

A LIVING CONSTITUTION WITHOUT JUDICIAL REVIEW: RETHINKING CONSTITUTIONAL INTERPRETATION IN VIETNAM

UMA CONSTITUIÇÃO VIVA SEM REVISÃO JUDICIAL: REPENSANDO A INTERPRETAÇÃO CONSTITUCIONAL NO VIETNÃ

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Abstract

This article reinterprets constitutional development in Vietnam through the lens of the living constitution doctrine. While many constitutional systems recognize that constitutional meaning must evolve with social change, Vietnam's interpretive practice remains largely formalistic and institutionally constrained. Drawing on comparative insights from the United States, Germany, and South Korea, the article shows how constitutional courts sustain the normative vitality of constitutional law by adapting constitutional principles to contemporary challenges. In contrast, the absence of constitutional adjudication in Vietnam has fostered a rigid legal culture that struggles to respond to emerging societal demands. The article advances three reform directions: establishing an independent mechanism for constitutional review, integrating dynamic interpretive approaches into legal education, and strengthening scholarly debate on constitutional meaning. It argues that constitutional effectiveness depends not on textual permanence alone, but on the capacity of constitutional interpretation to remain responsive to lived social realities. The article ultimately asks whether, and to what extent, the living constitution can serve as a viable interpretive framework for constitutional development in Vietnam in the absence of judicial review.

Keywords: Living Constitution, Judicial Review, Constitutional Formalism, Constitutional Interpretation, Constitutional Adaptability.

Resumo

Este artigo reinterpreta o desenvolvimento constitucional no Vietnã à luz da doutrina da constituição viva (living constitution). Embora muitos sistemas constitucionais reconheçam que o significado da Constituição deve evoluir em resposta às mudanças sociais, a prática interpretativa no Vietnã permanece em grande medida formalista e institucionalmente limitada. Com base em perspectivas comparadas dos Estados Unidos, da Alemanha e da Coreia do Sul, o artigo demonstra como os tribunais constitucionais preservam a vitalidade normativa do direito constitucional ao adaptar princípios constitucionais aos desafios contemporâneos. Em contraste, a ausência de jurisdição constitucional no Vietnã tem fomentado uma cultura jurídica rígida, com dificuldades para responder a novas demandas sociais. O artigo propõe três direções de reforma: o estabelecimento de um mecanismo independente de controle de constitucionalidade, a integração de abordagens interpretativas dinâmicas no ensino jurídico e o fortalecimento do debate acadêmico sobre o significado constitucional. Sustenta-se que a efetividade constitucional não depende apenas da permanência textual, mas da capacidade da interpretação constitucional de permanecer sensível às realidades sociais vividas. Por fim, o artigo indaga se, e em que medida, a constituição viva pode servir como um referencial interpretativo viável para o desenvolvimento constitucional no Vietnã na ausência de controle judicial de constitucionalidade.

Palavras-chave: Constituição Viva; Controle de Constitucionalidade; Formalismo



*Constitucional; Interpretação Constitucional;
Adaptabilidade Constitucional.*

1 INTRODUCTION

What does it mean for a constitution to be “alive” in a legal system where interpretation remains largely declaratory? Can constitutional norms evolve in the absence of a dedicated constitutional court? Is it possible to reconcile political supremacy with legal adaptability in socialist-oriented constitutionalism? These are not only theoretical inquiries but pressing questions for Vietnam’s legal development. As social complexity deepens and legal demands become more pluralistic, the expectation that the Constitution must speak meaningfully to contemporary realities becomes increasingly difficult to ignore.

Despite significant constitutional reforms in 1992 and 2013, the interpretive framework in Vietnam remains heavily text-based and politically guided.¹ The Constitution is often invoked as a foundational symbol rather than as a normative source with independent legal authority. Although Article 119(1) of the 2013 Constitution (as amended in 2025) declares that “*the Constitution is the fundamental law of the Socialist Republic of Vietnam and has the highest legal force*”² in practice it functions more as a political symbol than as a binding legal source subject to active interpretation. In such a context, how should one conceptualize the legal effect of constitutional provisions? Can the idea of a “living constitution” provide an alternative mode of understanding—one that enables constitutional meaning to be responsive, contested, and contextually grounded?

This article seeks to interrogate these questions by examining both the theoretical foundations and the practical implications of adopting a living constitutional perspective in Vietnam. Through comparative insights and normative analysis, it aims to articulate why and how constitutional meaning must evolve alongside the society it governs.

¹ Mark Sidel, ‘Law Reform in Vietnam: The Complex Transition from Socialism and the Rule of Law’ in Penelope Nicholson and Pip Nicholson (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (ANU Press 2005) 127–144.

² *Constitution of the Socialist Republic of Vietnam 2013 (as amended by Resolution No 203/2025/QH15 dated 16 June 2025)*, art 119(1).

2 METHODOLOGY

While the article primarily follows a normative and comparative analytical method, it also reflects an interdisciplinary orientation, drawing from constitutional theory, jurisprudence, and legal policy. The comparative dimension relies on jurisdictional case studies (Germany, South Korea, the U.S.), selected based on their relevance to the Vietnamese context—either because of shared civil law traditions (Germany), democratic transitions (South Korea), or rich theoretical debates on interpretive methods (the U.S.).

Further, the Vietnamese legal landscape is examined through a doctrinal lens, informed by statutory review, judicial practice (or the lack thereof), and academic scholarship. Sources include national journals (e.g., *Legal Studies Journal*, *Political Theory Review*), international academic literature (e.g., Strauss, Scalia, Fallon), and constitutional case law. This article further draws on recent comparative constitutional scholarship in Asia, particularly those addressing how socialist or post-authoritarian systems adapt constitutional interpretation without strong judicial review mechanisms. Such contexts reveal alternative pathways to constitutional adaptability through informal norms, legislative reinterpretation, or academic discourse.³

Future empirical research (as noted in the conclusion) may involve qualitative interviews, legal practitioner surveys, and content analysis of National Assembly interpretive resolutions or court decisions referencing the Constitution.

3 THEORETICAL FRAMEWORK: THE LIVING CONSTITUTION

The concept of a "living constitution" occupies a central place in contemporary constitutional theory. *It posits that the constitution is not a static legal artifact fixed at the moment of its ratification, but a dynamic framework that must be continuously interpreted in light of contemporary societal needs, values, and challenges.* This dynamic approach to constitutional meaning aligns with the Vietnamese constitutional principle that “the State is organized and operates under the Constitution and the law, and governs society

³ See Ngoc Son Bui and Mara Malagodi (eds), *Asian Comparative Constitutional Law, Volume 1: Constitution-Making* (Hart Publishing 2023); Rehan Abeyratne and Ngoc Son Bui (eds), *The Law and Politics of Unconstitutional Constitutional Amendments in Asia* (Routledge 2021).

by the Constitution and the law,” as enshrined in Article 8(1) of the 2013 Constitution.⁴ However, without interpretive flexibility, this principle risks being reduced to a formalistic declaration rather than a basis for responsive legal governance. This idea diverges sharply from more rigid interpretive traditions such as originalism and textualism, which insist on anchoring constitutional meaning either in the intentions of the framers or in the plain language of the text as understood at the time it was adopted.

Originalism, particularly influential in American constitutional thought, seeks fidelity to the “original meaning” of constitutional provisions. As Justice Antonin Scalia argued, the role of judges is not to update the Constitution but to apply it as it was originally understood, thereby ensuring stability and judicial restraint. However, critics point out that such an approach may render constitutional law unresponsive to new social realities and evolving norms of justice.⁵ Textualism, while distinct, similarly limits interpretation to the semantic content of the text, excluding broader contextual or purposive considerations.⁶

The living constitution approach responds to these limitations by foregrounding the role of time in shaping legal meaning. It recognizes that constitutional norms cannot remain relevant if interpreted in isolation from the society they govern. Law is not merely a set of rules but a living institution embedded in history, culture, and political transformation.⁷ The passage of time alters the social meanings of constitutional terms, reframes the problems they address, and introduces new dimensions of justice and legitimacy that could not have been foreseen by the drafters. In Asian contexts, the living constitution approach must grapple with additional constraints such as dominant party control, weak judicial independence, and enduring postcolonial legacies. Recent research shows that even in the absence of strong judicial review, constitutional meaning can evolve through informal pathways such as legislative reinterpretation, party discourse, and normative shifts in legal academia and public reasoning. These dynamics are particularly relevant for socialist legal systems like Vietnam’s, where formal

⁴ *ibid*, art 8(1).

⁵ Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press 1997).

⁶ John F Manning, ‘Textualism and the Equity of the Statute’ (2001) 101 *Columbia Law Review* 1.

⁷ David A Strauss, *The Living Constitution* (Oxford University Press 2010) 35–38.

constitutional amendment is infrequent, but socio-political change is rapid and multilayered.⁸

Importantly, the legitimacy of a constitution in a changing society may depend less on its formal continuity than on its capacity to adapt.⁹ In this view, interpretive flexibility is not a threat to constitutional authority, but a condition of its endurance. A living constitution does not abandon textual fidelity; rather, it treats the text as a starting point for interpretation, not its endpoint. It invites legal actors—judges, scholars, legislators, and citizens—to participate in an ongoing dialogue about the values that the constitution embodies and the ways those values must be applied in a dynamic social context.¹⁰

This theoretical framework, while contested, offers a powerful lens through which to reconsider how constitutional meaning is constructed, maintained, and transformed over time. In legal systems like Vietnam's, where constitutional interpretation remains largely undeveloped and institutionally constrained, the living constitution model presents not only a conceptual alternative but also a normative imperative for renewal.

4 COMPARATIVE PERSPECTIVE: JUDICIAL CONSTITUTIONALISM IN ACTION

In addition to the three jurisdictions under close analysis (Germany, South Korea, and the United States), constitutional practices in Greater China, including the PRC, Hong Kong, Macau, and Taiwan, illustrate how legal systems adapt constitutional meaning through mechanisms other than judicial review. Taiwan's Council of Grand Justices, for instance, plays a crucial quasi-constitutional function. Meanwhile, in Mainland China, constitutional interpretation often takes place through intra-party resolutions, administrative regulation, and legal scholarship. These systems reveal pluralistic modes of constitutional evolution that may offer instructive parallels for Vietnam.¹¹

⁸ See John Gillespie and Albert H.Y. Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge 2010); Lynette J. Chua, David M. Engel and Sida Liu (eds), *The Asian Law and Society Reader* (Cambridge University Press 2023).

⁹ RH Fallon Jr, *The Dynamic Constitution* (Harvard University Press 2024).

¹⁰ Aileen Kavanagh, 'The Idea of a Living Constitution' in Jeffrey Goldsworthy (ed), *Interpreting Constitutions: A Comparative Study* (OUP 2006) 125–148.

¹¹ See Ngoc Son Bui, Stuart Hargreaves and Ryan Mitchell (eds), *Routledge Handbook of Constitutional Law in Greater China* (Routledge 2022) chs 8, 9, 13.

The notion of a living constitution has found its most concrete institutional expression in the practice of constitutional courts. In jurisdictions with strong traditions of judicial constitutionalism, courts have served not merely as guardians of textual fidelity but as active agents in reinterpreting constitutional norms to address contemporary challenges. Three case studies—namely the United States, Germany, and South Korea—offer valuable insights into how dynamic constitutional adjudication can function in practice.

5 THE UNITED STATES: CONSTITUTIONAL EVOLUTION THROUGH JUDICIAL INTERPRETATION

In the United States, the Supreme Court has long operated without a specialized constitutional court, yet it has developed a rich tradition of constitutional reinterpretation through landmark rulings. In *Griswold v Connecticut* (1965), the Court recognized a constitutional right to privacy implicit in the "penumbras" of the Bill of Rights.¹² This reasoning laid the groundwork for subsequent decisions, including *Obergefell v Hodges* (2015), which extended the constitutional guarantee of equal protection to same-sex marriage.¹³ These cases exemplify the Court's willingness to read enduring principles in light of evolving societal values, despite significant political contestation.¹⁴

6 GERMANY: CONSTITUTIONAL IDENTITY AND THE ROLE OF THE FEDERAL CONSTITUTIONAL COURT

Germany offers a more formalized model of judicial constitutionalism. The Federal Constitutional Court (Bundesverfassungsgericht, or BVerfG) possesses explicit authority to interpret the Basic Law (Grundgesetz) and has played a pivotal role in shaping German constitutional identity. In the *Lüth* case (1958), the Court held that constitutional rights have "radiating effects" (Ausstrahlungswirkung) on private law, thereby embedding human dignity and free expression into all areas of legal life.¹⁵ More recently, in cases such as the *Right to be Forgotten II* decision (2019), the BVerfG has

¹² *Griswold v Connecticut* 381 US 479 (1965).

¹³ *Obergefell v Hodges* 576 US 644 (2015).

¹⁴ *Strauss* (n 4) 5–9.

¹⁵ *Lüth*, BVerfGE 7, 198 (1958) (Federal Constitutional Court, Germany).

extended constitutional protection into the digital sphere, balancing personal autonomy with informational freedom in a rapidly changing technological environment.¹⁶

7 SOUTH KOREA: SOCIALLY ENGAGED CONSTITUTIONAL ADJUDICATION AND LIVING CONSTITUTIONALISM

South Korea's Constitutional Court presents yet another example of an institution that embraces living constitutionalism through a socially engaged adjudicatory function. Since its establishment in 1988, the Court has addressed issues that reflect deep societal transformation. In cases involving labor rights, digital surveillance, and emergency powers, the Court has consistently applied constitutional principles to protect fundamental rights in new and complex contexts.¹⁷ Its decisions during the COVID-19 pandemic, for example, demonstrate a careful balancing of public health imperatives with individual freedoms, illustrating the capacity of constitutional jurisprudence to remain both principled and responsive.¹⁸

For Vietnam, these examples suggest that constitutional meaning is not inherently self-evident nor permanently fixed in the constitutional text. Rather, it is shaped, refined, and continuously negotiated through institutional mechanisms of interpretation. The absence of a constitutional court or judicial review mechanism in Vietnam has contributed to a static understanding of constitutional norms and limited the transformative potential of constitutional law. Instead of an independent constitutional court, Vietnam vests the authority to interpret the Constitution in the Standing Committee of the National Assembly, as provided in Article 74(2) of the 2013 Constitution.¹⁹ However, this interpretive function remains primarily political, episodic, and lacks the legal rigor and institutional independence found in judicial bodies such as the Federal Constitutional Court of Germany or the Constitutional Court of South Korea. This divergence in

¹⁶ *Right to be Forgotten II*, BVerfG, Judgment of 6 November 2019 – 1 BvR 276/17; Donald P Kommers and Russell A Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edn, Duke University Press 2012) 55–62.

¹⁷ Sophia Wasti, Hajeong Lee & Hannah Kim, 'South Korea's Health Misinformation Response during COVID-19: A Narrative-Thematic Analysis' (2025) *Asian Bioethics Review* (open access) <https://link.springer.com/article/10.1007/s41649-024-00323-3>

¹⁸ Kyong-Whan Ahn, 'The Korean Constitutional Court and Social Change: Activist or Facilitator?' (2001) 4 *Singapore Journal of International and Comparative Law* 1, 7–14; Dae-Kyu Yoon, 'South Korea's Constitutional Court and Its Role in Democratization' (2005) 36 *Columbia Journal of Transnational Law* 1, 23–27.

¹⁹ *ibid*, art 74(2).

institutional design explains why the idea of a “living constitution” is judicially actionable in those countries, while remaining largely symbolic in Vietnam. If the Vietnamese legal system seeks to develop a living constitutional culture, it must consider institutional reforms that allow for independent, reasoned, and context-sensitive interpretation of the Constitution. Such a shift would not only strengthen constitutional legitimacy but also align legal governance with the complexities of a rapidly changing society.

8 THE VIETNAMESE CONTEXT: STATIC CONSTITUTION IN A CHANGING SOCIETY

Despite notable advancements introduced by the 2013 Constitution, including stronger commitments to human rights, the rule of law, and democratic values, the effective legal force of constitutional provisions in Vietnam remains limited due to institutional and interpretive underdevelopment. Crucially, Vietnam lacks an independent constitutional adjudicatory body such as a constitutional court, which deprives the system of a formal mechanism to clarify constitutional meaning, resolve normative conflicts, and adapt constitutional principles to contemporary challenges.²⁰

In practice, constitutional interpretation is delegated to the Standing Committee of the National Assembly, as stipulated by the Law on the Organization of the National Assembly.²¹ However, this process remains largely political, opaque, and infrequently applied. The Supreme People’s Court, although the highest judicial authority, unlike in the United States, has no constitutional jurisdiction and rarely invokes constitutional norms in its reasoning.²² As a result, the Constitution is often treated as a symbolic charter rather than a binding source of law with direct normative authority. The absence of constitutional adjudication is not unique to Vietnam. Other Asian jurisdictions have experienced similar institutional gaps, yet some have developed mechanisms of

²⁰ NV Nguyen, ‘The Constitutional Protection Mechanism and Issues Raised in Vietnam Today’ (2025) 2 *Legal Profession Review* 18.

²¹ PH Dang, ‘The Interpretive Function of the Standing Committee of the National Assembly Regarding the Constitution, Laws, and Ordinances’ (2019) 3 *Political Theory Review* 32.

²² VC Nguyen, ‘An Overview of Constitutional Interpretation in the United States’ (2016) 17 *Legislative Studies Review* 52.

constitutional engagement through administrative courts, legal academia, or legal development initiatives supported by international cooperation.²³

This institutional vacuum reflects a deeper conceptual constraint — the persistence of a “rigid constitution” mentality.²⁴ This rigidity persists despite the constitutional principle that “state power is unified, with division, coordination, and control among state organs” as stated in Article 2(3) of the 2013 Constitution.²⁵ In the absence of an independent constitutional adjudication body, however, this requirement of internal checks remains formal rather than functional. Moreover, while Article 120 of the Constitution²⁶ outlines the procedures for constitutional amendments—including National Assembly deliberation and super-majority approval—these mechanisms reflect a centralized legislative model, leaving little room for interpretive evolution driven by judicial or societal engagement.

Constitutional provisions are frequently understood as static affirmations of political ideology rather than dynamic legal instruments capable of responding to social transformation. This static approach has hindered the legal system’s ability to engage with emerging societal demands. The COVID-19 pandemic, for example, revealed a range of novel constitutional questions concerning public health, digital privacy, data governance, and new forms of citizenship, which the Vietnamese legal framework was ill-prepared to address normatively.²⁷

Unlike jurisdictions such as France, where states of emergency are regulated by constitutional principles and subject to judicial oversight, Vietnam’s response has relied heavily on executive and administrative discretion, with limited constitutional framing or review.²⁸ This has raised legitimate concerns regarding the balance between public safety and fundamental rights. Meanwhile, calls for the recognition of digital rights, environmental constitutionalism, and socio-technological transformations have not been substantively incorporated into the interpretive discourse.²⁹

²³ See Gerald Paul McAlinn and Caslav Pejovic (eds), *Law and Development in Asia* (Routledge 2012), esp chs 1 and 6.

²⁴ DD Nguyen, ‘Interpreting the Constitution and the Law’ (2017) 1 *Legal Profession Review* 1.

²⁵ *ibid*, art 2(3).

²⁶ *ibid*, art 120.

²⁷ QM Le, ‘The Impact of the COVID-19 Pandemic on Human Rights and the Rule of Law in Vietnam’ (2022) 06 *Procuracy Science Journal* 50.

²⁸ THN Huynh, ‘State of Emergency under the Laws of the French Republic: Evocative Values for Vietnam’ (2023) 54 *Journal of Law and Practice* 42.

²⁹ MT La, ‘International Law on Limiting Human Rights During the COVID-19 Pandemic and Practical Applications in Selected Countries’ (2022) 22 *Industry and Trade Journal* 65.

In sum, the absence of an institutionalized interpretive mechanism and the dominance of declaratory constitutionalism have created a disjunction between the symbolic aspirations of the Constitution and its practical legal operation. Bridging this gap requires both structural reform — such as the establishment of a constitutional court or an equivalent body — and a paradigm shift in legal consciousness. Constitutional meaning must be understood as a dynamic and evolving construct that grows in tandem with the society it serves.³⁰

9 TOWARDS A LIVING CONSTITUTION IN VIETNAM

The argument for a living constitution in Vietnam is not grounded in abstract idealism, but in the pressing need to revitalize the Constitution’s normative function in a society marked by rapid transformation. Based on the systemic limitations discussed in Section IV—including the lack of institutional interpretation, the dominance of rigid legal thought, and the symbolic use of constitutional norms—this section proposes three concrete reform pathways: institutional innovation, legal education reform, and the cultivation of critical constitutional discourse.

While formal constitutional amendment remains a politically sensitive and procedurally rigid process, soft constitutional reform can begin through more modest, incremental pathways. Experiences from Asian jurisdictions show that academic debate, judicial training, and expert advisory bodies can help reinterpret constitutional principles in light of social change, even in the absence of institutional overhaul. This perspective allows reform to proceed within the current constitutional framework, while gradually building normative momentum for deeper transformation.³¹

9.1 Institutional reform: toward constitutional adjudication mechanisms

The absence of a constitutional court or equivalent adjudicative body is the most significant structural barrier to meaningful constitutional interpretation in Vietnam.

³⁰ TV Le, ‘The Need for Constitutional Interpretation in Vietnam Today: Legal Reality and Recommendations for Improvement’ (2024) 4 *Legal Studies Journal* 34.

³¹ See Lynette J. Chua, David M. Engel and Sida Liu (eds), *The Asian Law and Society Reader* (Cambridge University Press 2023), chs 6–7; Ngoc Son Bui and Mara Malagodi (eds), *Asian Comparative Constitutional Law, Volume 1: Constitution-Making* (Hart Publishing 2023), Introduction.

Despite the fact that the National Assembly and its Standing Committee are constitutionally empowered to interpret the Constitution, this power has been rarely exercised, and when it is, it lacks transparency and judicial rigor. The current model thus fails to meet the basic requirement of interpretive independence. This reform finds textual support in Article 119(2) of the 2013 Constitution³², which affirms that “*the National Assembly, its bodies, other state agencies and the entire people shall be responsible for defending the Constitution; the mechanism for defending the Constitution shall be prescribed by law.*” This provision provides a constitutional foundation for establishing an independent interpretive body, as part of the legal system’s commitment to protect the normative integrity of the Constitution.

The proposal to establish a constitutional court—or at minimum, a constitutional chamber within the Supreme People’s Court—is based on comparative insights and internal necessity. As seen in Germany and South Korea, such institutions do not undermine political stability but instead serve as stabilizers, ensuring that constitutional meaning evolves consistently and coherently. While some may question the feasibility of such reform in Vietnam’s political structure, it is worth noting that the idea of constitutional adjudication has been raised in Vietnamese scholarship and legal policy debates for more than a decade. A phased approach, starting with enhanced constitutional review powers within existing courts, could provide a politically viable and administratively manageable path forward.

9.2 Legal education reform: re-framing interpretive reasoning

The current model of legal education in Vietnam remains overly formalist, emphasizing codified text over interpretive theory and social context. This pedagogical framework has produced generations of legal practitioners and judges who treat the Constitution as a symbolic document rather than a source of actionable norms. Introducing the living constitution doctrine into the law school curriculum, particularly in constitutional law, legal theory, and jurisprudence courses, is essential to cultivate interpretive capacity. The constitutional right and obligation to pursue education, as stipulated in Article 39 of the 2013 Constitution³³, can be interpreted as including legal

³² *ibid*, art 119(2).

³³ *ibid*, art 39.

literacy and civic awareness, both of which are essential for fostering interpretive competence among future legal professionals.

This reform is feasible, as it does not require constitutional amendment or institutional overhaul. Law faculties can revise course content, incorporate comparative constitutional reasoning, and encourage case-based learning to shift interpretive focus from text to purpose, context, and principle. In particular, the COVID-19 pandemic has demonstrated how legal interpretation must be adaptive to emergency contexts, a lesson that should be embedded in legal training to prepare jurists for future crises.

9.3 Constitutional discourse: encouraging normative debate and critical commentary

The final pillar of reform lies not in formal institutions but in the broader epistemic community of law. In the absence of a constitutional court, academic constitutionalism can play a vital interpretive role. However, this requires a shift in the culture of legal scholarship: from passive doctrinal commentary to critical and normative engagement with constitutional meaning. This role for legal academia is consistent with Article 28 of the Constitution, which guarantees citizens the right to participate in the management of the State and society, and requires the State to facilitate such participation.³⁴ In the absence of a constitutional court, academic constitutionalism may thus function as a legitimate form of civic engagement in constitutional interpretation. Universities, legal journals, and professional associations should create platforms for sustained dialogue on constitutional interpretation, including the publication of annotated judgments, doctrinal critiques, and public legal education initiatives.

This reform is arguably the most immediately achievable. Encouraging constitutional dialogue requires minimal political cost but promises high normative impact. When judges, lawyers, scholars, and civil society actors engage in interpretive debate, they create social pressure and normative momentum for constitutional reform.

These three reform directions—judicial, educational, and discursive—are interdependent. Institutional reform without interpretive training leads to doctrinal stagnation; legal education without judicial channels renders theory impotent; and

³⁴ *ibid*, art 28(1)–(2).

discourse without institutional or educational support lacks authority. A living constitution is not the product of any one reform but the outcome of a sustained, multi-dimensional effort to make constitutional meaning responsive, grounded, and participatory.

10 CONCLUSION, LIMITATIONS AND FUTURE RESEARCH

This article has argued that Vietnam's constitutional framework, while textually modern, remains functionally static due to its lack of institutional mechanisms, interpretive culture, and academic engagement with constitutional meaning. This challenge is not unique to Vietnam. In many Asian jurisdictions, constitutional change is increasingly pursued through informal and hybrid mechanisms, ranging from legal education to epistemic communities and normative discourse, rather than through formal amendments. These soft reform pathways allow constitutions to evolve without triggering political disruption, and may offer a viable trajectory for countries like Vietnam.³⁵ By drawing on the theory of the living constitution and comparative examples from jurisdictions with active constitutional courts, it demonstrates that constitutional interpretation is not merely a technical exercise, but a condition for constitutional vitality and democratic responsiveness.

The Vietnamese Constitution, in its current form, oscillates between being a symbolic affirmation of political ideals and a neglected legal instrument. Without judicial interpretation, evolving rights claims—particularly in the context of digital governance, environmental crises, and public health emergencies—remain normatively unaddressed. As such, the article proposes three interrelated directions for reform: institutionalizing constitutional adjudication, reforming legal education to encourage dynamic interpretive thinking, and fostering a culture of critical constitutional scholarship.

Nonetheless, the analysis in this article faces certain limitations. First, it operates primarily within a normative-theoretical framework and does not offer an empirical account of how legal actors (judges, legislators, or citizens) in Vietnam engage with the Constitution in practice. Second, while comparative insights from Germany, the United

³⁵ See Rehan Abeyratne and Ngoc Son Bui (eds), *The Law and Politics of Unconstitutional Constitutional Amendments in Asia* (Routledge 2021); John Gillespie and Albert H.Y. Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge 2010), chs 2 and 8.

States, and South Korea provide valuable lessons, the transplantation of such models into Vietnam's unique political-legal system requires careful contextualization. Third, the paper assumes the political will for reform, which may not be forthcoming in the short term given Vietnam's strong tradition of centralized constitutional control.

Future research should address these limitations by adopting a more empirical approach, including field studies on constitutional reasoning in Vietnamese courts and interviews with legal professionals. It is also essential to explore how public discourse, legal mobilization, and civic constitutionalism can contribute to a bottom-up transformation of constitutional meaning. Comparative studies of constitutional change in other one-party or socialist-oriented states could provide further guidance on feasible reform trajectories. Ultimately, a living constitution is not simply one that adapts to change, but one that empowers the legal system to mediate between stability and progress, between authority and accountability, and between history and hope.

Although grounded in the Vietnamese case, the article contributes to broader debates on constitutional interpretation in non-liberal and socialist-oriented systems.

11 CONTRIBUTION TO THE LITERATURE

This article makes several distinct contributions to contemporary constitutional scholarship. First, it brings the theory of the living constitution into the context of a socialist-oriented legal system—specifically, Vietnam—where the absence of a constitutional court presents both theoretical and practical challenges. In doing so, it expands a debate traditionally confined to liberal democracies, offering a novel analytical framework for understanding constitutional evolution in hybrid or non-Western legal settings.

Second, the article bridges the gap between normative theory and practical reform. Rather than presenting abstract ideals in isolation, it grounds its analysis in the Vietnamese legal-political reality, proposing feasible and context-sensitive institutional reforms. This combination of conceptual depth and pragmatic orientation is still uncommon in Vietnamese constitutional literature, which often leans toward either doctrinal formalism or descriptive commentary.

Third, the article re-frames legal education not merely as a tool for professional training but as an essential component of constitutional development. By integrating

interpretive methods and critical constitutional theory into legal curricula, the article promotes a systemic view of education as part of the broader ecosystem that sustains constitutionalism.

Finally, it re-conceptualizes legal scholarship as an active site of constitutional meaning-making. In the absence of an independent constitutional court, the author proposes a model of “academic constitutionalism” in which scholars, journals, and law faculties engage in rigorous, public interpretation of the Constitution. This approach helps fill a critical gap in the literature on constitutional authority beyond the judiciary and contributes to a more pluralistic understanding of constitutional dialogue

12 IMPLICATIONS FOR POLICY-MAKING AND GOVERNANCE

This article holds important implications for multiple stakeholders in Vietnam’s evolving constitutional landscape.

For policymakers, it offers a road-map for initiating incremental constitutional reform without requiring immediate or radical institutional restructuring. By advocating for the establishment of interpretive chambers within the Supreme People’s Court or consultative bodies attached to the National Assembly, the article suggests legally and politically feasible entry points for strengthening constitutional adjudication. These mechanisms, while modest, could catalyze a broader shift toward institutionalizing constitutional interpretation within the legal system.

For legal educators, the article underscores the urgent need to integrate constitutional interpretation—particularly living constitutionalism—into the core curriculum of legal education. This reform does not necessitate sweeping legislative change but can be advanced through academic leadership and curricular innovation. By equipping future judges, lawyers, and civil servants with interpretive literacy, legal education becomes a proactive force in enhancing constitutional responsiveness.

For civil society and academic institutions, the article offers a normative foundation for reclaiming interpretive agency. In contexts where courts are structurally limited, legal scholarship and civic discourse can serve as alternative sites for constitutional meaning-making. This interpretive participation is normatively grounded in Article 25 of the 2013 Constitution, which guarantees citizens the rights to freedom of

speech, association, and assembly.³⁶ These rights provide a constitutional basis for fostering civil society's engagement in constitutional dialogue, even in the absence of formal judicial review. By promoting critical engagement with constitutional texts, academic institutions and civil society actors help cultivate a participatory and pluralistic constitutional culture—one that aligns with democratic aspirations even in the absence of fully liberal institutions.

In sum, these implications support a multi-level reform strategy that engages institutional, educational, and societal dimensions, paving the way for a more responsive and living constitutional order in Vietnam.

13 ETHICAL STATEMENT

This research was conducted in full compliance with academic ethical standards. It did not involve human participants, personal data, or any experimental interventions. All references and sources of information have been properly acknowledged. The author affirms that there are no conflicts of interest, financial or otherwise, that could have influenced the content or findings of this article. The author used AI-assisted tools solely for language polishing and stylistic refinement. No substantive ideas, arguments, or analysis were generated by AI.

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³⁶ *ibid*, art 25.

6. Fallon Jr RH, *The Dynamic Constitution* (Harvard University Press 2004).
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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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