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Public Discourse and Constitutional Change: A Comparison of Vietnam and Indonesia

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A recurring critique in the papers about the *2013 Constitution of the Socialist Republic of Vietnam* (2013 Constitution) in this Special Issue is that public discourse is shaping the reform agenda. Some commentators argue that public discourse is animating a transition from a Soviet-influenced authoritarian constitution to a more liberal incarnation that legally defines the interface between state and society. Others are less certain about the impact of liberal constitutional discourse, and argue instead that Confucianism and East Asian illiberalism are equally important discursive influences. Although differing in their normative emphasis, these accounts share a common view that public commentary is propelling the party-state toward some kind of constitutionally limited government. This transformation involves a shift from a constitution that coordinates state agencies, announces state ideology, and controls and elicits cooperation from subordinates, to one that also establishes legal limits to party and state power.

Despite unprecedented public discussion during the lead-up to the 2013 Constitution, commentators agree that reforms have been modest. Public calls for amendments that would have made the party and state legally accountable to the constitution were rejected. For example, the party leadership emphatically opposed constitutional oversight of the party, the separation of powers, a constitutional review council, legally enforceable guarantees of civil rights, and private land ownership. Nevertheless, many commentators remain optimistic that eventually the constitution will legally constrain party and state power. This faith in the capacity of public discourse to fundamentally change the conceptual underpinnings of the constitution raises fundamental questions. How does public discourse change deeply held constitutional preferences in authoritarian political spaces? What kinds of public discourse are the most persuasive in shaping law-making?

This article draws on neo-Habermasian scholarship[1] to analyze the interaction between public discourse and constitutional change. It then contrasts constitutional discourse in Vietnam with public discourse that fundamentally changed the Indonesian Constitution after the fall of President Soeharto in 1998. It argues that key

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1. See e. g. John S DRYZEK, *Foundations and Frontiers in Deliberative Governance* (New York: Oxford University Press, 2010) [Dryzek, *Foundations and Frontiers*]; Michael NEBLO, "Thinking Through Democracy: Between the Theory and Practice of Deliberative Politics" (2005) 40 Acta Politica 169.

preconditions for effective public deliberation are currently absent or constrained in Vietnam, suggesting that only modest constitutional changes are likely until the discursive environment changes.

I. THEORIZING PUBLIC CONSTITUTIONAL DELIBERATION

A burgeoning body of neo-Habermasian research shows that only particular types of discourse are likely to produce substantive constitutional change. Before turning to what constitutes effective public discourse, it is important to define what is meant by substantive change. The question here is whether the state has an instrumental and strategic commitment to constitutional change or a normative commitment to change.[2] Only a normative commitment, it is argued, distinguishes a state that is prepared to change deeply entrenched constitutional preferences from one that is merely modifying policies to appease critics. There is a key temporal difference between strategic and normative commitments. Although strategic constitutional change can eventually assume a normative force that influences the regime's thinking, studies suggest that this is a long-term process.[3]

What might a normative commitment to constitutional reform look like? Studies distinguish between states that are prepared to accept constitutions that increase the ruler's power from states that are prepared to accept constitutions that tie their hands. The first type of constitution uses coordination, a precommitment to rules, and the control of government agents to improve governmental functions.[4] The second type of constitution goes further and accepts that effective governance also includes legally enforceable limits to party and state power. Most governments are limited by élite power and even highly authoritarian states respond to public criticism.[5] A key question in distinguishing the first and second types of constitution is whether the state supports constitutional doctrines and practices that make the constitution the superior law.

One test for a normative commitment to the second type of constitution is whether or not a state has accepted legality, along with economic performance and national security, as a measure of regime legitimacy.[6] More specifically, has the government accepted some version of constitutionally limited government as a criterion for accessing their legitimacy? As the articles in this Special Issue reveal, there are many versions of a constitutionally limited government expressed in Vietnamese constitutional discourse. These range from Confucian-inspired constraints through to the liberal democratic norms proposed by the Petition 72 deliberators.

2. See John KANE, Hui-Chieh LOY, and Haig PATAPAN, "Introduction to the Special Issue: The Search for Legitimacy in Asia" (2010) 38(3) Politics & Policy 381; Steven LEVITSKY and Lucan A WAY, *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (New York: Cambridge University Press, 2010).

3. See Tom GINSBURG and Alberto SIMPSER, "Introduction: Constitutions in Authoritarian Regimes" in Tom GINSBURG and Alberto SIMPSER, eds, *Constitutions in Authoritarian Regimes* (New York: Cambridge University Press, 2014) at 1.

4. See Kane, Loy, and Patapan, *supra* note 2; Levitsky and Way, *supra* note 2; Ginsburg and Simpser, *supra* note 3.

5. See Mark TUSHNET, "Authoritarian Constitutionalism: Some Conceptual Issues" in Ginsburg and Simpser, *Constitutions in Authoritarian Regimes*, *supra* note 3 at 36–52.

6. See Kane, Loy, and Patapan, *supra* note 2; Levitsky and Way, *supra* note 2.

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Turning to what constitutes effective public deliberation, Habermas argued that constitutions and laws are fashioned by morals and ethics synthesized from public exchanges and contests between lawmakers and society—a process he termed "communicative rationality".[7] Recent neo-Habermasian scholarship has loosened the reliance in orthodox deliberative theory on the liberal public sphere and "ideal speech" based on rational deliberative exchanges.[8] Scholars working in China, for example, show that effective deliberation can occur between citizens and lawmakers in distinctly illiberal spaces.[9]

Interest has also grown in the capacity of social media platforms, such as Facebook, Weibo, and personal blogs, to displace the public sphere model of deliberation with one based on a networked public sphere.[10] The diffusion of knowledge by social media has the potential to disrupt the traditional role of the media in providing the tacit assumptions that shape public debates.[11] Studies show that effective deliberation is not confined to "rational" and reflective discourse, as it also takes place through self-interest advocacy, certain kinds of rhetoric, and even the story-telling and emotive discourses found on social media.[12] Neo-Habermasian scholars propose three criteria for assessing effective public deliberation: (1) authentic unmediated preference formation; (2) inclusive communication that enables the main affected actors to participate; and (3) consequential communication that allows the exchange of tacit ideas and preferences.[13]

II. COMPARING CONSTITUTIONAL DISCOURSE IN VIETNAM AND INDONESIA

Despite cultural and political differences, there are enough similarities in the constitutional histories of Vietnam and Indonesia to make comparison meaningful. Following independence, the new governments in Vietnam and Indonesia sought to

7. Jürgen HABERMAS, *The Theory of Communicative Action* (Boston: Beacon Press, 1987) vol 2 at 164–97.

8. See Dryzek, *Foundations and Frontiers*, *supra* note 1; Neblo, *supra* note 1.

9. Beibei TANG, "Deliberating Governance in Chinese Urban Communities" (2015) 73 The China Journal 84.

10. Zizi A PAPACHARISSI, *A Private Sphere: Democracy in a Digital Age* (Cambridge: Polity Press, 2010); Adrian RAUCHFLEISCH and Mike S SCHÄFER, "Multiple public spheres of Weibo: A typology of forms and potentials of online public spheres in China" (2015) 18(2) Information, Communication & Society 139.

11. Niklas LUHMANN, *The Reality of the Mass Media,* translated by Kathleen CROSS (Oxford: Polity Press, 2000) at 65–66.

12. Carolyn HENDRIKS, *The Politics of Public Deliberation: Citizen Engagement and Interest Advocacy* (London: Palgrave Macmillan, 2011) at 3–17; John S DRYZEK, "Rhetoric in Democracy: A Systemic Appreciation" (2010) 38(3) Political Theory 319; Gary BRIDGE, "Reason in the City? Communicative Action, Media and Urban Politics" (2009) 33(1) International Journal of Urban and Regional Research 237.

13. Neo-Habermasian scholars argue that effective public deliberation requires a conversation in which the state refrains from setting discursive rules that control the epistemic content of the discussion. See Iris YOUNG, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000) at 23–25. The conversation must also be inclusive in the sense that the deliberation includes a norm of mutual respect that allows those who want to participate access to the conversation. *Ibid.* Finally, effective public deliberation presupposes reasonable participants who are willing to listen and enter into conversations to find solutions that resolve collective problems. Reasonable participants recognize that dissidence often produces socially useful insights. *Ibid.*

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discredit colonial rule and stamp their authority on the legal and constitutional system. In Vietnam the state replaced French colonial governance with laws and doctrines modelled on the Soviet legal system.[14] It became fashionable in Indonesia to speak of *hukum revolusi* (revolutionary law), which emphasized bureaucratic regulation at the expense of legislative governance and judicial review.[15] Although the New Order regime under President Soeharto, which came to power in Indonesia in 1965, was vehemently anti-communist, law functioned in similar ways in Vietnam and Indonesia.

Professor Raden Soepomo, the architect of the Indonesian 1945 Constitution, was strongly influenced by German fascist and Japanese imperial thinking.[16] He argued that there was no need to guarantee "*Grund-und Freibeitsrechte* [basic rights] of individuals against the state, for the individuals are nothing else than organic parts of the state, having specific positions and duties to realise the grandeur of the state."[17] He reimagined the legal system based on a traditional village community—a theory of state and law that became known as *integralism*. According to *integralism*, the state could never be at odds with the individuals comprising it because the state was integrated with the people. There was no need for a private legal sphere independent from the state, because the state constituted all the people.[18] The purpose of the state was not simply to regulate society through laws, but also to encompass it by becoming involved in all aspects of social life. This highly corporatist understanding of the relationship between state and society corresponds with Vietnamese constitutional doctrines, such as democratic centralism (*Tập trung dân chủ*), which centralized power in the party-state executive, and collective mastery (*Làm chủ tập thể*), which collapsed distinctions between state and society.[19]

Integralism dominated legal thought in Indonesia until the fall of President Soeharto in 1998. During this period, the executive exercised broad discretionary powers to substitute political policy for legal rights and principles enshrined in the constitution and legislation.[20] Courts largely ignored the constitutional hierarchy of laws, following instead the executive orders issued by government agencies.[21] Constitutional doctrines were slow to develop because the executive, rather than the courts and other legal

14. See PHAM Van Bach, "Le Non Voi Van De Phap Che Xa Hoi Chu Nghia [Lenin and Socialist Legality]" (1970) 3 Tap San Tu Phap 9.

15. See Daniel S LEV, *Legal Evolution and Political Authority in Indonesia: Selected Essays* (The Hague: Kluwer Law International, 2000) at 215–44.

16. See Simon BUTT and Tim LINDSEY, *The Constitution of Indonesia: A Contextual Analysis* (Oxford and Portland, Oregon: Hart Publishing, 2012) at 9.

17. HM Yamin, *Naskah Persiapan Undang-undang Dasar 1945* [*Preparatory Documents of the 1945 Constitution*] (Jakarta: Yayasan Prapanca, 1959) at 114.

18. See David REEVE, "The Corporatist State: the Case of Golkar" in Arief BUDIMAN, ed, *State and Civil Society in Indonesia*, Monash Papers on Southeast Asia, No 22, Centre of Southeast Asian Studies, Monash University, Melbourne, at 157–170.

19. See PHAM Van Dong, "Strengthen the Party Leadership, Carry Out the State's Managerial Functions and Develop the People's Right to Ownership in Order to Successfully Fulfil the 1977 State Plan" *Ho Chi Minh City Domestic Service* (22 January 1977) 4 *FIBIS East Asia Daily Service* (16) (25 January 1977) at K9, K11–K13.

20. See Daniel LEV, "Between State and Society", Working Paper No 2, Law Department, School of Oriental and African Studies, University of London (November 1992).

21. Daniel LEV, "Comments on the Course of Law Reform in Modern Indonesia" in Tim LINDSEY, ed, *Indonesia: The Commercial Court and Law Reform in Indonesia* (Sydney: Federation Press, 1999) at 48–67.

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agencies, determined the meaning of law.[22] Under the New Order, a tension developed between official pronouncements that Indonesia was a *rechtsstaat*—a legally limited state—and *integralism* that placed public policy above the constitution.

Beginning with the 1999 constitutional reforms, and accelerating with the far-reaching constitutional reforms of 2002, the shadow of Soepomo and the *integralist* state has faded. In 2002 the *Majelis Permusyawaratan Rakyat* (MPR or People's Consultative Assembly) produced a constitution that was three times longer than the 1945 Constitution. This completed a transformation from Soeharto's *integralism* to a law-based regime that established a powerful constitutional court that reviews the constitutionality of superior legislation, rules on disputed electoral results, and determines disputes among state institutions.[23]

III. PUBLIC DELIBERATION AND CONSTITUTIONAL CHANGE IN INDONESIA

To evaluate the role that public deliberation played in constitutional change in Indonesia, it is useful to draw on neo-Habermasian scholarship and analyze unmediated, inclusive, and consequential deliberation. The New Order regime promoted an all-embracing political ideology that treated opposition as sedition and prevented unmediated public deliberation. It exerted significant controls over the mass media through the rigid licensing and regimentation of professional and non-government organizations. Under such constraints, the Internet provided the *Reformasi* (reform) movement with the only relatively unmediated forum for public discussion about controversial constitutional reform.[24]

Commentators primarily attribute the fall of the New Order regime to the severe economic recession created by the East Asian Financial Crisis in 1998.[25] The New Order regime used economic performance to legitimize authoritarian rule. When the economy collapsed, the justification for *integralism* vanished. President Habibie, Soeharto's protégé and successor, sought to regain legitimacy by responding to demands for constitutional reform.[26] Although opposed to liberal constitutionalism, Habibie set in place some of the preconditions for wide-ranging reforms by loosening controls over public demonstrations, increasing judicial powers, and ratifying international human rights treaties on civil and political rights.[27]

22. See Sebastiaan POMPE, *The Indonesian Supreme Court: A Study of Institutional Collapse* (Ithaca, New York: Cornell University Southeast Asia Program Publications, 2005) at 425–67.
23. The Constitution of Indonesia (2009), art. 24C.
24. See David HILL and Krishna SEN, *The Internet in Indonesia's New Democracy* (New York: Routledge, 2005) at 17–30.
25. See Dewi Fortuna ANWAR, "Indonesia's Transition to Democracy: Challenges and Prospects" in Damien KINGSBURY and Arief BUDIMAN, eds, *Indonesia: The Uncertain Transition* (Adelaide: Crawford House Publishing, 2001) 1 at 3–16.
26. See Greg BARTON, "Indonesia: Legitimacy, Secular Democracy, and Islam" (2010) 38 (3) Politics & Policy 471.
27. See Tim LINDSEY and Achmad SANTOSA, "The Trajectory of Law Reform in Indonesia: A Short Overview of Legal and Systems and Change in Indonesia" in Tim LINDSEY, ed, *Indonesia: Law and Society*

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Calls to abolish *integralism* came from a broad social base.[28] Public intellectuals, retired state officials, religious organizations, academics, journalists, and social activists used the Internet and other modes of communication outside state control to convince the public about the need for constitutional change. Key demands for reform included a democratically-elected president, separation of powers, and constitutional protections for civil rights.[29] Two NGOs and a university law school prepared model constitutions that were widely circulated and discussed on the Internet. At a time when the government was still censuring the media and controlling public association, the Internet permitted discussion about reforms that proposed radical constraints over the powers that had been enjoyed by the executive for thirty-five years.[30] The Internet also fulfilled another neo-Habermasian requirement for effective deliberation, as it enabled a broad range of people to voice their concerns.

Although these are important preconditions for effective deliberation, neo-Habermasian research convincingly demonstrates that consequential deliberation is critical in communicating complex constitutional ideas and preferences. Reformers needed to change how the MPR delegates responsible for constitutional reform thought about governance. This conceptual transformation was difficult because most delegates spent their formative years under the New Order regime and had little understanding of, and sympathy for, constitutionally limited government. Empirical studies show that knowledge-intensive deliberation, such as constitutional reform, requires the communication of tacit knowledge to convey and generate new regulatory preferences.[31] This research suggests that constitutional reformers needed sustained and consequential dialogical exchanges with MPR delegates to communicate the tacit knowledge needed to understand complex constitutional arguments. Consequential discourse builds social consensus because it verifies whether one set of interpretations—and the responses they generate—are accurately directing the meaning of constitutional reform. The delegates also needed time to absorb, reflect upon, and integrate the new tacit knowledge into their assumptions about how to govern effectively.

Opening political space for wide-ranging discussion, President Habibie declared that the 1945 Constitution was no longer sacred (*sakti*) and untouchable. The influential Committee of Legal Experts (*Dewan Pakar Hukum*), chaired by Professor Romli Atmasasmita, invited MPR delegates to discuss constitutional change with members of the *Reformasi* movement.[32] MPR delegates engaged in sustained and consequential discussions with public intellectuals, NGOs, and religious organizations during the crucial initial deliberations leading up to the 1999 constitutional reforms.[33]

(Sydney: Federation Press, 2008) 1 at 2; Dwight Y KING, "The 1999 Electoral Reforms in Indonesia: Debate, Design and Implementation" (2000) 28(2) Southeast Asian Journal of Social Science 89.

28. See Anwar, *supra* note 25 at 6–8.

29. *Ibid*.

30. See Hill and Sen, *supra* note 24 at 17–30.

31. See Joanne ROBERTS, "Point-Counterpoint: Limits to Communities of Practice" (2006) 43(3) Journal of Management Studies 623; Beth A BECKY, "Sharing Meaning Across Occupational Communities: The Transformation of Understanding on a Production Floor" (2003) 14(3) Organization Science 312.

32. See Denny INDRAYANA, *Indonesian Constitutional Reform 1999–2002* (Jakarta: Kompas Books, 2008) at 171.

33. *Ibid* at 143–170.

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After months of discussion and reflection, a majority of the MPR delegates voted to replace *integralism* with a law-based constitution that limited government and protected basic civil rights. Although many constitutional principles were not comprehensively settled during the initial deliberations during 1999, the normally divided parties and groups in the MPR formed a consensus about the need to make the constitution legally binding to prevent legislative and executive agencies from violating constitutional norms and principles.[34]

What is instructive about the Indonesian reform is that public deliberation profoundly changed the constitution before the Habibie government passed laws formally liberalizing freedom of the press and public association. Later in 2002, during a second round of constitutional reform, the MPR voted for the creation of a constitutional court. After decades of abuses by the New Order regime, MPR delegates were strongly attracted to the idea that only an independent body of review could guarantee constitutional rights and protect citizens. They concluded that constitutional rights are meaningless without an independent body with powers to review the constitutionality of statutes and executive action.

The Constitutional Court quickly demonstrated that it was both competent and independent from government policy. Shortly after its creation in 2003, the Court controversially invalidated a statute that would have permitted prosecution of those accused of involvement in the 2002 Bali bombings.[35] More recently, it has overturned the legislative powers of the state over forest areas, allowing customary claims to large tracts of land.[36] Vigorous public support for the Constitutional Court expressed in the press and social media has protected it from powerful political enemies.

IV. CONTRASTING CONSTITUTIONAL DELIBERATION IN VIETNAM AND INDONESIA

Most of the constitutional ideas circulating in public discourse in Indonesia are also present in Vietnamese constitutional discourse. The different reform outcomes are attributable not to the arguments made for reform, but rather to the quality of public dialogue. Neo-Habermasian scholarship provides a useful framework for evaluating the effectiveness of public deliberation.

A. *Unmediated Communication*

Contrasting with President Habibie's declaration that the Constitution 1945 was not sacred, the party leadership in Vietnam sought to guide public discourse by setting the ground rules for the 2013 constitutional reforms. Many of the most controversial

34. See Koichi KAWAMURA, "Politics of the 1945 Constitution: Democratization and Its Impact on Political Institutions in Indonesia", IDE Research Paper No 3, Institute of Developing Economies (IDE-JETRO) (September) online: <http://ir.ide.go.jp/dspace/bitstream/2344/811/1/ARRIDE_ResearchPapers_No.3_kawamura.pdf>.

35. See Simon BUTT and David HANSELL, "The Masykur Abdul Kadir Case: Indonesian Constitutional Court Decision No 013/PUU-I/2003" (2004) 6 Australian Journal of Asian Law 177.

36. Constitutional Court Ruling No 35/PUU-IX/2012 in Relation to Forest Lands 2013.

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demands for reform were published in an obscure journal—*Tạp chí Tia Sáng* (Light Journal) —before the party leaders established deliberative guidelines.[37] Once the guidelines were promulgated, commentators observed a change in public debate. Public calls for reform that violated the guidelines, such as Petition 72, were publicly criticized by party leaders. Party mediation was not confined to public discourse; rather, commentators such as Vo Tri Hao[38] demonstrate that National Assembly debates were also tightly monitored. Delegates were prevented from considering the more controversial public calls for change.

B. *Inclusive Communication*

The scale of public discussion in Vietnam surpassed public involvement in the Indonesian constitutional debates. It is important, however, not to confuse the scale of deliberation, which promotes feelings of public empowerment and expectations for change, with the quality and effectiveness of deliberation. The National Assembly reported 26 million comments about the constitution emanating from 28,000 conferences and workshops around the country.[39] The scale of public involvement provoked much excited discussion about the emergence of constitutional awareness and political engagement. But questions remain about the quality of the deliberation that took place in the conferences and workshops.[40] Was it unmediated, allowing consideration of controversial reforms? Of equal importance is the question of what steps (if any) the National Assembly took to collate and assimilate the comments into constitutional deliberation.

Unlike the Indonesian *Reformasi* movement, which concentrated its discursive message by presenting a united front to the MPR, most Vietnamese deliberators acted independently of each other.[41] They rarely responded to other deliberators and showed little interest in cultivating the oppositional consciousness that formed around the *Reformasi* movement in Indonesia. In the few cases where Vietnamese deliberators presented a united position, such as Petition 72, the state responded with public criticism and police surveillance and intimidation.[42] For example, Nguyen Dinh Loc—a prominent member of the Petition 72 group, was compelled to publicly withdraw his support for liberal constitutional reforms.[43]

37. VO Tri Hao, "Integrating the Principle of Separation of Power into the Constitution Amendment 2013 within the "Keeping Face" Cultural Context" (Paper delivered at the 'Constitutional Debate in Vietnam' Conference, National University of Singapore, 19–20 March 2016) [unpublished paper].

38. *Ibid.*

39. BICH Lan, "Quốc hội thảo luận ở tổ về Dự thảo sửa đổi Hiến pháp 1992 [The National Assembly Discusses in Groups on the Draft Amendment of the 1992 Constitution]", *National Assembly of the Socialist Republic of Vietnam* (27 May 2013) online: National Assembly of the Socialist Republic of Vietnam <http://quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=5761>.

40. PHAM Duy Nghia, "From Marx to Market: The Debates on the Economic System in Vietnam's Revised Constitution" (Paper delivered at the 'Constitutional Debate in Vietnam' Conference, National University of Singapore, 19–20 March 2016) [unpublished paper].

41. Vo, *supra* note 37 at 9–11.

42. LE Toan, "Interpreting the Constitutional Debate Over Land Ownership in The Socialist Republic of Vietnam (2011–2013)" (Paper delivered at the 'Constitutional Debate in Vietnam' Conference, National University of Singapore, 19–20 March 2016) [unpublished paper].

43. *Ibid.*

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C. *Consequential Deliberation*

Constitutional change in Indonesia reveals the importance of forums where public deliberators engaged MPR delegates in sustained and consequential deliberation. In Vietnam, public deliberation primarily took the form of stand-alone commentaries followed by state-sponsored criticism of the more radical claims for constitutional change. There is little evidence of constitutional positions evolving in response to what others were saying. Consequential constitutional deliberation took place in academic forums, but commentators are doubtful whether lawmakers engaged in these debates or read the conference papers.[44] Unlike Indonesia, public deliberators were not given the face-to face meetings required to convey tacit knowledge about limited government to either members of the constitutional drafting committee or National Assembly delegates. Although many new ideas about constitutional reform circulated in the public space, drafters and delegates needed tacit knowledge, communicated through face-to-face exchanges, to change deeply embedded constitutional assumptions.

V. CONCLUSION

The comparison of public deliberation in Indonesia and Vietnam suggests limits to constitutional change in Vietnam. Although the party leadership sought public comments, it attempted to mediate discussions about constitutionally limited government. It sent a clear message that although the Constitution plays a role in promoting efficient governance, legally enforceable constitutional constraints over party and state power were unacceptable.

What does this response indicate about the willingness of the party leadership to accommodate public demands for limited government? There is evidence that the party leadership is seeking legitimacy through procedural legitimacy. For example, party resolutions direct police to follow procedural guidelines, and hold judges and state officials accountable for applying the law. This appeal to procedural legitimacy is consistent with a constitution that coordinates state agencies, announces state ideology, and controls and elicits cooperation from subordinates. What is missing is evidence that the party-state is seeking legitimacy by placing legal constraints over its own power. Quite the opposite, the party leadership has consistently opposed a constitution that functions as meta-regulation—ordering and subordinating party, executive, and legislative power.

This position contrasts with the Habibie government in Indonesia, which sought to bolster its poor public standing by portraying itself as the creator of a constitutionally limited government. The Habibie government needed new sources of legitimacy because the East Asian Financial Crisis had discredited performance legitimacy based on economic growth. A social consensus emerged that blamed economic failure on 'crony' capitalism linking the government with business conglomerates. Although similar claims are made about government–business collusion in Vietnam,[45]

44. Vo, *supra* note 37, at 22–23.

45. World Bank, *Corruption from the Perspective of Citizens, Firms, and Public Officials: Results of Sociological Surveys*, 2d ed (Hanoi: National Political Publishing House, 2013) at 39–60.

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the economy is not experiencing an economic shock comparable to the East Asian Financial Crisis.

Neo-Habermasian studies tell us that the diffusion of constitutional ideas into public discourse in Vietnam is an unreliable signpost of constitutional reform. Constitutional change does not inevitably follow public discourse. Without face-to-face public deliberation, and a government that is receptive to new sources of legitimacy, the assimilation of controversial ideas is likely to be slow and uncertain. The problem with slow transformations is that a constitution that cannot justify its own authority as superior law may eventually be dismissed as irrelevant.

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