

FUZZY PROPERTY RELATIONS IN THE VIETNAMESE UPLANDS: ETHNOGRAPHY OF FOREST ACCESS AND CONTROL

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Introduction

Forest cover in Vietnam has substantially reduced during the last several decades. To increase forest cover, the Vietnamese government implemented a forest devolution policy in the 1990s. The Land Law enacted in 1993 mandated the state to allocate the land previously controlled by provincial and district governments and state forest enterprises (SFEs) to local households. The Law substantially expands the scope of tenure rights and the duration of rights granted to land recipients. The government expects that by giving local people more autonomy on land they will be motivated to make more investment in the land and that consequently more benefit will accrue to them. Forest cover will increase simultaneously. In addition to enacting the new law, the government also spent a lot on forest protection and planting activities.

In this paper I focus my attention on the effects of forest devolution policy on the local dynamic use of forest land and forest resources in an upland village in northern Vietnam. I particularly examine fuzzy property relations on forest land after the implementation of the devolution policy. I study how this fuzziness brings about contestations among different actors and vice versa. Two questions have been asked in my research. First, how has the implementation of devolution policy influenced the way villagers use forest land and forest resources? Second, what are the factors that have shaped the outcomes of property relationships among different actors?

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My inquiry into property fuzziness is motivated by previous studies which show that property-making in the postsocialist countries is very complex and fuzzy. In her book on property-making in postsocialist Romania, Verdery (1999) argues that property relations in postsocialist countries are always fuzzy. According to Verdery, property-making is fuzzy because different actors may hold different claims on the same resources; they may also hold ownership rights on the same resources. Fuzziness also comes from the lack of routinized rules and crystallized practices. Under certain conditions, property fuzziness leads to conflicts. In China, Sturgeon (2004) finds a huge discrepancy between the notions of the Chinese state and the Akha people on rural landscapes. Often the Chinese state emphasizes designated property rights aiming at increasing production of fewer types of crops. The Akha people, however, stress spatial complexity and temporal flexibility of rural landscapes. This difference produces conflicts between the two. In the same manner, Sowerwine (2004) finds in upland Vietnam that the land which is officially classified as forestland by the Vietnamese state and thus subject to forest production or a protection purpose has in fact flexible patterns of local land use practices for multiple purposes. Different notions of rural landscapes between the Vietnamese state and the Dao (ethnic minority) people lead to conflicts between the two. In the same manner, Sikor (2004) discovers in the Vietnam uplands that the government's land policy which emphasizes exclusive and territorial rights differs greatly from local land relations. The latter are more flexible in time and space, while the former is very rigid and is thus not able to accommodate overlapping rights of multiple users. Conflicts over forest resources, as Sturgeon (2004) suggests, arise when different state agencies follow conflicting strategies on forest resource use.

In this paper I argue that despite the emphasis on abstract rules in forest devolution policy, actual property relationships are highly fuzzy and very much contested among local people and between them and various local state agencies. The outcomes of forest devolution policy are shaped not merely by the policy itself, but also by other factors such as villagers' notions of rural landscapes and local power relations. My findings show that fuzziness actually creates opportunities for a local elite who have access to political power to channel most of the benefit derived from forest land and forest resources to themselves.

This paper proceeds as follows. I first introduce the background to the study. The background includes a short description of the forest devolution policy in Vietnam, the study village and the forest management in the village prior to the devolution. I

then shift my account to the implementation of the devolution policy at the village level. In this section, I highlight two different types of fuzziness in property-making in the village. The first is about the balance between the rights and duties given to land recipients and how local authorities readjust this balance by bending the state law for their own gain. The second is about the overlapping claims on forest land and forest resources among different actors. I point out that property-making established by a mixed legacy of socialism and forest devolution embedded in local power relations is highly fuzzy and contested. This allows the local elite and those who have power to acquire most of the benefit from the forest. After the empirical findings, I conclude my paper by highlighting some theoretical debates on property-making in postsocialist countries.

Background: Forest Devolution Policy

In Vietnam forest area accounts for two thirds of the total natural area of the country. Prior to the country's independence, forest was managed by the French colonial state. During this time, however, virtually all forest in the uplands was actually managed by local communities (Nguyen Van Thang, cited in Poffenberger et al. 1998). After defeating the colonial rulers, the Vietnamese government nationalized all forests in 1954. From the 1950s to the 1980s the forests were managed by a large number of SFEs which belonged either to the Ministry of Forestry (MOF) or to local authorities in provinces and districts¹. During this time, local people were totally excluded from forest management. There were overlapping functions within each SFE. Each SFE had a duty to protect the forest and to exploit timber in the forest to fulfill log quotas determined by the state. In practice SFEs merely focused on timber exploitation, disregarding the duty to protect the forest (Nguyen Van Dang 2001; Sikor 1998).

At the end of the 1980s state forestry underwent a crisis. Many forest conflicts emerged between SFEs and local villagers as villagers demanded land monopolized by the SFEs. Forest cover substantially reduced during this time.

In August 1991, in order to respond to the problem, the National Assembly passed

¹ In 1989, there were 413 SFEs of which 76 were directly under the control of the Ministry of Forestry and 199 under local authorities of provinces and 138 under the local authority of districts (Nguyen Van Dang 2001).

the Forest Protection and Development Law. The Law classified three types of forest and established different legal regulations for managing each type accordingly. According to the Law, *protection forest*, the first type, which accounts for about 30% of the total forest area, was managed mainly for protection of watershed, soil and environment. Management of this forest rested with the state agencies, either in the form of SFEs or Management Boards (MBs). MBs may contract this forest to organizations or individuals for forest protection and planting. *Special use forest*, the second type, accounts for about 10% of the total area and was managed mainly for nature conservation, and protection of ecosystems, flora and fauna gene resources, and historical and environmental sites. This forest was also managed by MBs. *Production forest*, the third type, which accounts for about 60% of the total forest area, was managed mainly for production of wood and forest-based products and for making a contribution to the protection of ecological environments. This type was granted to organizations and individuals. Recipients could use the land for agroforestry purposes. The state encouraged local people to receive barren land as production forests for tree plantations. It promised to provide support to people to enable them to plant trees and to process and market their products. The Law however determined rigid boundaries within which rights granted to recipients could be exercised. Land recipients were required to follow state regulations when using the land. To use the land or to harvest forest products on the land, they were required to submit a plan to local authorities at various levels for approval. Also, they were required to protect or replant the forest in the area where forest resources were exhausted. In general, by classifying three types of forest and by establishing separate legal regulations for managing them, the state still maintained its primary control over economically and ecologically important forests, while merely granting the poor-value forests, and in many cases, forest without standing trees or barren land to local households. Further, the use of forest land granted to households was still subject to various restrictions.

A Land Law enacted in 1993 strengthened tenure security on land by expanding the scope of rights in the bundle and the temporal dimension of rights in the bundle. The Law mandated the state to allocate land to individual households for long term use (50 years). On receiving the land, land recipients were entitled to five rights in the land. They could exchange or lease their land to others, mortgage it to secure loans from a bank, transfer it to a third party, or pass it to their heirs. To concretize the law, the government issued Decree 02 in January 1994 for guiding the allocation (*giao*) of production forest land to individual households. According to this Decree, households receiving production forest land were

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entitled to the five rights promulgated by the Land Law for a 50-year period. They were granted land use certificates (LUCs) by the government as legitimate claims on the land. In January 1995, the government issued Decree 01, guiding contracts (*giao khoan*) with households in the land for protection and special use forests. There is a big difference between *giao* applied to production forest land and *giao khoan* applied to land in special use forests and protection forests. Under *giao khoan*, the control over the land still rested with the state entities, particularly MBs. Further, land given to households was not for production purposes, but for forest protection and planting. Unlike those applied to production forest land, both spatial and temporal dimensions of rights granted to households were restricted, entirely depending on the term of reference specified in the protection contracts signed between MBs and local households.

In addition to the land policies, a preoccupation with forest cover is one important element of forest devolution policy. In September 1992, the government launched Program 327, aiming at greening barren land, protecting the environment, and encouraging fixed agriculture and sedentarization for forest dependent dwellers. Under the program, SFEs were assigned as management units whereas local households were considered production units. SFEs allocated (*giao*) barren land to households for forest planting, or contracted (*giao khoan*) forest land on which forest existed to households for forest protection. In return, households received a planting or protection fee. The program also aimed to increase the area for protection and special use forests. Immediately after Program 327 ended in 1998, the government launched Program 661. This program aims to create five million ha. of forest in the country by the end of 2010.² The government expected that by the year 2010 the forest cover would increase from about 30% in 1999 to 43%. Unlike Program 327 in which local people were seen as passive, they were now considered the main force in planting and protecting the forest, and they were defined as the main actors benefiting from these activities. Swidden and/or poor households living around the forest were prioritized to receive land in protection and special use forests. Unlike Program 327, where a benefit sharing mechanism was totally absent, it was made very clear in Program 661, where local people received certain rights to protection forests such as harvesting firewood and selectively cutting the trees they themselves planted. The government also provided support for marketing. However, the state still maintained primary control over high value forests.

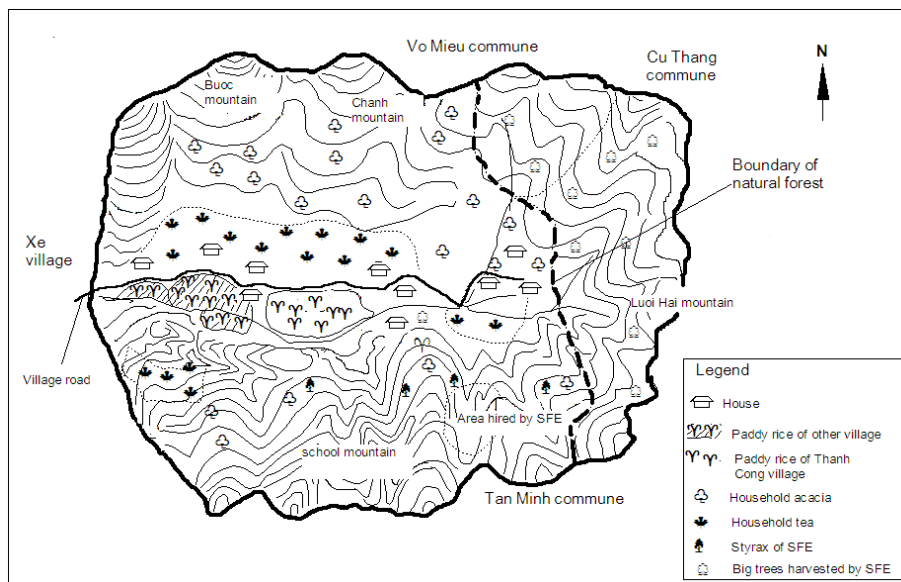
² Of these five, two will be protection and special use forests, one will be perennial crops, one fruit trees, and one softwood forest.

The study village

Thanh Cong is a small upland village in Van Mieu commune, Thanh Son district in Phu Tho province. The village is located at an altitude of about 500-600m. The village is located on Luoi Hai Mountain, which is covered by natural forest (see Figure 1). It is difficult to reach the village during the rainy season owing to the dirt road which is crosscut by streams.

In Vietnamese, Thanh Cong means success. The name was given to the village by local authorities in 1956 when they successfully persuaded swidden Dao (an ethnic

Figure 1. Sketch map of the village



Source: *Participatory mapping, 2004*

minority) to take up permanent residence at a lower elevation in the present village. When the villagers moved to the present area, the paddy land in the village

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was occupied by a state agricultural enterprise and the forest was managed by a SFE. The agricultural enterprise taught the villagers paddy rice cultivation techniques, and villagers then looked for suitable land near water to make their own paddy land. When the Thanh Cong agricultural cooperative was formally established in May 1970, the cooperative cadres encouraged villagers to contribute these paddy lands to the cooperative, but many households retained a certain amount of their own land.³ In addition to collective paddy land, the cooperative also worked a large area of swidden land. During this time, all forest land within the village boundaries was managed by the Xuan Dai forest enterprise, an organization of the Department of Forestry of Vinh Phu province (currently Phu Tho province). To have access to swidden land, cooperative cadres had to ask permission from the Xuan Dai forest enterprise. All households in the village also had their own private swidden fields outside the collective fields.

At the end of the 1980s the cooperative was dismantled. Paddy land was distributed to all 28 households in the village according to their labor availability. Each main laborer received 195m² of paddy land from the cooperative. Collective swidden fields were abandoned. In principle, all forest land was still managed by Xuan Dai forest enterprise. However, owing to loose control over swidden land, households in Thanh Cong were free to practice swidden in the forest.

In 1996 and again in 1998, forest land allocation (FLA) was implemented in the village. On average, each household received 6.4 ha. of forest land. No forest land on Luoi Hai mountain was officially allocated to households but all was directly managed by local authorities at the commune.

Currently there are 40 households in Thanh Cong, making up a population of 187 Dao people. On average, each household has 941 m² of cooperative paddy land plus 741 m² of their own. The land however is not sufficient. At present, half of the households in the village lack rice for about 1-3 months per year. In the village, income from timber and firewood accounts for the largest proportion (36%) of household income, followed by income from cassava (33%) and from tea (16%).

³ In Vietnam collectivization existed from 1950s to the 1980s. Initially to form the cooperative people were encouraged and sometimes forced to contribute their means of productions (e.g. land, buffaloes) to the cooperative. These assets then became collective assets. This collective form of production broke up in the late 1980s.

Recently villagers have been increasingly involved in the commodity market. While paddy land is important in producing rice for domestic use, forest land is the basis for capital accumulation. Since the late 1990s, many households have started to use their forest land to plant cassava, tea and softwood trees. Income derived from crops and trees planted on the forest land is an important source of household income.

Forest management prior to forest devolution in Thanh Cong

After 1968 the Dao people in Thanh Cong abandoned their nomadic life and settled in the current village. The Thanh Cong agricultural cooperative was formed in 1970. Villagers recall that prior to the collectivization households were free to practice swidden in the forest. Swidden land was privately owned. Timber logging for commercial purpose was totally absent and cutting was only done for housing.

As I mentioned earlier, under the state forestry regime the forest was primarily managed by SFEs. In Thanh Cong during the collective period, control over the forest within the village entirely rested with the Xuan Dai forest enterprise. In principle the land below 25 degree of slope was classified as agricultural land, home gardens and resident land and thus managed by local authorities of the commune. The land above 25 degree of slope was classified as forestland and should have been managed by the Tam Cuu forest enterprise. In practice, however, the Xuan Dai forest enterprise also managed much land below 25 degrees of slope. The local authorities of the commune mainly managed the collective paddy land.

During the collective period paddy land in Thanh Cong was not sufficient for the population's needs, and thus the cooperative had to maintain collective swidden fields in the forest. Every year the cooperative cadres had to request the enterprise to allow them to practice swidden in the forest. In principle the enterprise only allowed the cooperative to clear the land on which forest trees did not exist. In practice, after having consent from the enterprise, the cooperative was free to choose swidden fields anywhere in the forest. During this time, control over swiddens was very loose. "The enterprise never went down to the village to check", the father of my host in the village told me. Thus, all households had their own swidden plots beside the collective swidden fields.

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Though the Xuan Dai forest enterprise had to manage the forest, it actually focused solely on timber extraction. In the early 1980s, the enterprise started to construct a forestry road inside Luoi Hai forest to extract timber from the forest around the village. Logging took place from 1984 to 1991. During this time the enterprise hired five logging teams (*doi son trang*) totaling about 50 loggers. The former vice chairman of the Thanh Cong cooperative pointed his finger to Luoi Hai forest when we were standing at the bottom of a valley and told me: “dozens of trucks fully loaded with ironwood ran out of the forest each day.” When the Xuan Dai enterprise stopped logging timber in 1992, virtually all the good timber trees were gone. After the enterprise left Luoi Hai, any forest management was abandoned. From 1992 to 1996, prior to forest land allocation, control over timber extraction in Luoi Hai and over transportation of timber was very loose. Villagers in Thanh Cong and other nearby villages began to glean (*mot*) timber from the forest⁴. Private traders came directly to the village to buy timber from villagers. Villagers repeatedly told me that a forest protection force (*kiem lam*) was not present in the village to guard timber.

In November 1991 the government decided to restructure the state-owned enterprises that were not effectively operating in the market economy⁵. One year later, the MOF decided to restructure a large number of SFEs⁶. As requested by the MOF, all SEFs had to draw up inventories of resources (human, capital, land, machinery, etc.) and hand the forests they were not able to manage to local authorities for management. Under this restructuring, the Xuan Dai enterprise had to hand over 73% of its total forest land to 12 communes in Thanh Son district. Van Mieu commune, to which Thanh Cong village belongs, received 966.1 ha. However, the transfer of land was merely made on paper. After the transfer local authorities in the district started to implement a forest allocation policy.

⁴ Villagers use the term *mot* (to glean) to refer to the process through which they extracted left-over timber after the Xuan Dai enterprise left.

⁵ The Decree 388-HDBT, on the restructuring of state-own enterprises, was issued by the Ministerial Council (currently the government) on 20 November 1991.

⁶ MOF issued the Directive 12-TCLD on 19 August 1992.

Implementation of the devolution policy in Thanh Cong

Forest land allocation

After the Xuan Dai enterprise handed over the land to local authorities, forest protection staffs (*kiem lam*) in collaboration with the local authorities in Van Mieu commune, began to implement an FLA in Thanh Cong. During the allocation, *kiem lam* and local authorities did not consult the Xuan Dai forest enterprise. A total of 31 landholders belonging 26 households in Thanh Cong received 225.5 ha. of production forest in 1996, and another three landholders received 29.5 ha. of production forestland in 1998.⁷ None of the land in Luoi Hai forest (see Figure 1) however, was allocated to households in Thanh Cong, but rather it was kept by local authorities of the commune. In 1997, all landholders received their LUCs granted by local authorities of the district.

Fuzziness 1: From production land to material benefit

When I came to Thanh Cong in 2004, I was surprised to discover that in order to clear production forest land to plant timber trees and cassava, villagers had to obtain the permission of the *kiem lam*, with written consent from the chairman of the village and the chairman of the commune. This was strange as the law allowed households to use production forest land to plant trees and food crops without having to ask for permission from local authorities. I visited the head of the *kiem lam* to ask for clarification. According to him, forcing villagers to obtain consent better protected the forest in three ways. First, villagers would be less likely to practice slash and burn on the land and that in turn reduced the risk of forest fire.⁸

⁷ Most of households in Thanh Cong were allocated the land in 1996 but a few had to wait until 1998. The process of the FLA in the village was very top-down and had shortcomings. It resulted in an unequal distribution of land among households. Description of this implementation process, however, goes beyond the scope of this paper. Further, according to the law, each household is entitled to receive one LUC. In the village three households received more than one each. The issue of distribution also goes beyond the scope of this paper.

⁸ After slashing vegetation on the land, villagers would normally burn residuals in order to clear the land for planting. Some years back, however, there was a forest

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Second, although villagers received production forest land, they were not allowed to clear land that had good forest cover, and to do so would have been considered forest destruction. Third, the *kiem lam* could better check the origin of wood brought into the village for transportation and trading. If villagers had wood to sell without having written permission from the *kiem lam*, the wood was considered illegal and the villagers and traders were subject to a fine.

Indeed, some households in Thanh Cong do not ask for permission from the *kiem lam* for clearing land to plant trees and cassava as the forest cover on their land does not promise a good income for them. Where the land has good forest cover, permission is sought from the *kiem lam* for clearing the land. The permission allows households and traders to market the trees illegally⁹ exploited from the land without interference.

In all cases villagers must collaborate with both traders and local officials to market illegal wood. They must obtain permission from the *kiem lam* by writing letters of request to which have been affixed the written consent of the chairmen of the village and of the commune. The letters are then given to the traders who deal with the *kiem lam*. For the traders it is not difficult to get permission from the *kiem lam* because they each understand the process very well.¹⁰ Traders then keep these letters with them as permits for the transportation of wood. To a large extent, then, villagers are dependent on traders for permissions. As a result, traders are in a strong position to negotiate and manipulate the price and to control the market. Having weak bargaining power, villagers tend to accept any price offered by traders.

fire in Luoi Hai. The reason is still unknown. After the fire, the *kiem lam* was strongly criticized by the local authorities of the district, and became very cautious about forest fires. They now discourage villagers from burning residuals.

⁹ In this paper, I use the term 'illegal' to refer to local practices that are not allowed under the law. Such activities are legitimated in the local setting. 'Illegality' in this paper does not refer to 'illegitimacy' nor vice versa.

¹⁰ During my field research, I stayed in the office of the *kiem lam* several times and observed wood traders who came to the office to gain wood marketing permits. I assumed that the permission was facilitated through bribes. Villagers in Thanh Cong also told me that to get the permission from the *kiem lam*, traders had to pay quite a lot of money as bribes.

In this case, although devolution policy aims to provide more property rights on land to land recipients, exercising such rights are subject to various restrictions. The evidence from Thanh Cong shows that restrictions do not come from the policy itself, but from legal regulations set up by the *kiem lam*. Through licensing, the *kiem lam* are able to control the use of forests, thus creating room for rent-seeking behavior. In addition, licensing helps to strengthen the bargaining power of outsiders, in this case wood traders. In the section below, I shift my account to forest development programs to show how they excluded local villagers and were manipulated by the local elite.

Forest development programs and elite capture

As mentioned earlier, the Vietnamese government launched Program 327 in 1992. In Thanh Cong village, the Program was implemented by the Xuan Dai forest enterprise in 1994. A total of 102 ha. of forest on Luoi Hai mountain were designated for protection purposes. A ten-year protection contract was signed between the enterprise and the chairman of the village. Originally, the forest protection fee was set at 40,000 Vietnamese Dong (VND), or around US\$3.6 per ha. per year; however, the enterprise subtracted 15,000 VND (US\$1.25) per ha. for a designing fee, and the commune administration subtracted another 2,000 VND (US\$0.17US) for unknown reasons. Except for the household of the village chairman, no households in the village knew about the protection program. When the contract was made public, the chairman told villagers that he was appointed to protect the forest on Luoi Hai and villagers were not allowed to extract forest resources from the mountain. By monopolizing the protection contract, the chairman was able to capture all benefits from the forest protection fee.

In 1998, Program 327 was shifted to Program 661. In the village there was no cancellation of the protection contract for 102 ha. of forest on Luoi Hai. This area instead simultaneously shifted to the protection component under Program 661. The Xuan Dai forest enterprise was no longer to be manager of the program. At the district, a project management unit (PMU) was established which was directly under the control of the Forest Department of the province. Under the new program, the area designated for protection purposes on Luoi Hai expanded substantially. In addition to the 102 ha. transferred from Program 327, another 219 ha. were brought into protection. In Thanh Cong, four households including that of the village chairman received the protection contracts. Though the

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protection fee was set up at 50,000 VND (US\$3.3) per ha. per year, the PMU subtracted 15,000 VND (US\$ 1) and the local authorities of the commune subtracted another 4,000 VND (US\$0.27) from this amount. In principle, four protection contracts covering a total of 321 ha. on Luoi Hai should have been signed between the PMU and four individuals of the village: the chairman, the head of the farmer group, the head of the veteran group, and the head of the youth group. Following the terms of reference, individuals signing the contract with the PMU were entitled to 30% of the protection fee. The remaining 70% was supposed to be turned over to the respective groups to spend on day-to-day activities. Perhaps not surprisingly, these principles were totally different from what actually happened in the village.

At the village level the village chairman selected four individuals, including himself, to sign the contracts with the PMU. Eventually the vice-chairman of the village (the chairman's brother) received a contract of 74.7 ha. The chairman of the veterans union, (the chairman's father-in-law) received a contract of 90 ha. A villager with whom the chairman had very close relations received a contract of 56.3 ha. The village chairman himself received a contract of 100 ha. All remaining households in the village were excluded.

Though four protection contracts were signed between the PMU and different individuals, the village chairman manipulated all the contracts. He did not distribute the contracts but kept all under his control. To protect the forest on Luoi Hai, the chairman established a protection team. Each contract signatory was allowed to send members from his household to work for the team. The chairman included a son and three sons-in-law in the team. He also recruited the chairman of the farmer group, the head of the youth group, and one of his relatives. In total, there were 11 members in the protection team including the chairman as the team leader. Most team members took turns going to the forest but the chairman stayed home and recorded the labor days each member contributed to the protection work.

By manipulating protection contracts and contractors, the chairman was able to capture considerable benefit from this forest protection. Despite the protection team having to protect all 321 ha, the chairman separated out the protection fee paid for his personal contract of 100 ha. and kept that for himself. He then divided the remaining fees among the team members according to the labor days each contributed to protection work. Being the team leader, he also got a large share from this amount. In general, most of the protection fee accrued to the chairman

and his sons.

In response to the chairman's predatory behavior, villagers tried to fight back. During the village meetings, they requested the village chairman to recruit more members to the team. They also argued that the forest on Luoi Hai belonged to the village so that all villagers should be entitled to the protection fee. Yet the chairman always refused, arguing that the team had enough members. Villagers then wrote to the commune chairman denouncing the village chairman for the manipulation of the contracts. However, this attempt was unsuccessful as the commune chairman was an ally of the village chairman.

Apparently the implementation of the forest protection program in Thanh Cong was entirely embedded in local power relations. Access to political power plays a key role providing the chairman an opportunity to capture almost all benefits from the forest protection fee. In the village anyone without access to political power, or close contact with the village chairman, was totally excluded.

Fuzziness 2: The quasi- allocation of land on Luoi Hai

As mentioned earlier, none of the land on Luoi Hai Mountain was allocated to households in Thanh Cong under the FLA, and it was all kept by local authorities of the commune. Under the Law, land is managed by the state and the state gives the land to recipients for use and management. The Law also says that the management of the land at the local level rests with local authorities, and so local authorities cannot be land recipients. However in Thanh Cong, local authorities at both the district and the commune wanted to keep all the land on Luoi Hai. There were several reasons for this. First, up to the present the state still prefers to give land on which high value forest exists to state-owned entities such as SFEs or MBs rather than to local households. Since the forest on Luoi Hai is classified as natural forest with relatively high timber value, local authorities do not want to give the land to households. Second, forest in Luoi Hai provides a source of income for local authorities as they benefit from forest protection projects. As mentioned earlier, local authorities at the commune always subtract money from protection fees supposedly to be paid to contractors for unknown reasons. Thus, giving this land to other actors for management would mean that local authorities would lose an income source. Third, it is not clear to local authorities whether the forest on Luoi Hai will remain a production forest or become a protection forest in the future. Some years back, the *kiem lam* of the district submitted a proposal to their

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boss asking for the conversion of the forest on Luoi Hai to a protection forest. At the time I completed my study in the village in 2004, the proposal had not been approved. If this allocation was approved, there would be trouble if the land had already been allocated to households for production purposes. Finally, there exists a conflict between the Xuan Dai enterprise and the commune administration over 102 ha. of land on Luoi Hai. As I mentioned earlier, Program 327 terminated in Thanh Cong in 1998 and there was no liquidation of the protection contract. Thus, the Xuan Dai forest enterprise still considered their claim over 102 ha. of land in Luoi Hai valid. Currently, the enterprise continues to request that the chairman of Van Mieu commune return 102 ha. of land previously designated for protection purpose under Program 327.

To keep the forest on Luoi Hai, local authorities in 1999 secretly allocated most of the land (255.7 ha.) there to 16 households. The allocation, however, was only made on paper. Local authorities did not inform any of the land recipients about the allocation. Of the 16 land recipients, only five were from Thanh Cong, and they received a total of 87.6 ha. The remaining were local cadres from the commune and some other villages in the commune. This is a problem as it is stated in the Land Law that local villagers have priority rights to receive any land within the village boundaries, and only if they are not interested in the land can local authorities then allocate the land to people from other villages. When I talked to villagers in Thanh Cong, almost all of them were interested in receiving forest land on Luoi Hai, yet they had never been offered the land and did not know about the allocation to other villages. In 2000 the vice-chairman of the district issued 16 LUCs corresponding to the 16 land recipients. These LUCs, however, were not distributed to the land recipients but kept at the commune office. When I asked the commune chairman why he did not distribute these LUCs he told me that the land on Luoi Hai belonged to the local authorities of the commune, and thus people were not entitled to receive the LUCs. Although some commune cadres knew about the allocation and the LUCs for the land, none of them asked the commune chairman for their land. Two households in Thanh Cong who did ask the commune chairman for their land and LUCs, were scolded and told that the land on Luoi Hai was under the control of local authorities.

The LUCs serve as legitimizing documentation for local authorities who wish to justify their behavior to their superiors at the provincial level and to the Xuan Dai forest enterprise. By allocating the land to individual households and issuing the LUCs, local authorities at the district and commune are able to tell their superiors that they have successfully completed the land allocation in the area. This

overrides the claim on the land by the Xuan Dai forest enterprise. Whenever the enterprise comes to the commune to claim their land, the chairman of the commune shows them all the LUCs to prove that former claims to the land are no longer valid.

Open access to forest on Luoi Hai

The situation over the forest on Luoi Hai has become much more complicated since the forest protection project was completed in April 2004. Once the project ended, the PMU liquidated all the protection contracts and then gave 321 ha. of forest back to the four households with whom it had previously signed the protection contracts. According to the liquidation, the households are entitled to some benefit from the forest as a result of their protection services¹¹. However, the provincial director of the Department of Forest Development told me that this benefit is “too difficult to implement in the province”. According to him, this would require an assessment of the existing value of forest resources (timber and non timber products), for which the province does not have the funds.

With the protection contracts liquidated, protection fees were no longer available. The village forest protection team was dissolved. With no law enforcement mechanism, the forest on Luoi Hai has become *vo chu* (open access). When I was in the village in 2004, all villagers used the term *vo chu* when talking about this forest. A timber rush developed, and villagers reported that from April to October 2004, about 25 m³ of timber was extracted by residents of Thanh Cong. Villagers suspected that a much larger amount was extracted by surrounding villages.

The local authorities of the commune try to separate rights from duties, maintaining the right to retain benefits from the forest on Luoi Hai, while avoiding any duty to protect it. The commune chairman argues that it is impossible for local commune authorities to protect the forest with the available labor and financial

¹¹ Decree 178/CP was issued by the government on 12 November 2001. It mandates that, when forest products reach their maturity, households who have protected the forest are entitled to 1.5-2% of the total value of these products after tax for every year they protected the forest (Article 18). After six years of protection, then, each household in Thanh Cong which signed a protection contract with the PMU is entitled to between 9 and 12% of the total value of forest products after tax.

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resources. The *Kiem lam* of the district, on the other hand, argues that the forest protection task at the local level should rest with the local commune authorities and that the *kiem lam* is only there to advise them. This creates the opportunity for villagers and traders to extract timber and firewood from the forest. Neither commune administrators nor the *kiem lam* make any real effort to halt this exploitation, probably because they benefit greatly from bribes offered by traders to look the other way.

When this situation was discussed in articles in both the provincial newspaper and in the *Weekly News* in Hanoi, authorities at the provincial and the central government level demanded an investigation. Meetings were organized by provincial and district authorities and an inspection team was established comprised of the head of the *kiem lam* of the district, the chairman of the commune and various commune officials. The director of the Provincial Department of Forest Development led the team. The team members came to Thanh Cong several times to investigate, but as the *kiem lam* of the district always sent to the village to ask villagers to “clean up” evidence of logging, the team concluded that the articles were overstated. The team leader told me: “they [the authors of the articles] reported nonsense. You see, the forest here is much better than in other areas.” He would have drawn a different conclusion if the team had ever visited the forest

After this incident, however, control over the forest on Luoi Hai was tightened and timber trading ceased, with logging in the forest substantially reduced. Before I left the village at the end 2004, the *kiem lam* began to hire my host in the village to protect the forest. This may be ineffective as the area is too large for one person to guard. In addition, the forest on Luoi Hai borders three other communes (see Figure 1), complicating control of forest resources. Villagers in Thanh Cong do not believe that one person alone can protect Luoi Hai forest and are unhappy that outsiders without rights enter the forest that falls within the village’s territory.

In sum, the property claims in the forest in Luoi Hai is very complicated and fuzzy. In the table below I demonstrate some of the fuzziness.

Fuzzy property relations in Luoi Hai forest

Actors at local level	De jure rights and duties	Justification of claims (main sources)	De facto benefit
Local authorities of the commune	<ul style="list-style-type: none"> Control over 321 ha. of forest land and forest resources Duties to protect the forest 	<ul style="list-style-type: none"> Land Law Law on Forest Protection and Development 	<ul style="list-style-type: none"> Direct control over the land Access to benefit from forest protection project
<i>Kiem lam</i>	<ul style="list-style-type: none"> Control over vegetation (trees, bushes) of 321 ha. Control over transportation and trade of forest products Duties to protect the vegetation 	<ul style="list-style-type: none"> Land Law Law on Forest Protection and Development 	<ul style="list-style-type: none"> Direct control over transportation and trade Benefit (as bribes) derived from control
Xuan Dai forest enterprise	<ul style="list-style-type: none"> Control over 102 ha. of forestland under Program 327 Duties to protect this forest 	<ul style="list-style-type: none"> The land brought into the protection project has not been formally liquidated 	<ul style="list-style-type: none"> Excluded
10 households in various villages to whom the local	<ul style="list-style-type: none"> Use rights over 168.1 ha. Duties to protect the 	<ul style="list-style-type: none"> Land Law Decree 02/CP 	<ul style="list-style-type: none"> Excluded

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authorities allocated the land on paper	forest on the land		
5 households in Thanh Cong whom the local authorities allocated the land on paper	<ul style="list-style-type: none"> • Use rights over 87.6 ha. • Duties to protect the forest on the land 	<ul style="list-style-type: none"> • Land Law • Decree 02/CP 	<ul style="list-style-type: none"> • Excluded
4 of the 5 above-mentioned households involved in forest protection project under Program 661	<ul style="list-style-type: none"> • Rights to benefit from forest trees and NTFPs of 321 ha. • Duties to protect forest resources 	<ul style="list-style-type: none"> • Land Law • Decree 178/CP 	<ul style="list-style-type: none"> • Excluded
Villagers in Thanh Cong	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Moral claims over forest resources • No law enforcement mechanisms 	<ul style="list-style-type: none"> • Access to wood and firewood
Villagers in three nearby communes	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Moral claims • No law enforcement mechanisms 	<ul style="list-style-type: none"> • Access to wood and firewood

As the table shows, different actors hold different claims over the same piece of (forest) land and their claims are legitimated on different foundations such as moral justifications and legal regulations. In this context, fuzzy property comes from the legacy of socialism. It is expressed in the way that the Xuan Dai forest enterprise and later the PMU implemented forest protection programs, and in the way that local authorities take direct control over the land by manipulating the allocation. It is also illustrated through the discrepancy between local authorities of the commune and the *kiem lam* with respect to rights and duties over the forest.

Emphasizing a de facto benefit, both local authorities and the *kiem lam* attempt to increase their rights over the forest and at the same time try to transfer forest protection duties to the other. This in turn creates a vacuum of law enforcement mechanisms in the village, paving the way for open access.

Conclusion

In this paper I have examined property relations in forest in an upland village in northern Vietnam. I have shown that, despite the abstract sets of rules embodying forest devolution policies, actual property relationships are very fuzzy and contested among different actors. The fuzziness arises when the balance between rights and duties is readjusted by local authorities for their own gain, and when local regulations manipulate the state law on forest use and management.

Different actors hold different claims over the same piece of forest land and resources, deriving their claims from different foundations. Property fuzziness, in this context, stems from a legacy of socialism and from the ways in which local authorities conserve and manipulate forests. The contestation among various actors is about who holds the right over either forest land or forest trees. Eventually, property fuzziness produces a weak or even absent law enforcement mechanism on the ground, and this in turns provides free access for various actors.

Why is law enforcement weak or even absent on the ground? My findings support those of Verdery (1999), Sowerwine (2004) and Sturgeon (2004). In the village local authorities directly control the resources in order to retain most of the benefit for themselves. Given a high enough incentive, they are able to override the concrete law enforcement mechanisms set up by the state. This case study illustrates that both the *kiem lam* and the local commune authorities find ways to increase their rights and consequently accumulate more benefits while reducing their duties to conserve resources. The differences between them are exemplified by “the state of the state” as Sturgeon (2004) shows in China.

In sum, I am not able to answer the questions: whose land is it, whose tree is it? At the village level, such issues are highly fuzzy and contested. Different actors hold different claims on the same resources, and their claims are all equally legitimate. Unless all actors agree to sit down and discuss balancing their interests and also their powers over the forest, contestation among them will never be resolved.

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