

The Universality of the Rule of Law as an International Standard: Transplanting the Rule of Law in Vietnam

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Abstract

Legal doctrine usually regards the rule of law as the form of a state organization with formal and substantial characteristics. Scholars traced the initial formation and development of the concept through history to some Western countries. However, the rule of law has become an axiological requirement for all states. Besides the process of recognition and dissemination at national levels, the rule of law has become an international standard, along with democracy and human rights. Vietnam transplanted the idea of the rule of law in the late 1980s, along with Perestroika in the Soviet Union. After the fall of the Soviet Union, Vietnam opened up for economic integration, which gave new meaning to the rule of law in the country.

Keywords: Rule of Law, Hierarchy, Authority, International Standard, Legal Transplant

INTRODUCTION

With very few exceptions, the rule of law is one of the most universally popular concepts in the modern world. The rule of law is usually viewed as a principle and standard of state governance at the national level. The essential principle of the rule of law lies in the relationship between the state and the law, in which the state must be subject to and abide by the law, while such a law must include a few intrinsic characteristics that go beyond the authority of the state itself. Specifically, the rule of law refers to the dominant authority of the law, but the content of the law must be derived from justice, equality, and fairness. Regarding this model of state governance, “law is not only a tool of governance but also a constraint on the authority of government” (CHEVALLIER, 2010, p. 18). The relationship between law and government is characterized by a two-way principle: the law allows the government to exercise its power but also sets obligations for the government to comply with. In consequence, the rule of law requires the government to adhere to the whole autonomous system of supreme principles, imposing regulations on the state in a binding and enforceable manner. Such principles give the government the right to exercise its power and also identify mechanisms it can enforce (in which it shall not use the aforementioned legal rules that are not promulgated).

Basically, the essence of the rule of law is the concept of constraint on power and that the structure of legal order is a measure to guarantee the constraints on powers (CHEVALLIER, 2010, p. 51–52). In this fashion, the rule of law is linked with the fundamental principles of democracy, human rights, and the role of the state, which intrinsically indicate the basis of the rule of law. With regard to aspects of constraints on government powers, the protection of human rights is one of the most important (CHEVALLIER, 2010, p. 51–52). The rule of law entails the concept of a relationship between individuals and the state. This is the foundation of the legal framework, meaning that the constraints on government powers cannot only be found in constitutionally protected individual rights and in the notion of “law as the opposite to government power” (LEFORT, 1980, p. 25–26). Moreover, the power of the state itself is aimed at protecting individual rights. Consequently, the rule of law is the legal mechanism that protects human freedom and goes against power abuse by governmental officials.

Initially formed (FRANK, 2006) and developed in some Western European countries like Germany, France, and Great Britain (HEUSCHLING, 2002), the doctrine of the rule of law was then adopted and popularized

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in other countries and regions and gradually accepted as an international principle and standard that monitors international relations.

THE RECEPTION AND POPULARIZATION OF THE RULE OF LAW

The Rule of Law Promulgated in The New Constitutions

The universally recognized reception of the rule of law is viewed as a reference system for other countries, which implies that the rule of law has become a type of “doctrine”. However, it remains unclear whether the rule of law by itself is practical or impractical. In some countries, due to the shortage of necessary conditions for the development of the rule of law, the declaration of the rule of law is regarded as impractical, being political rhetoric rather than a positive law.

Since the 1970s, the rule of law has been commonly adopted in Europe, with the new constitutions of Portugal (Portuguese Constitution of 1976, Article 2) and Spain (Spanish Constitution of 1978, Article 1.1) promulgating it as a condition to commit to reform and to put an end to the past dictatorship.

In the early 1990s, most of the new constitutions of the former socialist countries and developing countries declared the rule of law and reinforced the principles of the rule of law with a system of specific regulations. Nevertheless, reality sometimes revealed a certain gap between political and legal statements and the practical application of the mechanisms of the rule of law models.

If referring to the official legal documents of such countries, it is clear that the reception of the rule of law is viewed as a standard of state organization and governance. The new constitutions of some Eastern European countries, such as Hungary, Bulgaria, Romania, Slovakia, the Czech Republic, Albania, and the former Soviet Republics, distinctly stipulate the principle of the rule of law. For example, Article 1 of the 1993 Russian Constitution declares that “The Russian Federation—Russia is a democratic federal law-bound state with a republican form of government” (NGUYỄN et al., 2012, p. 388). Similar stipulations and statements can be traced back to other constitutions, in Vietnam, for example. Article 2 of the 2001 Constitution declares: “The State of the Socialist Republic of Vietnam is a socialist state ruled by law and of the people”.

The rule of law can be expressed in two aspects in terms of content and form. Accordingly, on one hand, the rule of law is determined by a system of principles with regard to the rule of supremacy of the Constitution (Russian Constitution of 1993, Article 15). On the other hand, it also establishes a mechanism of constitutionalism, which ensures the protection and adherence to the constitution (Russian Constitution of 1993, Article 125). In these countries, judicial review is established with differences in the structure and forms of organization. In Russia, the protection of and adherence to the rule of law are strengthened by the rules.

Besides, in Europe, the rule of law is primarily expressed by the agreement with and approval of fundamental rights that are established by the European Union. After the fall of the Socialist Bloc, Eastern European countries wanted to regain their status on the continent by joining the Council of Europe or becoming members of the European Union. Accordingly, all the principles of the rule of law are viewed as a mutual heritage that is shared and protected by European countries. For instance, the Russian Constitution entails a list of detailed fundamental rights (Articles 17 to 64), which is affected by some European conventions, especially the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, of which Russia is a member. Article 2 of the Russian Constitution promulgates that “man, his rights, and his freedoms shall be the supreme value. The recognition, observance, and protection of human and civil rights and freedoms shall be an obligation of the state.”

The same phenomenon happened in African countries: the progress of democratization was followed by the end of dictatorial regimes and the recognition of the rule of law in the legislative documents. For instance, the rule of law was stated in the constitutions of the Central African Republic in 1986, the Constitution of Benin in 1990, and Burkina Faso and Mali in 1991. The reference to the rule of law is not only regarded as a form of impractical rule in the newly passed constitutions but also has the function to review the constitutionality of the law and to make a list of fundamental human rights. The same phenomenon happened in Asia and in the Middle East, but at a slower pace.

However, it is seen that these formal statements themselves are not enough to prove the implementation of a genuine rule of law because of the gulf between political discourse and reality. Stimulated by the lack of necessary preconditions for the rule of law in Western countries, it is difficult for the rule of law to grow and develop. In many countries, the claim of the rule of law as a national standard is mainly viewed as political rhetoric rather than as a legal statement. This is because of the shortage of guaranteed content such as check and balance procedures, constitutional review, or judicial independence. For instance, in many African countries, a shortage of judicial independence and rampant corruption in the governmental system stand as barriers to the execution of the rule of law.

Since the establishment and development of the rule of law are based on a system of ideological principles, which have origins in some political and social circumstances, the reception and replication of the rule of law can only be nurtured by forms of cultural integration and recognition through the combination of new values and symbols. The distortion of the rule of law will be inevitable without such criteria.

However, the distortion or adjustments of the rule of law somehow do not lower trust in the ideal of the rule of law, which has been viewed as a supreme standard that every state's governance should reach. As a result, it can be seen that Western countries have succeeded in popularizing the concept of legal and political organization by making the rule of law a universal notion or a requirement of value.

The Rule of Law as a Fundamental Principle of the European Union

The recognition of the rule of law is the most popular in Europe. Accordingly, the rule of law has then become the basic foundation for the organization and operation of the European Union.

The trend of “segmentary application of the rule of law” was first initiated at the court level. According to the European Court of Human Rights in Strasbourg, in a rule-of-law-based state that is controlled and governed by the law, people shall be protected and guaranteed their rights and freedoms as declared by the European Convention on Human Rights (AFFAIRE LELIEVRE C. BELGIQUE, 2007). Meanwhile, the Luxembourg Court states that the European community is “the community of law” (PARTI ÉCOLOGISTE “LES VERTS” C. PARLEMENT EUROPÉEN, 1986). This trend can be found in the official documents approved by the UE members and European communities. Besides, the reference to the rule of law is stated in the Treaty of Amsterdam of 1997 with the condition of adopting new members or temporarily making invalid the membership of the countries that do not comply with the regulations of democracy and the rule of law. The preamble of the Charter of Fundamental Rights of the European Union declares that the “European Union is based on the principles of democracy and the rule of law.” Article 2 of the Treaty of the European Union promulgates “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights.” The Union shall offer its citizens an area of freedom, security, and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration, and the prevention and combating of crime. Consequently, the rule of law is regarded as one of the pillars of the European Union, though the presentation of the term may entail some unique characteristics coming from the structure of the Union, which is different from a single state.

The establishment and structure of the European Union clearly demonstrate the popular recognition of the rule of law, in which the stable status of peace in Europe since World War II has been built up partly from the mutual approval and recognition of the same political governance, founded on democracy, human rights, and the rule of law. It was also the basis for the formation of the European Union (EU) during the half-decade period. Consequently, if Central and Eastern European countries want to access the Council of Europe, they have to adopt the rule of law. At the Copenhagen Convention, member states declared that “pluralist democracy and the rule of law are the basis to guarantee the protection of human rights and fundamental freedoms”, and the Charter of Paris for a New Europe on November 21, 1990, declared that human rights, democracy, and the rule of law are the foundation of “freedom, justice, and peace, which are the goals of a new Europe after the Cold War”.

The rule of law is recognized *per se*, as it is in some other regions, but to an indistinct extent. For instance, the Inter-American Democratic Charter, which was passed in Lima (Peru) on September 11, 2001, directly refers to the rule of law. Together with globalization, the rule of law has gradually gone beyond the Western world's borders, becoming so popular that, with the end of the Cold War, an international doctrine of the rule of law was then established step by step in the late 20th century.

THE INTERNATIONALIZATION OF THE RULE OF LAW

Starting as a national and regional standard in the early 1990s, the concept of the rule of law was internationally recognized and solemnly promulgated in a variety of international legal documents. The Western countries once used the rule of law as a political and ideological weapon to counter the effects of the political and legal systems of the socialist countries (CHEVALLIER, 2010, p. 118). Therefore, the collapse of the socialist bloc marked the triumphant and dominant impact of the rule of law not only at the national level but also at the international level. Adherence to the rule of law has become an obligation for each state and international institution.

The Recognition of The Rule of Law by International Institutions

It is in Europe, and specifically within the scope of the “Commission on Security and Cooperation” (CSCE, the precedent for the Organization for Security and Cooperation in Europe), that first commenced the progress to recognize the internationalization of the rule of law. In the legal documents of CSCE that were passed in Helsinki on August 1, 1975, it was only limited to the regulation to monitor the supporting relationships within state members as follows: “respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion, or belief” (Principle VII). In addition, the Vienna Convention (1986–1989) adopted a new concept of the human dimension. In a document that was signed on June 29, 1990, at a Copenhagen conference on the human dimension of the CSCE, participating states admitted that “pluralist democracy and the rule of law are the core principles to ensure respect for human rights and fundamental freedoms” (OSCE, 1990b) and the Charter of Paris in 1990 (OSCE, 1990a) state that human rights, democracy, and the rule of law set the conditions for “freedom, justice, and peace”, which are the initial objectives of a new Europe after the Cold War.

Consequently, in Europe, the rule of law is recognized distinctly as one of three inseparable principles: democracy, human rights, and the rule of law. Thus, it can be understood that the rule of law was created as a tool to protect human rights and as a requirement and condition of democracy. The rule of law can only express its meaning in a mutual relationship with the other two conditions.

This recognition would be expanded at the international level, especially in the scope of activities sponsored by the United Nations. The last declaration of the World Conference on Human Rights in Vienna in June 1993 emphasizes “the task of building and strengthening adequate national structures that have a direct impact on the overall observance of human rights and the maintenance of the rule of law” (WORLD CONFERENCE ON HUMAN RIGHTS, 1993, p. 16–17) in order to “create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms.” As such, Europe took a step further than the 1948 Universal Declaration of Human Rights and other relevant conventions by the United Nations, which emphasized the strong link between the rule of law and democracy and human rights. After that, this approach was mentioned again in the Resolution on February 19, 1994, by the United Nations on strengthening the rule of law and in “an agenda for democratization,” signed by its General Secretary on December 17, 1996 (ASSEMBLÉE GÉNÉRALE DE NU, 1994).

Since 1993, the rule of law has been stated in a variety of resolutions of the United Nations, not to mention in the United Nations Millennium Declaration on September 8, 2000, and the Declaration of the 2005 World Summit Outcome on September 16, 2005, in which member states committed themselves “to actively protect and promote all human rights, the rule of law and democracy recognize that they are interlinked and mutually reinforcing, and that they belong to the universal and indivisible core values and principles of the United Nations” (THE GENERAL ASSEMBLY, 2005, parag. 119). There is also a separate section is named “the rule of law” (THE GENERAL ASSEMBLY, 2005, parag. 134). After this declaration, the “rule of law” at national

and international levels was mentioned in the next meeting sessions on the agenda of the UN General Assembly, being a main point of various reports of the Secretary-General and related resolutions. In terms of form and content, the rule of law has become a priority in the discussion panels of the UN, in coherence with human rights and democracy, the three principles regarded as in a close and dependent relationship (Resolution issued on December 4, 2006, by the United Nations).

In the official documents of the 2005 World Summit outcome held by the United Nations, it was declared that “good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development, and the eradication of poverty and hunger” (THE GENERAL ASSEMBLY, 2005, parag. 11).

The dominant application of the rule of law resulted from the pressure of international institutions on transforming countries after the fall of the Soviet Union and developing countries. For instance, European institutions and international financial institutions greatly encouraged and favored the adoption of the principles and mechanisms of the rule of law through supporting and cooperating projects between such countries and other states. Central and Eastern European governments must recognize the mechanism of the rule of law that is clearly declared in the founding treaty if they want to join the Council of Europe. In a similar fashion, the European Union has viewed the rule of law as one of the essential mechanisms in its cooperation policies with developing countries (COUNCIL OF EUROPE, 1991) and its support of transformation in Eastern Europe (through the Phare and Tacis programs).

Besides, the pressure from international financial institutions is also central to the application of the rule of law. For instance, the World Bank also established requirements to commit to restructuring the political system, in which the rule of law is of great importance, for other countries to receive donations. Since 1989, the World Bank has mentioned those three conditions in the broad meaning of the term “governance”. At that time, the three conditions, including democracy, human rights, and the rule of law, were emphasized in terms of economy and development. In the recommendations for approval of the resolutions towards freedoms, the World Bank laid emphasis on the importance of efficient public institutions to direct economic development and also on obedience to the requirements of political structure. According to the World Bank, good governance entails some requirements: citizen security is guaranteed; obedience to laws is guaranteed, especially through independent justice institutions (the rule of law); official authorities manage the expenditure and budget in a transparent and proper way; political leaders must present their activities (the responsibility and accountability); information must be public and accessible to everyone (the rule of transparency). This statement was reused by the United Nations, specifically in the scope of the United Nations Development Programme (UNDP) and other international institutions such as the International Monetary Fund (IMF), the Organization for Economic Co-operation and Development (OECD), and UNESCO.

Toward The International Rule of Law?

The rule of law at the national level is established based on the principles that the power of the state must be exercised within the scope of law and be subject to and limited by law. Naturally, this logic would be applied at the international level. Accordingly, the state must adhere not only to the national rules but also to the principles and norms of international laws (MORINA et al., 2011). These principles put “the international rule of law” into perspective. Specifically, the international rule of law can be understood in three aspects. First, the rule of law is a measure to monitor the execution of principles of relationships within countries and other institutions of international law. Second, the principles of the international rule of law take precedence over the national rule of law, as seen in the prominence of the conventions on human rights compared with the national principles. Third, a system of international rules includes principles that have a direct impact on individuals without formal meditation through existing national institutions (CHESTERMAN, 2008) (pressure on the states and partly limitations on national sovereignty). In other words, it can be understood that the international rule of law is equal to the “dominance of law” (CHEVALLIER, 2014, p. 180), that is, in international relations, the power is based on the obedience to law and in the scope of law, and the law can consist of a legal system of globally recognized principles.

However, the concept of the rule of law could lead to the elimination of the classic concept of international law. International law was initially built on the principle of national sovereignty, being the product of the combination of supreme willpowers, an “inter-state” law based on agreements within countries. Thus, international law is featured by the “covenant”, which excludes the principle of hierarchy of legal norms. Meanwhile, the rule of law (by national definition) is linked to the principle of a hierarchy of legal norms. Moreover, with regard to international legal proceedings, these institutions of international law are not fully competent and lack coercive measures as possessed by the rule of law at the national level. If the “international rule of law” is reviewed and assessed under the theory of the national rule of law, then it is limited to the initial outline, as a consequence of the absence of effective mechanisms to ensure the operation of the rule of law principles.

Nevertheless, in reality, the guarantee mechanisms of the international rule of law are gradually shaped. In this manner, the establishment of the United Nations is regarded as a breakthrough. The United Nations is the convergence of almost all the countries in the world, being expressed as a “global forum” or a kind of “inter-state democracy”. The United Nations Security Council has become a mechanism to ensure “international legislation”, particularly related to the use of force. The operations of the United Nations are the basis for the rule of law, even though they are not complete since the United Nations Security Council rarely assumes the full responsibilities promulgated in the United Nations Charter. Even when these principles are not influential enough to avoid armed conflicts, the establishment of the United Nations at least sets out progress and makes contributions that contribute to the promotion of the idea that conflicts within countries must be resolved in peace. In cases of armed conflict, the rule of law bears the tendency to ensure the use of force in a lawful manner (ICRC, 1998, p. 1) and the legalization of the existence of force use in a few limited cases.

Making contributions to the institutionalization of international relations through laws, a legal order has gradually been formed under the sponsorship of the United Nations. This legal order is based on the fundamental principle of “the prevention of the use of force”, except in some limited cases clearly defined in the Charter (cases listed in United Nations Charter, Chapter VII on the use of force). It can be understood that the obedience of the rule of law is viewed as a mechanism to monitor international relations in a peaceful way. This can be expressed in two aspects. On the one hand, the state shall be subject to the law beyond the power of the state and tied to the principles of this law. The international community will take a long time to reach this ideal, though. However, it can be seen that the very first steps on the progress have been taken; for instance, the formation of the International Criminal Court, the International Court of Justice, the European Court of Human Rights, the Inter-American Court of Human Rights, the International Tribunal for the Law of the Sea, etc. These are the basis in terms of jurisdiction to ensure obedience to the law at the international level. They are the very first steps but have approved an absolute trust in law, which is central to the formation of the rule of law doctrine that is based on the conviction that the power shall be tied by the principles and that the power is to maintain and serve the law.

The international rule of law is also drafted through the recognition of the fundamental principles of human rights. Of course, the guarantee of execution and protection of such rights is not complete in practice. The idea that everyone possesses a whole set of rights, a kind of collective legacy of mankind that every state shall obey, creates power to monitor international relations in a peaceful manner. In reality, the protection of such rights has not been fully realized, even at the national level. However, the establishment of the International Criminal Court in 1988, through which the Court has the authority to resolve cases concerning genocides, crimes against humanity, and war criminals, revealed a breakthrough in the “roadmap of obedience to human rights and the rule of law at the international level”, as Kofi Annan, the former Secretary-General, stated on July 20, 1998, on occasion of the establishment of the International Criminal Court, regardless of quite a few barriers. In brief, the foundation of the international rule of law has been gradually formed.

THE RULE OF LAW IN VIETNAM: THE DOCTRINAL RECEPTION AND INSTITUTIONAL BARRIERS

The Theory of The Communist Party of Vietnam on The Rule of Law

When the terminology of the rule of law was first established (1930), the Communist Party of Vietnam emphasized the goal of building a democratic state following the Marxist-Leninist theory, that is, the “dictatorship of the proletariat”—the state in which the working class and peasants hold the political power, exercising dictatorship with the bourgeoisie, landlords (exploiting classes), and exercising basic human rights. However, in the Sixth Party Congress (1986), although the term “dictatorship of the proletariat state” (COMMUNIST PARTY OF VIETNAM, 2006, p. 124) was still used, awareness of the state’s functions and duties was renewed, whereby: “The state’s function is to institutionalize by law the powers, interests, and obligations of the working people and to manage society and the economy in accordance with the law” (COMMUNIST PARTY OF VIETNAM, 2006, p. 125). In this term, the “authoritarian” factor (i.e., state and society management mainly by the party’s lines and resolutions) has been relieved, making way for the rule of law (state and social management by law). In addition, the right to democracy is upheld. These reflect the movement towards the progressive principles of the rule of law and democracy that have proven their superiority and rationality in the world.

The above movement continues to be motivated in the next Party Congress. The 7th Party Congress (1991) emphasized the importance of exercising democracy by defining socialist democracy as the essence of reforming and consolidating the political system, considering it both a goal and the driving force of innovation. In order to renovate and consolidate the political system, the Party advocates for continuing to push up the reform of the state apparatus in the direction of: “The state is really of the people, by the people, and for the people; the state manages society by law, under the leadership of the Party; organize and operate under the principle of democratic centralism; exercise uniform power, but assign and decentralize clearly; streamline compact and high-quality operation; strengthen socialist legislation” (COMMUNIST PARTY OF VIETNAM, 2006, p. 297). Next, at the Second Conference of the 7th Central Committee (1991), the term

“building a rule-of-law state” was first mentioned in the speech of former General Secretary Do Muoi (November 29, 1991) (COMMUNIST PARTY OF VIETNAM, 2007, p. 462–468). The principles of building the state apparatus continue to be affirmed: “The state power is unified, indivisible, but clearly assigned... Our state must be built with full rule of law on both branches. Three branches of legislative, executive, and judicial... Building the rule of law, organizing, and managing on the principle of democratic centralism” (COMMUNIST PARTY OF VIETNAM, 2007, p. 461–463).

The credo of building the country during the transition to the socialism of the Party in 1991 continues to concretize the innovative ideas of the state raised in Party Congress VI and VII, emphasizing the role of the state in legislating and managing society by laws and organizing state power in the model of unifying the three legislative, executive, and judicial powers but having a clear assignment of those three rights (COMMUNIST PARTY OF VIETNAM, 2006, p. 327). The presentation of these contents in an important document called Political Platform shows a new step in the political determination and actions of the Party in renovating the organization and operation of the state in accordance with legal principles. This is the premise for going to the National Conference of Representatives during the 7th term (1994) of the Party; the term “rule-of-law state” is officially used, as are the opinions, principles, and contents of state construction. The rule of law state of Vietnam for the first time was determined quite comprehensively, in particular, stating that the rule of law state of Vietnam was “the state of the people, by the people, for the people, managing all aspects of social life by law, bringing the country towards socialist development. The rule-of-law state of Vietnam is built on the basis of strengthening and expanding the great unity of the people, taking the working class coalition with peasants and the intellectual class as the foundation, led by the Party” (COMMUNIST PARTY OF VIETNAM, 2006, p. 329). The conference also pointed out: “exercising socialist democracy, promoting the people’s right to the state... The state must closely associate with the people, respect and listen to the opinions of the people, and be subject to supervision to protect the people, human rights, and the basic rights of citizens... Strengthening

legal education, enhance knowledge, and foster a sense of respect for the law... to ensure that laws are enforced strictly, unitedly, and fairly” (COMMUNIST PARTY OF VIETNAM, 1994, p. 56–58).

At the 8th Central Executive Committee Meeting (Session VII) (1995), the guidelines and solutions to continue renovating and perfecting the state apparatus in the direction of the rule of law state continued to be concretized. In this conference, five basic views on building a socialist rule of law state were identified, including (1) building a socialist state of the people, by the people and for the people, taking the coalition period workers with peasant class and intellectual class as the foundation, led by the Communist Party. Fully exercising the people's right to the state, strictly maintaining social and authoritarian discipline with all acts of infringing upon the interests of the Fatherland and the people; (2) State power is unified, with the division and close coordination among state agencies in the exercise of three rights: legislative, executive, judicial; (3) Thoroughly grasp the principle of democratic concentration in the organization and operation of the State of the Socialist Republic of Vietnam; (4) Strengthen socialist legislation; building the the rule of law state of Vietnam managing society by law, at the same time attaching importance to education and raising socialist morality; (5) Enhance the Party's leading role with the State (COMMUNIST PARTY OF VIETNAM, 1995, p. 23–27).

The above standpoints on the construction of a socialist rule-of-law state continue to be affirmed and more or less concretized in Party Congress VIII (1996), IX (2002), and X (2006). The Party Congress X (2006), through the review of 20 years of Doi Moi and 15 years of implementation of the Platform in 1991, identified: To go up to socialism, we must build a socialist rule of law state of the people, by the people, and for the people. By the 11th Party Congress (2011), the credo of national construction was supplemented and developed, in which the Party noted: The socialist rule of law state that we are building is the state of the people, by the people, and for the people, and identified the building of a “socialist rule-of-law state” as one of eight directions to achieve the goals set out in the Party’s Country Building Platform.

The Party Congress XI (2011) also continued to affirm: “The state is a socialist rule-of-law state of the people, by the people, for the people, and led by the Party. The state takes care of and serves the people, protecting their legitimate rights and interests. The state’s power is unified; there is coordination and control assignment between agencies in the exercise of legislative, executive, and judicial powers” (COMMUNIST PARTY OF VIETNAM, 2011, p. 52). At the same time, the Congress also affirmed to “continue to promote the construction and improvement of the socialist rule of law state, ensuring that our state is truly of the people, by the people, for the people led by the Party, and good functions of economic management and social management, properly solving the relationship between the state and other organizations in the political system, with the people, with the market”, and raising one of the important directions. The importance of building and perfecting the socialist rule of law state is: “studying to build, supplement specific institutions and mechanisms, and operate to ensure the principle that all state power is unified. There is a division, coordination, and control among agencies in the exercise of legislative, executive, and judicial powers. To enhance the role and effectiveness of state economic management in line with the requirements of socialist-oriented market economy development. To continue to improve the legal system, mechanisms, and policies to effectively operate the economy, fulfill international commitments, and protect national interests. Expediently study, amend, and supplement the 1992 Constitution (amended and supplemented in 2001) in accordance with the new situation” (COMMUNIST PARTY OF VIETNAM, 2011, p. 246–347).

Continuing the above trend, at the 12th Party Congress (2016), 30 years of comprehensive renovation of the country were conducted, and the main directions for the next period were as follows: “In the organization and operation of the state, the state must exercise democracy, abide by the rule of law, and create positive changes and achieve higher results. The construction of a rule-of-law state must be carried out in a synchronous manner, including the legislative, executive, and judicial processes, and be carried out synchronously with the renovation of the political system towards streamlining, effectiveness, and efficiency associated with economic, cultural, and social innovation. Continue to improve the mechanism of protecting the Constitution and laws” (COMMUNIST PARTY OF VIETNAM, 2016, p. 175).

In line with the renovation of the Party’s views and perceptions on the rule of law state, the 1992 Constitution amended in 2001 supplemented Article 2, which clearly states: “The Socialist Republic of Vietnam State is the

law-based socialist state of the people, by the people, for the people. All state power belongs to the people, the foundation of which is the union of the working class with the peasantry and intellectuals. The state power is unified; there is a coordinated assignment in the implementation of the legislative, executive, and judicial powers.” This is the first time that the term “rule-of-law state” as well as the socialist rule of law nature of the Vietnamese state, has been formally affirmed in the Constitution.

The 2013 Constitution further reaffirms the above provision of the 1992 Constitution, also in Article 2, with an important addition, stating that “The Socialist Republic of Vietnam State is a socialist rule-of-law state, of the people, by the people, for the people. The Socialist Republic of Vietnam is owned by the people; all state power belongs to the people, the foundation of which is the alliance between the working class, the peasantry, and the intellectuals. The state power is unified, with the assignment, coordination, and control among state agencies in the exercise of legislative, executive, and judicial powers.” With the addition of control, the 2013 Constitution has taken a big step in acquiring reasonable elements of state power control according to the doctrine of decentralization and the rule of law that is being applied popularly in countries around the world.

Through the above presentations, it can be seen that from the time of establishment, the Communist Party of Vietnam has always been interested in finding and testing state and legal models suitable to the political goals of the Party, which is to build a socialist regime in Vietnam while at the same time being suitable to the conditions of socio-economic development and the development trend of modern states. Awareness, views, and policies of the Party on this issue have changed over time, and the most dramatic changes have occurred continuously since the Party launched the Doi Moi (1986). So far, through Party documents, the Party and State’s viewpoint on the socialist rule of law state has been fairly clearly shaped. Accordingly, the socialist rule of law state includes the following the following basic characteristics (or constituent elements) (ĐÀO, 2006, p. 233–315, 2015, p. 123): (1) The state of the people, by the people, for the people, demonstrating the people’s ownership. (2) The state is organized and operates on the basis of the Constitution, respecting and protecting the Constitution. (3) The state manages society by law, ensuring the supreme position of the law in social life. (4) Respect and protect the human rights, rights, and freedoms of citizens. (5) State power is unified, with division, coordination, and mutual control among state agencies in the exercise of legislative, executive, and judicial powers; there is strict inspection and supervision of the implementation of the people's state power through social organizations. (6) The state and society are led by a single party, the Communist Party of Vietnam.

The above-mentioned characteristics show the views and perceptions of the Party and the State of Vietnam on the rule of law later than the rule of law and the socialist rule of law. But basically, the awareness of the rule of law of the Party and the State of Vietnam is gradually approaching (though not completely updated) the popular view of the rule of law of the international community. Here, while the characteristics (1) to (4) show high compatibility, feature (5) is only at the basic level of compatibility because, according to the general conception of the international community, a Among the properties of the rule of law is decentralization according to the principle of three rights of isolation—something that the fifth characteristic has not fully reflected. However, the biggest difference is expressed in the last characteristic, which helps distinguish between the concept of “socialist rule of law” in Vietnam and the concept of “rule of law” in the world.

Basic Awareness of The Rule of Law in Vietnam

In Vietnam, the awareness of the two concepts of rule of law and rule-of-law state is still unclear (NGUYỄN, 2018), inconsistent, and still unreasonable, of which the most controversial is the tendency to rule according to the rule of law in the state governed by the rule of law. From an academic perspective, the rule of law is relevant but cannot be identical with the rule of law state, as well as with other terms close to it such as Rechtsstaat and État de droit. Compared to the terms of the rule-of-law state (of Vietnam), Rechtsstaat (of Germany), and État de droit (of France), the rule of law has its own origin and has a broad, inclusive connotation. The homogeneity between the rule of law and the rule of law state in Vietnam probably stemmed from the process of importing ideas and theories about the rule of law into Vietnam. This theory was introduced to Vietnam in the early 1990s in the context of the innovation of the political and legal systems to meet the needs of national renewal. In fact, in Vietnamese, the term “rule of law” first appeared in August 1985, in the Nhan Dan newspaper, in the

acceptance speech of General Secretary of the Communist Party of the Soviet Union Gorbachov. This speech uses the term *pravovoe gosudarstv*, which is translated into Vietnamese as *nha nuoc phap quyen* (rule-of-law state).

Studies of the rule of law in Vietnam are influenced by Russian studies, which commonly use the term “rule of law” (*pravovoe gosudarstv/Правовое государство*) and tend to be close to the *Rechtsstaat* theory of the Germans. In Russian rule-of-law state, elements of the organization of state power are more focused on elements of content and form of law.

It can be seen that the consistency of these terms, especially between the rule of law and the rule of law state, is obligatory.

It is due to the terminology uniformity mentioned above in our country that has led to the status of the constitutive elements of the rule of law with the constituent elements of the socialist rule of law state; especially, sometimes it is consistent with the rule of law with the “rule of law”. As a result, the content of the rule of law is significantly narrowed, “downgrading” the goal that should have been to build a rule of law society down to a rule of law state. In addition, the overemphasis on the “state” element has resulted in a focus on innovation and the improvement of state organization, with a slight disregard for legal elements. Meanwhile, the connotation of the rule of law is a legal system that has quality in terms of content (fairness, protection of human rights) as well as form (stability, predictability, accessibility, comprehension). More seriously, the agreement between the rule of law and the rule by law (*pháp trị*) can also distort the institution.

Although there is currently no unified definition of the rule of law in the world, some of its constituent attributes have been commonly acknowledged, focusing on issues such as restriction and control of state forces, protection of human rights, and ensuring that laws are built appropriately and effectively implemented in reality. In general, almost all the constituent elements of the rule of law in the common understanding of the world have been expressed, directly or indirectly, in party documents and state legal documents. Vietnam, but with the nature as the requirements or content of the socialist rule of law state. Thus, it is possible to refer to and apply the constituent elements of the rule of law that have been agreed upon by the international community to build up the content of the socialist rule of law in Vietnam. However, a requirement herein is to separate the constituent elements of the rule of law from those of the rule of law. To accomplish this, it is necessary to start with the realization of the concept of the rule of law in relation to the concept of the rule of law.

CONCLUSION

One of the most noticeable features of the legal situation in the late 20th century and at the beginning of the 21st century is the popularity of the rule of law. This progress stemmed from Europe in the 1970s and mostly spread around the world with the fall of the socialist community. The rule of law nowadays has become a strong pillar of the new world, which is made up of the three inseparable elements of respect and protection of human rights, democracy, and the rule of law, in which the rule of law stands as a measure to protect human rights and a mechanism to guarantee democracy.

To some extent, it can be said that the popularity of the rule of law illustrates the rise of the model of freedom of political governance and state based on the foundation of democracy, the rule of law, and the respect and protection of human rights. This popularity has proved the attraction of the tested model, which has been recognized in many countries, especially in Western countries. It has become a universal value accepted by almost all states and international institutions.

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