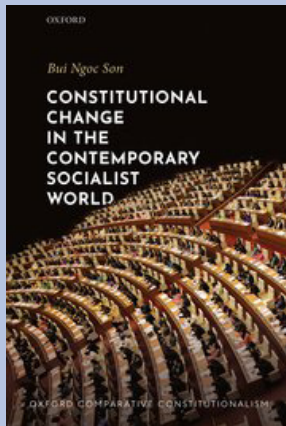


CONSTITUTIONAL CHANGE IN THE CONTEMPORARY SOCIALIST WORLD BY NGOC SON BUI

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Ngoc Son Bui's book, *Constitutional Change in the Contemporary Socialist World*, sheds light on a neglected yet relevant area for constitutional studies worldwide. Almost 20% of the global demographics, around 34% of the global gross domestic product, *circa* 25% of the worldwide pool of monetary reserves in central banks, a relevant chunk in the total international trade volume and, needless to say, the geopolitical relevance; all of these data support the contention that this constitutional grey area deserves scholarly attention (*China Statistics and Facts* 2024; *Foreign Exchanges Reserves in Selected Countries and Territories across the World from April 2024 to September 2024* 2024). Given this, the book aims to depict the similarities, differences and evolutionary trends in the constitutional identity and framework shared by the five classic Marxist-styled socialist countries (hereinafter, the Five). The basic argument is that the socialist constitutional framework goes beyond a fixed set of principles as the establishment engages in an evolutionary constitutional discourse, pragmatically moving between two polarized positions related to liberal democratic Western values: adoption and resistance. This leads to contextual interpretation to bridge the axiological gap.

Consequently, the author lays down a structural exposition of ideas following a sound two-section system: first, the general conceptual overview concerning the socialist constitutional identity and history;

second, a detailed account of the features characterizing each and all of the Five countries under the classic Marxist-styled socialist constitutional framework: People's Republic of China (PRC) (mainland China), Lao, Vietnam, Democratic People's Republic of Korea (North Korea) and Cuba.

At this point, it is worth noticing that the author refers to these Five countries within the socialist category. Still, those should be categorized within the area of the *umbra*, the accurately limited region of shadow cast by the sun. In my opinion, the author could and should have made clear that there is an area of *penumbra*, neither in the dark side nor under the bright sunlight, which includes the socialist-leaning authoritarian legal systems (ie Venezuela, Nicaragua, Bolivia), to mention just a few of them.¹ A comparison between these two sets of domestic legal systems is worth trying to get an insightful approach on how liberal democracies and the rule of law take a slowly degrading turn without a violent revolutionary uprising.

The methodological proposition in the book leads the author to provide a theoretical account of constitutional identity for all socialist countries and the singularities of each one. This purpose is fulfilled to the full extent. The theoretical approach is the main methodological instrument to forward such purposes, as the empirical and other resources do not add significantly to the aims drawn by the author. According to the traditional constitutional content structure (axiological, dogmatic, organic and dynamic), the author focuses mainly on the dynamic content concerning constitutional change. However, the author pivots to other relevant constitutional issues to make his point. The title itself sparks curiosity given the many trends developing in the small and full sample formed by the Five socialist countries, and the global mainstream of legal knowledge is only giving them marginal attention, if any. The title itself and the table of contents announce the need for an overall systematic structured approach to the legal landscape and dynamics in the so-called socialist world, not only for academia but also for practitioners and law students. That is to say, an insightful approach to this constitutional setting requires both a general theorization and a detailed case-by-case analysis.

The author assigns a *nomen* consistent with the main feature depicting each one of the Five countries and their constitutional framework: the universal model (Vietnam), the integration model (Lao), the reservation

¹ The grey area (or pink, for a better colour selection in a map layout) between the classic Marxist-styled socialism and the classic liberal democratic states is not a narrow one but a very broad ecosystem with different shades, forms and attitudes. All of these borderline states should be categorized as authoritarian, and they are a particularly interesting research subject of their own.

model (Cuba), the exceptional model (PRC) and the personal model (North Korea). Modelling is essential in comparative law as it helps to structure the different legal solutions to similar social challenges. Whether the model outline involves only one element for each category, it is helpful to single out the main feature in every model and which elements best fit for such a category. This is a suitable form for doing research in comparative law. Thus, using models to describe, explain, organize and assess cases and realities in social sciences, in general, and comparative law in particular, is heavy-duty as it requires deep knowledge of every case involved. In addition, many abilities are needed to distinguish differences and similarities, identify the highlighted features and label the categories and parameters for description, distinction, assessment and so on.

For the first part, the author put together a short list of hot topics in socialist constitutional law: parliamentary constitution-making; constitutional ideology (or the ideological instrumentalization of constitutional provisions); the role of the Communist Party (or the role the Communist Party assigns to constitutional provisions); mobilization; regulation of the economy (or the Communist Party regulatory approach to the economy); and legislative constitutional enforcement. This is a very important feature in the book because this pretty much sums up the actual doctrine and theoretical framework in socialist constitutional law. This also puts rigour in the analysis and sets the author apart from the simplistic approach characterized by the mantra that there is no law in socialist countries. The author calls this “comparative constitutional law beyond juris-centrism” (page 8). I would prefer to call it “stepping away from socialist legal fetishism”.

Bui covers additional topics in his book. To abbreviate, let us mention the most controversial and remarkable ones. First, the author argues that the established evolutionary trend in constitutional law from strict theory to comparative studies compels academia to take a deep dive into the so-called “constitutional experience in unusual settings” (pages 2, 5). In this context, the description and analysis of the constitutional framework in the remaining socialist countries is relevant.

Relevant circumstances are twofold: pragmatist and methodological. Pragmatist circumstances refer to these countries’ participation in the global quota of demographics, industrial infrastructure, consumer markets, financial importance and geopolitical significance. Methodological circumstances of relevance concern the inclusion of a pluralistic legal research attitude involving the formalistic setting

and the surrounding relevant data and methods from social, political, economic and cultural backgrounds.

In the second part, the author lays down one of the most interesting topics in the book, referring to the conceptual framework of legal transplants applied to socialist constitutional change: diffusion mechanisms and the different behaviours constitutional framers or reformers may adopt in response to the epistemic transnational influence on the legal domestic landscape from scholars, academic institutions or non-governmental organizations. The author successfully classifies these different behaviours through self-explanatory labels: convergent, resistant, aversive and engaging, similar to the John Nash role-playing dynamics that the socialist political elite has adopted at the moment (pages 31, 62, 244, 277, 298, 336).

Other major contributions to theory are the author's references to the role played by external geopolitical events, regional and international integration, local pressure and the perceptions of seriousness and steadiness of constitutional reform towards liberalization and open markets within the socialist legal principles and identity by the global pool of trade partners and investors.

Further details and analysis are needed regarding the contention of rights as signals to defeat the still-standing simplistic argument that socialist constitutional law should not be taken seriously. The ever-growing participation, dependence and reliance of these socialist economies in the global net of supply chains, markets for products and services, and financial instruments also make them particularly sensitive to liability in international commercial and investment arbitration as well. Needless to say, foreign courts in countries under the rule of law are also in the mix, reading the constitutions, legislation, court reports and cases that come their way through publishing products or online.

It is refreshing to watch how the author focuses on the evolving force of economic globalization and its influence on socialist constitutional change. He puts forward the examples of the World Trade Organization (WTO) and the Association of Southeast Asian Nations as major forces driving constitutional amendments in socialist Asia (Part II, chapter 4, "Vietnam") and the controversial example of Latin American integration in the case of Cuba (Part II, chapter 6, "Cuba"). As per the last item mentioned, I differ from the author's point of view: the most important foreign driving force for constitutional change in Cuba is not Latin American integration (albeit it has actual importance, as recent constitutional trends of mutual feedback in the region testify). The most important foreign driving force

is the need to signal to the European business community that Cuba is a trustworthy partner for trade and investment. Any institutional environment is helpful for this purpose: WTO, the United Nations Commission on International Trade Law, the Paris Club, the European Union (EU) human rights oversight system, courts and the like.²

In my view, international and foreign adjudication under the rule of law and due process adds pressure to the Five countries and prevents them from playing the victim of an alleged international capitalistic conspiracy against the proletariat. Debts must be paid, contractual obligations must be performed, goods for sale must be shipped and delivered, and exceptions must be alleged in courts according to the due process requirements. We know this; businesspersons know this; investors know this, and the socialist political elites in the Five countries also know this.

Along the same lines, the author sheds light on the constitutional framework of the Five with a very mature, serious approach, which is particularly useful for legal practitioners worldwide. However, this book is a scholarly product intended for study, analysis and theoretical discussion rather than a handbook for legal practitioners. Although, the latter would not be a bad idea considering the huge market of law firms invested and willing to learn about these grey areas that are currently reduced to a limited number of well-connected legal boutiques. The business dynamics in the global pool of legal firms also play an important role in raising interest in these “unusual” legal systems.

Returning to constitutional law, through the book chapters the author provides an overall organized layout, kind of a map with instructions on how to split the main categories into small pieces or sections to get a better understanding. This is the case, for instance, with the idea behind the function of constitutional change. Having exposed socialist constitutionalism and its drastic differences to liberal constitutions, the author puts forward a description and an explanation of the main roles constitutional amendments and replacement can play (ie the foundation of a new political regime, construction of a path to liberalization, raw abuse of power and progression to open markets). The full list may not be definitive, but the approach is appropriate to get into the specifics of the internal constitutional dynamics in the Five countries.

² We should never downplay the importance of constitutional signalling and the particular European business expectations from a Socialist country. It is significant enough to make the entire EU jump into a trade showdown with the United States, as a famous WTO dispute revealed: DS-176 US – section 211 Omnibus Appropriations Act of 1998; all the fuss just for the disputed ownership of a brand of Cuban rum.

Deep into the guts of the books, the author exposes a widespread conceptual polysemy around the term “new constitutionalism” (page 33). Bui refers to this as a concept stemming from contemporary law and development scholarship. However, in contemporary Hispanic constitutional scholarship, the idea of “new constitutionalism” refers to the new theoretical framework supporting constitutional change in Latin America for the new socialist-leaning wave of governments that has been taking place since the 2000s. This political movement, characterized by the return of the pendulum from the Chicago Boys’ neoliberalism to a soft-militant, non-guerrilla, electoral-access-to-power, leftist trend was tagged with the label “XXIst century-Socialism” (Venezuela in 1999, Argentina in 2003, Bolivia in 2006, Ecuador in 2007, and almost the rest of all Latin American countries with some exceptions). All of these countries started their movements for constitutional change with the theoretical assistance of Spanish constitutional advisers from the Universitat de Valencia Law School, who conveniently spread the new label to the Hispanic audience and readers. More studies are required to clarify how this dissonance came about and continues; however, it is likely due to the language barrier in academia, as very few contributions have been published in English by Hispanic constitutional scholars to clarify this issue.

Yet, in another example of insightful analysis, Bui argues that for understandable reasons the theory of “unconstitutional constitutional amendments” has neglected the socialist area, although these governments are driven to incorporate the approach due to raising concerns by the global pool of investors and trade partners (page 48). A more detailed study on the subject is required because formal constitutional change in socialist countries (via amendment or replacement) is jumping out of the frying pan into the fire: the need to effectively signal major change versus the fear of unleashing the hell of an uncontrolled transitional process. Either way, survival instincts may play a part.

Let us also praise the author’s efforts to single out the distinctive features of each one of the Five. An example of this is his characterization of constitutional change through the binary choice for the call to a constituent process following the distinction between *pouvoir constitué*, and *pouvoir constituant* (page 47). These valuable efforts also include the rightful assertion that popular participation in socialist constitutional change should be read as controlled participation, as “public engagement in the constitution-making process under the management of the Party-State” (page 51). However, there is always an entropy zone in the landscape of popular participation in the constitution-making process, and it depends on many circumstances, including artists, emigration,

political exile, domestic scholars, the civil society, even public opinion through official channels.

Overall, the author makes a sound contribution to the studies of constitutional experiences in “unusual settings”, particularly in socialist countries. His experience, insightful approach, structured exposition and guts to dive into controversy deserve the detailed attention of scholars and practitioners. The reading of this volume was, without doubt, a rewarding experience.

About the author

Johannes San Miguel Giralt is a Doctoral Researcher, University of Helsinki Faculty of Law. He was EDUFI Fellow 2024-2025. He received his doctoral degree from the University of Havana, 2012, and his Master of Laws in Trial Advocacy from the California Western School of Law, 2022. He also has law degrees from the Catholic University of Santiago de Guayaquil, 2021, and the University of Havana, 2004. He has also been a Senior Researcher, SENESCYT (Ecuador); European Parliament-certified legal expert in comparative law, 2018-2021; Expert in Legal French, Chambre de commerce et d'industrie de Paris, 2005-2007; Independent Counsel in WTO disputes DS 458, DS 467 Australia – Tobacco Plain Packaging; WTO Dispute Resolution Training, WTO/IBD, Buenos Aires, 2011; Legal Expert in Private International Law, Council of the Judiciary, Ecuador, 2018-2020. He is an author and scholarly researcher on comparative law, international arbitration, consumer protection and antitrust and an open-access editorial reviewer and graduate course third-party reviewer.

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