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Property, State and Society in Vietnam

Thomas Sikor[1] with an introduction by Hue-Tam Ho Tai and Mark Sidel

Introduction: What is property? Vietnamese Perspectives

What is property? What do rights to property cover and what are their limits? To whom do these rights belong? In an era where everything can become a commodity, be branded, trademarked and copyrighted, disputes over property and property rights uncover tensions at every level of society, between and among different levels of the state and various social configurations, from individuals to neighborhoods and whole villages. Disputes over property are also disputes between competing social goods and values. Projects that improve a country's infrastructure for the benefit of the many may infringe on the rights of the few to enjoy their property. Attempts to preserve scarce resources may reduce or eliminate altogether hitherto public access to them. Communally held property is no longer recognized under new legal regimes. Community norms clash with national laws; market value fails to align with moral values.

In societies that undergo profound change in political regimes such as countries that transitioned into and/or out of socialism, and/or rapid economic growth issues such as these are made visible more often than in societies with more stable political regimes and economic systems. Vietnam, which, within the span of a century, has experienced colonial rule (and prior to that imperial rule), socialism (in the North), a limited free market economy (in the South) and most recently a market-driven economy combined with a one party political system, offers an excellent opportunity for exploring some of these tensions.

When Marxist terminology was first introduced into Vietnam, the term proletariat—working class—was translated into "propertyless." It applied equally to landless peasants, who constituted the overwhelming majority of the population, as to the far smaller number of workers. All that peasants and workers had was their labor; but even this was not entirely their own. It could be indentured to private landowners or conscripted by the state, whether imperial, colonial, or socialist. Today, labor continues to be a Vietnamese peasant's chief asset, as can be seen in the number of Vietnamese guest workers in Europe, the Middle East and in various countries of East Asia. Some of that labor is coerced and forms part of the phenomenon of human trafficking.

At the same time, as in many other countries, practically anything, whether tangible or intangible, can be turned into a marketable commodity. In the process, it becomes detached from its origins, its meaning and its place in its community transformed by forces that are increasingly translocal and even transnational.

The following article by Thomas Sikor constitutes the epilogue of a volume of articles edited by Mark Sidel and Hue-Tam Ho Tai arising from a conference on property and property rights in Vietnam held at Harvard University in May 2009. Sikor is particularly concerned with the way power and property are mutually constituted through the operations of the state, society and the market. MS and HTHT

In Vietnam, property has always been a central preoccupation of rulers, their agents and ordinary people during critical periods of state-making, whether in the fifteenth century under the new Le dynasty, in the nineteenth and early twentieth centuries under French rule, in the 1950s and 1960s in the Democratic Republic of Vietnam, or since the 1990s with the *Doi Moi* reforms. The broad temporal coverage represented in *State, Society and the Market in Contemporary Vietnam: Property, Power and Values* illuminates certain features of the relationship between property and state that transcends specific political regimes and socio-cultural contexts and thus can be fruitfully explored in different temporal and geographic environments.

Governments commonly employ property laws and reforms when they seek to establish, augment or consolidate state control over resources and people. On the other hand, the state figures centrally in people's claims to resources time and again. Urban residents and rural villagers commonly call upon 'the state', state law, or state officials in their everyday dealings about land and other resources. Even though they may not always do so, the state is a primary politico-legal institution they invoke to authorize their claims as property rights. People become involved in processes of state-making when they assert ideas about how 'the state' sanctions their claims, how certain laws do or do not apply, and what kinds of actions particular state agents should or should not undertake in relation to their concerns. The latter, the agents of the state, are active participants in these dynamics of state formation. They can go about their business of enforcing property rights, arbitrating in property disputes, or implementing property reforms in different ways. People's and state agents' property practices thus feed into everyday processes of state formation.

I seek to develop these conceptual insights on the linkages between property and state in light of recent theorizing on how property and authority constitute each other recursively.[2] In a nutshell, Lund and I argue that property is intimately bound up with authority, authority understood as power considered legitimate.[3] Property is one of the fields in which people attribute legitimacy to various kinds of politico-legal institutions and thereby contribute to the constitution of authority relations. As these institutions get to 'authorize' claims on resources as property, people solidify their authority in comparison with other institutions. At the same time, authorization by politico-legal institutions grants or denies legitimacy to claims on resources. Claims are only recognized as property if people can legitimize them in reference to the sanctioning authority of politico-legal institutions. These dynamics of property and authority contribute to processes of state formation because the state, its constituent parts, and its agents are key elements in them. State here refers simultaneously to a politico-legal institution, in the sense of an idea or ideal set of practices, and a forum in which various kinds of social actors struggle for control over people and resources. The recursive constitution of property and state is particularly visible in postsocialist societies[4] but also occurs in other institutionally pluralist societies.[5]

Furthermore, I employ the conceptual framing to derive comparative insights about key dynamics of state formation in contemporary Vietnam. The negotiations over property documented in this book, I suggest, indicate critical features of ongoing state formation: the centrality of property in the exercise of state power; struggles over control between the central party-state and local cadres; and, the permeability of the Vietnamese state to customary arrangements and community norms. Property emerges as a critical field in which the central party-state seeks to consolidate its authority through legislative action and discursive means. Property legislation and discourse serve the top echelons of the Communist Party and central government to discipline local cadres and to accommodate the influence of customary arrangements and community norms. Property law and discourse also connect with an increasingly pervasive anti-corruption campaign that works to insulate the central party-state from criticisms of state practices on the ground.

State property projects

Identifying property legislation and reforms as projects commonly undertaken by states in their efforts to control people and resources would be nothing new. Governments have long used land reforms, the nationalization of land and other assets, collectivization of agriculture, privatization, etc. for economic and political aims. In fact, Vietnam may be a prime example for how governments have employed property legislation and reforms. When Vietnam was divided after World War II, the regimes in the north and south undertook land reforms in an effort to secure political support from the peasantry. The Democratic Republic of Vietnam followed land reform with the collectivization of agricultural land and nationalization of forestland to mobilize people and resources for the war and industrialization. From the mid-1980s onwards, the government of unified Vietnam promoted the decollectivization of agriculture, devolution of forests, and privatization (or equitization) of industry and trade to promote economic growth and ensure its political survival.[6]

An original insight generated by this book is, however, the large repertoire of property interventions available to governments. These interventions include classic state property projects, such as the land colonization schemes used by governments in historical and contemporary times to raise taxes and ameliorate political pressures. David Biggs looks at an experimental colonization scheme in colonial Vietnam, historical precedent to the large US-funded refugee resettlement projects and the massive New Economic Zone program implemented by the Communist party-state. He shows how the experimental scheme was prompted by the growing number of landless people and the deplorable plight of tenant farmers in the 1930s, which provided fertile grounds for the organization of tax protests and granary raids by the Indochinese Communist Party and caused fears of insurrection on the French side. This experimental colonization scheme in turn harked back to the military-agricultural settlements of precolonial Vietnam, which themselves were inspired by Chinese models dating back to the Tang dynasty.

Governments have often targeted land for their property interventions in more recent times, but historically people's labor has been equally attractive to them. Ken MacLean demonstrates how the recruitment of labor for public works is a critical means for ruling regimes to assert property claims to labor. MacLean puts the spotlight on the rules guiding the recruitment of workers for large infrastructure projects in the newly independent Democratic Republic of Vietnam. The rules specified the procedures under which local government officials could conscript labor, recruit volunteers, and contract wage labor at construction sites. The critical question looming in the background was how the emerging socialist state would use its claims to a part of people's labor in order to maximize its ability to extract economic surplus from the countryside. There was a clear trade-off between the need to provide long-term protection against floods and droughts and the short-term need to boost food production to avoid famine.

State delineations of property may also take more indirect forms. The property laws written under the incoming Le dynasty in the fifteenth century gradually changed from a gender-neutral treatment of inheritance rights to one that supported different rights for sons and daughters. Early jurisprudence did not differentiate the rights of male and female heirs, emphasizing the significance and enforcement of the testament. It is impossible to determine, from available evidence, whether sons and daughters actually inherited equally. Starting in the 1460s, the legal code granted sons preferential rights to a portion of inherited property. Erik Harms' analysis of a land clearance project outside Ho Chi Minh City indicates how state delineations of property, in law and discourse, influence the kinds of objects considered available for property claims. Harms reports his bewilderment that people affected by the land clearance did not resist the demolition of their houses. Their acceptance of the project came from their view of the project as legitimate, legitimate in the sense of what futures they envisioned for their country and city. This view reflected not only the applicable regulations on land clearance and government discourse of modernization, but also implicit delineations of the object at stake: it was the urban development project and not people's individual houses. Once people had accepted the delineation as legitimate (i.e., that the issue at stake was an urban development project), they had little grounds to resist the demolition of their houses.

This book thus indicates the large repertoire of government property interventions. These are not limited to direct interventions into the use of resources, such as land reforms, colonization schemes, or the conscription of labor. Other state interventions seek to influence the use of resources in more indirect ways through the exercise of control over the use of valuable resources, checking and directing property practices.[7] This control gets enacted in many ways, such as through legislative action, discursive means, law enforcement, and dispute resolution. It has profound effects on property practices, as it influences the very actors, objects and relationships recognized to constitute property relationships.

Conflicts over property, struggles within the state

Governments' tendency to initiate property laws and reforms does not imply that the state acts as a unitary organization. This volume shows that the very agents of the state react to state property projects in many ways, actively negotiating how they set out to act upon them. These agents include the top echelons of the central government, members of parliament, high court judges, line ministry staff, and various local officials. As these actors are all involved in the creation, enforcement and implementation of property legislation, it does not come as a surprise that their practices and interpretations are often at odds. Moreover, the making, implementation or arbitration of property may open up forums in which different state entities compete against each other. Property thus may end up at the core of struggles within the state about control over people and resources.

The courts may find themselves in an ambivalent position towards other arms of the state. On the one hand, they are expected to enforce the laws and regulations made by the legislative and executive branches. On the other, their mandate requires them to prosecute legal violations and to resolve property disputes independent of the other branches, even if the violations or disputes involve state officials. In Vietnam, Mark Sidel finds, courts experience serious restrictions on their independence (see also Gillespie). In a widely publicized dispute over land in Haiphong, conflict arose when a local People's Committee allocated highly attractive land to a number of district and provincial leaders in an apparent case of favoritism. Media reports about the allocation led to criminal charges against four local officials and a trial at the Haiphong People's Court. Yet the entire case was handled extra-judicially, the courts turning into mere pawns of dueling state and Party officials reaching all the way up to the Prime Minister and President. The ambivalent position of the courts in Vietnam became particularly evident from the fact that central officials never criticized Haiphong officials for intervening in the case: the offense was that they *over-intervened*. Some interference into court proceedings was thus deemed acceptable and even desirable, but only to a point.

Property claims and their recognition may pit local cadres against central government officials, as illustrated by the politics of recognition of intangible cultural heritage examined by Oscar Salemink. Local groups seek recognition from the central government for their sites of remembrance, worship or ritual practice as historical or cultural monument. If successful, the Ministry of Culture issues them a certificate of recognition as historical/cultural monument. The central government thus acts as arbiter in a competitive process of validating and authenticating local sites or practices, a process that possesses striking historical parallels with state certification of local ritual practice and heritage claims by the Board of Rites of imperial times. The central government is in the position to recognize – or reject – the intangible cultural heritage claims endorsed by local officials. Seen from this angle, central and local governments offer competing forums for the recognition of cultural heritage.

Negotiations over property thus may create, deepen or just reflect cleavages in the state. At the same time, they may also give rise to unexpected coalitions, as Nguyen Vu Hoang reveals. Nguyen examines the efforts of a group of Hanoi residents to defend their

land rights against a public infrastructure project. The residents were able to enlist support from state officials, in particular two local officials and Communist Party members, who knew how to mobilize support from the neighborhood Party Cell and from within national state entities. Forming an effective coalition with central state agents they were able to overcome stiff opposition from the district and ward People's Committees, which long appeared determined to remove them from their land as set out in the construction plan made by the People's Committee of Hanoi. They succeeded when they presented their opposition in the terms of the national anti-corruption campaign, causing the Ministry of Communication and Transportation to step in and request alterations to the plan.

Accusations of power abuse and corruption appear to be an integral element of negotiations over property within the state, as illustrated by Nguyen Vu Hoang's account. Local officials, in particular, may find themselves exposed to accusations of power abuse by local people and the target of anti-corruption campaigns enacted by central governments. In this book, accusations of improper behavior and self-enrichment appear in a wide variety of settings in the past and present, extending from the fifteenth century and the land reform campaigns in the mid-twentieth century to land allocations and land clearance projects in contemporary Vietnam. Corruption charges thus look like a frequent legal and discursive means employed by people and state officials alike in struggles over property.

In short property negotiations are deeply implicated with contestations about control over people and resources within the state. Various kinds of state actors seek to establish, affirm, or strengthen their power by asserting control over property. Vice versa, as various kinds of state actors struggle over control, they offer support to multiple claims on resources. Conflicts over property consequently may be as much due to competing claims to use rights as to conflicting assertions of control embedded in wider struggles within the state, as illustrated by Sidel. Property conflicts thus are linked to cleavages within the state, cleavages that may run along different fault lines.

Contestations over property and the state

Yet negotiations about control over property are not confined to struggles among state actors. Negotiations over property extend beyond the state, challenging the state's primacy as definer and enforcer of property rights in relation to other politico-legal institutions. There are a variety of other politico-legal institutions which also offer to endorse the property claims made by people.[8] People have a choice when they make property claims on land or other assets. For example, a family can reference its claim to a particular residential plot to the laws and agents making up the state. Yet the family may also be able to justify its claim by asserting that family members have lived on the land for a long time, other people in the neighborhood consider the family's claim legitimate, or transnational human rights conventions protect its right to safe residence. Thus, in more abstract terms, the family may refer to the state, custom, community norms, or transnational law when it seeks to demonstrate the legitimacy of its claim and thereby get the claim recognized as a property right. The state does not hold a monopoly over the exercise of control about property, but people routinely make and unmake the authority attributed to the state as an institution sanctioning property in practice.

Custom, in its many incarnations, emerges as an alternative politico-legal institution to which people reference their property claims. Custom, understood as a more or less congruent set of norms and regularized practices, may compete with the state for the endorsement of property rights. Competition between state and custom comes out in a particularly stark manner in To Xuan Phuc's discussion of property rights to forest and forestland in a northern mountain village. Statutory rights and customary rights are radically different from each other with regard to the use of forest for the extraction of timber and use of forestland for swidden cultivation. State and custom not only accord forest use rights to different actors, but they are also based on very different notions of use rights in terms of their temporal duration and spatial extent, their exclusivity, and the way they bundle or disentangle rights to multiple resources. Moreover, the different conceptions of use rights connect with different ideas about the exercise of control rights, and ultimately about the politico-legal institution deemed legitimate to govern property over forest.

State and custom may not necessarily be at loggerheads; they may even be related in a mutually accommodating manner, as indicated by John Gillespie. Gillespie explores how Hanoi judges use "reason and sentiment in applying the law" to resolve land and housing disputes. They employ customary understandings of property rights despite the explicit mandate written down in the Constitution that courts have to resolve all disputes according to statutory law. Judges tend to quickly encounter the limitations of statutory land rights and legal doctrines and therefore draw on customary norms and practices. What results from judges' flexible and pragmatic interpretations of the exercise of control rights over property is a relatively symbiotic relationship between state and customary norms. The boundary between state and custom becomes highly permeable in practice.

Transnational norms may also validate property claims, as highlighted by Michele Thompson's discussion of the *saola* (see also Oscar Salemink). Although local people and Vietnamese scientists had long known about the existence of the saola, its status changed fundamentally after international scientists 'discovered' it, gave it the scientific name *pseudoryx nghetinhensis*, and declared the animal an endangered species. From then on, life was never the same again for either the few remaining saola or the local people living around their habitat. Vietnam's central government enlarged Vu Quang Nature Reserve and declared all local hunting illegal with backing by international conservation organizations and donors. The validation provided by transnational conservation agreements bolstered the application of existing Vietnamese laws and regulations, affording the government's claims on forests and wildlife additional legitimacy and thereby fortifying state control over a remote area.

These observations do not imply that people always seek ways to reference their property claims to politico-legal institutions other than the state. Many assert claims to critical resources on the basis of state laws, regulations and practices even where other options are available. They may even invoke the state as an idea in times of political turmoil and civil warfare, where the state does not step up in the form of a single and clear political organization. This is the rather surprising finding by Nhung Tuyet Tran, as she discovers that local performance groups referred to statutory law when they sold their customary rights to village songs and dances in the seventeenth and eighteenth century. When performance groups sold their rights to perform in front of a particular communal house, villagers not only erected stelae to document the sale in the customary way; they also included references to statutory land law in the inscriptions to bolster the legitimacy of treating their customary rights as 'cultural property' and transferring them to third parties. The contracting parties sought validation through the laws of the state to bolster the credence of the contracts, as weak and fragmented as the state was at that time.

Negotiations about property, therefore, are simultaneously contestations over the state, understood as a politico-legal institution. When people assert claims on resources, they may justify these claims on the basis of state laws, regulations and practices, or they may call upon customary or transnational norms to legitimize the claims. The relationship between the state and other politico-legal institutions is not necessarily a competitive one, as Gillespie and Thompson show. The state may accommodate validations of property claims originating from other institutions (Gillespie), or may even employ them usefully to bolster state validations (Thompson). The boundary between the state and other institutions thus may be permeable in practice, as clear as it is conceptually. Yet the property claims endorsed by the state may in other instances be at loggerheads with the claims sanctioned by other institutions, as highlighted by To Xuan Phuc. State control over property, therefore, is not automatic but needs to be established, consolidated, adjusted, or strengthened in a never-ending process, as people continuously weaken, undermine, or unravel state control by asserting claims and invoking validations in contradiction with state laws, regulations and practices.

Negotiating property and state in Vietnam

Not only does this book provide fascinating conceptual insights about the linkages between property and state, but it also offers a novel perspective on critical dynamics of state formation. Vietnam's rulers have generally displayed keen interest in property. Various precolonial, colonial and postcolonial regimes have asserted use rights to critical resources, such as through the nationalization of land and the conscription of labor. In addition, Vietnam's rulers have time and again demonstrated a major preoccupation with the exercise of control over the use of resources by their subjects by codifying statutory rights, registering actual rights, and many other tactics. Most prominently, land rights have remained a primary target for the exercise of state control from the fifteenth century onward. This historical emphasis on control over land, or more broadly territorial control, sets Vietnam apart from its neighbors, where territorialization occurred as part of modernizing projects in the late nineteenth and twentieth century only.[9] The centuries-long tradition of territorializing efforts also highlights the economic and political antecedents of the land allocation program enacted as part of the *Doi Moi* reforms in the 1990s. Land allocation has been as much about creating the necessary conditions for economic growth as about reestablishing state control over people and resources on new foundations.

Struggles over the exercise of control over property reveal significant cleavages within the contemporary state. A central axis in these struggles is discrepancies and conflicts between the laws and regulations designed by the central party-state and local officials' property dealings. Local cadres often find themselves at odds with central officials, as has been observed more broadly in Vietnam[10] and other postsocialist countries.[11] In comparison, the relations between the executive party-state and the judiciary appear much less strained, as courts lack the autonomy granted to them in certain postsocialist countries.[12] Vietnam does not experience the struggles between law-governed and executive exercise of state control characterizing state formation in a number of other postsocialist societies, such as Romania.[13]

The negotiations over property also reveal a Vietnamese state that is surprisingly permeable to and accommodating of the influence of other politico-legal institutions.[14] Statutory law often lacks "persuasive power", as Gillespie observes. In reaction, people invoke customary arrangements and social norms to justify property claims on resources, not only in remote rural areas but in the very centers of Hanoi and Ho Chi Minh City. Local cadres and judges use the decision-making spaces available to them to accommodate claims based on community norms and custom. This permeability has allowed the state in Vietnam to avoid the kind of direct challenges to its very existence encountered in many other postsocialist (and postcolonial) societies. In the Albania of the 1990s, for example, people's turn to customary regulations for the distribution of land and resolution of property disputes led to a massive challenge to the state's ambition to be the primary definer and enforcer of property rights.[15] At the same time, the permeability implies that state control over people and resources in Vietnam looks much less complete and uniform than accounts of a strong party state insulated from societal influences would suggest.[16]

These insights support interpretations of state formation in Vietnam which put the spotlight on struggles about 'rule by law'.[17] A key dynamic in contemporary Vietnam arises from efforts by the central political leadership to establish and justify 'rule by law' as a way to reestablish state control over people and resources on new foundations. 'Rule by law' accords the executive party-state primacy over the legislative and judiciary branches, as it exempts the top echelons of party and executive state from accountability to the law. In addition, it is an integral component of ongoing efforts by the central party-state to control the actions of local cadres. Law thus has emerged as an instrument by which the central party-state seeks to strengthen its hold over citizens and the other parts of the state alike, in an effort to avoid the "parcellization of sovereignty" observed in other postsocialist settings.[18]

Property legislation and discourse assume center stage in contestations over 'rule by law' in Vietnam. On the one hand, the party-state seeks to use property legislation to assert its authority against potentially competing politico-legal institutions, such as community norms and customary arrangements. Control over land is just the most prominent field, as indicated by the land allocations, land registrations, and resolution of land disputes which have kept many government officials busy over the past two decades. Yet property laws and enforcement extend to other assets, such as houses and apartments, and intangible resources, such as endangered wildlife and cultural heritage. Even the recognition of local cultural practices, may work to provide 'cultural validation' to the party-state, as Salemink notes, as the process of recognition also serves to augment the authority of the recognizing party state.

On the other hand, the central party-state employs property legislation to discipline local cadres, as illustrated by central party and government officials' passion for writing legal texts which specify what the agents of the state should or should not do in their dealings with land. The resolutions, laws, decrees, decisions, and technical guidelines are often written at a level of detail that does not allow any space for discretionary decisions, and leaves cadres with the task of reconciling contradictory demands. Moreover, it is the very discretionary decisions made by local officials and judges which allow the Vietnamese state to accommodate the influence of other, potentially competing politico-legal institutions such as community norms. Local cadres and judges thus find themselves in a vulnerable position, as they are required to comply with the laws and regulations enacted by the central party-state yet also face people's expectations to act in reasonable ways – reasonable according to social norms and customs.[19] In many instances their practices may not catch the attention of central officials, yet at times the cleavages may break out in the open. If they do, the ensuing conflicts are often couched in terms of power abuses, arbitrary behavior by cadres, and corruption.[20] Accusations of self-enrichment and power abuse seem to have particular traction at the beginning of the twenty-first century after the central government has embarked on an anti-corruption campaign, as indicated by Harms' survey of media reports.

These observations, finally, support a provocative interpretation of these corruption charges: they may be as much about the assertion of central party-state control and state authority as due to unlawful actions by local cadres.[21] Just like the never-ending flow of property laws and regulations, anti-corruption laws and discourse may serve the central party-state to discipline local officials. The discourse of local power abuses, arbitrary cadre behavior, and corruption has long served Vietnam's rulers to discipline local cadres as part of a broader struggle over authority within the Vietnamese state.[22] The recent anti-corruption campaign may just be another means by which central party and government officials seek to make sure that local cadres comply with their orders. In addition, talk of corruption may simultaneously help the party state to divorce the state, understood as a politico-legal institution, from the actions of state officials considered undesirable or improper by the wider population. The talk may operate to separate the concrete practices of state agents from the very idea of the state, thereby defending, sustaining and embellishing the authority people attribute to the state as an institution. Or in other words, the property discourse and anti-

corruption campaign may allow the party-state to construct the image of a 'good state' – and claim its own – against the template of dispossession and power abuse.

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Notes

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