

Constitutional Reform as Neoliberal Trojan Horse: The Politics of New Constitutionalism in the Global South

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Article	Abstract
<p>Keywords: New Constitutionalism; Economic Constitution; Neoliberalism; Global South; Imperialism.</p> <p>Article History Received: 10 May, 2025; Reviewed: 22 May, 2025 Accepted: 25 Oct, 2025; Published: 25 Oct, 2025.</p>	<p>The increasing trend of constitutional reform in the global South for the last three decades has marked a shift from the state interventionism regime to free market neoliberalism. This article explores the concept of new constitutionalism which has been used in comparative constitutional law studies to understand the adoption of neoliberal legal norms through constitutional reform. It argues that the constitutionalization of neoliberal features cannot be separated from the context of the global imperialism hegemony which has an interest to establish a market-friendly legal framework in global South. Incorporating neoliberal legal norms into the economic constitution at the national level offers an effective way to lock in neoliberal value as a normative order for the state institutions and therefore, that place limitation of state intervention toward market.</p>



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Introduction

The increasing trend of constitutional reform in the global South in the last three decades has sparked an exciting debate surrounding the adoption of neoliberalism into economic constitution documents. As a consequence of the structural

adjustment program promoted by multilateral financial institutions such as the International Monetary Fund (IMF) and World Bank, countries in Latin America are taking steps to change some constitutional provisions intended to remove obstacles to foreign investment, deregulations, privatization and economic liberalization.¹ Some Provisions of the Colombian Constitution (1991)², Peruvian Constitution (1993)³, and Chilean Constitution (1980)⁴ include new features that define a strong legal framework and private property rights for the free market.⁵ The ratification of the North American Free Trade Agreement (NAFTA) which was the background to the abolition of Article 27 of the Mexican Constitution in 1992 led to the omission of protection to the collective land (*ejidos*) of indigenous farmers and public control over natural resources. This provision influenced the state's decision to allocate land for foreign investment in Mexico which, ironically, was the starting point of the land grabbing process which triggered the uprising of an armed movement by

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- ¹ See Roberto Gargarella, "Latin American Constitutionalism: Social Rights and the 'Engine Room' of the Constitution", *Notre Dame Journal of International and Comparative Law*, 4(1) (2014): 9–18, <https://scholarship.law.nd.edu/ndjicl/vol4/iss1/3>; Rodrigo Uprimny, "The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges", *Texas Law Review*, 89(7) (2011): 1587–609, https://www.academia.edu/69701214/The_recent_transformation_of_constitutional_law_in_Latin_America_trends_and_challenges; and Javier Couso, "The 'Economic Constitutions' of Latin America: Between Free Markets and Socioeconomic Rights" in Rosalind Dixon and Tom Ginsburg (eds.), *Comparative Constitutional Law in Latin America* (Edward Elgar Publishing, Cheltenham, 2017) pp. 343–359.
 - ² Cesar Rodriguez-Garavito, "Toward a Sociology of the Global Rule of Law Field: Neoliberalism, Neoconstitutionalism and the Contest over Judicial Reform" in Yves Dezalay and Bryant G. Garth (eds.), *Lawyers and the Rule of Law in an Era of Globalization* (Routledge, Oxon, 2011) pp. 156–182.
 - ³ Felipe Ford Cole, "Neoliberalism's Law in Peru: A Model" in Gillian MacNaughton and Diane F. Frey (eds.) *Economic and Social Rights in a Neoliberal World* (Cambridge University Press, Cambridge, 2018) pp. 41–58, <https://doi.org/10.1017/9781108284691.001>.
 - ⁴ Benjamin Alemparte, "Toward a Theory of Neoliberal Constitutionalism: Addressing Chile's First Constitution-Making Laboratory," *Global Constitutionalism* 11(1) (2022), pp. 83–109, <https://doi.org/10.1017/S2045381721000058>
 - ⁵ Detlef Nolte and Almut Schilling-Vacaflor, "Introduction: The Times they are a Changing: Constitutional Transformations in Latin America Since the 1990s" in Detlef Nolte and Almut Schilling-Vacaflor (eds.), *New Constitutionalism in Latin America Promises and Practices* (Routledge, Oxon, 2012) pp. 3–30, <https://doi.org/10.14201/alh.9356>.

indigenous farmers of Zapatista Army of National Liberation (EZLN) in Chiapas.⁶ In Indonesia, there are some pressures to limit the role of the state and include features of neoliberalism such as the principle of economic freedom and the constitutionalization of ownership rights through Article 33 of the Indonesian Constitution,⁷ 'given that the state's excessive control over economic activity is suspected of being responsible for the financial crisis.'⁸ This is line with the recommendations of economic liberalization from the World Bank, IMF, and Asian Development Bank who have long urged the government to divide state's monopoly in the hope that market competition will increase efficiency and investment.⁹ The trend to constitutionalize neoliberalism idea is a legal phenomenon which Stephen Gill calls 'new constitutionalism' which aims to discipline constitutional legal norms at the domestic level against neoliberal ideologies at the global level and to isolate the policy-making process from the democratic reach of society. The nature and structure of the constitution as the highest law constitutes an ideal platform that binds the commitment of neoliberal policies as constitutional imperatives and thus creates substantive limits on the capacity of the state to intervene in the market.¹⁰

This article discusses the concept of new constitutionalism developed by comparative constitutional law to understand the phenomenon of constitutional reform in various post-Cold War

⁶ Maria Teresa Vazquez Castillo, *Land Privatization in Mexico Urbanization, Formation of Regions and Globalization in Ejidos* (Routledge, New York, 2004), https://doi.org/10.4324/9780203327258?urlappend=%3Futm_source%3Dresearchgate.

⁷ See Bivitri Susanti, *Neo-liberalism and Its Resistance in Indonesia's Constitution Reform 1999 – 2002 a Constitutional and Historical Review of Indonesian Socialism and Neo-liberalism* (Dissertation Master of Law, University of Warwick, 2002); and Syahriza Alkohir Anggoro, *Reformasi Pasar dan Perubahan Konstitusi Ekonomi di Indonesia pasca Orde Baru* (Tesis, Universitas Brawijaya, 2019), <https://repository.ub.ac.id/id/eprint/177535/>.

⁸ Simon Butt and Tim Lindsey, *The Constitution of Indonesia a Contextual Analysis* (Hart Publishing, Oregon, 2012, Kindle Version) 250, <https://doi.org/10.5040/9781509955732>.

⁹ See Simon Butt and Fritz Edward Siregar, "State Control Over Natural Resources in Indonesia: Implications of the Oil and Natural Gas Law Case of 2012", *Journal of Energy & Natural Resources Law*, 31(2) (2013): 107–121, <https://doi.org/10.1080/02646811.2013.11435324>.

¹⁰ David Schneiderman, *Constitutionalizing Economic Globalization Investment Rules and Democracy's Promise* (Cambridge University Press, New York, 2008) pp. 2, <https://doi.org/10.1017/S0008197309000117>.

countries from the perspectives of class, power and global inequality. Stephen Gill defines new constitutionalism as the politico-judicial project associated with disciplinary neoliberalism and market civilization that seeks to lock in ‘the power of capital through a series of pre-commitment mechanisms, such as national constitution, multilateral trade agreements and judicial review.’¹¹ The concept of new constitutionalism has been used to understand why many global South countries and including post-Cold War socialist countries are undergoing constitutional reform by incorporating neoliberal legal norms in economic constitution documents.¹² This in turn allows for effective regulation to promote economic liberalization, deregulation, full protection of ownership rights and contract enforcement, downsizing the role of the Government, and privatization of public sector as a constitutional legal product which in fact very important for the sustainability of capitalist accumulation.

This article consists of two discussions. The first part of this article discusses the global and national context that triggered the emergence of new constitutionalism phenomena in several countries and links them to the orthodox revival of neoliberalism. The second part of this article discusses the legal implications of new constitutionalism on the provisions of the constitutional economy at the domestic level. This article uses the notion of “neoliberal legal norms” as a set of doctrines that conceptualize the form, mode and specific role of law in the neoliberal period.¹³ Neoliberalism should not only be understood as a 20th century intellectual movement

¹¹ The term ‘constitutionalism’ used by Stephen Gill comes from the word *to constitute* (formation of law) which interpreted broadly to include global and national contexts. See Stephen Gill, “New Constitutionalism, Democratization and Global Political Economy”, *Pacific Review*, 10(1) (1998): 23–38, <https://doi.org/10.1080/14781159808412845>.

¹² See, for example, Mark Tushnet, “The Globalisation of Constitutional Law as a Weakly Neo-Liberal Project”, *Global Constitutionalism*, 8(1) (2019): 29–39, <https://doi.org/10.1017/S204538171800028X>; and also Ioannis Glinavos, *Neoliberalism and the Law in Post Communist Transition the Evolving Role of Law in Russia’s Transition to Capitalism* (Routledge, Oxon, 2010), https://doi.org/10.4324/9780203856406?urlappend=%3Futm_source%3Dresearchgate

¹³ Ioannis Glinavos, “Neoliberal Law: Unintended Consequences of Market-Friendly Law Reforms”, *Third World Quarterly*, 29(6) (2008): 1095, <https://doi.org/10.1080/01436590802201055>; and also see David Singh Grewal and Jedediah Purdy, “Introduction: Law and Neoliberalism”, *Law and Contemporary Problems*, 77(4) (2014): 195–213, https://scholarship.law.duke.edu/faculty_scholarship/3141.

related to ideological beliefs in the free market or *laissez-faire* ideology,¹⁴ but also as a *juridical project* to rebuild the laws and institutions needed to restore the conditions of capital accumulation and the strength of the global economic elite.¹⁵ The juridical project of neoliberalism was officially codified in the Washington Consensus policy which formulated by John Williamson, covering fiscal disciplines such as cutting social spending, taxation reforms related to incentives, financial deregulation, trade liberalization, elimination of tariff barriers, legal protection of ownership and contracts, establishment of competitive free market regimes, and privatization of State-Owned Enterprises.¹⁶ This idea has been adopted by many global South countries in varied levels, especially through the agenda of legal reform which attached in the conditionality of financial loan from multilateral institutions.¹⁷ The formation and implementation of such policies are also closely monitored by global North, which in practice have participated in deploying ‘international law’ instruments as the *de facto* global economic constitution to dictate global South with regard to

¹⁴ In its purest form, neoliberalism develop its idea around the *laissez-faire* concept that sees market as a mechanism or institution that being abstracted, administered, and moved by its own internal law through the world of ideal transaction whose nature is voluntarily among individuals who act maximizing utility. Neoliberalism intellectual thinking can be traced from the rise of conservative political movement led by Margaret Thatcher and Ronald Reagan in the UK and USA in 1970s and 1980s, which marked the period of collision of embedded liberalism system, post-war Keynesian tradition, and the decadency of working class. In the context of law, the origin of this idea can be traced back from German *ordo-liberalism* intellectual movement; further developed by Mont Perelin Society which was established by Friedrich Hayek and Ludwig von Mises in 1947 and lately also contribute in an important part of Legal and Economic thinking pioneered by Ronald Coase and Richard Posner in 1980s. See David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, New York, 2007), <https://doi.org/10.1093/oso/9780199283262.001.0001>.

¹⁵ Honor Brabazon, “Introduction: Understanding Neoliberal Legality” in Honor Brabazon (ed.), *Neoliberal Legality Understanding the Role of Law in the Neoliberal Project* (Routledge, Oxon, 2017) pp. 2, <https://doi.org/10.4324/9781315544106>.

¹⁶ Richard Peet, *Unholy Trinity the IMF, World Bank and WTO Second Edition* (Zed Books, New York, 2009) pp. 14–16, https://doi.org/10.1111/j.1944-8287.2005.tb00285.x?urlappend=%3Futm_source%3Dresearchgate.

¹⁷ Tor Krever, “Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense”, *Third World Quarterly*, 34(1) (2013): 134, <https://doi.org/10.1080/01436597.2012.755014>.

the formation of domestic laws that facilitate the scheme of market liberalization.¹⁸

Method

This article uses the political economy of law approach in the Marxist legal literature to understand how neoliberal ideology influences constitutional structures.¹⁹ This approach challenges traditional understandings of the neutral nature of law from social, economic and political configurations and instead proposes an instrumentalist understanding that positions law as the result of the non-legal articulations in which it is implemented or fought. Through this approach, I will interrogate the neoliberal constitutionalization project as a product of the hegemonic power of global capitalism to construct constitutional rules compatible with capital accumulation.

Result and Discussion

A. New Constitutionalism: Global and National Contexts

The emergence of new constitutionalism as a vast and massive post-Cold War political project cannot be separated from the victory of liberalism *vis-a-vis* communism and the great events that marked the end of the bipolar order of the decade, marked by the collapse of socialist countries and the wave of capitalism crisis in 1997 in global South countries in Southeast Asia (Malaysia, Thailand, and Indonesia) and Latin America (Brazil, Argentina, Peru, and Mexico) which generally adopted interventionist economic constitution model.²⁰ In a provocative work entitled *The End of History and the Last Man* published in the 1990s, Fukuyama described the decade of the 1990s as a signal

¹⁸ Brian Tamanaha, "The Dark Side of the Relationship Between the Rule of Law and Liberalism", *NYU Journal of Law and Liberty*, 3(516) (2008): 546, <https://www.nyuill.com/volume-3/blog-post-title-two-487jn>.

¹⁹ See Marco Goldoni and Michael Wilkinson, *The Cambridge Handbook on the Material Constitution* (Cambridge: Cambridge University Press, 2023); and Grietje Baars, *the Corporation, Law and Capitalism a Radical Perspective on the Role of Law in the Global Political Economy* (Leiden: Brill, 2019), <https://doi.org/10.1163/9789004392861>.

²⁰ See, for example, Joel Hellman, "Constitutions and Economic Reform in the Post-Communist Transition" in Jeffrey Sachs and Katharina Pistor (eds.), *The Rule of Law and Economic Reform in Russia* (Colorado: The Harvard University Russian Research Center, 1997) 55–78; and Bojan Bugarcic, "Neoliberalism, Post-Communism, and the Law", *Annual Review of Law and Social Science*, 12(1) (2016): 313–329, <https://doi.org/10.1146/annurev-lawsocsci-110615-084545>.

to the superiority of the liberal side in all aspects of military, political, legal and economic aspects, which was marked by the collapse of the Soviet Union's empire, the transformation of Chinese's communism into socialism with chinese characteristic or state capitalism, and a decline in the political power of working class opposition in many European welfare states.²¹ Despite criticism arising from Fukuyama's hasty analysis, this view is in fact very dominant as a mainstream discourse in the intellectual world at the time, which sparks a world-wide confidence that liberal democracy and free markets were perhaps the most advanced political and economic order in human life. In the context of economic constitution, what is needed by free market regime is constitutional provisions that are subject to the principles and doctrines of the rule of law²² which produce a minimalist state that limits state intervention on the market.²³

The new constitutionalism project initiative is a strategy that seeks to internalize capitalist forms of legal and socio-economic relations through the domain of the economic constitution that is regulated based on the political economy interests of capital owners.²⁴ Through the elites in compradors, multinational corporations, international financial institutions, and civil society that financed to promote the values of liberalism, global South countries and post-socialist countries are encouraged to incorporate their domestic legal systems according to free market regimes by replicating foundational constitutional basis that well-known in the North. This move also

²¹ See Francis Fukuyama, *The End of History and the Last Man* (The Free Press, New York, 1992).

²² The rule of law doctrine in neoliberalism ideology refers to the thick rule of law concept that limits government's actions in economic activity. It refers to the point of view that emphasize law as general rule which oriented to protect individual freedom (especially economic freedom) at one point and on the other side, allowing individual to independently decide the use of that freedom. Relating to this, see generally Joel M. Ngugi, "Policing Neo-Liberal Reforms: The Rule of Law as an Enabling and Restrictive Discourse", *University of Pennsylvania Journal of International Law*, 26 (2005): 513–99, <https://scholarship.law.upenn.edu/jil/vol26/iss3/4>.

²³ David Schneiderman, "Constitutional Approaches to Privatization: An Inquiry Into the Magnitude of Neo-liberal Constitutionalism" *Law and Contemporary Problem*, 4(63) (2000): 85, <https://scholarship.law.duke.edu/lcp/vol63/iss4/4>.

²⁴ See Herlambang Perdana Wiratraman, "The Ascendancy of Governance in Thailand and Indonesia a Comparative Study of Governance Reform Driven by Neoliberal Mainstream Post Constitutional Amendment", <https://herlambangperdana.files.wordpress.com/2008/06/herlambang-the-ascendancy-of-governance1.pdf>.

creates a new ideological context for global trade by providing theoretical reasons for privileging the expansion of international law that can increase global competition by minimizing the costs for negotiating and enforcing agreements.²⁵ In Cutler opinion, what is called as the juridification of *lex mercatoria* regime is a logical consequence from the expansion of capitalist mode of production and international work distribution that expand the scope of creation of commercial activity types, trade agreements, legal subjects, and new sources of law.²⁶ Policy and legislation of national economic law—which previously were under the jurisdiction of the government and legislative body of a country—now must be formulized based on relative bargaining position and the capability of resources allocation by the state towards neoliberal process under the domination of international monetary institution.

As stated by Gill, the political project of constitutionalism law, for now, still operates in two interrelated jurisdictions. First, the jurisdiction of international law. Although it carries hegemonic political-economic interests, new constitutionalism is basically not a systematic project because it is scattered within various global constitutional frameworks that include multilateral agreements governed by the Bretton Woods organization,²⁷ such as structural requirements of the World Bank and IMF, NAFTA agreements and Maastricht 1992 agreements,²⁸ World Trade Organization (WTO)²⁹ and other forms of transnational legal regimes, designed to facilitate the mobility of trade and global capital.³⁰ According to Schneiderman, this kind of supra-national rule, in practice, can operate as a higher law than the state constitution, which sometimes need to harmonize the

²⁵ Claire Cutler, *Private Power and Global Authority Transnational Merchant Law in the Global Political Economy* (Cambridge University Press, Cambridge, 2003) 29, <https://doi.org/10.1017/CBO9780511550300>.

²⁶ *Ibid*, pp. 17–19.

²⁷ See Fabio Morosini and Michelle Ratton Sanchez Badin, *Reconceptualizing International Investment Law from the Global South* (Cambridge University Press, Cambridge, 2017), <https://doi.org/10.1017/9781316996812>.

²⁸ Miguel Poiars Maduro, “Reforming the Market or the State? Article 30 and the European Constitution: Economic Freedom and Political Rights”, *European Law Journal*, 3(1) (1997): 55–82, <https://doi.org/10.1111/1468-0386.00019>.

²⁹ Andrew Lang, *World Trade Law after Neoliberalism Re-Imagining the Global Economic Order* (Oxford University Press, New York, 2011), <https://doi.org/10.1093/ejil/chs045>.

³⁰ Stephen Gill, *Power and Its Resistance in the New World Order* (Palgrave Macmillan, Hamshire, 2008) pp. 138–139, <https://doi.org/10.1057/9780230584518>.

substance by amending the provisions of the economic constitution at the national level.³¹ Free market regimes at the international level constitute 'the power of neoliberal governance at the global level because it involves the state in adjusting national laws and policies under the business requirements formulated at the request of the business sector.'³² For example, the main points regarding the arrangement of General Agreements on Trade in Services (GATS), 'requires its signatory countries to "progressively" liberalize trade and domestic investment regimes that related to public service provision'³³ by significantly reducing the role of the state and opening the participation of the private sector to provide public services determined by the market's mechanism.³⁴ In Gill's analysis, the submission of global South countries and post-socialist countries to the global regime is binding and must be accompanied by fundamental adjustments within the country by establishing regulations that parallel with economic globalization.

Second, national jurisdiction through the agenda of economic constitution amendment. According to Gill, massive wave of constitutional reform in many global South countries and post-socialist transitional countries in Eastern Europe, normatively, provides a perspective in domestic level about the shift of state's interventionism regime to free market neoliberalism. One example of this can be found in the results of constitutional amendments that introduce the principles of balanced budget, central bank autonomy, freedom of contract, protection of private ownership, restrictions on Government monopolies and other neoliberal legal norms where

³¹ See David Schneiderman, "Investment Rules and the New Constitutionalism", *Law and Social Inquiry* 25(3) (2000): 757–787, <https://doi.org/10.1111/j.1747-4469.2000.tb00160.x>.

³² Claire Cutler, "New Constitutionalism, Democracy and the Future of Global Governance" in Stephen Gill (ed.), *Critical Perspectives on the Crisis of Global Governance Reimagining the Future* (Palgrave Macmillan, London, 2015) pp. 89, <https://doi.org/10.1057/9781137441409>.

³³ Isabella Bakker, "Toward Gendered Global Economic Governance" in Stephen Gill (ed.), *Critical Perspectives on the Crisis of Global Governance Reimagining the Future* (Palgrave Macmillan, London, 2015) pp. 163, <https://doi.org/10.1057/9781137441409>.

³⁴ See, generally, Deborah Z. Cass, *The Constitutionalization of the World Trade Organization: Legitimacy, Democracy and Community in the International Trading System* (Oxford University Press, New York, 2005), <https://doi.org/10.1093/acprof:oso/9780199285846.001.0001>.

economic policy does not result in strict state control.³⁵ In Indonesia for example, support to accommodate Neoliberal legal norms in the economic constitution are inseparable from the post-Soeharto economic and political configuration, the roles of the World Bank and the IMF, as well as include civil society who participated in transmitting the rule of law doctrine and the discourse of good governance as a panacea to overcome the 1997/1998 Southeast Asia economic crisis.³⁶ In short, in Gill's terminology, what new constitutionalism is trying to achieve is the creation of policies and products of domestic legislation aimed at facilitating the interests of capital owners.

The current global trend is towards new constitutionalism, therefore, part of a broader process whereby political and economic elites who act to serve the interests of the dominant class economy express support for liberal democracy and free markets as—borrowing Fukuyama's term—"the end of order" in the world government and at the same time trying to protect these interests from threatening socio-economic forces.³⁷ Hirschl stated that the emergence of constitutionalisation trend to neoliberal legal norms basically did not come from the need to democratize economic access that was initially controlled and monopolized by the state as commonly found in economic constitutions in the global South countries and socialist countries, in fact must be seen as a product of strategic interactions between political and economic elites who restore their power.³⁸ In certain situation, the factors of international political economy also can push domestic economic elites to advocate the constitutionalization of neoliberal legal norm as a way to put economic freedom and rules that allow the accumulation of transnational capital out of the reach of majoritarian control.³⁹ This is in line with the study by Dumenil and Levy which states that neoliberalism is also an elite political faction project in global North that seeks to secure the activities of capital accumulation that has suffered setbacks in the face

³⁵ Stephen Gill, *Globalization, Democratization, and Multilateralism* (St. Martin's Press, Tokyo, 1997) pp. 11, <https://doi.org/10.1007/978-1-349-25555-9>.

³⁶ See Herlambang Perdana Wiratraman, *Good Governance and Legal Reform in Indonesia* (Thesis, Mahidol University, 2006).

³⁷ See, Ran Hirschl, "The Political Origins of New Constitutionalism", *Indiana Journal of Global Studies*, 11(1) (2004): 108, <https://www.repository.law.indiana.edu/ijgs/vol11/iss1/4>.

³⁸ *Ibid*, pp. 72.

³⁹ *Ibid*, pp. 94.

of the challenges of expanding state intervention in the aftermath of the Second World War.⁴⁰ Both in its form and content, neoliberal economic constitution is basically not democratic, because it opposes the economic and political sovereignty of the people by limiting the capacity and responsibility of the state to develop economic policies which oriented to distributive justice that represent the interests of the lives of many people.

B. New Constitutionalism as Legal-Political Project

The project of new constitutionalism has the purpose to provide legal framework and institution that able to deepen the penetration of capital owners' power by strengthening legal rights and capital movement freedom into the domain of economic constitution. According to Gill, 'economic constitution provides an ideal platform to lock in neoliberal legal norms regarding economic policy preferences, institutional structures and other legal rights that articulate the relations of the state, market and society.'⁴¹ Gill claims, 'around 80 countries have formally adopted neoliberal economic constitution, and most of them also joined the WTO which accepts free market conditions,' with the adoption of a set of macro-economic policies dictated by the World Bank and the IMF.⁴² During the 1990s, economic constitutions that promoted neoliberal legal norms were introduced in many countries which provided a stimulus to the growth and stability of a market economy which, according to its supporters, was indispensable for improving the welfare of third world societies.

The legal political root of new constitutionalism, in its philosophical aspect, can be found in the tradition of liberal constitutionalism according to classic definition that developed under the mainstream of legal thinking tradition in Europe during the

⁴⁰ See Gerad Dumenil and Dominique Levy, *Capital Resurgent Roots of the Neoliberal Revolution* (Harvard University Press, London, 2004).

⁴¹ Ran Hirschl, "The Origins of the New Constitutionalism: Lessons from the 'old' Constitutionalism," in Stephen Gill and Claire Cutler (eds.), *New Constitutionalism and World Order* (Cambridge University Press, Cambridge, 2014) pp. 98, <https://doi.org/10.1017/CBO9781107284142.009>.

⁴² Stephen Gill, *Power and Its Resistance in the New World Order*, *Op.Cit.*, pp. 254.

enlightenment centuries.⁴³ Historically, the existence of a constitution is inseparable from its basic purpose of making monarchical political power subject to the rule of law, which will create a governance system based on the law.⁴⁴ Liberal constitutionalism is generally associated with the events of the bourgeois revolution in France where the constitution - understood in its formal sense as a social contract - should prioritize the principle of individual freedom as a reflection of the fundamental agreement between citizens and rulers so that the state protects these freedoms from the arbitrariness of the authorities.⁴⁵

The idea that the constitution must limit the role of the Government to find its relevance in the classic legal thinkings from John Locke and Jean Jacques Rousseau who perceive state power—even though it has the potential to be abused—as a *necessary crime* to protect the freedom enjoyed by individuals in their natural state.⁴⁶ In the ideal world of liberal constitutionalism, the guarantee of individual freedom must be constitutional because it is the highest agreement between the ruler and the individual owner of the right to freedom. The state must play the least role possible and leave market's power as the main driver of economic activity.⁴⁷ Market, according to this theory, is not an institution established by formal authority, but a historical and evolutionary entity that naturally emerge in the society that work based

⁴³ Rachel S. Turner, *Neo-Liberal Ideology History, Concepts and Policies* (Edinburgh University Press, Edinburgh, 2008) pp. 171–172, <https://doi.org/10.3366/edinburgh/9780748632688.001.0001>.

⁴⁴ Tor Krever, “The Rule of Law and the Rise of Capitalism” in Christopher May and Adam Winchester (eds.), *Handbook on the Rule of Law* (Edward Elgar Publishing, Cheltenham, 2018) pp. 190, <https://doi.org/10.4337/9781786432445.00018>.

⁴⁵ Brian Tamanaha, *On Rule of Law History Politics Theory* (Cambridge University Press, Cambridge, 2004) pp. 32, <https://doi.org/10.1017/CBO9780511812378>.

⁴⁶ See, for example, Vicki C. Jackson, “Accommodating an Old Constitution to the 21st Century State: of Law and Politics” in David Bilchitz and David Landau (eds.), *The Evolution of the Separation of Power Between the Global North and the Global South* (Edward Elgar Publishing, Cheltenham, 2018) pp. 114–143, <https://doi.org/10.4337/9781785369773.00006>.

⁴⁷ David Trubek, “The Political Economy Rule of Law: The Challenge of the New Developmental State”, *Hague Journal on the Rule of Law*, 1(1) (2009): 29, <https://doi.org/10.1017/S1876404509000281>.

on the logic of economic rationale.⁴⁸ Economic activity moves by itself without state's intervention as long as the required conditions for market mechanism, such as property ownership rights and contracts are enforced. The state is expected, for instance, to set a strong private law regime for the rights of ownership and ensure contractual obligation, and perform its coercive function to protect the operation of free market.⁴⁹ In contrary, state's role in economy will create distortion because it is assumed as not having sufficient information to coordinate prices and very vulnerable of being co-opted by the officials who act selfishly. Because of that, the state is idealized to play its traditional function in building legal and institutional institutions that allow free transaction between individuals that recognized by the law as autonomous subject in the market and refrain itself from being directly involved in determining the allocation of resources in economic activity. Liberal constitutionalism, thus, represents the separation between state and society with the role of constitutions that

⁴⁸ This point of view is established above classic assumption from naturalist law school by Adam Smith who regarded society's welfare can only be achieved through the mechanism of market who has natural self-regulating capability as an efficient system in generating decision for the allocation of resources as representation of the selfish nature of human. It stems from a firmly entrusted belief in the free market as the most effective means of coordinating socio-economic and political conditions in realizing economic freedom as the main prerequisite for prosperity. In neoliberal legal thought, market mechanisms are highly dependent on the rule of law doctrine which consists of abstract and universal basic rules that guarantee property ownership rights, contract enforcement and fair competition. These elements can only be implemented by preconditions where the state serves to protect individual economic freedom and reduce as much intervention as possible on economic activities. Relating to this, see Tor Krever, "Law, Development, and Political Closure Under Neoliberalism", in Honor Brabazon (ed.), *Neoliberal Legality Understanding the Role of Law in the Neoliberal Project* edited (Routledge, Oxon, 2017) pp. 22–42, <https://doi.org/10.4324/9781315544106-8>.

⁴⁹ Martin Krygier, "Transformations of the Rule of Law: Legal, Liberal, and Neo-" in Ben Golder and Daniel McLoughlin (eds.), *The Politics of Legality in a Neoliberal Age* (Routledge, London, 2017) pp. 19–42, https://doi.org/10.4324/9781315650784-2?urlappend=%3Futm_source%3Dresearchgate.

isolate society, including the economic activities of individual market, from state's intervention.⁵⁰

That classical legal scholarship approach is accepted as postulate for the new constitutionalism project to protect markets and individuals who conduct transaction in it from arbitrary intervention by the state or authorities. However, different from the traditional understanding of the concept of liberal constitutionalism which pays attention to the protection of individual rights, the new constitutionalism specifically provides protection towards capitalist rights through disciplining public institutions and isolating key aspects of economic activity from democratic control, and by increasing supervisory mechanisms related to the role of international financial institutions.⁵¹ In a more theoretical approach, the new political project constitutionalism law seeks to de-institutionalize the authority of state intervention to administer the economy and replace it with a market role with a formal guarantee of economic freedom, private property rights and freedom of contract according to the principle of *pacta sunt servanda*.⁵² According to Gill, likewise classical constitutionalism, the neoliberal economic constitutional framework is characterized by its minimalist nature in which the state is subject to private space and thus has limited legal competence to interfere in individual and market affairs.⁵³ In this context, there are three series of projects introduced by a new constitutionalism project to introduce amendments to economic constitutions in global South and post-socialist countries to achieve the ideal neoliberal constitutional order.

⁵⁰ Gavin Anderson, *Constitutional Rights after Globalization* (Hart Publishing, Oregon, 2005) pp. 110.

⁵¹ Nicola Short, "Leadership, Neoliberal Governance and Global Economic Crisis: A Gramscian Analysis" in Stephen Gill (ed.), *Global Crises and Crisis of Leadership* (Cambridge University Press, New York, 2012) pp. 51.

⁵² Nicolas M. Perrone, "Neoliberalism and Economic Sovereignty: Property, Contracts and Foreign Investment Relations" in Honor Brabazon (ed.), *Neoliberal Legality Understanding the Role of Law in the Neoliberal Project* (Routledge, Oxon, 2017) pp. 43–60, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3066904.

⁵³ Stephen Gill, "Market Civilization, New Constitutionalism and World Order", in Stephen Gill and Claire Cutler (eds.), *New Constitutionalism and World Order* (Cambridge University Press, New York, 2014) pp. 35.

First, reconfiguring the state towards the market by placing the Government in its main function to act as facilitator, and move in the context of market and market discipline. For Gill, the adjustment of government's roles towards the market in formal way will separate the economic policy making process from political interventions to achieve a pure policy solely based on economic considerations. 'State institutions are designed to compete with the private sector, for example, in the provision of public services, and behave, at least in theory, as if they were market participants.'⁵⁴ The international financial institutions such as the World Bank and IMF have a direct role in directing the legal reform agenda in state reconfiguration, that is by supporting global South through debt loans to support the establishment of market discipline.⁵⁵ This kind of loan is done through a binding contractual agreement between two subjects of international law, 'whereby the debtor is required to surrender his legal and economic sovereignty in order to obtain an amount of new financing needed to overcome the debt payment balance crisis.'⁵⁶ Although both are equal subjects before international law, this contractual relationship is materially asymmetrical because international financial institutions operate under the logic of interests and powers of the Norths.⁵⁷ According to Mattei and Nader, 'the basic needs embedded in neoliberal legal norms—through the World Bank and the IMF—are to maintain the demand for commodities needed by global North and open up new business opportunities in basic sectors in global South, especially in the sectors of natural resources.'⁵⁸

⁵⁴ Stephen Gill, *Power and Its Resistance in the New World Order*, *Op.Cit.*, pp. 171.

⁵⁵ Gabriel Garcia, "The Rise of the Global South, the IMF and the Future of Law and Development", *Third World Quarterly*, 72(2) (2015): 1–17, <https://doi.org/10.1080/01436597.2015.1108826>.

⁵⁶ Ugo Mattei and Laura Nader, *Plunder When the Rule of Law is Illegal* (Blackwell Publishing, Victoria, 2008) pp. 57, https://doi.org/10.1111/j.1467-9655.2008.00537_23.x?urlappend=%3Futm_source%3Dresearchgate.

⁵⁷ China Mieville, "The Commodity-form Theory of International Law" in Susan Marks (ed.), *International Law the Left Re-examining Marxist Legacies* (Cambridge University Press, Cambridge, 2008) pp. 92–131, <https://doi.org/10.1017/CBO9780511493720>.

⁵⁸ Ugo Mattei and Laura Nader, *Plunder When the Rule of Law is Illegal*, *Op.Cit.*, pp. 37.

In Gill's point o view, this scheme is also followed with promotion towards professional ideology such like the rule of law doctrine and the good governance doctrine as a mainstream topic that periodically will improve the Government's credibility upon conditions that guarantee total security to investor's interests.⁵⁹ Good governance became prerequisite for market liberalization where global South must adopt a set of principles and institutions that have been perfected in global North to achieve progress and stability.⁶⁰ Reconfiguring state's role is basically the main gate for applying new constitutionalism disciplines because they make the country safer for global capitalism by ensuring that national policies and laws will not interfere with private sector investment and trade.⁶¹ In Susanti's study on new constitutionalism in Indonesia, for instance, she noted that the reconfiguration of the state took place under the application of legal reform package introduced by IMF to change the judicial process towards economic transition. Through its *Letter of Intent*, IMF constructively mandates the establishment of a commercial court and business competition supervisory commission that separates the administration of the economy from the political process of the Government, and makes the country move in market discipline that oriented towards efficiency.⁶²

Second, the formation and expansion of liberal capitalist market. From theoretical point of view, this second scheme involve what is called by Soviet legal scholar, Evgeny Pashukanis, as legal

⁵⁹ See Stephen Gill, "Globalization, Market Civilization, and Disciplinary Neoliberalism", *Journal of International Studies*, 24 (1995): 903–910, <https://doi.org/10.1177/03058298950240030801>.

⁶⁰ Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, New York, 2004) pp. 249, <https://doi.org/10.1017/CBO9780511614262>.

⁶¹ Claire Cutler, "New Constitutionalism, Democracy and the Future of Global Governance," *Loc.Cit.*

⁶² Bivitri Susanti, 'Implikasi Globalisasi Terhadap Perubahan Kebijakan Pemerintah di Bidang Ekonomi, Politik dan Pembangunan', *Jurnal Konstitusi Ketenagalistrikan Pasca Putusan MK*, 1(3) (2005): 125, https://www.academia.edu/84866574/Implikasi_Globalisasi_Terhadap_Perubahan_Kebijakan_Pemerintah_Di_Bidang_Ekonomi_Politik_Dan_Pembangunan.

commodification.⁶³ What the new constitutionalism project wants to achieve by forming and expanding markets, according to Gill, is an amendment to the economic constitution that can accommodate the formation of policies and legislation products that commercialize commodities that have utility values according to market logic. In the realm of theory, legal commodification can be described as a process whereby the factors of production such as land, labor and so on are abstracted into the law as commodities which freely traded by equal legal subjects. According to Marxist' approach, the commodification of production factors is a historical development in capitalist system which born because it has a use value or benefit that can be converted into surplus value when exchanged.⁶⁴ Cutler added that the prerequisite needed for commodification is legal recognition to claim a value of the commodity by giving a legal subject, whether individual or corporation, a right to enjoy the added value obtained through an exchange.⁶⁵

The formation and expansion of capitalist market, in turn, will assume the needs for legal category that allow ownership rights to commodities and enforcement of contract that mediates the transaction process.⁶⁶ The conditionality imposed on the debting countries by the World Bank and the IMF in the structural adjustment program to establish natural resource privatization laws, for example, can only gain constitutional legitimacy if there are economic constitution provisions that capable of supporting the commodification of natural resources.⁶⁷ As the consequences, such structural prerequisite program provokes oppression that cause new

⁶³ See Michael Head, *Eygegy Pashukanis A Critical Reappraisal* (Routledge, Oxon, 2008), https://doi.org/10.4324/9780203945261?urlappend=%3Futm_source%3Dresearchgate.

⁶⁴ Rachel S. Turner, *Neo-Liberal Ideology History, Concepts and Policies*, *Op.Cit.*, pp. 195.

⁶⁵ Claire Cutler, "New Constitutionalism and the Commodity Form of Global Capitalism" in Stephen Gill and Claire Cutler (eds.), *New Constitutionalism and World Order* (Palgrave Macmillan, Hamisphire, 2008) pp. 47.

⁶⁶ *Ibid*, pp. 48.

⁶⁷ See Tor Krever, "The Legal Turn in the Late Development Theory: The Rule of Law and the World Bank's Development Model", *Harvard International Law Journal*, 52(1) (2011): 288–319, https://journals.law.harvard.edu/ilj/2011/02/issue_52-1_krever/.

social economic problems following the disappearance of the solid safeguard as a result of privatization policy.⁶⁸ The economic constitution must be interpreted broadly by legislators to support the provision of securing ownership rights over these natural resources and at the same time ensuring that the Government will not act arbitrarily to take ownership rights from legal subjects.

For example, constitutional protection to ownership rights combined with independent institutions to enforce them, is 'an effective way to form legislation products that able to accommodate the needs of capital owners and in turn give signal about the attractive investment climate conditions in the country.'⁶⁹ Establishing state intervention towards the economy as a constitutional duty, in Sunstein's view, is contrary to the traditional function of the constitution as the highest legal device that prevents abuse of power.⁷⁰ In his survey on the convergence of the idea of neoliberal economic constitution that adopted free markets and liberal democracies in global South countries and post-socialist countries, Sunstein rejected the idea that state intervention threaten private ownership rights and economic freedom, and potentially distorting the market's ability to regulate itself.

Economic constitution which designed to promote economic liberalisation can effectively prevent the emergence of legislation product that support private ownership rights that subordinated to the principle of social collectivism like the form of socialist economic constitution that promote communal ownership rights. Another example, a provision in the economic constitution that limit state's monopoly towards prominent production sectors may resulted in a legislation product that support privatization of state's company under

⁶⁸ See, for example, Roberto Gargarella, *Latin American Constitutionalism 1810 – 2010 Engine Room of the Constitution* (Oxford University Press, New York, 2013) pp. 151–155, <https://doi.org/10.1093/icon/mou009>.

⁶⁹ Cass R. Sunstein, "Constitutionalism, Prosperity and Democracy: Transition in Eastern Europe" *Constitutional Political Economy*, 2(3) (1991): 372, <https://doi.org/10.1007/BF02393136>.

⁷⁰ Cass R. Sunstein, *Free Markets and Social Justice* (Oxford University Press, New York, 1997) pp. 212–214, <https://doi.org/10.1093/oso/9780195102727.003.0001>.

the reason that the transfer of such company to private party will improve company's efficiency which directly effect economic growth and stability. The restriction of government's authorities, is also said, created transparent and accountable state bureaucratic and institutional conditions, that could eliminate the rent-seeking behavior in state bureaucrats and functionaries. In short, the tendency to expand constitutional restrictions on the role of the state through constitutional texts must be seen as a strategic step to isolate the market from Government intervention that can support the establishment of a legal framework for development, and thus reduce the state's position in influencing and regulating economic activities in real ways.

Third, prevent and protect market from distortion caused by democratic demands. The formation of neoliberal economic constitution as the supreme guideline to economic policy, said Gill, 'will limit democratic control (from the bottom) that has potential to threat central element of economic policy or regulation by locking the concept of governance in the future onto neoliberal accumulative framework.'⁷¹ Here, new constitutionalism is intended to isolate the policy and legislation products of neoliberal from the influence or resistance of the society by forcing, both internally and externally, the elimination of obstacles and protection of community's rights in

⁷¹ Gill uses Karl Polanyi's reading on the left-wing social movement which seeks to protect itself from policies that detrimental to the proletarian class which will later produce a compromise in the form of a welfare state in the aftermath of the second world war. In Gill's view, efforts to democratize economic access basically did not end with the victory of liberal capitalism after the cold war. New social movements which noted by scientists, for instance, was trying to advocate public from the wave of state-sponsored neoliberal policies. In a more general language, new constitutionalism seeks to encourage the state to protect the interests of capital owners from the threat of social movements such as anti-globalization movements, indigenous peoples' movements, peasant movements, and so on. According to Gill, one way to tame this kind of movement is to increase community participation that can reduce the potential for conflict by forming a hierarchical representation system. The existence of civil society that accepts donors from the World Bank, IMF, global North, and other international institutions, although it cannot be generalized just like that, has an agenda setting to localize community participation in the development in safe channels. See Stephen Gill, *Power and Its Resistance in the New World Order*, *Op.Cit*, pp. 79.

investment.⁷² By this way, legal political project of new constitutionalism only introduces liberal democratic model whose function is to delegate the dominant economic and political elite classes as legislator who act to facilitate the interest of market during the legislation process.⁷³

For example, the threat of democratic control according to Gill can be found in populist' demands towards the nationalization of foreign companies that control vital resource wealth carried by left-wing political forces and radical labor union organizations. Such claims are identified as a rejection of the rights of private ownership and the sovereignty of international capital that can be anticipated by a provision of economic constitution norms that are not designed to enable the state to meet these demands.⁷⁴ In his essay on new

⁷² Different from the concept of neoliberal economic globalization whose nature is top down, some progressive law scholars propose an opposing topic with what they call as globalization from below. Globalization from below is understood as a broad-based resistance movement that formulates an alternative legal framework through transnational advocacy networks and by populations which most disadvantaged by neoliberal policies. The counter-hegemonic globalization project can be seen as legal practice to oppose the neoliberal economic constitution, such as Chilean Constitution (1980) and Peruvian Constitution (1993) which were promoted by Pinochet and Fujimori authoritarian regime. Economic turmoil, democratic transition and political instability in Latin America during 1990s were preconditions that gave birth to several grassroots socio-political movements to support state intervention in the economy and promoting legal recognition of the collective rights of indigenous people and the rights of mother earth (*pancha mama*) as a legal subjects in the constitution. The counter-hegemonic globalization phenomenon can be found in the Bolivarian constitutions of Venezuela (1999), Ecuador (2008) and Bolivia (2009) which reflect the victory of left-wing populist politics in the neoliberal legal reform agenda. See, for example, David Schneiderman, *Resisting Economic Globalization Critical Theory and International Investment Law* (Palgrave Macmillan, New York, 2013) 15–16; and Boaventura de Sousa Santos and Cesar Rodriguez-Garavito, “Law, Politics and the Subaltern in Counter-Hegemonic Globalization” in Boaventura de Sousa Santos and Cesar Rodriguez-Garavito (eds.), *Law and Globalization from Below Towards a Cosmopolitan Legality* (Cambridge University Press, New York, 2005) 1–26; and Mark Tunshet, “The New “Bolivarian” Constitutions: a Textual Analysis,” in Rosalind Dixon and Tom Ginsburg (eds.), *Comparative Constitutional Law in Latin America* (Edward Elgar Publishing, Cheltenham, 2017) pp. 126–152, <https://doi.org/10.4337/9781785369216>.

⁷³ Herlambang Perdana Wiratraman, *Op.Cit.*, pp. 14.

⁷⁴ Robert Knox, “Law, Neoliberalism and the Constitution of Political Subjectivity: the Case of Organised Labour,” in Honor Brabazon (ed.), *Neoliberal Legality*

constitutionalism and post-colonialism, Fitzpatrick demonstrated how the 1993 Peruvian Constitution, which has historically had colonial economic experience, was designed to embrace a free market system aimed at accommodating US business interests, given Peru's experience of the potential for a relatively strong left-wing power before the coup to the administration of the democratically elected socialist revolutionary Salvador Allende and the nationalization of foreign company laws in the 1980s.⁷⁵ In a study about the amendments to the economic constitution in Canada, Schneiderman stated that the NAFTA agreement, which was essentially designed to free the protection of US products exported to the global North and South countries of the American continent, forced the Canadian parliament to revise the provisions in the economic constitution that resulted to the elimination of protection and subsidies for local products to achieve competitive prices.⁷⁶ Schneiderman also illustrated how the NAFTA requirements pushed the military junta administration of General Salinas in Mexico to amend the provisions of Article 27 of the 1992 economic constitution which abolished the so-called Calvo doctrine⁷⁷ that protected the communal lands of indigenous peoples

Understanding the Role of Law in the Neoliberal Project (Routledge, Oxon, 2017) pp. 92–118, <https://doi.org/10.4324/9781315544106-12>.

⁷⁵ Peter Fitzpatrick, “The New Constitutionalism: the Global, the Postcolonial and the Constitution of Nations,” *Law Democracy and Development*, 10(2) (2006): 1–20, <https://www.saflii.org/za/journals/LDD/2006/8.pdf>.

⁷⁶ David Schneiderman, “NAFTA’s Takings Rule: American Constitutionalism Comes to Canada”, *The University of Toronto Law Journal*, 46(4) (2006): 499–537, <https://doi.org/10.2307/825985>.

⁷⁷ Carlos Calvo’s doctrine is a classic legal doctrine that originated from Argentine legal experts at the end of the 19th century, Carlos Calvo. This doctrine arises in response to the strength of international capital which states that international capital is not entitled to the higher legal protection given to the host country than the protection provided by the local economic sector. This doctrine is inseparable from the experience of Latin American countries, based on the colonialism of the United States and European countries, to uphold its economic sovereignty without interference from other countries. According to Schneiderman, this doctrine underwent an expansion of meaning during the 1930s through the Mexican economic constitution and spread as one of the traditions of constitutional drafting in Latin American countries. Through the Mexican constitution, Calvo’s doctrine supports state control over resources and supports international capital withdrawals through law. Regarding Calvo’s doctrine and analysis of the economic constitution of Latin American countries, see David Schneiderman,

in Mexico.⁷⁸ Schneiderman identified that this amendment provoked the EZLN uprising in 1994 where the agreement entered into force.⁷⁹ By limiting democratic control relating to key aspects of life and neoliberal economic policies, the new constitutionalism project specifically gives privileges to the owners of capital as its main constituent, while at the same time limiting access to democratization of economic control or other threats that could potentially threaten the realization of hegemonic interests.⁸⁰

The ideal economic constitution in executing legal political project of new constitutionalism, thus, is economic constitution that support constitutional framework for market's economy.⁸¹ Constitution is fundamental media that capable to implement neoliberalism ideology because it represents the only acceptable way where government's and official's authorities can be limited.⁸² Neoliberal economic constitution basically treats market as constitutional order with autonomous rules, procedure, and institution that operate to protect the market's order from any political intervention.⁸³ In the neoliberal world, constitutional government is a limited administration and therefore through the application of these constitutional constraints, individual freedom, at least normatively, can be guaranteed. The constitutionalization of neoliberal legal norms in practice is achieved by incorporating the values of economic

Constitutionalizing Economic Globalization Investment Rules and Democracy's Promise, *Op.Cit*, pp. 161–163.

⁷⁸ Jane Kelsey, "Global Economic Policy-Making: A New Constitutionalism?", in Jane Kelsey (ed.), *International Economic Regulation* (Routledge, London, 2002) pp. 547.

⁷⁹ David Schneiderman, "Investment Rules and the New Constitutionalism", *Op.Cit*, pp. 765–767.

⁸⁰ Christopher May, "The Rule of Law as the Groundnorm of New Constitutionalism" in Stephen Gill and Claire Cutler (eds.), *New Constitutionalism and World Order* (Cambridge University Press, Cambridge, 2014) pp. 69, <https://doi.org/10.1017/CBO9781107284142>.

⁸¹ Jedediah Purdy, "Neoliberal Constitutionalism: Lochnerism for a New Economy", *Law and Contemporary Problems*, 77 (2015): 195–213, https://scholarship.law.duke.edu/faculty_scholarship/3328.

⁸² Rachel Turner, "Neoliberal Constitutionalism Ideology Government and Rule of Law" *Journal of Politics and Law*, 1(2) (2008): 47, <https://ccsenet.org/journal/index.php/jpl/article/view/737>.

⁸³ *Ibid*, pp. 52.

freedom and orders to protect key elements in a market economy such as ownership rights, the principle of competition and efficiency and the role of the state as regulator into norms and constitutional structures that are difficult to change.⁸⁴ The approach to change the pattern of regulating interventionist economic constitutions to neoliberal economic constitutions can lock down normative orders to the state to form policies and legislating laws that promote market economies, and thereby transfer responsibility for managing and controlling productive sectors of the state to market mechanisms.

Conclusion

The spread of neoliberal legal norms throughout the world after the Cold War is the main power that exist behind the practice of free market order adoption into constitution document. Many global South countries and socialist countries are characterized by the provisions of interventionist economic constitution where the economy is managed collectively and the state has a great authority to allocate resources. Such provisions provide considerable authority to the Government to command all economic activities, regulate market participants, and create barriers, protection and restrictions on inflows of foreign investment. Amendments to such provisions are, therefore, important sites of struggle under the legal political project of new constitutionalism because the provisions of interventionist economic constitution are the biggest obstacle to the success of neoliberal praxis promoted by global North, multinational corporations and international financial institutions such as the IMF and World Bank. The legal political project of new constitutionalism seeks to reorganize relations between the state and the market through a process of constitutional reform so as to create a binding neoliberal economic constitution provisions for the formation of domestic economic policy and legislation products.

This article argues that the phenomenon of new constitutionalism cannot be separated from the context of the hegemony of global imperialism with an interest in shaping a legal framework that responsive to markets in the global South. Incorporating features of neoliberal legal norms into new economic

⁸⁴ Ioannis Glinavos, "Neoliberal Law: Unintended Consequences of Market-Friendly Law Reforms", *Op.Cit.*, pp. 1095.

constitution documents is essential to ensure preferences for economic freedom, legal protection of private property, enforcement of contracts and restrictions on state intervention as constitutional imperatives that must be implemented. This phenomenon operates at two related levels; (1) through various international trade and investment regimes of *de facto* global economic constitution which requires participating countries to make regulatory adjustments to support the mobility of global trade and capital; and (2) through changes in the constitution of the domestic economy directed by internalizing neoliberal legal norms to discipline the role of the state. This article agrees to Schneiderman's view who sees the concept of 'new constitutionalism as a heuristics instrument that useful to check the practice of neoliberalism that can affect, change and replace national constitutional norms'.⁸⁵ Using the views of new constitutionalism has helped to provide alternative explanations for the process of constitutional reform in various countries since the end of the Cold War which was strongly influenced by the hegemonic interests of the global North, multinational corporations and international financial institutions. The main purpose of such hegemonic interests is to create an investment climate and a responsive and predictable rule of law for the market by institutionalizing constitutional government that can limit state interference to the market.

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⁸⁵ David Schneiderman, *Constitutionalizing Economic Globalization Investment Rules and Democracy's Promise*, *op.cit.*, 3.

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