Self-Interest and Ideology: Bureaucratic Corruption in Vietnam

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Remedies for corruption in socialist-transforming East Asia (China and Vietnam) primarily apply 'public choice' theory, invoking Weberian imagery of socially detached bureaucratic decision-making. However, as the episodes of corruption accumulate, it is becoming clear that existing legalistic conceptions of corruption must give way to analytical methods that take into account broader social and institutional perspectives. This article evaluates public choice theory by examining ideological explanations for bureaucratic corruption in Vietnam.

I. Introduction

Many foreign and domestic commentators agree that bureaucratic corruption in China and Vietnam is increasing (Xia, 1999: 15–18; He, 1998; Phong, 1994: 3; Lancaster and Montinola, 1997: 186–94). In reaching this conclusion, they are applying political, economic and cultural values as to where, how and when public officials should make personal gains. These viewpoints ultimately shape the strategic decisions made by foreign investors and the way regional governments and aid donors tackle the problem. Remedies for corruption in these socialist-transforming countries primarily apply public choice theory,1 invoking Weberian imagery of socially detached bureaucratic decision-making (Hechter and Kanazawa, 1997: 208–14). As the episodes of corruption accumulate, it is becoming clear that existing legalistic conceptions of corruption must give way to analytical methods that evaluate broader societal and institutional perspectives.

Though different in many ways Vietnam and China – as Asia's only transforming socialist countries – share many structural problems, including high levels of public office corruption (Kerkvliet, Chan and Unger, 1999: 5–14). Both countries, for example, are undergoing dual transformations from developing to developed, and from socialist command to socialist market economies. These changes have generated moral confusion. Trading activities – once considered corrupt – are now encouraged and the opportunities for officials corruptly to participate in the economy have vastly increased (Pike, 1995, 497–503; Gaylord and Levine, 1997: 119–27). Market reforms have virtually displaced state subsidies as the primary locus of corruption (Montias and Rose-Ackerman,

Particularly since the 1980s, most Western attempts to explain bureaucratic corruption in East Asia have applied ‘public-choice’ theories of rent-seeking behaviour. Developed in the 1960s at the Chicago School of Economics, public choice theory generates propositions about political and bureaucratic behaviour from behavioural models used by economists to understand market transactions. By explaining governmental decision-making according to the market principle of self-interest, theorists transformed public officials into self-interested utility maximisers and treated political influence as a currency of exchange (Buchanan, 1984: 12–13; Rubin, 1991: 3–16). Since corruption is located in the calculations of individual decision-makers, public choice remedies aim to restrict the role of bureaucrats in the market place and increase personal accountability. This narrow Hobbsian explanation for human behaviour de-emphasises familial, societal and organisational influences.

Public choice theory lies at the centre of multilateral donor-funded (World Bank and United Nations Development Fund (UNDP)) administrative reform programs throughout East Asia (Shihata, 1997: 451; Gould and Maro-Reyes, 1983: 4). Obstinately refusing to respond to theoretical prescription, corruption in socialist-transforming East Asia has probably increased along with criminal law reforms designed to shut bureaucrats out of the market economy.

Through a series of case studies, this article explores from a structural perspective why criminal law reforms based on public choice theory have been ineffective in controlling bureaucratic corruption. Though based on Vietnamese experiences, it is argued that these case studies broadly represent, and pertain to, structural corruption in China. Anthropological and Gramscian notions of ideology are used as methodological tools to categorise and evaluate different perceptions of bureaucratic corruption (Hunt, 1993: 118–20; Merry, 1986: 254–7). By providing a means of evaluating the ‘fuzzy’ legality that blurs centre–local and state–society notions of corruption, ideology broadens analysis beyond the narrow legal–illegal categories permitted by public choice theory. The article concludes that universal behavioural norms, presumed by public choice reforms, traverse three ideological orbits: law-based state legalism,
'socialist legality' (phap che xa hoa chu nghia) and local 'cultural' precepts. Incongruities between these ideological orbits undermine the strict legalism required by criminal law based reforms.

II. Public Choice Public Administrative Reform Programs

The starting point in this inquiry is assessing the influence of public choice theory in Vietnam. Official explanations for corruption are usually framed in theoretical terms as deviations from Marxist-Leninism. Like their neo-Confucian predecessors, contemporary rulers attribute corruption to moral lapses in officials. For this reason, moral campaigns combating corruption especially target party members, who are expected to lead society through exemplary behaviour. Criticism, self-criticism and ideological purification campaigns are the major weapons in the party’s anti-corruption arsenal (Tien, 1999: 1, 3).

From the inception of economic reforms, the Vietnamese government recognised that revolutionary moral rectification campaigns alone could not control modern bureaucracies. Amid a growing sense of crisis, the Vietnamese Communist Party identified corruption as the most potent threat to modernisation, economic development and ultimately party legitimacy (Pieke, 1995: 515–16; Nguyen, 1986: 72; Truong, 1986). Nothing short of comprehensive administrative reform seemed capable of reinstating party control over the bureaucracy. Though generally reluctant to borrow Western organisational principles, public administration reforms in both countries were substantially funded and conceived by the World Bank and the United Nations Development Program (UNDP, 1994).

The Vietnamese Government launched a comprehensive Public Administration Reform (PAR) program in May 1994 that meticulously prescribed public choice theory. It presupposes clear lines separating party–state and state–society and combats corruption by removing temptation from bureaucrats. Reforms streamline administrative procedures by closing licensing gateways, professionalising public service recruitment, promotion and training, and enhancing accountability through citizen complaint procedures and administrative courts. Both the explanation for corruption, external interest groups capturing discretionary power (‘exchanging money for power’, doi tien lay quyen luc), and proposals for reform that shift decision-making from the public to the private sector are infused with public choice theory (Government of Vietnam, 1994: 2–6).

Chinese administrative reforms likewise attribute corruption to exchanging money for power (quanzian jiaoyi) and as a corollary assume that strict controls over bureaucratic discretion will minimise opportunities for corruption (Ma, 1996: 1–2; Wang, 1999: 5). As in Vietnam,
both the ethical norms used to assess corruption (self-interest) and the administrative reforms devised to reduce malfeasance have been grafted onto state and non-state institutions that reflect quite different cultural, political, religious and philosophical traditions.

Although Vietnamese reforms have not been fully implemented and take time to change behaviour, a decade of planning and price deregulation, administrative streamlining and substantially improved living standards should by now have measurably reduced corruption.\(^4\) Party newspapers, on the contrary, chronicle spiralling corruption levels (Nguyen and Doan, 1995: 20–2). External corruption indexes also imply that bureaucratic corruption has increased after PAR programs were implemented.

Searching for deeper explanations, social scientists researching corruption in former Eastern Block countries identified causal links between malfeasance, polycentric power distribution, institutional instability and ideological confusion (Holmes, 1997: 284–8). In suggesting that market-generated self-interest is not the only explanation for corruption, these studies imply that solutions based on public choice theory only address part of the problem. Before exploring whether these findings apply to Vietnam, it is necessary to define corruption more precisely.

### III. Conceptualising Bureaucratic Corruption

#### A. Definitional Problems

Few generalisations can be made about corruption other than that it exists in all societies and has no single commonly accepted definition (Gould and Mao-Reyes, 1983: 4; Heidenheimer et al, 1989: 8; Klitzgaard, 1988: 3–10; Theobald, 1990: 1–5). Public administrative reforms in Vietnam (and China) have adopted a ‘public duty’ definition of bureaucratic corruption that criminalises bureaucratic behaviour that consciously deviates from formal duties and accepted norms for private advantage (Shihata, 1997; UNDP, 1994). Legal definitions of corruption in Vietnam (and China) codify this formulation, locating wrongdoing in the misuse of official power.\(^5\) This criminal law model presupposed congruence between official and community attitudes towards the use of public power for private benefit. In portraying public officials as rent-seekers, PAR reforms de-emphasised corruption caused by incompetence, laziness, poor communication and ethical conflicts.

Research in Vietnam (and China) indicates that, except at the extremes, there are few universally understood or agreed standards of corruption. Elite and popular opinion tolerates some official misbehaviour – ‘white corruption’.\(^6\) Bribes paid to market inspectors, though clearly
criminally corrupt, are condoned by businessmen who believe to *long biet on* (evoke gratitude) in Vietnam and *rengisgwei* (human obligations) in China are unavoidable aspects of operating private enterprises in ‘socialist orientated market economies’ (Pieke, 1995: 502–5; Tan, 1999: 11).

Opinion is equally united in condemning predatory corruption. Pham Huy Phuoc, the director of Tamexco, a Communist Party owned trading company in Ho Chi Minh City, was sentenced to death for embezzling more than $US30 million. Both elite and popular public opinion condemned his actions (Nguyen, 1997a: 2). In between these extremes, ‘grey’ corruption divides opinion. For example, central authorities denounced land registration violations by Ho Chi Minh City People’s Committee officials as corruption. But to members of the public seeking scarce housing, the same officials pragmatically implemented dysfunctional central rules (Minh, 1997: 1–3). In each case, criminal laws require authorities to decide whether officials have abused their powers in situations where state and community standards may differ.

**B. Ideology as an Analytical Tool**

The preoccupation with rent-seeking in public choice theory makes limited sense in an ideal neo-liberal world where states are monolithic and laws clearly delineate boundaries separating public and private spheres. But imagine a state where political power is unequivocally polycentric and legal boundaries are blurred and highly permeable. If the meaning of law and policy is contested among different levels of government and the public, it is much more difficult to assume that only central states generate the ethical standards guiding bureaucratic decision-making.

Ideology is a valuable tool for comparing different perceptions about the validity of bureaucratic decision-making in polycentric states. In its anthropological sense, ideology represents categories of meaning used to understand social reality (Bourdieu, 1977: 16). It has the ‘capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live’. (Gordon, 1984: 108). Conversely, unless laws conform to ideological modes of thought, they are unlikely to appear natural and beneficial.

Antonio Gramsci, on the other hand, located ideology in Marx’s class-struggle, as ‘thinly veiled expressions’ of the ruling elite (Gramsci, 1971: 300–21). Contemporary theorists have expanded Gramscian ideology to encompass contested areas or frames of reference through which people think and act (Cain, 1983: 111–15; Gordon, 1984: 100–2; Hunt, 1985: 13–19). Rather than concealing reality, elites maintain power by using ideology to make laws and institutional processes appear natural, normal and right. The dominant ideology is thus the sets of rules and precepts used by elites to justify and maintain their control over sociopolitical structures.
Also building on Gramsci’s work, Poulantzas (1973: 204–5) observed that ‘[i]deology itself is divided into various regions which can be characterised, for example, as moral, juridical and political, aesthetic, religious, economic, philosophical ideologies’. In his estimation, certain ideological regions located in the dominant ideology consistently influence state institutions and economic behaviour more powerfully than others. For example, the conversion of feudal serfs into wage earners and the expansion and consolidation of national markets under capitalism required a shift from the religious ideology of feudalism to the political, legal ideology of capitalism. The new dominant ideology of universal, normative law weakened communitarian values and constrained the monarch’s (or central state’s) prerogative or discretionary powers to appropriate property and disrupt the contractual relations required for investment and labour markets. He concluded that the main project of every dominant ideology is to bind together social expectations under the leadership of the ruling elite, a process Gramsci called ‘hegemony’ (Poulantzas, 1973: 206–8).

C. Local Ideologies

Contrasting with dominant ideologies, Gramsci believed that the public makes sense of their world through locally generated ideologies constructed from assumptions about politics, economics, religion, work, leisure and the nature of reality (Cain, 1983: 98–9). Local or ‘bottom-up’ ideologies incorporate some aspects of the dominant ideology and manufacture others from negotiated and constructed local practices. As Therborn put it, ‘[i]deologies actually operate in a state of disorder ..., constantly being communicated, competing, clashing, affecting, drowning, and silencing one another in social processes of communication’ (Therborn, 1980: 103). On a functional level, it is the necessity to take action in particular circumstances that reveals which ideological thread is momentarily influential. This means the acceptance of political and legal solutions to social problems starts with people and institutions as they are, with their notions of right, wrong, justice and appropriate commercial behaviour – in short, with their ideologies.

In defining corruption in perceptual terms, as conscious and inadvertent deviation from public duties and accepted norms for private advantage, public choice theory presupposes consensus between dominant and local ideologies. Where discrepancies emerge between dominant and local standards of bureaucratic behaviour, it is a matter of perspective whether goal substitution is corrupt or merely flexible policy implementation. Restated in prepositional form, the greater the disparities between dominant and local ethical standards (ideologies), the less likely public

The following case studies have been selected to illustrate different aspects of Vietnam’s ideological landscape and suggest ways that ideological analysis can expand the investigation of corruption beyond narrow categories of bureaucratic self-interest.

IV. Case Study: Administrative Service Companies

Except for large construction projects of national importance, the Chief Architect’s Office (Van Phong Kien Truc Su Truong), a body attached to the Hanoi People’s Committee (a local government body), must approve construction permits. Operating in an environment virtually free of independent review, it encourages applicants to use architectural service companies associated with the Chief Architect’s Office to prepare site plans and building applications. Using personal links with the Chief Architect’s Office, service companies understand the unpublished nuances of municipal policy and benefit from inside knowledge. Though their services are not compulsory, independent consultants complain of costly delays in modifying plans to meet the Chief Architect’s Office’s rather vague and protean interpretation of building and planning legislation. Evidently fees collected by associated services companies are transferred to the Chief Architect’s Office, where they are used to supplement salaries and improve working conditions. Without extra funds, state officials would need to work second jobs to earn living wages.

According to anti-corruption legislation, the transfer of confidential information to service companies for private advantage constitutes bureaucratic corruption (Ordinance Against Corruption 1998: arts 3, 13(a); Decree No 64 1998: art 6). Chief Architect’s Office staff absolve themselves by arguing that the public good (greater efficiencies and higher official salaries) generated by service companies outweighs the social harm caused by the commercialisation of public resources. They further justify service companies as a form of co che (mechanism), which is a popular contraction of the phrase doi moi co che quan ly kinh te (renovation of the mechanisms of economic management). Co che invokes society’s fatalistic acceptance of goal substitution by public officials during periods of rapid institutional change. Officials believe they are not abusing state powers because service companies discharge socially useful public services: an explanation that transcends the explanatory power of public choice theories’ self-interested profit maximisers.

Since the early 1990s, disjunctions emerged between privatised housing construction, on the one hand, and state administration steeped in socialist concessionary attitudes to construction regulation, on the
other. One consequence is that approximately 90 per cent of housing construction does not conform to legally prescribed procedures and/or building codes. Working in this anarchical environment where legal compliance is a fringe phenomenon, many Chief Architect’s Office personnel openly query whether prescriptive regulations have the capacity to control construction. If legal rules are unable to implement prescribed standards, officials believe they have a public duty to use extra-legal, personalistic forms of regulation like administrative services companies. Further blurring distinctions between central and local legal ideologies, the central government in Vietnam (and China) tacitly condones administrative service companies generating ‘creative earnings’ to reduce state budget expenditure (Gong, 1993: 321).

According to PAR’s legalistic ideology, Chief Architect’s Office officials acted unlawfully in using state power to generate private income. That no criminal proceedings were taken implies a disjunction between PAR’s legalism and alternate ideological visions (regions) of ethically correct behaviour. Local ideology employed a ‘fuzzy’ legality that condoned the use of state power for private benefit, provided it also generated public good.

V. Case Study: Land Registration in Ho Chi Minh City

The orderly recognition of ancien régime land rights is one of the most urgent and sensitive issues facing state land management in Vietnam. This problem is particularly acute in Ho Chi Minh City where the overwhelming majority of the population trace occupation rights to the former Republic of Vietnam before 1975. There are two legal means of converting ancien régime rights into land use rights (quyen su dung dat dai) legally recognised since 1988. Informants claim that both methods are virtually unworkable.

The vernacular press is full of accounts of local officials legitimising otherwise illegal land transfers by knowingly accepting land use documents secured through bribes (Van, 1996: 11). Officials colluded in more elaborate schemes to exploit legal uncertainties. For example, vendors can legalise unregistered land by entering loan agreements with purchasers to finance the construction of housing. In return for extinguishing loans, vendors transfer houses to purchasers, and officials grant land use rights to the substratum (Le, 1996: 12).

Official reports identified 1345 annual cases of wrongful or inappropriate land use allotment, but concede this figure represents ‘the tip of an iceberg’ (Minh, 1997: 1–3). Others estimate that less than 10 per cent of tens of thousands of land allotment applications processed annually conform to statutory requirements (The, 1995: 3). Whatever the precise
figures, rent-seeking alone seems an improbable explanation where procedural violations are the behavioural norm.

A. The Legal Definition of Corruption

A comparison of the success of land use right applications over a twelve month period in Ho Chi Minh City (36.7 per cent) and Hanoi (6 per cent) (The, 1995: 3) suggests that legalisation is significantly easier in the South than in the North. Central level officials attribute this discrepancy to higher levels of procedural non-conformity - bureaucratic corruption - and chu nghia dia phuong (localism) in Ho Chi Minh City. There are also more extant land title documents in the South.

Non-conforming land allotment procedures are treated as criminal violations by central authorities. The Penal Code 1999 (art 8) uses 'formal' and 'material' criteria to define criminal offences. 'Formal' criteria impose a positive duty to use state power for authorised purposes (Dao Tri Uc, 1999: 14). Under the Ordinance against Corruption 1998 the 'formal' element of corruption is sufficiently broad to encompass the unlawful conversion of land titles, with or without the payment of bribes (Ordinance against Corruption 1998: arts 3, 23; Decree No 64 1998: art 2). Article 174 of the Penal Code 1999 casts the legal net even wider to include any one 'taking advantage of or abusing their positions and/or power ... to use or permit the change of land use in contravention of law'.

The 'material' element of crime requires an infringement of the independence and sovereign integrity of the nation, the socialist state-economy, the fundamental rights of citizens, and other aspects of trat tu phap luat xa hoi chu nghia (socialist legal order) (Phan, 1986: 18, 19). Bribery or embezzlement of socialist property worth at least five million dong (approximately $AUD600) is automatically 'material'; other offences must produce 'serious consequences' (hau qua nghiem trong). Bureaucratic corruption is thus the misuse of official power for private advantage (public-office corruption) causing an unacceptable degree of harm to trat tu phap luat xa hoi chu nghia (socialist legal order). The highly subjective trat tu phap luat xa hoi chu nghia conveys a broad discretion enabling procurators to classify behaviour into criminal and administrative offences. The most important principles guiding their discretion are '[p]arty guidelines, state policy, the interests of citizens, community and State. Legal consciousness and political consciousness, therefore, are of great importance' (Dao Tri Uc, 1999: 16). Non-political administrative abuses causing low levels of harm to trat tu phap luat xa hoi chu nghia attract administrative sanctions (Order No 41-L/CTN 1996: art 1).
B. Local Explanations for Non-Compliance

Despite calls by central level policy-makers to end land violations in Ho Chi Minh City (HCMC), the author is unaware of any local-level prosecutions for unlawful land conversions. In contrast, there have been numerous prosecutions for embezzling land use rights (The, 1995: 3; Nhi, 1995: 1). It is unclear whether the failure to act against procedural violations implies: tacit approval by HCMC People’s Committee officials; that the removal of all offenders is impossible as there are simply too many incidents; or that sympathetic procurators think that land officials cause minimal levels of harm to trat tu phap luat xa hoi chu nghia. If senior officials seriously wanted to curb procedural irregularities, they could make an example of prominent offenders. This has not happened.

Informants perceive a gap between Northern and Southern understandings of procedural non-compliance. Perceptual differences are illustrated by the more restrictive land conversion rules applied by the Hanoi People’s Committee (Dua Tu, 2000: 6). Southern officials consider centrally enacted land conversion rules unnecessarily restrictive and infused with the alien ideology of the Northern party elite. Lagging behind PAR pilot programs design to streamline land procedures, conversion rules retain numerous ancillary procedures that routinely take six or more months (LTO, 1997: 3; Minh, 1997). Compounding the problem, local officials think legislation is vague, contradictory and deliberately designed to frustrate those with land titles issued by the former Republic of Vietnam. For example, many of the 16 types of land title documents recognised by Official Letter No 647 CV/DV 1995 for the purposes of legalising land use rights never existed in the South. In the end, local officials are expected to bring order to urban development with dysfunctional central rules, while interacting with a community that does not clearly differentiate public and private behaviour (Tran, 1997: 5, 10; Truong, 1996: 22–4) and that emphasises moral virtue over law (Duiker, 1983: 71).

Far from public choice theory’s consequentialist, socially insulated decision-making, even the terminology used by local officials to describe discretionary processes is infused with contextual subjectivity. A popular term for discretion (niem tin noi tam) literally means, ‘believe in one’s self’ or ensure that the decision was made with ‘good heart’ (tam) and sentiment or understanding (tinh cam). Cultural influences affecting decision-making are captured in popular sayings, such as ‘make law’ (lam luat), which refers to the arrogation of power by officials to resolve issues not directly addressed by formal law. This has the positive connotation of manufacturing local solutions to centrally imposed problems and the negative implication of inventing laws to extract rents. Officials are also
expected to apply the law flexibly (*luat mem*) with *tinh cam* (sentiment) and *co long tot voi dan* (showing good heart to the people). Even government commentators expect officials to discharge their duties with *ly va tinh trong viec chap hanh phap luat* (reason and sentiment in carrying out the law) (Dinh, 1990: 2). Officials risk losing local trust unless they apply the law with compassion (*thong cam*).

Finally, officials work at the ambiguous interface between official and personal obligations. The strong cultural expectation that they will intervene on behalf of family and clan members is encapsulated by the proverb, 'if one of us becomes a Mandarin the whole clan gains favours' (*mot nguoi lam quan ca ho duoc nho*). In practice, this often means bending central laws to enable family, patrons, and members of the local community to legalise *ancien régime* titles.

### C. Plural Legal Ideologies

Attitudes to land administration in Vietnam reflect the proposition that dominant ideologies are complex and contradictory (Bourdieu 1977: 16; Hays, 1994: 60–7). The existence of different perceptions about the legality of violative land registration procedures implies different sets of assumptions regarding ethically correct bureaucratic behaviour. In dealing with local land violations, central authorities project the image of a strong unitary state administered through clear legal and political hierarchies. The separation of state and society underlying this organisational architecture is derived from imported administrative principles that treat decision-making as a series of positive choices made by rational officials working towards clear organisational goals (Weber, 1946: 196–244; Galligan, 1988: 167–70; Emirbayer and Goodwin, 1994: 1411–20). This improbable Weberian archetype has been grafted onto Marxist-Leninist legal principles and institutional structures (discussed below).

What little is known about decision-making at the local level in Vietnam strongly suggests that it does not function like Weber’s closed organisational machine. The evidence does not support claims by some HCMC People’s Committee Officials that their decisions are primarily based on rules, policy, and procedures; nor is this plausible. Informants describe land allotment processes where title conversion is rarely approved without interdepartmental consultation (Anh, 1997: 2). For example, applications to convert *ancien régime* titles are routinely resolved by collective determinations of housing and land and construction departments. Where no title exists, committees comprising officials drawn from *phuong* (sub-district) level committees, Fatherland Front organisations, police and party branches, verify occupancy claims.
In these socially organised settings, strong personal interactions shaped by status, experience, education, familial and patron-client relationships compete with central policies and rules. Though decisions are presented to the outside world as nhat tri (consensus), informants suggest that reality is more precisely described by the expression chap thuan. This term connotes a diversity of opinion cajoled and bullied into unanimous outcomes by those exercising hierarchical and personal power. Rather than manufacturing personal harmony, the main function of collective decision-making is information dissemination and building intra-departmental cooperation.

This case study depicts two ideological orbits influencing perceptions of corruption, namely the central legalism of anti-corruption laws and local ‘cultural’ attitudes to law. Local officials borrow from both ideological orbits to give syncretic meaning to specific events. In part, the blurring of central and local ideologies is permitted by jurisprudential theory. The ‘blending of law with reason and sentiment’ (ap dung phap luat co ly co tinh), a deeply entrenched legal principle attributed to Ho Chi Minh, is used by Vietnamese bureaucratic and judicial institutions to generate ethical norms that validate official action (Thanh 1997: 26–9). The expressions ly va tinh (reason and sentiment) and hop tinh hop ly (suitable sentiment, suitable customary law) are regularly invoked by legal officials to justify deviations from prescribed land registration procedures. The flexible application of law has considerable appeal in localities like Ho Chi Minh City where the bulk of the population, including many in the party and government elite, indulge in some form of unofficial land use. Indeed, in many circumstances both levels of government function as two components of the same system. It suits the central government occasionally to sanction procedural non-conformity investing local authorities with jurisdiction over areas technically outside the central legal framework.

Though a convenient means of localising imported laws, the procedural flexibility permitted by the ‘blending of law with local sentiment’ ultimately undermines the universal normative standards introduced under the PAR anti-corruption program. According to this view, ‘fuzzy’ legality is an anachronistic legacy of Neo-Confucian virtue rule (duc tri) and socialist legal nihilism, which has no place in a modern mixed-market economy. Local authorities were considered corrupt by central authorities because they substituted statutory standards of ethically correct bureaucratic behaviour with local ‘cultural’ perceptions.

The case studies discussed so far suggest there are only two ideological orbits in Vietnam. Tang Minh Phung’s case study deepens the analysis of corruption, by expanding the ideological regions beyond legalism and local ‘cultural’ ideologies to include the dominant politico-legal ideology.
VI. Case Study: Tang Minh Phung

A. Ideological Hegemony

Elites also use legal ideology to strengthen their hegemony over the public (Gramsci, 1971: 300–21; Cain, 1983: 111–15; Hunt, 1985: 13–19). In manufacturing popular consent, ruling elites use ‘ideological apparatus’, such as the media, educational institutions and mass organisations, to inculcate a system of values, attitudes, beliefs and morals (Althusser, 1984: 10–22; Cain, 1983: 98–9; Ricoeur, 1994: 51–60).

Although Gramsci’s theories concerned governance in advanced capitalist states, they aptly describe Leninist states like Vietnam (and China) that use institutional matrices to project state power into civil society (Mann, 1987: 113). Periodic anti-corruption (tham nhung in Vietnam and fandui jubai in China), official waste (lang phi in Vietnam and langfei in China) and ‘social evils’ campaigns could not simply proclaim policy goals. Instead, they relied on an array of ideological apparatus, such as mass organisations, as propaganda ‘transmission belts’ (tuyen truyen in Vietnam and niu dai in China) for state-sponsored morals and values. Not only has the message changed to reflect shifting political ideology, so have the methods of inculcation. Campaigns now primarily target corrupt party members and state employees, rather than private marketeers as in the past (Lan, 1994: 1, 3; Nhan Dan, 1994, 1; People’s Daily, 1998: 4; White, 1996, 162–6). Furthermore, market pricing polices have undoubtedly weakened the ideological apparatus – mass-organisations and household registration systems – that generated (ideological) loyalty through the distribution of food and housing subsidies. As the old ‘transmission belts’ lose their potency, the state is increasingly turning to law to validate and inculcate the dominant ideology. This transformation is considered vital, because the party-state remains convinced that progress and development is only possible through strict adherence to state-sponsored ideology (Marr, 1981: 320; Vasavakul, 1995: 257–89).

Tang Minh Phung’s Case is pertinent to this discussion, because it suggests that incongruous legalistic and politico-legal ideological regions undermine the hegemonic power of universal legal standards of ethical behaviour.

B Background to the Tang Minh Phung Case

At one point, Tang Minh Phung was considered an entrepreneurial role-model. He developed a large textile conglomerate with state-owned bank finance and during 1992 and 1993 purchased land use rights (quyen su dung dat) covering many hectares of vacant land in Ho Chi Minh City and
surrounding areas. He also entered into several infrastructure for land use right swaps with the Ho Chi Minh City People’s Committee. In one transaction Tang Minh Phung agreed to build 150,000 square metres of footpaths, a new road and 10 low-income accommodation homes in exchange for 24 hectares of land in Thu Duc District valued in excess of $US2.3 million (Nguyen Ngoc Chinh, 1997: 4).

A few years later the central government passed two statutes, which some informants believe were specifically designed to curtail the alarming (to central authorities) rise in wealth and power of southern entrepreneurs like Tang Minh Phung. One statute prohibited private Vietnamese companies from contributing land use rights (or capital raised on the collateral of land use rights) as capital for foreign joint ventures.\textsuperscript{14} This provision blocked a proposed joint-venture land development project using capital contributed by Taiwanese and Singaporean investors. Even worse for Tang Minh Phung, the other statute\textsuperscript{15} reclassified land use rights held by private companies as leaseholds, significantly diminishing their market value.

These policy changes set in motion the largest corruption case in Vietnamese history. Without foreign capital, land owned by Tang Minh Phung’s companies lay idle. Worse still, the reclassification of company land use rights induced a general collapse of the Ho Chi Minh City land market. In order to raise capital to develop the land, Tang Minh Phung copied Western entrepreneurial corporate structures by establishing a series of sub-subsidiary companies to borrow from one bank, to recapitalise loans as they fell due to other banks (Nguyen and Vu, 1998b: 1).

Tang Minh Phung and 74 co-accused were arrested in March 1997 for fraudulently misappropriating ‘socialist property’ (\textit{tai san xa hoi chu nghia}), an offence carrying the death penalty under art 134 of the Penal Code (1986). Going to unprecedented lengths to demonstrate state legality, the court summoned more than 200 witnesses during a trial lasting 67 days – the longest in Vietnamese legal history.

Tang Minh Phung, director of Cong Ty Minh Phung, and Lien Khui Thin, director of Cong Ty Epco, were alleged to have colluded with senior state-owned bank officials, Pham Nhat Hong and Nguyen Ngoc Bich, fraudulently to obtain state loans exceeding $AUD400 million (\textit{Saigon Giai Phong}, 1999b: 1). The three elements of the crime were: (i) fraudulent behaviour leading to the (ii) misappropriation of (iii) socialist property.

The easiest of the three elements of the crime to prove was that the alleged misappropriation concerned socialist property (\textit{tai san xa hoi chu nghia}). As state bank loans, the debts owed by Tang Minh Phung and associated companies constituted socialist property.\textsuperscript{16}
C. Fraud

According to art 134 of the Penal Code, the procurators were required to show that ‘fraudulent methods’ were used to appropriate socialist property. The term lúa dao (fraud) used in art 134 is an inaccurate translation of art 93 of the Soviet Criminal Code 1960, upon which it is based. The Soviet provision refers to taking possession of socialist property through ‘moshennichestvo’, literally swindling but generally translated as ‘deception or abuse of trust’ (Berman, 1972: 121, 159). Since the Penal Code does not define lúa dao, the procurators employed the Soviet terminology ‘taking possession of socialist property through abuse of trust’ to describe the element of the crime (Saigon Giai Phong, 1999a: 1). The procurators alleged that Tang Minh Phung and associates perpetrated four types of ‘abuse of trust’ (lâm dụng tín nhiệm) (Saigon Giai Phong, 1999: 1). The following discussion considers the two most important allegations.

Subsidiary Companies

The procurators’ main assertion was that the subsidiaries established by Tang Minh Phung had no intrinsic commercial value and were established solely to circumvent state credit regulations. Procurators demonstrated that relatives or employees of Tang Minh Phung occupied most of the official positions in the subsidiaries. Testimonies given by Tang Minh Phung’s brother-in-law suggested that subsidiary directors knew nothing of the affairs of their companies and signed loan documents without demur (Nguyen and Vu, 1998b: 3). The indictment effectively invited the court to lift the corporate veil and treat the subsidiaries as part of the holding company.

The defence acknowledged that the subsidiaries were established to circumvent the banking regulations, but argued this was not a crime. The State Bank regulations addressed bank officials, rather than borrowers and no law prohibited the use of subsidiaries to circumvent credit limits. The defence also maintained that the Law on Companies did not require directors to have commercial experience, and in any event the HCMC People’s Committee incorporated the subsidiaries knowing the background of the office bearers. More importantly, they argued that, since senior bank officials knew funds borrowed by subsidiaries were intended for the holding company, there was no deception or ‘abuse of trust’ (Saigon Giai Phong, 1999d: 1). The court accepted the testimony of bank officials to this effect.

When asked to justify his elaborate corporate structure, Tang Minh Phung replied that Do Muoi, the General Secretary of the Communist Party, had given him permission. In explaining the commercial basis of his business structure, Tang Minh Phung posed a question to the court: ‘If
my enterprises needed to borrow 300 million dollars did not it make more sense to establish 30 subsidiaries each capable of raising 10 million dollars than the state establishing 30 banks?"

**Commodity Transactions**

Allegations of fraud revolved around a series of commodity transactions made by Grain Import and Export Company (Grainco), a state owned import/expert company, and Epcó a private company owned by Tang Minh Phung’s main business associate. Loan transactions took various forms; however, assets were generally transferred from Minh Phung Cong Ty (the holding company) to subsidiaries for use as loan collateral. In order to generate cash flows to service the loans, it was alleged that Grainco constructed a series of circular transactions in which imported commodities were sold to subsidiary companies, and then on-sold to Minh Phung Cong Ty. Completing the cycle, the goods were then resold to Grainco for a small loss. Finally, Grainco sold the goods to consumers at market prices.

Once again the defence conceded the alleged transactions, but argued they violated anti-monopoly, rather than anti-corruption, provisions. The defence also maintained that letters of credit issued by state-owned banks to finance the transactions observed banking regulations; and commodities purchased by the subsidiary companies were, depending on market conditions, either sold on the domestic market or resold to Grainco. Either way, the transactions had a dominant commercial purpose and did not – and were not intended to – ‘abuse the trust’ of state-owned banks.

**Collateral Valuations**

The most damaging allegations were that the holding company and subsidiaries fraudulently inflated the value of land used as collateral. Because there were no legally prescribed valuation guidelines, bank officials assessed collateral at market rates. Valuations were not, however, permitted to exceed land prices set by the Ministry of Finance (MoF). MoF valuations were designed to compensate occupiers for land compulsorily acquired by the state and invariably are well below market prices. Procurators relied on bank witnesses in the trial to show that MoF valuations were not followed and Tang Minh Phung’s properties were assessed at estimated market prices that significantly exceeded MoF rates.

The defence countered with two arguments. First, the State Bank valuation rules were directed at state-owned bank officials, not borrowers. Second, if properties were sold on the market they would have more than repaid outstanding loans. Defence counsel illustrated this assertion with
the example of rural land near Vung Tau. Using borrowed money, the holding company developed the wasteland into modern storage and industrial facilities with seven warehouses and accommodation (Nguyen and Vu, 1998a: 1). Strategically located near an Export Production Zone and port, the market value of the land vastly exceeded the original allotment price. State-owned banks valued the land at approximately 2 million dong (approximately $AUD200) per square metre, whereas the Land Valuation Determination Council appraised the land during the trial at 500,000 dong (approximately $AUD50) per square metre (Saigon Gia Phong, 1999b: 1).\textsuperscript{20}

In summary, the defence argued there were sound commercial reasons for establishing subsidiary companies and valuing collateral at market prices. At worst, bank officials breached credit control regulations attracting minor administrative penalties. Since avoiding banking regulations was not a criminal offence, structuring business affairs to maximise borrowings could not constitute ‘abuse of trust’.

**D. Misappropriation**

The trial judge calculated bank losses by subtracting collateral valuations provided by state authorities from aggregate outstanding loans. Since no collateral was realised before the trial, the pivotal allegation of misappropriation rested on anticipatory rather than actual losses. Without evidence of actual default, the procurators made much of Minh Phung’s and associated companies’ inability to repay loans.

The defence counsel and some press reports indicated that at the time of his arrest none of Tang Minh Phung’s companies had defaulted in loan repayments (Nguyen Thi Loan, 1999b; Tuoi Tre, 1999: 4). Even more remarkably, none of the 10 state, private and foreign banks owed money issued default notices. If this is correct, Tang Minh Phung was charged with fraudulently misappropriating socialist property before a legal obligation to repay loans arose. Without evidence of actual default, Tang Minh Phung and associates were convicted and sentenced to death in anticipation that company assets could not satisfy outstanding debts.

Even more damaging for the procurators’ case, informants maintain that at the time of the trial Minh Phung Export Garment Company, the chief revenue generator in the defendant’s business conglomerate, employed approximately 4000 workers and traded profitably. Just 10 days after Tang Minh Phung’s arrest and without obtaining a formal bankruptcy order, the garment company was seized by a 10-member steering board headed by Nguyen Van Chi, Vice Chairman of the Ho Chi Minh People’s Committee (Vietnam Investment Review, 1997d). The legal authority for this seizure of private property was not discussed during the
trial. Subsequent reports indicate that movable assets seized by the court were transferred to state-bank creditors (Vietnam Investment Review, 2000: 1–2).

Finally, only offences ‘committed in particularly serious circumstances’ attract the death penalty. Procurators need to demonstrate that Tang Minh Phung and associates were phan tu xau (bad elements), and the misappropriation of socialist property had substantially damaged the economy, state and society (Pham, 1995: 170–93; Phan, 1986: 19; Ngo, 1991: 35–6). Tang Minh Phung’s indictment accordingly emphasised the enormity of the bank loans, the organised and complex nature of the fraudulent activities, and damage to the banking sector and regional economy (Saigon Giai Phong, 1999a: 1).

E. Criminal Law Ideology

The defence counsel believed that procedural inconsistencies in Tang Minh Phung’s trial were attributable to criminal law ideology. Originally modelled on the 1960 Criminal Code of the Soviet Union (Quigley, 1988: 146–51; Holscher, 1996: 58), ‘the [Vietnamese] penal code serves as a sharp tool of proletarian dictatorship in ensuring the party’s leadership, the labouring people’s collective mastery, and the effectiveness of state management’ (FBIS, 1985: K 3). As a corollary, the Penal Code 1986 raised the state’s interests above all others, reserving especially severe penalties for crimes against state sovereignty, property and administrative processes. It also criminalised activities ‘sabotaging the infrastructure of socialism in the area of politics, security, national defence, economy, science and technology, culture or social affairs’ and ‘the realization of State plans in the area of socioeconomic affairs’. Where socially dangerous behaviour infringed state interests, the doctrines of ‘legislative analogy’ (ap dung qui pham phap luat tuong tu) and ‘legal analogy’ (ap dung phap luat tuong tu) permitted legal officials to criminalise (otherwise legal) politically or socially harmful behaviour.21 ‘Legislative legality’ was borrowed from the Soviet Union to enable judges to analogue from existing laws. The Decree-Law on the Repression of Infringements of Socialist Property 1970 (art 24), for example, authorised ‘legislative analogy’ for ‘infringements of socialist property not foreseen in this decree-law, the dispositions of this decree-law shall be applied by analogy’.22 Vietnam followed amendments to Soviet Criminal Code 1960 in formally abolishing the doctrine in the Penal Code 1986 (art 2). It was claimed at the time by the Council of Ministers that Vietnamese laws were sufficiently developed so that the doctrine was no longer required and that the Vietnamese legal system should mirror ‘progressive trends’ in other socialist countries (Nguyen, 1983: 6).
As with 'legislative analogy', 'legal analogy' is invoked where existing laws do not adequately protect state and private interests. Unlike 'legislative analogy', the doctrine authorises legal officials to analogise from general principles of 'socialist legality' (phap che xa hoi chu nghia) where there are no similar or relevant legislative principles. Commentators recommend that the doctrine should be sparingly used, after consultation with 'higher level' authorities, to combat phan cach mang (counter-revolutionary activities).

Many informants, including defence counsel for Tang Minh Phung, believe that both doctrines are still widely applied in Vietnam (Pham, 1995; Feofanov and Barry, 1996: 70–8). Their suspicions are corroborated by unlikely sources. A leading textbook currently used in Vietnamese law schools states that 'legislative' and 'legal analogy' is permitted to protect revolutionary ideals of 'socialist legality' and criminalise phan cach mang (counter-revolutionary) activities that would otherwise escape through gaps in the law.

The Deputy Chief Judge of the Criminal Division of the Supreme Court confirmed that Vietnamese courts currently use 'legislative analogy'. He gave the example of a criminal prosecution under art 95 of the Penal Code for illegally manufacturing firearms, heard by the Lai Chau Provincial Court (Dinh, 1999: 181–7). Although Circular No 1 TTLN Providing Guidelines for art 95 of the Penal Code 1996 specifically limited the application of art 95 to military weapons, the offence was considered sufficiently serious to justify using 'legislative analogy' to extend art 95 to criminalise the manufacture of low calibre sporting rifles.

Tang Minh Phung's case illustrates the different ideological regions comprising criminal law ideology. Defence counsel based their case on the ideological presumption that unless behaviour is prohibited by legislation it is lawful. From this perspective, there is no 'abuse of trust' if state-owned banks acted as 'business partners' in loan transactions and no misappropriation without defaulting loans. The procurators were persuaded by socialist ideology that the economic harm caused by the 'misuse' of 'socialist property' was sufficiently serious to justify using 'legal analogy' to overcome procedural deficiencies in the state's case.

F. Manufacturing Consent: Político-Legal Hegemony

Ideological press campaigns are co-ordinated by the Department of Ideology and Culture (Central Committee of the Communist Party). The Department prepares guidelines for party members in state organs and the press 'to assume leadership and set a direction for public opinion' (Quan Doi Nhan Dan, 1997: 3). The General Secretary of the Communist Party recently clarified the party’s role in manufacturing public consent when he urged the press to 'assume the role of a guide to help readers
thoroughly understand the true nature of things [sic: corruption] that are distorted by general rumors and bad people' (Ta, 1999: 6).


The first public indication of Tang Minh Phung's fall from grace surfaced in press accounts of his arrest (Saigon Economic Times, 1997: 8). Reports used colourful terms such as 'handcuffed and humbled in his own town ... the flamboyant boss of Minh Phung Export Garment Ltd Co stares grimly ahead ... he is accused of fleecing the State of $18 million' (Vietnam Investment Review, 1997). As the enormity of the outstanding loans increased to hundreds of millions of dollars, the tone of reporting shifted. The acclaimed entrepreneur became 'vain and self-possessed, Phung's reputation for doubled dealing and backhands stretched back years' and he 'ruthlessly built his empire' (Anh and Nguyen, 1997: 3). Even more damaging in a socialist country, the press asserted that 'Phung's arrogance in the workshop and lax management style often meant workers had nothing to do for days on end with no pay. When work did come in they were forced to double their shifts and work gruelling hours often for low pay' (Vietnam Investment Review, 1997a).

Appealing to popular sentiment that abhors ostentation, Tang Minh Phung was generally depicted as profligate and flamboyant – a phan tu xau (bad element) (Saigon Giai Phong, 1999b: 1). Reports stated that 'Tang Minh Phung was always boasting about what a good businessman he was even showing off his Honda Accord car to his workers who could only just afford to buy bicycles' (Anh and Nguyen, 1997: 3). The press emphasised the enormity of the amounts involved by comparing them to state expenditure on health (AFP, 2000). The climate of moral outrage enabled the procurators to characterise a series of non-defaulting loan agreements as 'not only damage to property, but also to the economic, political and social structure, particularly in the banking sector' (Saigon Giai Phong, 1999c: 3).

State orchestration of the media is also evident in the issues that went unreported. Defence arguments that without loan defaults there could be no misappropriation were not mentioned. The press likewise failed to question why criminal charges for loans advanced by state-owned
banks were not extended to loans issued in similar circumstances by private banks. The large discrepancy between court and market land valuations and the capacity of Minh Phung Cong Ty to service loan repayments were also ignored. Finally, no mention was made of the 33 state awards given to Tang Minh Phung: ‘recognising the achievements of a good man of good character’.  

In portraying Tang Minh Phung’s business organisation as socially and politically dangerous (Saigon Giai Phong, 1999c: 3), the press generated moral outrage against entrepreneurs. This ideological camouflage enabled the courts to criminalise otherwise lawful business activities. More generally, press reporting depicted a central state caught between two contradictory hegemonic ideals – legality (due process) and class-based ‘socialist legality’ (phap che xa hoi chu nghia).

G. Unofficial Perceptions of Central Political Ideology

Tang Minh Phung as a Doi Moi Success Story
Tang Minh Phung’s case revealed fundamental differences between official and unofficial (business) perceptions of economic crime. The following review of the events leading to Tang Minh Phung’s fall from grace and trial was pieced together from newspaper reports and interviews with Tang Minh Phung’s legal advisers and business leaders.

Commentators agree that from 1981 Tang Minh Phung ran a workshop-co-operative under the auspices of District Three, People’s Committee in Ho Chi Minh City (Saigon Economic Times, 1991). Businessmen and some press accounts concur that his business prospered under the o du (umbrella) provided by local party and government officials. By 1993, the business had grown sufficiently large for city level authorities to compel him to incorporate it as cong ty (company).

Relationships that were manageable at the district level became increasingly more complex and unpredictable at the city level. Soon after the incorporation of Minh Phung Cong Ty in July 1993, city officials alleged that capitalisation levels were overstated, and reduced the legal capital from 36 billion dong to 17 billion dong (Nguyen and Vu, 1998a: 1). Further problems arose later in the year when Minh Phung Cong Ty was investigated for land use right violations (Saigon Times, 1993). Informants intimated that powerful central party figures intervened to suppress administrative proceedings and the negative press campaign. Tang Minh Phung’s rehabilitation seemed complete when invitations to attend welcoming ceremonies and other public events with senior HCMC People’s Committee Officials resumed. By March 1997, press allegations of Tang Minh Phung’s huge loan defaults had escalated beyond the control of party–state patrons.
Criminality or Poor Commercial Judgment?
For many entrepreneurs the central question is why were loans advanced to Tang Minh Phung when banks should have known that collateral was overvalued? They speculate that either the entire management of 10 state and private banks was corrupt or, more plausibly, that imprudent loans were made during a period of unprecedented bank deregulation. Not only were prudential guidelines vague, but bank officials accustomed to command lending to state-owned enterprises lacked experience in assessing commercial risk (Ha Thang, 1998: 2). As a rising entrepreneur, openly lionised by prominent party–state officials, Tang Minh Phung appeared creditworthy. In the words of one businessman, 'bank officials were eager to attract the business of a valued and politically connected customer'. A combination of poor banking practices and competition to attract corporate borrowers lies at the centre of other Vietnamese corruption cases (Pham and Tran, 1997: 3).

Entrepreneurs interviewed were not convinced that Tang Minh Phung had misappropriated socialist property, suggesting instead that in market economies bank losses are generally attributed to poor commercial judgment rather than criminality (Keenan, 1997). More typically, in a society that only dimly comprehends the 'corporate veil' doctrine, most informants concurred with a Northern businessman that 'Tang Minh Phung was just an ordinary person who wanted to run a company. He was "spoiled" (lam hu hong) by state officials, but also spoiled state officials'. In other words, informants believed that he employed sharp practices and induced state officials to breach lending guidelines but he was not guilty of fraudulently misappropriating socialist property. His guilt was presumed, however, once the prosecution invoked political imagery of danger to trat tu phap luat xa hoi (socialist legal order); and moral imagery depicting him as phan tu xau (bad element).

Political Motives
Despite extensive evidence of systematic payments made by Tang Minh Phung to bank officials no one was charged with bribery (Nguyen and Vu, 1998a: 1–3). Many entrepreneurs ascribe this anomaly to power struggles in the highest echelons of the party–state. According to this narrative, Tang Minh Phung was used as a 'pawn' to damage his patrons' political credibility. However, both political factions were reluctant to commence bribery investigations, which experience showed were difficult to control and invariably implicated senior party–state officials.

Informants also believe that with the assistance of the press, factions opposed to Tang Minh Phung transformed a series of poor investment decisions into crimes against 'the socialist regime, economic system and socialist ownership'. In their estimation, the strict legalism promoted by
the state evaporated when the state criminalised Tang Minh Phung's business operations. State-owned bank losses were politicised as attacks on the socialist system and ultimately the nation.

VII. The Ideological Dimensions of Corruption

A. Constructing Dominant Legal Ideologies

The case studies sit comfortably with Poulantzas's observation that dominant ideologies are comprised of competing strands (or regions) of political, moral, religious and philosophical thoughts which shape ethical perceptions. For example, the public good generated by the Chief Architect's service companies legitimised otherwise corrupt behaviour. The forbearance shown by central authorities in this case implied a 'fuzzy' legality that evaluated corruption according to trade-offs between the public good and private advantage, rather than universal behavioural standards. Similar inferences can be drawn from the tacit approval of corrupt land use allocations in Ho Chi Minh City. Local ideology generated a 'fuzzy' legality that permitted local authorities to negotiate the boundaries separating state and private interests. It also transformed anti-corruption laws into flexible management tools (cong cu quan ly) to preserve local interests. In both cases, local ideology infiltrated and modified central legalism.

In Tang Minh Phung's case, Vietnam's longest and most complex trial, the state went to unprecedented lengths to demonstrate its commitment to legalism. The complex 504-page indictment (Saigon Giai Phong, 1999a: 1) took days to read out in court, while the state called hundreds of witnesses. When legal processes failed to prove the embezzlement of socialist property, the courts applied socialist 'legal analogy', a different kind of 'fuzzy' legality, to criminalise otherwise lawful commercial behaviour.

Socialist 'fuzzy' legality is a product of Vietnam's dualistic dominant legal ideology. Especially after the Seventh Party Congress adopted the doctrine of the 'law-based-state' (nha nuoc phap quyên) in 1991, legal ideology in Vietnam projected an image of legal modernity. Considerable effort has been expended in regularising political processes by replacing secret internal relationships with 'rational' legal instruments (Rose, 1998: 99–105). Reformers called for stable, authoritative and compulsory law; equality before the law; and the use of law to constrain and supervise enforcement and administration. They also advocate better-trained judges and lawyers and widely disseminated laws. The government is well aware that domestic and foreign audiences increasingly measure state legitimacy against due process (CPV Central Committee, 1995: 11–12).
Contradicting the legalist facade, the dominant legal ideology in Vietnam comprises interwoven strands of strict legal instrumentalism and the political expediency permitted by Marxist-Leninist legal theories. The Marxist-Leninist 'socialist legality' (*phap che xa hoi chu nghia*) doctrine, which for decades expounded the three tenets of socialist governance – the people as owners, the party as leader, and the government as manager – unequivocally remains in place. Although the focus of the state has shifted from class struggle to economic development, the Marxist base determines the superstructure metaphor ensures that the ultimate purpose of law is to reflect the 'will of the ruling class' (*y chi cua giai cap thong tri*) (Nguyen Nham, 1997: 3; Vu, 1995: 7). Since the party is the executive committee of the 'working class', socialist legal ideology slavishly follows the party-line (*duong loi dang*).

In repositioning socialist ideology in contemporary law reforms, the Minister of Justice (Nguyen Dinh Loc) reaffirmed that criminal law:

institutionalises the Party's and State's criminal domains ... to ensure social and political stability, firmly protect revolutionary gains, socialist reconstruction and citizens' rights to freedom and democracy, to respect human rights, protect industrial property, the environment and ... service the cause of *doi moi*. (Nguyen, 1999: 16–17)

Dao Tri Uc, a leading legal theorist, elaborated the class-based nature of law:

Legality (*phap che*) in general is the way to organise society, to put social life into the order that fits with the will of the ruling class. If laws are the legalised will of the ruling class, arising from the contemporary needs and social condition of the ruling class, legality must be understood as the process to put that will into real life, making it reality. Thus, for us, legality has the same meaning as the need to institutionalise the requirement that state administration and social administration to benefit the working people. (1999: 18)

In confirming that 'socialist legality' (*phap che xa hoi chu nghia*) is primarily applied to benefit the 'working people', Dao Tri Uc implies that legality only incidentally promotes legal conformity.

**B. Constructing Local Ideologies**

Local ideologies do not simply reflect the norms and precepts of dominant ideologies. They are instead constructed from interactions between dominant and local values. Decision-making by Chief Architect and land officials involved blending behavioural norms selected from the dominant legal ideology with a syncretic mix of local values (reflecting neo-Confucian, Taoist, Buddhist and Western influences). The interaction between dominant and local ideologies is strongly mediated by state and
social institutions: bureaucracies, families and patron-client relationships. Although the surface meanings of local ideologies are clearly influenced by dominant ideologies, these values are filtered through and shaped by the organisational goals of state. For most, the impersonal rules underpinning public choice theory that divide the world into public and private spheres have few points of intersection with highly fluid and contextualised family, work place and political networks. So, for example, Chief Architect officials followed a higher morality in violating anti-corruption laws to assist each other. Similarly, land officials invoked the neo-Confucian adage that law is the lowest form of morality when substituting familial and patron-client interests for state policy (Le, 1993: 32–5; Nguyen, Quang Vinh and Leaf, 1996: 176–82).

Tang Minh Phung’s case likewise provoked frictions between the dominant and local ideologies of Vietnamese elites. For many party–state officials Tang Minh Phung epitomised the very worst aspects of market reforms that allowed Southern entrepreneurs to succeed over Northern revolutionaries. Contesting the party–state orthodoxy, many private lawyers and businessmen believed Tang Minh Phung was guilty of sharp commercial practices, even bribing bank officials, but not of the charges laid. They considered entrepreneurialism and the accumulation of wealth and power outside the party–state orbit the real crime.

The salient issue is not which version is correct, but rather, that influential members of the business elite received contradictory ideological messages from the state. Rejecting fabricated images of procedural neutrality and nhà nước pháp quyền (law-based-state), businessmen believed that socialist ‘fuzzy’ legality criminalised commercial activities. Far from demonstrating equality before the law, the trial reaffirmed the need for particularistic – often corrupt – o du (umbrella) relationships with high-ranking officials and mistrust of rights-based legalism. Compounding the problem, a well-documented leniency shown to corrupt party cadres in Vietnam has entrenched popular scepticism concerning the dominant legal ideology and its capacity to curb corruption (Huy, Le, 1996: 5; Schwartz, 1996: 18).

In sum, the case studies reveal three ideological orbits in Vietnam; legalism, ‘socialist legality’ and local ‘cultural’ precepts. They imply that contests between the ideological orbits produce ‘fuzzy’ legality. In Tang Minh Phung’s case, ‘socialist legality’ subordinated the legalist procedural conformity, whereas the HCMC land cases showed local ideology infiltrating state legalism. In the Chief Architect’s case, local ideology infused state institutional culture. In each case, competing ideological regions subordinated the procedural legality presupposed by public choice theories of bureaucratic corruption.
C. Evaluating Hegemony Theory

Although hegemonic theory enables the analysis of corruption to step outside the legal–illegal analytical straitjacket imposed by public choice theory, its heuristic potential is constrained by several shortcomings. In assuming that ideological hegemony operates top-down, the theory does not adequately account for interaction between dominant and local ideologies. Many important economic reforms in Vietnam originated from the bottom-up infiltration of technically illegal local precepts. Household production contracts, for example, trace their genesis to illegal village practices (Kerkvliet, 1995: 413–20; Kerkvliet and Selden, 1999: 106–14).

More fundamentally, by focusing on the penetration of civil society by the state, hegemony theory does not easily account for polycentric states. Despite aspirations to the contrary, Vietnam always was, and continues to be, highly fragmented and prone to regionalism (Cooke, 1998: 124–45). It is frequently unclear in the case studies, for example, whether local–state ideologies had shifted so far from central imperatives that they dissolved into civil society. Adding to the complexity, provincial officials predominantly comprise party elites and they bring to central decision-making the competing ideologies of local level power brokers and family structures.25 Far from a harmonious discourse, central ideology reflects compromises struck between highly competitive ministries, party factions and orthodox Marxists and reformers (McCormick, 1999: 164–9). In this polycentric matrix, a textured understanding of corruption needs to look beyond ideological dichotomies, to consider integrating institutions that generate, maintain and transmit ideology.

VIII. Conclusion

By emphasising the perceptual basis of bureaucratic corruption, it has been possible to argue that corruption is partially produced by disjunctions between dominant and local ideologies in Vietnam. Whether co-mingling, co-existing or locked in conflict, it has been further argued that dominant and local ideologies represent different versions of reality. In this bifurcated ideological landscape, public choice theory's assertion that rent-seeking is the primary cause of corruption seems improbable. Public choice theory fails to account for the full range of preferences that shape bureaucratic decisions, much less explain how those preferences arose and interrelate. These are serious failings for a predictive theory.

Ideological theory, on the contrary, gives a fuller explanation of bureaucratic behaviour. It accounts for inconsistencies between central policy and local implementation and public cynicism concerning the real objectives of anti-corruption campaigns. Though ideological analysis generates instructive insights, central authorities designing anti-
corruption programs in Vietnam (and China) are unlikely to abandon state monism and treat central and local ideologies equally. They might correctly conclude that this path leads to legal pluralism and customary legal rights (Griffiths, 1986, 2-5; Tamanaha, 1993: 195-9). Public choice theory appears attractive to Vietnamese (and Chinese) officials, precisely because it treats state monism as a given and attributes corruption to the behaviour of individuals. If only people make mistakes, party-state institutions escape scrutiny. Public attention is deflected away from building processes that manufacture value consensus through dialogue between central and local ideologies.

The highly successful anti-corruption program in Hong Kong suggests that effective solutions lie in closing the ideological gap between elite and local legal ideologies. According to Carol Jones (1999: 56-62), Hong Kong’s Independent Commission Against Corruption (ICAC) would have been unable to combat alarming levels of corruption in Hong Kong during the 1970s without the central elite convincing the public that anti-corruption laws were fair and socially acceptable (Palmier, 1985: 176-88). The state promoted its message through press campaigns, education programs, and making law more accessible through legal aid and labour dispute tribunals. In short, a fundamental shift in emphasis occurred. Law was no longer regarded purely in coercive terms as an instrument to keep a dangerous population under control; the state began to take every one’s legal rights seriously.

Admittedly, reforms in Hong Kong were aided by a comparatively well-paid and trained bureaucracy, a fully functioning judicial system and unified administrative structure. Nevertheless, a considerable ideological gulf existed between the transplanted British liberalism of the colonial elite and local ideologies of the large Chinese immigrant population. More importantly, corruption decreased over a period where salaries and conditions remained relatively static, implying that self-interest (though undoubtedly significant) was not the primary causal factor. Evidently, one of the most potent symbols of the new legal ideology was the political independence of the ICAC. By rigorously pursuing corruption in all social levels, it convinced sceptical officials that legal processes observed government rhetoric promising unwavering, impartial legality. The ideological gap was not just a theoretical problem, it had a direct bearing on every day life. If state institutions do not function according to the dominant ideology, people find corrupt routes and means to achieve their objectives.

The conundrum facing law-makers in Vietnam (and China) is finding ways within existing socialist structures of collapsing the chasm between dominant and local legal ideologies. Developmentalist and nationalist themes are increasingly invoked to mobilise public support for these regimes. Like campaigns conducted by Lee Kuan Yew and Mahathir
Mohamad, the perceived superiority of Asian values and the promise of rapid economic development invest nationalism with some credibility (McCormick, 1999: 164–5). Though undoubtedly potent hegemonic symbols, anti-corruption reforms in Hong Kong indicate that popular support for law-based anti-corruption programs requires a dominant legal ideology that unequivocally pledges due process and legal institutions that make good the promise.

Drawing on Hong Kong’s example, Vietnam (and China) now urgently require institutional changes that formalise public exchanges between the three ideological orbits – legalism, ‘socialist legality’ and local ‘cultural’ ideologies. Ideological discourse is unlikely to appear credible unless publicly accessible processes are created that enable central ideology to address and incorporate local ideological precepts and values. It remains unclear, however, whether genuine discourse is possible in the permitted sites of social organisation, namely the party, mass organisations and, more recently, the village and family. To realise its hegemonic potential, legal ideology must accommodate local concerns and state institutions must possess a willingness and capacity to resist party–state political power.

Notes

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1 Public choice theory developed from behavioural models used by economists to understand market transactions. They reasoned that market principles of self-interest also shaped decision-making by ‘public choosers’, such as bureaucrats, politicians and party leaders: Buchanan, 1984: 13; Rubin, 1988: 1257–8.

2 Measuring absolute levels of corruption is both practically and conceptually difficult. However, some indication of relative levels can be gleaned from impressionistic accounts of corruption in the vernacular press. Surveys based on the perception of businessmen, like the Transparency International Index, also capture broad shifts in the incidence of corruption. China, for example, was given a Transparency International corruption index rating of 5.13 out of 10 in 1980–5, 4.71 1988–92 and 2.43 in 1996: Lancaster and Montinola, 1997: 186–94. The lower the score the higher the perception of corruption.

3 According to Government policy, ‘administrative reforms must be aimed at promoting the ongoing nationwide renovation and national development in line with industrialization and modernization policy’: Phan, 1995: 95–6; Phan, 1993: 1–3.

4 Although overall standards of living have improved through increased official salaries and second incomes, in comparison with entrepreneurs, public sector workers have missed out on economic reforms. Some commentators suggest that feelings of being left behind are a potent source of malfeasance: Irvin, 1995: 742.

6 Very few scholarly writings address corruption in Vietnam. Comments in this article are based on newspaper articles, in-depth interviews and 22 focus group discussions conducted in Hanoi during 1997–98. Informants were a reasonably representative cross-section of genders, ages and socio-economic backgrounds. They were asked to classify different types of corruption according to their social harm and comment on three case examples of common forms of corruption. In contrast to Vietnam there are numerous articles dealing with social perceptions of corruption in China: Rocca, 1992: 404–8; Smart, 1993: 397–405.

7 Contemporary theorists rejected Gramsci’s orthodox Marxist belief that ideology is purposely used by the elite to cloak their monopolisation of resources: Bourdieu, 1997; Hunt, 1985, 13–20.

8 These comments are based on the SENA Corporation, an architectural and drafting service company owned by the Institute for Urban Technology and Development, a body controlled by the Hanoi People’s Committee. Interviews with Nguyen Son Lo, Director, Institute for Urban Technology and Development, and officials in the Chief Architect’s Office, 1996–1997. Interviews were also conducted with two high ranking officials in the Chief Architect’s Office conducted during July 1998 and April 1999 in Hanoi. Corroborative information was provided in interviews with lawyers working with Leadco and Investconsult, July 1998, April 1999 and October 1999 in Hanoi.

9 It is also possible that powerful patrons shielded Chief Architect officials from prosecution, although the author lacks concrete evidence supporting this contention.


11 Despite the recent amalgamation of housing, land and construction departments in HCMC and Hanoi, informants indicate that intra-departmental consultations continue to provide opportunities for ‘creative’ giving and receiving favours.

12 Louis Althusser refined Gramsci’s theories by identifying which state and non-state institutions inculcated dominant ideologies. In discussing State ‘coercive institutions’, like the police and courts and ideological institutions, like schools and the press, Althusser was careful to note that they have duel functions: categorisations are based more on function than effect: Ricoeur, 1994: 51–60.


14 The Law on Foreign Investment, 1987 (amended 1992), allowed private companies to form joint ventures, but an Official Letter issued by the General Department of Land Management in 1994 forbade capital contributions of land use rights.


16 Socialist property is any asset owned by the state. State-owned banks do not own but ‘manage’ socialist property on behalf of the state: Decree No 43 CP, 1995.
A decision of the Governor of the State Bank (issued in September 1994) limited the quantum of loans advanced to individual borrowers to 10 per cent of credit institutions’ reserve funds (Nguyen and Vu, 1998b: 1–3). Following the Tamexco corruption scandal, lending limits were further restricted by capping loans to 10 per cent of the legal capital of individual borrowers (Nguyen and Vu, 1998a: 1). The Tamexco case involved fraudulent borrowing by the director of a party owned trading company (AFP, 1996). Adopting state-owned bank advice, Tang Minh Phung established thirty-nine công ty con (literally child companies, but usually translated as subsidiary companies) (Nguyen and Vu, 1998a: 1; Nguyen and Vu, 1998b: 1; Mai, 1999: 11). Evidence led at the trial indicated that the subsidiaries borrowed up to the 10 per cent limit, vastly increasing funds available to Tang Minh Phung’s holding company: Official Letter No 1186/NHCT/TP Industry and Commercial Bank 1995; Brady, 1998: 44.

Commentary concerning defence arguments are primarily based on interviews with Tang Minh Phung’s lawyers conducted during July 1998, March–April 1999 and September–October 1999. Only Madame Nguyen Thi Loan, the leading liuat su (attorney) consented to the citation of her name.

Article 3 of Decree No 87/CP Stipulating a Price List of Categories of Land 1994, sets out maximum and minimum prices for different categories of urban and rural land. People’s committees were required to determine land prices within their locality based on the frame prices. The entire question of market valuation is uncertain in Vietnam, because only the state is permitted in legal theory to sell land. In practice, land use rights, the occupation rights issued by the state, are traded like a commodity in large urban centres. Interviews with domestic lawyers.

The defence attorneys assert that shortly after the trial concluded in August 1999, the Ministry of Agriculture advertised the sale of land originally allotted to Công Ty Minh Phung for approximately two million đồng per square meter, over four times the court valuation.

Article 16 of the repealed 1926 Soviet Criminal Code provided that '[i]f any socially dangerous act is not directly provided for by the present Code, the basis and limits of the responsibility for it shall be determined by application of those articles of the Code which provide for crimes most similar in nature'.

Evidently ‘legislative analogy’ is not an exclusively socialist doctrine and was used by some civil law countries, such as Norway and France, to punish serious crimes that would otherwise slip through statutory loopholes: Quigley, 1988: 160–2.

These are the words of a certificate signed by the Party Secretary of the Ho Chi Minh City Branch of the Communist Party, 18 May 1995.

Many commentators have observed similarities in style between pre-modern and contemporary Vietnamese institutions. In preferring virtue rule (Li or duc tri) to state law (Fap or phap tri), some contend socialist bureaucrats recycle the attitudes of their Confucian predecessors. Few would seriously argue that pre-modern thought was swept aside by Marxist-Leninism or Western thinking, but it would be equally erroneous to conclude that imported ideologies have not profoundly shaped bureaucratic thinking: Woodside, 1999: 21–9; Vu, 1994: 74; Ta, 1994: 93–6; Chuong, Phan, 1994 90–1; Marr, 1981: 101–15.

For example, approximately 67 per cent of the Central Committee of the Communist Party of Vietnam are drawn from provincial party and government officials: Abua, 1999: 1110–11; Vasavakul, 1997: 116–18.

Despite its intuitive appeal, empirical research indicates that taxation reform leading to higher official salaries is also only marginally effective in reducing corruption. A detailed study conducted by the IMF concluded that there was some evidence for improving official salaries based on inter-country comparative analysis. However, they admitted that extraneous factors like different political and cultural institutions made inter-country analysis problematical: Van Rijkceghem and Weder, 1997: 30–41.
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Bureaucratic Corruption in Vietnam


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