

Ho Chi Minh's First Constitution (1946)

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«The constitution which you have just approved is the Vietnamese people's first constitution. Even though it is not 100% perfect, it is still satisfactory and appropriate for our young nation. It condones the establishment of the republican and democratic regime.» This is what president Ho Chi Minh stated to the members of Vietnam's first National – or Constitutive – assembly on 9 November 1946, just after they had approved the constitution of the Democratic Republic of Vietnam (DRV), with 240 votes against 2.¹

In published works about the modern and contemporary history of Vietnam, this constitution is rarely mentioned at all, and I am not aware of any scholarly discussions of it in Western languages. Ho Chi Minh's first constitution has also had little importance in the Vietnamese national imagining. The Vietnamese nation does not take the same kind of pride in its constitutional history as the United States of America or Norway, two nations who both have old constitutions that are frequently referred to and used in their political debates. Still the Vietnamese constitution of 1946 is an interesting text for a historian of nation-state formation. It resulted from a constitution-making process involving heated debates about many of the big constitutional issues, such as monocameralism contra bicameralism, the question if sovereignty resides in the individual or in the community, and the question of which citizen rights should be included in a constitution.

The Vietnamese constitution of 1946 consists of 70 paragraphs divided on seven chapters. It starts out by defining the Vietnamese state as a democratic republic (the DRV). This was unanimously approved by the members of the Assembly. Then it goes on to place sovereignty in the «popular community» without any distinctions made as to race, gender, prosperity, class or religion. It states that Vietnam is a united territory of the northern, central and southern regions, which cannot be divided, and with Hanoi as joint capital.² The second chapter enumerates the «obligations and rights of the people».³ These obligations are to defend the motherland, respect the constitution, obey laws and decrees, and do military service. The subchapter on rights pronounces absolute equality before the law, but also opens up the possibility of positive discrimination of ethnic minorities in order to lift them up to the

¹ Hien phap nuoc Viet-nam Dan Chu Cong Hoa, undated printed copy in the Vietnam National Archives, file DRV 1945-54, «Affaires intérieures», dossier 572 (also in the Revolutionary Museum of Vietnam, Hanoi). A contemporary French translation can be found in box 5, file Conseiller Politique supplémentaire, Archives de la France d'Outre-Mer, Aix-en-Provence. The latter also includes French-language minutes from the second session of the Vietnamese National (or Constitutive) Assembly, 28 October - 10 November 1946.

² Dat nuoc Viet-nam la mot khoi thong nhat Trung Nam Bac khong the phan chia.

³ Nghia vu va quyen loi cong dan.

general level of development. Women are said to have the same rights as men in all domains. (One female member of the National Assembly wanted to make sure that this also included the right to do military service, but this was not included in the text of the constitution.) The rights enumerated in the constitution are the rights of expression, commerce, association, thought and of movement both within the country and abroad. Some Assembly members wanted to see property rights included, and they were given a special paragraph (12). Another faction in the Assembly put special emphasis on the protection of workers, and these were also given a special paragraph (13). Finally the Constitution puts much weight on the right to education, and after debates in the Assembly, it was said that private schools should be acceptable as long as they conformed with official programmes of education. Everyone was given the right to vote from the age of 18, and to accept elected office from the age of 21.

Chapter III deals with the main organ of popular sovereignty: the National Assembly which would consist of only one chamber. The National Assembly would be the highest authority in the DRV. There would be national elections every three years, with one delegate for every 50,000 inhabitants. The National Assembly would sit together only in May and November each year, but between these two annual sessions, the government would be under the control of a 15 member Permanent Commission of the National Assembly. There was much discussion in the committee preparing the constitution about the role of this Permanent Commission, which could easily become very powerful.⁴

The government (chapter IV) would be led by the President of the Republic who was to be elected by the National Assembly for five year terms. The President would choose his Prime Minister from among the members of the National Assembly and submit his choice to the approval of the Assembly. After approval the Prime Minister would choose his ministers also from among the members of the Assembly. Each minister would also need to be approved by the National Assembly, and there was not to be any ministerial solidarity. In the provinces, cities and urban communes there would be regional assemblies (chapter V), and within each of the country's three main regions, these assemblies were to elect an Executive Committee. These committees would be responsible both to the assemblies which had elected them and to the central government.

⁴ The following persons were elected as members (ten of whom belonged to the Viet Minh): Bui Bang Doan, Ton Duc Thang, Ton Quang Phiet, Pham Ba Chuc, Duong Duc Hien, Hoang Minh Chau, Phan Thanh, Nguyen Dinh Thi, I Ngo Ong, Cung Dinh Quy, Duong Van Du, Tran Huy Lieu, Tran Van Cung, Hoang Van Hoa, and Nguyen Van Luyen.

Chapter VI on the judiciary awards all who are accused of crimes the right to defence either by themselves or with the help of a lawyer, and says the other powers cannot put pressure on the courts. The judges, however, were to be appointed by the government, and there were no provisions for a jury system.

The final chapter (VII) prescribes that modifications in the constitution could be made only if a 2/3 majority in the Assembly supported it, and after consultation of the population through referendum.

Why has not Ho Chi Minh's first constitution received a more prominent role in Vietnamese historical memory? Why is it almost never discussed? This is the main question addressed in this paper. I shall try to explore five possible reasons: first, the weaknesses in the constitution as such; second, the limited role of the constitution-making process in the Vietnamese politics of 1945-46; third, the parallels and concurrence of constitution-making processes in Vietnam and France; fourth, the fact that the constitution was not properly promulgated; and fifth, the fact that the constitution was conceived and adopted in a very special phase in the history of the international communist movement. Finally I shall ask the question if perhaps Ho Chi Minh's first constitution may regain some of its value as a source of historical inspiration in the current stage of Vietnamese history.

1 First there are the inherent weaknesses in the constitutional text as such, perhaps alluded to by Ho Chi Minh when he said it was not 100% perfect. As a constitution it was deeply «rousseauist» in that it placed all sovereignty in the people as such, represented by the National Assembly and its standing committee. There were no provisions for a division between legislative, executive and judicial powers, except for the statement that the government should not put pressure on the courts. There was no High Court which could decide whether or not a certain government action was in accordance with the constitution or not. Also there were no provisions for a parliamentary system where governments would have to seek support from a majority group in the Assembly. Instead the government was seen as an instrument of the Assembly. The latter would elect the President and could refuse to accept any minister the President or the Prime Minister submitted for its approval. These «weaknesses», which are actually still parts of the Vietnamese constitution today, may not perhaps explain that Ho Chi Minh's constitution did not become more important in Vietnamese history, but are noteworthy as such. In our context it is probably more important that so much was lacking in it which is normally included in a constitution. It did not for instance include rules for how to qualify for Vietnamese citizenship. Another weakness was that the constitution did

not actually reflect the political realities in the DRV. The most powerful organisation in the DRV was the Viet Minh and its central (Tong Bo), but they had no place in the constitution. The Tong Bo remained an «occult power». In the discussions leading up to the adoption of the constitution the Viet Minh was treated more or less like any other party although it really was a state in the state. Later Vietnamese constitutions have been more realistic in that they have clearly stated the leading role of the Communist Party (which was called the Vietnamese Workers' Party from 1951 to 1976). In the period 1946-51 the constitution of the DRV was somewhat fictional in that it did not recognise the major political force of that time, the Viet Minh.

Let me immediately proceed, however, to the second explanation for the weak position of Ho Chi Minh's first constitution in Vietnamese national memory, namely the limited role that the constitution-making process played in Vietnamese politics during 1945-46. It shall be necessary here to explore the background for the adoption of the constitution on 9 November 1946. The August Revolution of 1945 had led to the establishment of a Democratic Republic with a provisional government under the presidency of Ho Chi Minh and to the proclamation of the DRV at big rallies in Vietnam's major cities on 2 September 1945, notably in Hanoi where Ho Chi Minh gave his first major public speech and created a *lieu de mémoire*. His provisional government subsequently regulated public affairs through a number of official decrees, published in an official gazette, and put emphasis on building an administration under the control of People's Committees on all levels. Much emphasis was also put on developing a national army in prolongation of the guerrilla forces constructed under Vo Nguyen Giap in the final year of the Second World War. It is essential to the understanding of this early phase in Vietnamese nation-state formation that the state was constructed in parallel with the Viet Minh political front, which consisted of a number of so-called national salvation organisations (Cuu Quoc), other popular associations, and also a certain number of political parties. The Viet Minh was led by the Tong Bo, which in turn was completely dominated by leading members of the Indochinese Communist Party. This party, however, was officially dissolved in November 1945, and continued its activities only clandestinely and to some extent publicly in the form of Marxist Study Groups. There was a considerable degree of overlap between the Viet Minh front and the structures of the state, and one purpose of the 1946 constitution-making was to base the state in a formal structure that could reflect and build upon the successful construction of the Viet Minh. The intention was, if possible, to integrate all patriotic political forces either within the Viet Minh or within a larger front around it. This was not easy to achieve for Ho Chi Minh's

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government, however, because it continuously had to take into consideration its difficult relations with the Chinese occupation forces in the north, and with the British and French occupation forces south of the 16th parallel, where a war of colonial reconquest was launched on 23 September 1945. The formal dissolution of the ICP in November was a means to reassure the Chinese nationalist occupation forces. After they had arrived in the autumn of 1945, Ho Chi Minh's government planned to make good of promises made during the revolution to organise national elections. These had to be postponed several times, but were finally held on 6 January 1946. Only candidates screened by the Viet Minh stood for election, however, and most candidates were elected with an overwhelming majority of the votes. Before the elections, two Chinese-supported opposition parties in the north, the Viet Nam Quoc Dan Dang (VNQDD) and the Dong Minh Hoi had made clear that they would not take part in the elections, but in a special agreement negotiated with the government they were allowed to designate 70 representatives to the National Assembly to supplement the 300 who were to be properly elected.

After the elections the new assembly was not immediately convened, but met for its first session only very briefly on 3 March 1946. This was a particularly critical moment in the Franco-Vietnamese relationship, when huge French forces of occupation were approaching Haiphong harbour with the intention of resuming control of the whole of northern Indochina (they were already in control of the south). On 3 March Vietnam was actually on the brink of full-scale war, and the meeting of the National Assembly had the main purpose of establishing a national front of both the Viet Minh and the two Chinese-supported parties in order to counter the French attack. Thus a new coalition government was established, which remained under Ho Chi Minh's presidency. On 6 March 1946, however, the new government signed a deal with France, allowing the French to establish garrisons in the main northern centres in return for France's recognition of Vietnam as a free state. It was also agreed that the question of the unity of Vietnam's three main regions should be decided by a referendum (which, however, was never held).

The first session of the National Assembly in March also found time to establish a commission to edit a proposal for a constitution, with seven members representing the Viet Minh, three the Dong Minh Hoi, and one the VNQDD.⁵ The constitution committee deliberated during the summer and autumn, but its work did not receive much attention from the

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government who was deeply engaged in negotiations with France, first at Dalat in April-May and then at Fontainebleau south of Paris during June to August 1946. The aim was to arrive at a treaty, but no agreement was reached, and on 14 September 1946, Ho Chi Minh (who was in France during the whole summer) took the decision to sign another preliminary agreement with France, this time called a *modus vivendi*. It was only after the *modus vivendi* agreement, and Ho Chi Minh's return to Vietnam in October that the constitution committee actually issued a proposal for a constitutional text. By this time the Chinese occupation forces had left Indochina, and the DRV government which during the president's absence had been under the effective leadership of Vo Nguyen Giap, had made a strong attempt to integrate the Dong Minh Hoi and the VNQDD in the Viet Minh-dominated national bloc through a combination of pressures and offers. The main leaders of the two opposition parties were either arrested or went into Chinese exile while other leaders agreed to continue working with the Viet Minh. The integration effort was most successful in relation to the Dong Minh Hoi. In the constitution committee the three Dong Minh Hoi representatives went along with the majority whereas the one VNQDD member, Pham Gia Do, systematically advocated his own views, favouring for instance a two chamber system and less class-based, more nationalist policies.

When the National Assembly met on 28 October to deliberate on the commission's proposal, Pham Gia Do continued to advocate his own views and was strongly criticised, even condemned, by other members for breaking national unity and failing to support the government's struggle for national independence. He was on one occasion prevented from stating his views, and was one of the two who voted against the constitution when it was adopted by a final vote on 9 November. The fault line during the discussions did not only go between the VNQDD and the rest, however. There were a range of proposals for revision on a number of points such as gender, property rights, the protection of the working class, etc. The Assembly members grouped into a number of factions: marxists, socialists, democrats, Viet Minh, Dong Minh Hoi and VNQDD who all stated particular priorities, but apart from the VNQDD all generally supported the constitutional text, and although the marxists, socialists and democrats voiced their own independent views, they actually formed a part of the Viet Minh bloc. The whole process was an interesting attempt to develop a kind of multi-factional politics within the framework of an overall support for Ho Chi Minh and the Viet Minh front.

⁵ The commission had the following members, the first four of whom belonged to the Viet Minh: Nguyen Thi Thuc Vien, Ton Quang Phiet, Nguyen Dinh Thi, Tran Duy Hung, Do Duc Duc, Cu Huy Can, Huynh Ba Nhung, Tran Tan Tho, Nguyen Van Hach, Dao Huu Duong, Pham Gia Do.

I have gone into some detail in describing the political background for the constitution mainly in order to explain that it did not get a stronger role in Vietnamese nationalism. It would most probably have become more important if not for the basic conflict which raged all the time between the DRV and France. Those Vietnamese politicians who collaborated with France, at this juncture they were running a separatist Cochinchinese Republic in the south, did not of course take part in the constitution-making. Actually the Franco-Vietnamese relationship entered into a crisis while the National Assembly was in session, and the President of the Cochinchinese Republic committed suicide the day after the constitution was adopted, thus setting off a serious political crisis in French-controlled Cochinchina. All of this meant that the constitution of the DRV was more or less drowned in issues related to the Franco-Vietnamese conflict. What was mainly on everyone's mind was the question of whether or not the conflict could be solved peacefully or if there would be war. More than a real constitution the text adopted on 9 November was a means to achieve national unity. As such it was fairly effective.

The third reason for the failure of the constitution to become a basic national text on the same level as Ho Chi Minh's famous declaration of 2 September 1945, was that the constitution-making process from March to November 1946 was so deeply influenced by the concurrent constitution-making process in France. Just like the DRV the French Republic also had a provisional government through the whole of 1945 and 1946. A constitutional commission established a proposal supported by the French communists and socialists which, however, was rejected by the French population in a referendum. A new text therefore had to be worked out, which received the support also of the French Christian democrats (MRP), and this constitution (which was heavily criticized by de Gaulle) was only adopted in October 1946, two weeks before the Vietnamese National Assembly met in Hanoi to deliberate on its constitution. France was then going through a new round of national elections to establish the first genuine National Assembly of the French 4th Republic. In tone and content the Vietnamese constitution bore close resemblance to the first constitutional project in France, the one backed by the French communists but which was rejected. The Vietnamese constitution also resembled the constitution adopted for the French 4th Republic with its strong National Assembly and weak governments, a constitution that would be discredited in the 1950s and replaced with that of de Gaulle's 5th Republic from 1958. Thus Ho Chi Minh's first constitution could be seen as a modified copy of a French constitution which was first rejected and then, when adopted in a modified form, did not work well. While the later prime minister Pham Van Dong presided over the deliberations of the Vietnamese National Assembly in October-November 1946 he had a

copy of the just adopted French constitution in his hand. It may also be added that Vietnam was not alone to adopt French-inspired constitutions in this period. The Laotians and Cambodians also acquired new constitutions conceived of in the French language and translated into the vernacular during 1946-47.

The concurrence of constitution-making in Vietnam and France was also problematic in another way. One of the most controversial matters in the French constitution was colonial reform. The new constitution of the 4th Republic replaced the French Empire with a French Union which was to have its own assembly consisting of representatives from France as well as all its former colonies. Vietnam was supposed to be a member of the French Union through its membership in an Indochinese Federation. This was provided for in the French constitution but not at all reflected in the Vietnamese constitution, which did not even mention the existence of France, the French Union or the Indochinese Federation. The Vietnamese constitution treated France as if it had no presence or role to play in Indochina at all. This may have been a solomonic solution, given the fact that the Vietnamese and French negotiators at Fontainebleau had not been able to agree on the terms of Vietnam's membership in the French Union, but it also meant that the constitution got an unrealistic aura to it. It ignored both the existence of the Viet Minh and of the French presence. It must therefore have been clear to everyone concerned that if France and the DRV were to reach an agreement during the next round of negotiations scheduled for early 1947, the newly adopted constitution would have to be modified.

These negotiations were never, however, to be, and this brings us to the fourth reason for the weak position of Ho Chi Minh's first constitution in the Vietnamese national imagining. It was adopted at a time of crisis in the Franco-Vietnamese relationship, caused by the inability of the two parties to agree on the application of the clauses of the modus vivendi. A ceasefire had been effectively implemented in southern Vietnam, but a dispute over the collection of customs duty had developed into a tense situation in Haiphong. Because of the crisis and perhaps because of a general lack of resources the Vietnamese National Assembly decided immediately after adopting the constitution that it should not be promulgated. It would enter into force without promulgation. The reason for this was that if the constitution were promulgated, it would be necessary to first subject it to a national referendum and then hold elections for a new National Assembly, just as France had done. The Vietnamese assembly which had been elected in January 1946 would then be seen as a Constitutive Assembly, and a new assembly would become the first genuine National Assembly under the new

constitution. Instead the «Constitutive Assembly» decided to prolong its own term while letting the new constitution enter into force without being promulgated. Formally this meant that the National Assembly violated the terms of its own constitution immediately after having adopted it. There were few protests against this since the crisis called for a general sense of pragmatism, but as a legal text the constitution became handicapped from the start. Once full scale war had broken out on 19 December 1946 and Ho Chi Minh's government was obliged to escape to prepared guerrilla bases in the countryside, there was little room for legalistic subtleties. The constitution continued to play a certain legitimising role, however, in that it provided some of the basis for the claim of the DRV during the war years that it was the sole representative of the Vietnamese people. This made it possible, for instance, for the DRV to officially recognise the new People's Republic of China in January 1950 and receive Beijing's recognition in return. At this time, however, Ho Chi Minh's first constitution was already seen as an outdated text by the Vietnamese communists themselves.

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This leads us to the fifth and final reason for the limited role of the 1946 constitution in Vietnamese historiography and national myth-making. As a text it is a remnant from a special phase in the history of the international communist movement, the phase between the dissolution of the Comintern in 1943 and the founding of the Cominform in 1947. During this period the communist parties around the world operated independently of the international leadership in Moscow and followed their own national trajectories. Both French communist leader Maurice Thorez and Ho Chi Minh's national front strategies in this period came under criticism in the following period. Thorez, after having been thrown out of the French government, changed to a far more radical line in French politics, with emphasis on mobilising a general strike movement in the autumn of 1947. Ho Chi Minh, who had come to power with a strategy focussing on the construction of the Viet Minh front and even going to the extreme of pronouncing the formal dissolution of the ICP, came under criticism from other members of the international communist movements for right wing and nationalist deviationism, and the Vietnamese communists were asked to answer a number of critical questions. This led to a reassertion of the role of the communist party within the Viet Minh movement, and from 1950 the Vietnamese communists came under heavy Chinese communist influence. Once the war against France had been won at Dien Bien Phu in 1954 and the DRV could return to its capital Hanoi by virtue of the Geneva agreement, Ho Chi Minh's first constitution was scrapped and replaced with a new constitution more in line with those of the socialist states. A French-language copy of the 1946 constitution that was filed at this time in the Vietnamese National

Archives was given the following annotation: «This constitution was adopted at a time when Vietnam was in a particularly difficult and complex situation ... From the point of view of a People's Democracy, this constitution contains a number of imperfections and lacunae which have been corrected later through legislative measures implemented by the Resistance Government. This is why it clearly no longer corresponds to the social situation of Vietnam.»⁶

As a historian I should end my paper here, but I cannot resist the temptation to ask if perhaps, at some point in the future, the Vietnamese Communist Party may want to seek some inspiration from Ho Chi Minh's first constitution and also perhaps from the attempts of the first Vietnamese National Assembly to provide room for various political factions (marxist, socialist, democrat) within a national bloc.

⁶ «Cette constitution a été votée à un moment où le Vietnam se trouvait dans une situation particulièrement difficile et complexe ... Du point de vue d'un Etat démocratique populaire, cette Constitution présente de nombreuses imperfections et lacunes qui ont été mises sur pied et les mesures législatives qui ont été prises par le Gouvernement de la Résistance. C'est pourquoi il est hors de doute qu'elle ne répondra plus à l'état social du Viet Nam.»

