

INTRODUCTION

I asked the manager to allow me to get my social insurance premium, because my life is hard and I need money. I want to settle family debts and want to have enough to feed my kids Each month I earn about 6 million dong (approximately US\$260). I use 2 million dong to pay rent. With the remaining 4 million dong, I have to think back and forth when spending it between the four of us; otherwise it would not be enough. (Interview, March 4, 2018)

Mrs. Lan, a factory worker in her mid-forties, recalled how she was desperate to claim her social insurance money to pay for pressing family expenses. In Vietnam, the social insurance scheme managed by the state has been an important pillar of Vietnamese employees' workplace-related benefits, most of which cover their old-age pension. If Lan had not claimed her social insurance money now, she could have continued working and contributing to the social insurance fund until her retirement. Married with two young children, Lan has been the main breadwinner of the family for the past year, since her husband was made redundant due to the restructuring of a construction company where he had worked for more than fifteen years. About twenty years ago, Lan and her husband, who came from a northern, rural region of Nam Định province, moved to Hồ Chí Minh city (HCMC), the most rapidly developing city of Vietnam, for new economic opportunities. Faced with more financial stress in the city now that one of them is out of work, the couple have been considering the option of returning to their rural hometown where they would be able to at least stay with their parents and save on the cost of renting, and other expenses such as food and milk formula for their children.

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Lan had worked as a line worker in the garment industry for eighteen years. This is one of the typical manual assembly jobs that require limited skill and qualifications and most often reward workers with barely enough to feed themselves and their families. Workers' incomes increase every year due to the government's annual minimum wage adjustments, yet such increase is at the same time offset by the rising cost of major expenses, such as rent, food, and fuel. According to current legislation, 8 percent of employees' monthly income is paid into their social insurance premium,¹ most of which will cover their living allowance and health insurance when they retire. Other benefits related to social insurance include maternity benefits, and occupational diseases and accidents cover.

By law, employees can obtain early access to their social insurance money in some circumstances, including when they have quit their job and stopped contributing to the social insurance fund for one year.² In reality, many low-income factory workers view the social insurance money, part of which is the monthly deduction of how much *they* earn, as a kind of savings to which they feel they are entitled. And given the aforementioned legal stipulation, many workers are inclined to access the fund when their lives are in trouble, such as when they encounter financial hardship or need a large sum of money for family expenditures. In the case of Lan, the money was crucial. Her husband, also a factory worker, had been made redundant a year ago, making Lan the household's breadwinner. They were in debt, and stressed about the upcoming time when their savings would be used up. Lan decided to formally quit her job so that she could claim her social insurance money in a year's time. She has accumulated more than nine years of social insurance contribution from her work with the current employer. She had withdrawn her social insurance premiums before then. In her estimation, the amount to be claimed could help the couple pay off debts; any remaining amount would be used to help the household settle back in their rural hometown, where the cost of living is much lower. While waiting to claim social insurance money, Lan also asked her current employer to consider hiring her to "work casually," which means work with no labor contract or any legally bounded obligation, to which her

¹ The employer is obligated to contribute another 17 percent of employees' income to their social insurance premium (Law on Social Insurance, 2014).

² Other circumstances include when employees migrate overseas or face life-threatening diseases. I add that, in all circumstances, the bureaucratic process for claiming social insurance early does not require the claimants to prove that they are facing any (extreme) financial hardship.

employer had agreed. This particular stipulation regarding early access to the social insurance law turned out to be of use when Lan felt financially insecure and needed some relief.

Nonetheless, Lan's decision to withdraw social insurance money meant that she and her employer would put an end to their employment relationship. Lan's work did not provide much remuneration but her employer was obliged to pay her wages, any extra allowance support, and social insurance benefits every month. After all, her supervisor at work had not treated her terribly and she had a good relationship with her coworkers. To withdraw this money also means giving up her right to pension benefits when she retires, a legal right that would be realized if Lan had continued to be in formal employment and contributed to the social insurance fund for at least another ten years. The contingency plan that was successfully carried out through her withdrawal of the pension helped relieve the household's near-future financial stress, but did not appear to make her work and life in the long run less hard or challenging. As mentioned, while waiting a year to claim her social insurance money, Lan has become a casual worker, receiving cash payments and being exposed to arbitrary dismissal in case the employer no longer needs her. After claiming the money, the household will return to their rural hometown, where they will pay less for day-to-day expenses, but then face uncertainty about their prospects of earning a living.

Stories of desperation and suffering and the resourcefulness and resilience of people like Lan form the centerpiece of this book. Lan is one of the seventy low-income Vietnamese workers and residents that I have met and talked to in suburban areas of HCMC, who have turned to the law, or avoided and resisted it in their daily life, to overcome specific economic and financial hardship or to pursue their needs and goals. These people come from different backgrounds; their work and living arrangements also vary, but they all share the same daily struggle, which includes addressing needs such as feeding themselves and their family, funding their children's education, paying for medical care, and securing their accommodation. In all cases, their engagement in a legal, semilegal, or illegal activity was a response to a condition of uncertainty, underpinned by a hope to achieve more stability.

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While the participants' plan to fulfil their needs and goals was successfully carried out, this fulfilment turned out to be disadvantageous, and to some people, unfortunately destructive. The first group of participants, who are middle-aged factory workers such as Lan, gave up their legal right to a pension, something that can provide a stable source of income or a financial safety net in their old age, while simultaneously taking on precarious employment or being trapped in an exploitative working arrangement with their employer. The second group, workers who used to work in a former state enterprise and sought early retirement, spent their retirement on a low, substandard pension that, even with a free public health insurance, could barely compensate for their illnesses and deteriorating wellbeing following decades of hard and hazardous work. The last group of people, who are low-income homeowners in a peri-urban area of the city, faced the worst consequences. Following their attempts to build their own houses in an agricultural land rather than legal residential land, they ended up living in uncertainty in their deteriorating and uncomfortable settlement, or even losing their homes, money, and neighborhoods. Ultimately, the living and working conditions of these people, as a result of their legal, semi-legal, or illegal, behavior, are in no way better.

How can we make sense of these people's decision to use the law (or avoid and resist it), only to end up in such a disadvantaged condition? Which factors and processes would account for their course of action when the negative effects apparently outweighed its benefits? If we view human beings as rational actors, who would (or would not) take a certain course of action following a calculated judgment and anticipation that such an act would work out in their favor, the realities that confront these Vietnamese people are puzzling and striking. The paradox that comes out of these people's situations is particularly important and relevant for law and society research agendas because of the possibilities, and limitations, of law in delivering desirable social outcomes for the people who are supposed to be protected under the law or benefit from it. This paradox is especially compelling when we consider the economic disadvantage of the target group of people, who most often have to face a range of social, political, and legal barriers as they get by in their daily life.

This paradox in turn raises a question which formulates the central thesis of this book: How does law matter to the everyday survival strategies of people who live and work in uncertain and sometimes desperate conditions in Vietnam? In addressing this question I seek

to contribute to and advance the ongoing contention and debates in the sociolegal literature as to the role of law in the individuals' lives: Is law able to offer a feasible solution to their everyday problems, or is it only a set of abstractions that are distant from and irrelevant to their needs, goals, and expectations? Is law able to empower those who choose to invoke it, or would invoking law only lead to failure and disappointment? This book also offers new and important insights into everyday legality in Vietnam and contributes to the relevant emerging Vietnamese sociolegal scholarship which has thus far focused mainly on the formal settings of law's function.

The rich body of literature on legal consciousness, that is, how people make sense of and act according to the law, has offered three distinctive accounts of law and social life. These scholars have chosen to approach ordinary people in commonplace, informal settings to flesh out important aspects of the social fabrics of law that elude those who focus solely on formal, institutional avenues of legal practices and enforcement. The first account projects a view of law as a hegemonic and pervasive force within society. Law permeates into and casts a broad shadow over people's lives, and elicits their consent and subservience to its ideals and authority (Ewick and Silbey, 1998, 2003; Sarat, 1990). The second strand of literature addresses the rise and prevalence of people's distrust toward the law, showing how law exerts limited, if any, influence on the way people talk about, behave, and act upon their social problems (Hendley, 2011a; Hertogh, 2018; Kurkchiyan, 2003; Su, 2018). In many contexts, the mismatch between law in the books and law in action leads to people turning away from law. The third account acknowledges the potential benefits of invoking the law to be realized through the agency of the rights bearers. Even though law and its associated practices are full of shortcomings, law can be a useful and powerful tool for disadvantaged and marginalized people to remedy the wrongs perpetrated upon them, or to push for broader political claims about their rights and entitlements (Abrego, 2011; Gallagher, 2006; Gilliom, 2001; Hernández, 2010; Nguyen, 2019).

These previous accounts, while providing useful perspectives into the multifaceted and oftentimes contradictory nature of law's power and operation in daily life, do not adequately capture and explain my research participants' experiences. Let me consider again the situation of Lan, the female breadwinner mentioned at the beginning of this Introduction. Lan decided to formally quit her job so that she can claim her social insurance money in a year to settle

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family debts and expenses. Her action is at odds with the objective and spirit of the social insurance law, which encourages employees to uphold and accumulate their social insurance money toward the old-age pension. In her life, law is not hegemonic, as it fails to elicit her consent or deference to its official discourse and authority. But neither is law irrelevant to her life. When in need of extra money, Lan was able to mobilize one particular aspect of the law that allows for early withdrawal of social insurance in a tactical way. By engaging in an informal process of negotiation with her employer, she was able to bend the law to suit her own situation, her own needs. However, in contrast to what some scholars would suggest about the potential benefits of invoking the law, Lan became worse off, precisely because of the way she tried to put the law into action, to find a way out of the difficult situation that she was in.

As such, the paradox that comes out of my informant's situation is less concerned with whether and how they would invoke the law, and more with the way their disadvantaged condition is reinforced and sustained *as a result of* their legal behavior. After all, these experiences are not exclusive to the low-income migrants and residents in Vietnam, but can resonate with people who are trapped living and working in desperate, unstable, and uncertain conditions in any society. The stories of these people allow me to discern the factors and processes that account for the paradoxical impacts of law on people's survival strategies, and to generate important and useful theoretical insights into the ongoing debates of whether and how law matters in our society.

In short, the puzzle that inspires this project foregrounds the complexities of the life experiences of the individuals who are direct or potential beneficiaries of law, or subjects of law enforcement. These experiences, which I call precarity and will expound in Chapter 1, capture the vulnerable nature of people's life and work as well as their aspirations and capability to improve their condition. This conceptual approach brings together insights from sociolegal studies and the political economy literature on the disruptive impacts of global capitalist development on the nature of life and work, and is illustrated through my ethnographic observations of the livelihood strategies of the people and their communities in Vietnam. From this perspective, I seek to flesh out the important two-way relationship between people's precarity and law, that is, precarity both shapes and is shaped by the way people experience and engage with the law in their daily survival. This relationship sheds a new light on the double-edged

effects of law in the lives of disadvantaged and marginalized citizens, an issue that has remained largely undertheorized in existing legal consciousness literature.

The central argument of this book is that legal consciousness, that is, the way an individual perceives of and acts according to the law, has to be understood in terms of their experiences of precarity. I examine precarity as an ontological aspect of life that embodies people's aspirations to have a better life, or better control over their life. This notion is borrowed from the political economy literature on the disruptive impacts of global industrial transformation and neoliberalism on the meaning and nature of work, welfare, and citizenship (Alberti et al., 2018; Herod and Lambert, 2016; Kalleberg, Hewison, and Shin 2022; Lee and Kofman, 2012; Neilson and Rossiter, 2005; Parry, 2018; Standing, 2011). The precarity of the Vietnamese people covered in this book is mostly concerned with experiences of insecurity and uncertainty in their livelihood and working arrangements. These experiences are grounded within the broader process of Vietnam's economic transformation and a new mode of governing that causes work and welfare to be increasingly exposed to market forces and private regulation. Social factors such as age, gender, and migration status also create distinctive and variegated experiences among different groups of people. In Chapters 3 to 5, I will tease out the various ways in which precarity is portrayed and experienced by factory workers in female-dominated light manufacturing industries, by retired, former construction workers, and by aspiring homeowners in a peri-urban area of the city, most of whom are migrants from other provinces. Amidst these challenging life circumstances, we also get a picture of people's resilience and adaptability, that is, the way they act, or choose to act, to overcome their challenges and achieve more stability in life. It is important not to view precarity as a fixed or homogenous condition, but one that is variegated, dynamic, and subject to change; and for that reason it calls upon the possibility of law as one of the resources and means for people to improve their condition.

This study posits that the relationship between precarity and law is constituted by the following three-pronged, interconnected process. Central to this process are the dynamic, complex interactions between law and other sets of norms, understandings, and practices

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that go beyond the scope of law or extend from it. In the first part of this process, experiences of precarity influence the way people understand and perceive of the law. Living and working under precarious and desperate conditions, they come to judge whether and how the law is just or meaningful to their lives, and whether and how it might offer a solution to help improve their condition. In the construction of these understandings, judgments, and perceptions, people draw upon ideals, discourses, and practices derived from the law, as well as other sets of normative structures, such as customary, traditional norms, or widely held beliefs and practices. Some examples of these other sets of normative structures that I will cover in the empirical chapters include morality and sentiment in workplace relationships, gendered norms, obligations and expectations in a household, and the communal, shared ethics of survival. These other sets of normative structures are either at odds with or complement the ideals and values derived from law, and are fundamental to either consolidating or challenging the moral legitimacy of law in the lives of these people.

The second part of the process is about people's behavior: Having judged whether and how law matters to their lives, they turn to use, avoid, or contravene the law as part of their survival strategies. If the first part of the process centers upon law's moral legitimacy, the second part is about its actual operations, which are usually flexible and open to negotiation. The way people choose to bring law to bear on their everyday problems, or to *not* do so, depends on their capability to utilize, exploit, or negotiate formal regulations, as well as law's vagueness and ambiguity, in a way that people anticipate might work in their favor. Some examples in the chapters include people's engagements in brokerage and bribery, and informal and casual forms of transactions and agreements that circumscribe the law or exploit its loopholes and ambiguities. This particular characteristic of their legal behavior consequently determines the effects of law upon their lives, which then completes our concerned process that characterizes the relationship between law and precarity.

In the final part of the process, people encounter, or are subject to, aspects of the law that ironically reinforce or sustain their precarity. This part illuminates the complex payoffs of people's legal behavior: Despite being able to pursue their needs as they have planned, people end up in different precarious living and working arrangements. Because these people's legal behaviors unfold *within* the scope and boundary of the law rather than outside of it, the outcomes are inevitably subject to law's authority, sanction, and discretion. The exclusion,

disadvantage, and subordination experienced by these people embody the power of submission that law inflicts upon the lives of those who attempt to use, avoid, or contravene it in the first place. In the end, they are all confronted with new forms of everyday struggles, hardships, and sufferings.

By positing this mutually reinforcing relationship between law and precarity, this book advances existing understanding of the paradoxical, double-edge effects of law in the lives of disadvantaged people. On the one hand, law enables people living and working under precarious circumstances to pursue their needs and achieve greater stability; yet on the other hand, it can disadvantage them further and make their work and lives even more precarious. This relationship features the salient role of factors and processes that enable people to act upon the law, but at the same time operate so powerfully in opposition to the benefits of invoking it. Understanding the complex dynamics between law and precarity sheds new light on the role of law that, especially to the lives of people caught in uncertain and often desperate circumstances, makes matters worse rather than better.

The conceptual relationship between law and precarity will be demonstrated by the stories of low-income workers and residents that I collected during my ethnographic research in Vietnam. Even though such a relationship could be studied and observed in any society, it is particularly illuminating to locate such a study in a transitional economy, where the factors and processes that characterize the paradoxical, double-edged effects of law play out vividly and in a significant way. Now a lower-middle-income country, Vietnam started its transition from a central planning economic system toward a “market economy with a socialist orientation” in the late 1980s. The Communist Party of Vietnam (CPV), which remains the only political party in the country, has propagated the construction of socialism as one of its ruling, ideological doctrines. The reform agenda, known as *đổi mới* (renovation), welcomes private capital development, which was almost nonexistent under the centrally planned system, and integrates the country further into the global economy. The restructure of state-owned enterprises (SOEs), the decentralization of state power to the local levels, public administration reform, and marketization of social services are among the key mandates executed during the reform era.

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Existing accounts of law and society in Vietnam have situated the law within the authoritarian nature of the political system and the moral economy of local communities. The CPV has maintained its hegemonic rule of the country since Vietnam's independence from France in 1945. Under the CPV's leadership, Vietnam has held rubber-stamp elections of members of the one-chamber legislative body, the National Assembly, every five years. Under the central planning economic system, all economic and social activities followed the policies and mandates of the CPV. New laws passed after the reform have reconfigured economic and social relationships in line with market principles. The legal doctrine shifted from "socialist legality," which views law as derived from and serving the interests of the ruling class (which is the proletariat), to the construction of a "socialist law-based state," whereby law is the main instrument of state governance and its regulation of social and economic activities (Do, 2016: 67–73; Gillespie, 2011). The new legal system has recognized and granted citizens individual rights in different civil and administrative issues, but the enforcement and protection of these rights have been subordinate to the state's political interests (Sidel, 2008).

At the societal level, customary norms, beliefs, and informal practices have played a predominant role over official rules in shaping social behavior and relationships despite the comprehensive legal reform agenda. The old, popular Vietnamese saying, "the king's edicts stop at the village gate" (*phép vua thua lệ làng*), captures this situation. This is not to mention the limited regulatory capacity of law enforcement at the local level, the prevalence of informal practices, and a flexible application of legal rules that have characterized the interactions between and within the state and citizens (Kerkvliet, 2001; Koh, 2006). Local authorities' allocation of resources and benefits, provision of social assistance, or resolution of social disputes has mostly relied on patron–client networks and ad hoc contingency measures rather than on formal rules, processes, and practices (Do, 2016; Gillespie, 2014).

Of course, the prevalence of these informal norms, processes, and practices is not unique to Vietnam but can be observed to various degrees in the application of law in any country and context. Nonetheless, these sets of nonlegal norms and practices are vividly apparent and striking in a country undergoing significant legal change and social transformations such as Vietnam. They are embodiments of the on-the-ground operations and social life of the law that is always ambiguous, fluid, and contestable. Locating a study of law and precarity

in a transitional economy context like Vietnam allows for a deeper understanding of the significant manner in which precarity and law mutually shape one another. The legal and regulatory issues that are central to the survival strategies of my Vietnamese informants, which relate to social insurance, pensions, land, and housing, have in recent years been subjects of media debates, as well as questioning and criticisms among the public about their objectives and implementation in terms of delivering social fairness and desirable outcomes for disadvantaged people. During my ethnographic research, I also gained a deeper look into how these laws are subject to contention, abuse, and arbitrary discretion on a daily basis, which makes them most suitable for my analytical and empirical investigation of legal precarity.

Overall, this book offers a fine-grained and comprehensive analysis of the role of law in the lives of disadvantaged people in Vietnam: Law is manipulable and emancipatory, but also disadvantageous and sanctioning. By acting upon the law and using it to their advantage, these people at the same time become entangled within the power and authority of law that in turn generates profoundly negative impacts upon their lives. Their decisions to engage with the law, or not, are underpinned by complex moral calculations that somehow defy the logic of rational decision-making, but that suit their own life circumstances and the beliefs and sense of justice that they hold on to.