality and non-discrimination. The affirmation of equality among citizens, regardless of gender, ethnicity, or religion, demonstrates a normative vision that extended beyond regional and temporal constraints (Hung, 2011). Notably, the constitutional recognition of women's political rights in 1946 preceded similar developments in many other countries, including some Western states.

At a time when international law still offered limited protection for vulnerable groups, Vietnam's constitutional provisions on equality can be viewed as an indirect contribution to the subsequent development of universal norms. They illustrate that postcolonial states were not merely norm-takers but could also play a pioneering role in interpreting and expanding the substantive content of global values (Anghie, 2005).

Taken together, these elements indicate that the 1946 Constitution of Vietnam cannot be understood simply as a domestic legal text. Rather, it functioned as a postcolonial legal strategy, employing the language and structure of modern constitutionalism to engage with the emerging international normative order. In the absence of effective international enforcement mechanisms, the domestication of universal norms became a key means of narrowing the gap between *de facto* political independence and *de jure* international recognition (Koskenniemi, 2001; Thornhill, 2016).

From this perspective, the 1946 Constitution not only reflects the Vietnamese people's aspiration for independence but also demonstrates a high degree of normative self-awareness in positioning the newly independent state as a responsible member of the international community. This places the 1946 Constitution of Vietnam in a distinctive position within the history of postcolonial constitutionalism, as an early and emblematic example of the integration of national sovereignty with the universal values of modern international law.

Discussion

Analyzing the 1946 Constitution of Vietnam from the perspective of international norms allows this text to be repositioned within broader debates on postcolonial constitutionalism and the relationship between international law, sovereignty, and state legitimacy. Rather than approaching the constitution as a purely endogenous product of national revolutionary processes, this article demonstrates that the 1946 Constitution functioned as a conscious legal practice aimed at engaging with the emerging global normative order after World War II. This perspective challenges reductive interpretations that view postcolonial constitutions primarily as instances of imitation or passive reception of Western models (Anghie, 2005; Koskeniemi, 2001).

First, the Vietnamese case illustrates that postcolonial constitutions are not merely instruments of state-building but also outward-oriented legal strategies. In a context where the right of peoples to self-determination was not yet secured by effective international mechanisms, the domestication of norms such as representative democracy, human rights, and the rule of law became a crucial means through which newly independent states asserted their capacity for self-government and demanded international recognition. This observation aligns with analyses emphasizing the contested nature of postwar international law, in which postcolonial actors were simultaneously shaped by and actively reinterpreting the norms that governed them (Anghie, 2005).

Second, the 1946 Constitution of Vietnam reveals a complex relationship between national sovereignty and universal values. In much of the scholarly discourse, the sovereignty of postcolonial states is often framed in opposition to human rights or the rule of law, as if the protection of independence necessarily entailed the sacrifice of individual freedoms. The 1946 Constitution disrupts this dichotomy by closely integrating the affirmation of popular sovereignty with the constitutional protection of fundamental rights. This integration suggests that postcolonial constitutions can serve as sites of reconciliation rather than antagonism between sovereignty and universality (Thornhill, 2016).

Third, the early recognition of human rights in the 1946 Constitution – prior to the adoption of the Universal Declaration of Human Rights – poses a significant challenge to Western-centric narratives of human rights history (Clapham, 2015). The Vietnamese case demonstrates that norms concerning individual rights were not simply “exported” from global centers of power, but were also appropriated, reinterpreted, and reconfigured within postcolonial contexts, driven by distinct political motivations and normative aspirations (Koskeniemi, 2001). This insight invites a more polycentric reading of human rights history, in which newly independent states play a more active role in shaping normative content.

Moreover, the 1946 Constitution highlights the importance of constitutional design in constructing the legitimacy of postcolonial states. Constitutional scholarship has emphasized that institutional structures, mechanisms of representation, and guarantees of the rule of law directly affect political stability and international recognition (Ginsburg et al., 2009). In Vietnam's case, the choice of a representative democratic model, the central role accorded to the National

Assembly, and the constitutionalization of broad political rights reflect a high degree of normative self-awareness regarding the expectations of the contemporary international order. This contributes to a more nuanced understanding of the diversity of postcolonial constitutional trajectories, moving beyond binary classifications of “successful” or “failed” models.

At the same time, rethinking postcolonial constitutionalism requires a clear recognition of the historical limits of the 1946 Constitution. Although the post-1945 international legal order opened new normative spaces, it remained heavily shaped by great power dominance. Under such conditions, the domestication of universal norms could not immediately translate into full international recognition. Acknowledging these constraints helps avoid idealizing constitutions as omnipotent instruments, while also highlighting the structural asymmetries of the global legal order confronting postcolonial states (United Nations, 1945).

On this basis, the article suggests that the study of postcolonial constitutionalism should move beyond purely institutional comparisons and instead approach constitutions as strategic normative practices. Such an approach not only enables a deeper understanding of historical cases such as Vietnam, but also enriches contemporary debates on the relationship between international law, democracy, and sovereignty in the context of globalization and the ongoing reconfiguration of the world order.

Conclusion

This article has approached the 1946 Constitution of Vietnam as a constitutional text that transcends the confines of national political history, situating it within the broader context of the post – World War II international legal order and the process of decolonization. By analyzing the international norms domesticated in the 1946 Constitution – including popular sovereignty, representative democracy, human rights, the rule of law, and equality – the study demonstrates that the constitution functioned not merely as an instrument for organizing state power, but as a deliberate normative statement aimed at asserting Vietnam’s legal personality and legitimacy within the international community.

From a theoretical perspective, the Vietnamese case enriches debates on postcolonial constitutionalism by challenging interpretations that depict the constitutions of newly independent states as passive receptions of exogenous models. On the contrary, the 1946 Constitution reveals a high degree of normative self-awareness in the selective adoption, adaptation, and reinterpretation of universal values associated with modern constitutional and international law. This perspective underscores the active role of postcolonial actors in the formation and development of the global normative order.

At the practical level, this study suggests that analyses of constitutions in contexts of political transition should extend beyond internal institutional arrangements to encompass their external and normative dimensions. Such a reading allows constitutions to be understood as strategic instruments through which newly independent states engage in global debates on sovereignty, democracy, and human rights. In the contemporary context, where globalization, inequality, and the reconfiguration of the international order continue to pose new challenges, revisiting the 1946 Constitution of Vietnam from an international perspective is not only of historical significance but also offers important insights for rethinking the role of constitutions in the postcolonial world.

Taken as a whole, this study affirms that the 1946 Constitution of Vietnam should be understood as an active and creative postcolonial constitutional practice, in which the norms of modern international law were received, adapted, and domesticated in pursuit of both national

independence and normative integration into the global order. The Vietnamese case illustrates that newly independent states were not merely objects of the postwar international legal order, but active participants in the construction and redefinition of the universal values of constitutionalism and international law in the twentieth century.

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