

Coping with Precariousness: How Social Insurance Law Shapes Workers' Survival Strategies in Vietnam

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This article examines the role of social insurance law in the survival strategies of factory workers in Vietnam, especially when they are faced with pressing family needs and an uncertain future. Despite the official discourse of the law which encourages employees to accumulate social insurance for their pension benefits, workers in this study have considered their social insurance fund as a form of saving and opted to gain early access to it when they are in desperate need of money. Workers understand and use the law in a way that answers to their needs; however, such action simultaneously puts them outside the protection of the law. In workers' daily struggles, law generates a moral tension between rights and needs, and ultimately perpetuates their precarious, vulnerable condition. The article demonstrates how workers' legal consciousness varies according to their perception of their precariousness, a precariousness generated by the fragile nature of their work and underpinned by their traditional familial moral obligations. This research advances our understanding of the way state law in postsocialist regimes informs social action and consciousness in ways that oftentimes contradict the spirit of the law.

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. If the management still needs me, I will be able to continue working, though without a labor contract.

Mrs Lan, a factory worker in her mid-40s, recounted to me how she was able to claim the lump sum from her social insurance fund to pay for pressing family expenses. As with many factory workers in Vietnam, Lan is entitled to access the social insurance scheme managed by the state, to which employers and employees are obligated to contribute. The premiums are then used to cover employees' old-age pensions, health insurance, and other

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work-related benefits. Lan, along with other factory workers in my study, was desperate to gain early access to the social insurance money, accessing it as a lump sum. This is despite their awareness that taking the lump sum is not, in the end, a desirable option and will put their employment rights at stake. Two questions that arise from this case are how do social insurance law and varying practices associated with it matter to the survival needs of factory workers like Lan? And, how is the law implicated in shaping ordinary life in a transitional economy context like Vietnam?

Existing scholarship on law and society in postsocialist, transitional regimes has suggested a limited role played by state law in shaping social behavior. State law often has to compete with pre-existing moral norms and informal practices in asserting its claims to legitimacy, as social actors are inclined to behave in a way that bypasses, contravenes or resists to the law, or to use law for strategic or instrumental purpose. Conventional scholarship, nonetheless, does not stretch to explain the type of behavior depicted above, whereby ordinary people use yet in fact undermine the law that is designed for their benefit. This article provides a detailed examination of the manner and extent to which law shapes ordinary people's survival strategies through an exploration of the case of factory workers' access to social insurance benefits in Vietnam. The research contributes to existing understanding of the opportunities and constraints of law in protecting welfare rights, especially of people who live and work in a precarious condition.

Vietnam provides an appropriate setting for studying whether and how law operates in ordinary life amidst the ongoing influence of other modes of social regulation. Despite a rather comprehensive legal reform and legal system developed since the economic reform of *đổi mới* in 1986, interactions between and within state and society are still largely driven by informal norms and practices. One piece of legislation that is central to the reform agenda, aimed at enhancing social security and welfare for Vietnamese employees and citizens, is the Law on Social Insurance. The law, first introduced in 2006 and most recently amended in 2014, has faced significant social backlash during the past 5 years. The contention between employees and the state over this law, as will be shown later in the article, reveals an important gap between official state rhetoric and workers' understandings and behavior with regard to their legal rights and livelihood.

The contribution of the article is twofold. The analysis shows that law matters to a greater extent in ordinary life than has been previously suggested in transitional economies. The effects of law manifest specifically in the way people make sense of and mobilize

their rights and entitlements in planning for their livelihoods, albeit in a way that contradicts the official discourse and objective of the law. The article also contributes to understanding legal consciousness by introducing the idea of precariousness into the examination of people's survival strategies. Precariousness captures people's experiences and perceptions of risks and uncertainty in their work and life and provides a useful explanation for everyday views and behavior toward the law. The social insurance law in Vietnam, as I will argue, creates a moral tension between fulfilling one's needs and upholding one's rights, as workers perceive of and interpret the law in a way that suits their life circumstances. Workers' legal consciousness depends on their experience and perception of their precariousness, which mainly concerns the fragile nature of their income and work and is also underpinned by their moral obligations.

The article proceeds as follows. The next section discusses the literature on law and society in transitional economies, especially focusing on the interactions and competition between law and informal norms in regulating social behavior. This is followed by a discussion of legal consciousness literature and the concept of precariousness as the analytical framework for this article. I then move on to outline the key issues and the public discourse concerning social insurance benefits in Vietnam. The main empirical section analyzes how workers' perception and use of social insurance law at work is related to their livelihoods and strategies for coping with precarious conditions.

1. Law and Society in Transitional Economies

Legal reform in transitional economies is often a rocky road toward a robust rule-of-law regime and achieving legitimacy within society. As these countries transform from centrally planned economies into market economies, they consolidate and revamp their legal systems following global liberal standards and "good" governance practices believed to be conducive to development. The interactions between the state and nonstate actors nonetheless are mostly found to follow informal rules and practices that contravene the law or exploit its loopholes (Galligan 2003; Hsu 2005; Ledeneva 2006; Hendley 2011a; Gillespie 2015; Su 2018). The tactical and innovative ways in which ordinary people get by outside of or in contravention of the law testify to the limitations of the model of legal authority and good governance transplanted from Western liberal democracies. The introduction of new laws and policies following market principles and the liberal model of development is often at odds with

longstanding modes of social regulation concerning what is right, appropriate, and just (Kurkchyan 2003). In coping with daily grievances and problems, people in transitional societies tend to rely on social networks and informal measures of dispute resolution, which are more accessible, familiar, and socially acceptable than the formal legal processes. As shown in Kathryn Hendley's study of neighbor disputes in Russia, for instance, people's inclination to use informal or self-help measures when faced with ceiling leaks reflects the socially shared norms and expectations held within the neighborhood (Hendley 2011b). Filing a lawsuit against a neighbor is seen as contradictory to such norms. In Vietnam, the country where empirical research for this article was conducted, interactions between and within state and society are still heavily shaped by customary norms, precepts, and informal practices (Endres 2014; Gillespie 2018; Koh 2007). This is in spite of a rather comprehensive legal reform and system developed since the 1990s, and the state's rhetoric of ruling society through the law. Local resolution of social disputes still relies much on ad hoc, extra-legal measures (Do 2018) that often prove to be more efficient and effective than engaging with the legal system.

Law's weak legitimacy can also be observed in a wide range of people's protests and social disputes. In disputes over property and civil rights, for instance, ordinary people are often found to reject the letter of the law and law enforcement institutions in favor of customary norms and practices (He et al. 2013; Pils 2016; Whiting 2011). Their resistance and rejection of law speak both to the way law enforcement fails to live up to its ideal, and the incompatibility between law and other nonlegal, moral conceptions of justice. Disadvantaged people's sense of justice derives mostly from nonlegal sets of norms and beliefs rooted either in cultural and moral norms of traditional society (He et al. 2013; Thireau and Linshan 2003) or the state's propagated socialist ideology (Lee 2007; Nguyen 2019a, 2019b).

Despite the law's lack of moral legitimacy, scholars of transitional regimes do not disregard law as an analytical construct or object of analysis. These scholars discuss the law to draw attention to the distinction between what people see as an arbitrary, if not corrupt, institution versus the moral and informal norms that regulate social relationships. This binary view of law and informal life overlooks instances when law plays a more nuanced and implicit role in shaping social behavior. Such a view is unable to explain the situation of the female worker whose story appeared at the start of the article. In her situation, the law is central to her life paradox: it enables her to pursue her needs and overcome financial difficulties, yet her action unfolds at the expense of her legal rights and generates uncertainty in her life and work

arrangements. The social insurance decisions of this female worker and other workers in this study demonstrate that law matters to a greater extent to the people's lives than has been suggested in previous scholarship, albeit in a way that makes their lives worse rather than better.

2. Legal Consciousness and Precariousness

This research draws upon the concept of legal consciousness to explore how law matters in ordinary people's survival strategies in Vietnam. This concept has been widely used for understanding everyday practices, thoughts and attitudes toward state law, and the implications of law in influencing social behavior (Ewick and Silbey 1998; Hull 2003; Marshall 2003). Referring to the way in which people "make sense of law and legal institutions" (Ewick and Silbey 1992: 734), legal consciousness varies and depends on individuals' values, life experiences, and past engagements with the law, as well as their absorption of shared, collective values, and understandings. Viewing consciousness as imbued with social and cultural practice, Ewick and Silbey (1992: 742) observe that "legal consciousness may vary across time [...] or across interactions [...]," and that "a person may express, through words or actions, a multi-faceted, contradictory, and variable consciousness." Building upon this analytical insight, many scholars have identified and fleshed out the complex and dynamic nature of legal consciousness (Hull 2003; Gallagher 2006; Halliday and Bronwen 2013; Engel 2016). In some instances, ordinary people's apparent resistance to law implies their embrace rather than rejection of legality (Hull 2003), moral outrage that ideals and rights embedded within law are betrayed (Engel 2016), or a tactical use of law in pursuit of collective interests beyond formal legality (Halliday and Bronwen 2013). In this article, in drawing particular attention to daily survival strategies of the factory workers, I examine legal consciousness as rooted in their individual circumstances and highlight the critical role of time in making sense of varied consciousness.

My analysis contributes to legal consciousness studies by introducing the notion of precariousness. The term precariousness¹ has appeared widely in political economy literature on the changing nature of work and employment amidst ongoing technological change and industrial reform at the global level. An interest in precarious employment is predominant in this literature,

¹Precariousness as a political concept also refers to human beings' physical vulnerability, the ethics of survival and protection against violence (Butler 2009).

referring to work “characterized by uncertainty, low income, and limited social benefits and statutory entitlements” (Vosko 2010: 2). Such form of employment is typical of people working in the informal economy, the self-employed, those working on fixed-term and casual contracts, or those experiencing job and income uncertainty in the formal economy (Kalleberg 2008; Standing 2011; Vosko 2010). These jobs have been proffered in place of long-term employment that offers ongoing security and does not allow for arbitrary dismissal. In transitional and developing countries in the South, global outsourcing and production in the global supply chain have created competition between local businesses producing for international markets (Kalleberg and Hewison 2013; Lee and Kofman 2012). Firms and factories in labor-intensive assembly industries are often under pressure to keep production costs down (including labor) to be able to survive in such a competitive environment. These disruptive impacts of capitalist development are further exacerbated by the retreat of the state in providing for social welfare, with people gradually turning to community and social networks to alleviate their uncertainty (Arnold 2013).

Apart from these broader political economy contexts, scholars have also paid attention to the subjective dimension of precariousness (Alberti et al. 2018; Allison 2013; Millar 2014). This subjective dimension captures how individuals feel about, perceive, and respond to their precarious condition linked to work and other social factors. Experiences of precariousness, which are “partial and situated” (Armano and Murgia 2017: 48), capture individuals’ subjectivities in their relationships with the state, employer, and other social and political actors. Time is central to these experiences, as it reflects the transient and unforeseeable nature of life circumstances and influences the kind of strategies that people adopt to overcome their precarious condition.

The notion of precariousness offers alternative explanations for everyday perceptions, views, and behavior toward the law. This article posits that an individual’s legal consciousness should be understood in terms of their struggle within and against precariousness. In the empirical discussion that follows, precariousness is analyzed mainly as people’s experiences and perceptions of risks and uncertainty in their work and life. This concept is particularly relevant to our understanding of the life circumstances of people who are at the lower end of the economic structure. Precarious experiences shape legal consciousness by determining whether, when, and how the law is relevant, useful or just in relation to individual needs and other sets of moral and social norms, and in turn inform particular legal behavior. In this sense, an individual’s use of or resistance to the law can be said to represent

their attempts to cope with precariousness, a condition that can, as a consequence, be mitigated, sustained, or reinforced by their particular struggle.

3. Data and Methodology

The main data for this article were obtained from ethnographic research during two field trips, each lasting four months in Vietnam in 2018. Semi-structured and open-ended interviews were conducted with 40 factory workers employed in two industrial districts in Hồ Chí Minh City. The workers were approached and recruited with the help of key informants. All interviews with workers were conducted either at their homes, rental units or cafés. Conducting interviews away from their workplaces allowed workers to speak freely about issues at work without fear of managerial surveillance. Each interview lasted from half an hour to two hours.

Interviewed workers are in their 30s or 40s, which makes questions about their future work and retirement plan more relevant than they would be to younger workers. All are married and have children. Most of them have been working since they were 18 years old, with some now switching or intending to switch to informal work and small trading activities. The whole duration of their employment ranges from 16 years up to 21 years, and their incomes range from 5.5 million dong to 7 million dong (approximately U.S. \$235–\$300) per month.

Interviews opened with questions about workplace conditions, workers' complaints and grievances, and their family's conditions. I then asked workers to share their views of social insurance law and how this law is carried out within the company, with the aim of grasping workers' awareness of their rights. Workers told me about their retirement plan and whether they thought the pension or the lump sum was a better option for them. Besides talking about their own circumstances, workers also briefly shared the experiences of their coworkers. After conducting the initial round of a dozen of interviews, I discovered that sometimes workers were involved in informal arrangements with their employers that later compromise their rights. Further, I identified a privately run garment company where, according to a first few interviewed workers, informal arrangements about early withdrawal of pension are quite common. I then focused on recruiting and interviewing workers in this particular company, which becomes the case study in the empirical discussion. Even though the information is exclusive to certain companies and industries, it illustrates everyday struggles of low-income and low-skilled employees in Vietnam whose

precariousness speaks to broader issues of labor rights and employment security.

Besides interview data, I also analyze news articles published online in the main labor news outlets in Vietnam, such as *Labor* (Lao Động), and *Laborer* (Người Lao Động), to provide readers with information and context relevant to public discourse and workers' livelihoods.

4. Social Insurance in Vietnam

This section sets out key legal issues and debates as background to the case study discussion. The Law on Social Insurance, introduced in 2006, formalized the social insurance system for Vietnamese employees working under labor contracts. Promoting and enforcing social insurance law is central to the state's social security agenda, which aims at enhancing citizens' social security and welfare. According to the law, employers and employees are obligated to contribute a certain amount of money to employees' insurance premiums, which include social insurance, public health insurance, and unemployment insurance. Social insurance, which is the largest component of insurance premiums, is mainly used for the old-age pension and maternity benefits.² Contributory social insurance is the main source of employees' pension savings as well as financial support when they are (temporarily) out of work. The contribution is based on the employees' basic wage; the current rate of contribution is 17 percent from employers and 8 percent from employees.³ The public health insurance that comes with social insurance premiums provides free or discounted treatment at public hospitals and eligible health care clinics, the quality and service of which however are not necessarily up to par. Besides this contributory pension scheme, Vietnamese workers receive little public welfare support from the state, unless they are from eligible poor households or from families recognized for their wartime contribution.

Employees who have contributed to the social insurance scheme for at least 20 years are entitled to a monthly living allowance when they retire, calculated based on the number of years worked and the base wage during their employment. Those who have contributed to the scheme for less than 20 years do not qualify for the pension and can receive their social insurance benefits as a lump sum. While the aim of the scheme is to encourage saving for the pension, in reality many employees who are younger

²Art. 4.1, Law on Social Insurance (2014).

³Art. 85 and 86, Law on Social Insurance (2014).

than the retirement age opt to claim the lump sum, which is by law possible within 1 year after leaving their job. Early withdrawal of pension benefits also occurs in other more developed societies where this is legally allowed (Agarwal et al. 2019; Beshears et al. 2015; Nys et al. 2017; World Bank 2019). Such withdrawal has been mainly aimed at satisfying consumption needs or used for profit-driven investment (Agarwal et al. 2019) and is largely dependent on income level and the availability of other forms of pension savings (World Bank 2019).

In 2014, the state introduced an amendment to the Law on Social Insurance that sparked workers' protest. The amendment stipulated that social insurance premiums could *no longer* be claimed as a lump sum, except in some special circumstances (such as a plan to emigrate from the country or diagnosis with a life-threatening disease). Employees no longer had the choice of claiming the lump sum within 1 year after quitting a job. Their social insurance premiums could be claimed only when they retired at the legal age of 55 for females and 60 for males. The passage of this amendment was followed with protests by thousands of workers in Hồ Chí Minh City and other nearby industrial areas in the south (Lao Động 2015; Tiền Phong 2015). Widespread discontent was reported among workers elsewhere in the country. State officials and union authorities held dialogs with workers to end the strike and, following a legislative debate, the state reversed the change. Regulations regarding early access to social insurance benefits, as a lump sum, remain in effect.⁴

State officials' rhetoric propagated through the media since the 2014 protests has stressed the importance of old-age pension benefits as a crucial source of income for employees when they retire. Those gaining early access to their social insurance premium are deemed by the state to be making an unwise decision (Người Lao Động 2017a; 2017c; Lao Động 2018b). While the lump sum looks like a large amount of money, it offers fewer benefits for employees when compared to the old-age allowance, to be received monthly from retirement until death. Official discourse portrays employees who choose to claim the lump sum as "only thinking about their short-term needs," while employees who accumulate the benefits for their retirement are viewed as sensibly aware of their longer-term welfare. News articles have

⁴While this event is significant in that it demonstrates workers' collective mobilization and success in their resistance to state law, it is beyond the scope and inquiry of this research to discuss the politics of labor unrest in Vietnam. For extensive research on workers' collective mobilization and resistance in Vietnam, see Trần (2013), Anner and Liu (2015). The current regulations regarding lump sum withdrawal are outlined in Government Decree 115/2015/NĐ-CP on detailed regulations of some articles of the Law on Social Insurance on compulsory social insurance.

referred to claiming of the lump sum as, literally, “eating ripe social insurance” (*ăn non bảo hiểm xã hội*), an action that is rash and immature (Lao Động 2013; Lao Động Đồng Nai 2016). Detailed calculations of social insurance benefits and concrete examples of people who made different choices were also given by labor lawyers in the news to illustrate that old-age allowance paid out over time is more beneficial, economically and socially than receiving a lump sum.

Following the economic reform of *đổi mới*, Vietnam has welcomed the growth of private and foreign investment, with foreign investment mostly concentrated in labor-intensive assembly industries that produce export goods. A large proportion of the workforce is low-skilled factory workers, most of whom have migrated from rural to industrial/urban areas. Previous research has explored their low pay, exploitative, and hazardous working conditions, and the transient nature of work contingent on businesses’ production orders (Nguyen 2019a; Trần 2013). As most of these businesses produce for exports, their performance and profits depend on and fluctuate according to demands of the global market. Many workers, who began work at 18, do not plan to work in these factories until their retirement; rather, they plan to earn enough money to gather some savings and then invest in a small business or engage in small trading activities. While state officials claim that social insurance money should be saved for workers’ pensions, workers themselves consider such money, claimed in the form of the lump sum, essential for meeting immediate needs and moving on in their lives after factory work. However, workers’ beliefs do not reflect the fact that businesses have consistently failed to comply with the social insurance law in Vietnam, a failure the state has done little to combat.⁵ For instance, when a worker lodges a lump sum claim at the social insurance department and their employer has not paid the employee’s social insurance premiums, the authority in charge will notify the business management that they must fulfill their legal obligations to that particular claimant (Interviews with workers, April to July 2018). Social insurance debts therefore tend to be rectified on an

⁵The most common form of legal violation reported is employers’ failure to submit their and employees’ contributions to the state’s social insurance fund, despite them having deducted employees’ contributions from their monthly wage payments (Người Lao Động 2002; Lao Động 2016). Such violation is a blatant appropriation of workers’ insurance benefits which can sometimes be accounted for by the business running at a loss. There have been reports of companies going bankrupt and their foreign owners running away, leaving workers with months of owed wages and social insurance (Người Lao Động 2017c; Lao Động 2018a). Weak regulatory measures in the face of rampant legal violation is one of the factors that explain workers’ distrust in the social insurance system, leading them to prefer claiming early access to their benefits.

ad hoc and reactive basis, which provides minimal guarantee of employers' compliance in the future.

An example of a working couple in their 30s illustrates the link between social insurance benefits and workers' livelihood strategies. The couple, who had worked in the same garment company for 12 years, handed in their resignation letter a few weeks before I spoke with them. They are rural migrants from a southern province who moved to Hồ Chí Minh City to work when they were 18 years old. As one of their two children was about to start primary school, they planned to move back to their hometown province where the costs of living and of education are lower. The couple said that there are now more job opportunities in their hometown rural province due to industrial development. The wife, Phương, shared with me in detail how she came to this decision:

When I started work here, I thought that I would work until my retirement. Then I got married and had children and stuff in the family to take care of. My two kids are two and six years old. The older one will soon start primary school, and school fees here are high. Normally I earn more than 5 million dong a month; sometimes more than 6 million dong if we work overtime. I barely have any saving. (Interview, July 19, 2018)

Phương and her husband wish to claim the lump sum 1 year after they quit their current jobs, as it is still uncertain whether they will be able to find new suitable jobs in their hometown. "If we are unable to find one, then we can use the lump sum to open a small shop or do some petty trade." Yet they also expressed their wish to receive a pension in their old age, saying that "if we manage to find a new job and start paying again into social insurance, we will still be eligible for the pension." Accumulating another 20 years of social insurance contribution from now until their retirement ages does not seem difficult to the couple, as Phương and her husband are now only 30 and 35 years old. Their uncertainty about future jobs is similar to the sentiments of other middle-aged workers who struggle to be any better off after many years of factory work.

Thus far I have shown that legislative reform was challenged not just by workers' protests but also by the way it failed to capture workers' life circumstances and their livelihood strategies especially when workers face uncertainty. Workers' desires to claim the lump sum might be viewed as defiance of the spirit of the law as well as the official interpretation of it. However, a

detailed investigation of their life circumstances reveals a complex picture of how they perceive and engage with the law.

5. Case Analysis

This section discusses workers' access to their social insurance benefits in a private garment company, called here Company D. The company was established in the 1990s in Hồ Chí Minh City and produced clothes for export. According to the workers, the number of employees in the company is around 500–600. Workers are paid by the piece, a type of payment that is meant to increase their productivity. Workers' basic wage, the wage that is used to calculate their social insurance contributions, must be at least equal to the government's minimum wage. These workers have, or previously had, permanent labor contracts, which they are legally entitled to after having their initial fixed-term contracts renewed twice and as long as they continue to work for the same employer.

Up until 2016, the business was in charge of keeping employees' social insurance books, the individual records of employees' insurance premiums. The book was to be returned when employees left the job, and then submitted to their new employer. The new regulation puts this record in the hands of the employees, allowing them to keep track of their social insurance contributions and enabling them to raise any problems regarding their social insurance benefits with the employer or the local authority. The company manager followed the new regulation and a number of employees realized that their social insurance premiums were not paid for during the first few years of the company's establishment. Workers who had been with the company for more than 20 years found that they had from two to five yearly payments missing. These workers raised the problem with the manager who demanded proof in the form of their paper payslips from those missed periods. None of the workers had retained their payslips for such a long time. Despite the company's failure to comply with the law, none of the workers has demanded that the manager rectify the problem nor reported it to the state authorities.

5.1 Perceiving Social Insurance Benefits and Family Obligations

Workers' understanding of their social insurance benefits is different from the official legal discourse. Their economic condition makes the thought of the pension, to be received in the next 10, 15, or 20 years, too distant and abstract from their everyday

struggles.⁶ Permanent labor contracts provide these workers some level of employment security. However, while being paid above the minimum wage, these factory workers have few savings from their monthly income and consequently are vulnerable when any further financial demands arise. In Vietnam, the government-issued minimum wage has been increased and adjusted over the years, but it still fails to provide for employees' minimum living needs (Lao Động 2018c; Người Lao Động 2019; Trần 2013). While most workers in assembly and labor-intensive industries in fact receive an income higher than the minimum wage, the difference mostly comes from overtime work. The income reported by the workers in this study included their basic wage, which is merely above the minimum wage, and overtime payment. The economic situation is particularly difficult for migrant workers from the countryside (the majority of these factory workers), who have to pay for residential rent and higher rates of utility fees; urban workers are able to live with their parents. Migrant workers also face barriers in accessing social services in the city due to Vietnam's household registration system that ties a citizen's legal residence only to their hometown (Arnold 2013).

Workers consider their social insurance benefit, part of which is the monthly deduction of the money *they* earn, a kind of saving, or their own financial safety net. Now in their 30s and 40s, most interviewed workers are unsure about their future employment prospects and some were considering self-employment and petty trade as possible alternative ways to earn their living. They see the social insurance as their saving (*tiền để dành*) to which they are entitled. In their view, had it not been for the compulsory social insurance scheme, workers would have been able to keep all the money that they earn each month. The social insurance contributions from employees, as the workers said, "were kept by the state on [our] behalf, to care for our lives when needed, like when we get sick, give birth, or retire." As such, 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. By "large," they mean an amount that is in the range of 40–50 million Vietnam dong (approximately U.S. \$1720–\$2160), which is roughly equal to 8–10 months' income. In addition, despite workers' awareness of the business' violation of their social insurance rights, as mentioned before, this issue is not a prominent factor in their deciding whether and *when*

⁶Workers also told me that they might not be alive long enough after their retirement to enjoy the pension. This is despite the fact that average life expectancy in Vietnam is 75 (World Bank 2018) and the official retirement age is 55 for women and 60 for men. Such concern adds further to their sense of uncertainty and vulnerability.

to withdraw their pension benefits. Were this a key factor, workers would likely have taken some action to challenge the manager's behavior when they learned about the violation or switched their jobs to another place where they might be able to enjoy better protection of their legal rights.

Hoa, a single mother, told me how she felt under pressure when her child's school fee added up and the rent was getting higher. She found it hard to juggle between work and care for her son, especially when she was intermittently required to work overtime. She thus had her mother, who had been living in their rural hometown, move to live with her and her son in their small rental unit in the city. It is hard to feed three people, including herself, on a meager wage of 6 million dong per month, despite Hoa managing to obtain some school fee concession for her son. Minh, a mother of two, needed money to pay off family debts. She wanted to relieve her husband of financial stress and decided to pay those debts off. Hạnh, another mother of two, struggled to find extra cash to fund her child's high school education. She thought that she was in a better position than her husband to pay for her child's education as her husband was working in an unstable job that had no social insurance benefits. These are a few examples of workers anxious to have access to money but unable to rely on their own savings from their usual income or to borrow from their friends and relatives. A few other workers told me they plan to use the "saving" to invest in their own business, or move back to their rural hometowns where they can pay much less for children's school fees and living expenses. Workers colloquially speak of their lump-sum claim as "withdrawing the money" (*rút tiền*), which is similar to the way Vietnamese people speak of their withdrawal of money from the banks, or less often, "withdrawing [social] insurance" (*rút bảo hiểm [xã hội]*). Such language reflects workers' perception of the social insurance money as their money, their financial saving, as I have discussed above. In short, similar to poor and marginalized people elsewhere who evoke the language of needs and ethical obligations in raising their claims (Gilliom 2001; Sarat 1990), factory workers in this study also use moral justifications to explain their decisions.

Despite workers' decisions to claim the lump sum, a closer look into what workers say rather than what they do (Ewick and Silbey 1998) reveals a complex picture of how they perceive their benefits. While they chose to claim the lump sum and give up the accumulation for their old-age pension, the potential benefits of the pension are not lost on workers. They appreciated the state's social insurance system and admitted their preference for the pension, if their life condition had been different. They

anticipated that the pension would be small, as it is calculated based on their (low) wages, but “it’s better than nothing” when they can no longer work. Knowledge of the law creates a moral dilemma when workers evaluate and anticipate future livelihood, not just of themselves but also of their family members. Minh, the one with family debts, told me about her difficult decision:

You know, my husband and I both have social insurance. But he is much older than me; he needs that insurance for now and later in case he falls sick. As my family was in a difficult situation, I decided to withdraw my social insurance money, otherwise I wouldn’t need that money. It’s actually better to get the monthly allowance [when I retire], and then enjoy it for the rest of my life. Let’s put it like this, as a *woman*, I should *sacrifice* for my family.” (Interview, April 22, 2018)

In weighing up the options, Minh knows what would be good for her, for her husband and the family, and decided to put her interests last. When it comes to weighing the benefits of social insurance as a legal prerequisite for the old-age pension (which comes with living allowance and free health insurance), Minh found that her husband would need the pension more than she would as he is more vulnerable to illness. If either she or her husband would have to claim the lump sum, which is a less desirable option, she felt she should be the one to do so. Minh’s justification for her decision derives from a gendered norm in Vietnamese society: women and mothers are expected to “sacrifice” (*hy sinh*), to give up their benefits for the benefits of their husband and children (Hoang 2016). Women’s compliance with such a norm has been a manifestation of their continuing subordination and subjectivity to patriarchal culture. In invoking womanhood, Minh demonstrates that her decision was morally right, despite foreseeing her economic disadvantage during retirement.

Hạnh, the mother who was seeking extra money for her high-school child, also talked about her decision and future retirement plan in terms of family commitment:

At that time I couldn’t seek help from anyone, so I decided to get the lump sum. When I retire, my child will be working and she will take care of me. When I decided to get that money, I explained to my husband that let’s do so to pay for our kid, and he agreed. (Interview, July 18, 2018)

Hạnh mentioned to me that her husband was doing some informal work without a labor contract or any social insurance benefits (or savings, in the workers’ views). As the one with more stable,

secure employment, Hạnh found herself in a better position to support her child. She made up her mind and then sought her husband's approval. It will be hard for her to get by in her old age without a pension, but Hạnh did not seem to show much concern. She invoked a filial expectation from her child, suggesting that her child will be able to work and support her financially when Hạnh retires without a pension. As they see it as morally right to give up their legal benefits for their family, none of the workers show any regret of their decision.

Thus far, workers' legal consciousness, implicit in their decision to claim the lump sum and their justifications of it, is underpinned by their perception of precariousness as a result of their low income and unstable financial prospects. By viewing social insurance benefits as a form of saving, workers have assigned new meaning and purpose to the law. Workers' economic conditions create a tension between fulfilling family obligations in the short-term and their own welfare and social security in the long term. In their attempt to resolve this tension, workers use their legal rights in a way that undermines law's authority but suits their individual, survival needs.

5.2 Turning to "Law"⁷

According to the law, early access to social insurance fund is possible (1) when employees move overseas, (2) when they have life-threatening diseases, or (3) within a year of employees' leaving their work and stopping their contribution to social insurance (voluntarily or compulsorily).⁸ To satisfy the third condition, the manager and workers in Company D agree to terminate the labor contract. Below I will discuss the legality and workers' experiences of the process in two parts: the negotiation regarding termination of the labor contract and workers' subsequently precarious employment status (Figure 1).

In the first instance, workers approached the manager with their intention of claiming the lump sum. Only those who have not paid into the fund for 20 years are able to do this; beyond this length of contribution workers are no longer able to claim the lump sum (except when they move overseas or have life-threatening diseases). In that case they must wait until their retirement to receive the pension. As required by law, employees

⁷I put law in quotation mark as the way in which workers turn to law follows the law's letter but does not conform to its spirit (Ledeneva 2006: 18). I also note that the "law" here is different from the "law" used elsewhere in Vietnamese scholarship that refers to arbitrary rule, or the law of the jungle (Endres 2014).

⁸Art. 8.1, Decree 115/2015/NĐ-CP on detailed regulations of some articles of the Law on Social Insurance on compulsory social insurance.

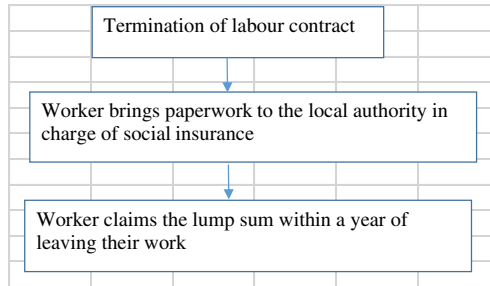


Figure 1. Workers' Access to the Lump Sum.

intending to claim the lump sum must provide a letter of resignation and their social insurance book to the local social insurance authority. In Company D, the termination of a labor contract is usually a result of workers' intention to claim the lump sum, rather than any other reason. Workers use the manager's letter giving notice of the contract's termination to lodge their lump-sum claim with the local social insurance authority.

Yet, despite the manager's termination of labor contracts, these workers will still continue working and supporting themselves and their family.⁹ They do not intend to seek early retirement for health or other reasons. To give an example, Mrs Anh "formally" quit Company D on May 18, 2017 after working there for 18 years. However, she continued to work full-time in the company, even past May 18, 2018, the date when the lump sum was due. In short, workers were able to obtain the lump sum while earning their usual income. If Anh had entered into a new labor contract within this 1 year, her social insurance contribution would have been resumed and she would no longer be able to claim "her" money. Workers understand that they can only work illegally (without a contract), or work in the informal sector, to be able to get around these legal restrictions.

5.3 A Precarious Circle

When a business allows workers to work on a regular basis without a labor contract, it is breaking the law. The manager is now free of legal obligation to workers, including the obligation to pay their shares of social insurance benefits. Ultimately, workers' cosmetic compliance with social insurance law means an abandonment of their legal rights, putting their future livelihood at stake.

⁹Workers' behavior here is similar to what Lillian Hsiao Ling Su called "tactics of evasion" (Su 2018: 81) deployed by business owners in their response to intellectual property law in China, when the apparently law-abiding practices conceal illicit activities.

The employment relationship between workers and the manager shifts from one based on a long-term legal contract toward one built entirely on trust. Trust is based on “how one perceives of the other person’s disposition, from which they expect that the other person will choose to perform certain act or keep their promises” (Dasgupta 1988: 50–51), and has been central to fostering interpersonal relationships and cooperation. In this case, the workers trust that the manager will continue to pay them for their labor and not dismiss them. Managers benefit from hiring skilled and highly productive workers to whom they bear no legal obligation. The manager trusts that the workers will not report the business’ legal violations, and that they will not take the business to court. It is in workers’ interests to earn their income when the company functions as usual instead of being subject to legal sanction. The trust between workers and the manager is maintained mostly on a basis of mutual benefits.

As workers actually experience their precarious employment, they perceive their future welfare prospects and relationship with the manager in a dim light. While they were vulnerable to economic hardships before obtaining the lump sum, now they are even more vulnerable because of the lack of legal protection in their employment. Several workers told me that the money they earned from work is no longer subject to any compulsory social insurance deductions, and the manager, concurrently, benefits from not having to pay into their social insurance fund. Reflecting on her previous decision to claim the lump sum and her current situation, Minh said to me and sighed between sentences:

It’s actually a disadvantage, you know. Let’s say I and another worker under contract both earn 5.2 million dong. The other one has social insurance benefits while I don’t. If the manager pays, let’s say, their contribution of 500,000 dong into our social insurance benefits, isn’t it that our actual income is 5.7 million dong? That’s the disadvantage. I once thought that withdrawing social insurance and working like this would be good, because at that time my family situation is difficult. But it’s not good at all, not only because we don’t have any social insurance benefit, but also because our income is actually lower. Also because we don’t have any labor contract, the manager can pay us any amount they like and can sack us when they don’t need us. We don’t have any rights or interests. (Interview, April 22, 2018)

Workers’ previous attempts to resolve their financial dilemma by turning to the “law” and getting around legal restrictions have undermined the stability that they previously enjoyed. The extract above concisely summarizes workers’ uncertainty of their

employment prospects, which is in contrast to the long-term labor contracts that they held before the informal deal with the manager. Most workers like Minh thus perceive their current precarious status as a compromise of their early withdrawal of the pension. They understand that their future work is no longer bound by any legal guarantee, instead it is completely subject to business profits and production orders, which depend on demands in the global markets. The term “rights and interests” in Minh’s anecdote is the commonplace reference of Vietnamese workers to their rights encoded in the labor law in Vietnam. This term has appeared widely in factory workers’ language of resistance, oftentimes to convey and amplify claims and ideals of justice beyond the law (Nguyen 2019a, 2019b). Here, the term is used to imply a tension between rights and needs, and the wish to reclaim those rights when workers’ needs have been fulfilled. Workers’ future work now depends on, as they said, “whether the manager still needs me.” They have learned how business profits have taken a toll on the workforce, recalling that the total number of 1000 employees about 10 years ago has now been reduced to 500–600. If the manager sacks such workers for any reason, they do not have any legal ground to challenge her action.

Of the above workers, only Mr Quan, now a line leader, spoke of the manager’s conduct as illegal. At the time of the interview, Quan also had plans to resign from the job and claim the lump sum after working there for 18 years, to return to his hometown and look after his recently widowed mother. Quan was sympathetic to his coworkers’ situation but was also critical of the way they made this informal deal with the manager to claim the lump sum. He said:

In this whole process, employees are disadvantaged, not just once but twice. They are disadvantaged all the way since they are poor and miserable. Their situation pushed them into obtaining the lump sum and then losing their rights and interests. Only those whose financial situation is fairly stable, who do not have to worry about their meals and clothes for the day, are able to think through about their pension. (Interview, April 22, 2018)

The twofold disadvantages that Quan mentioned above refer to his coworkers’ desperate resort to claim the lump sum, and their subjection to insecurity. In discussing the dilemma between lump sum and pension, Quan pinned it down to workers’ current living needs and suggested that any thought of the pension seems to be a luxury to those struggling to subsist in the present. In our conversation, Quan was also critical of the way the labor laws in

Vietnam fail to guarantee the livelihood of workers, thereby rendering any legal propaganda of the state out of touch with most workers' life conditions.

Interviewed workers suggest that there used to be "many" workers involved in such informal deals with the manager. Most of them are women, not simply because more women work in the garment industry, but also because of the gendered nature of family care duties and moral obligations. This practice of hiring many workers to work on a noncontractual basis would put the manager in trouble if discovered by a labor inspector. For this reason, while the manager still opens up the offer for workers to withdraw social insurance, she has mostly recently become more selective and is sympathetic only to workers "whose condition is so difficult, like those who are taking care of their infants or are really short of money" (Interviews with workers, July 12 and 19, 2018). This anecdote implies that only a strong moral ground on the part of workers would suffice to justify the manager's risking legal sanctions by the local authority.

It is instructive to draw from previous research on organizational structure and workplace culture to further comprehend workers' turn to law through this informal deal with their manager (Hoffmann 2005). Company D has been privately run by a female manager with her daughter's assistance, and does not have varying managerial and supervisory layers which is usually the case in other manufacturing enterprises in Vietnam that employ thousands of workers. Workers perform their tasks under the line leaders, who are often highly skilled and experienced workers, and the female manager. This allows for more frequent interactions between manager and workers compared to larger enterprises, making informal arrangements easier. In addition, workers' decisions to take informal measures also depend on the perceived possibility of the manager's consideration of their personal circumstances and her willingness to retain them at work and continue to pay them appropriately for their labor.

At the time of our interviews, workers who had lodged their paperwork and were waiting for the lump-sum withdrawal were hoping that the manager would consider also signing labor contracts with them. Some of them have been waiting anxiously to hear from the manager about the contracts. One worker told me that the chance of a contract is very low. Of course, these workers have the option of finding jobs elsewhere, but they understand that the job market in the garment assembly industry is skewed against older workers, meaning those above 35 years old (Người Lao Động 2017b, 2017d). Such discrimination reflects employers' beliefs that older workers' physical health has deteriorated and they are less productive compared to younger workers.

6. Discussion

In the previous section, I discussed how social insurance law contributes to shaping workers' livelihood strategies in Vietnam. An investigation into their life circumstances and justifications for their behavior reveals a complex picture of how workers perceive their legal rights and engage with the law. Workers' behavior that follows their decisions in relation to their social insurance benefits complies with the letter of the law but undermines its spirit. And yet they are not against the law in the sense of seeing law as an arbitrary power or rejecting its authority; they know how and when to take advantage of law to serve their needs. This study finds that workers' precariousness leads them to use the law in a way that ultimately made them vulnerable as precariously employed, casual workers. In the rest of this section, I will contextualize the findings within broader sociolegal literature on the welfare poor, who, despite different social and political statuses, share relatively similar economic condition and daily survival struggles with the factory workers covered in this study. I will also reflect upon the idea of precariousness as a way of making sense of legal consciousness.

The way factory workers view and perceive state law has some parallels with experiences of the welfare poor in other contexts. They see law as constraining and inflexible (Gilliom 2001; Sarat 1990; White 1990), and yet they contribute to a construction of legality that bends the law to suit their needs. The legal stipulation concerning employees' eligibility for the pension in social insurance law is seen to be a constraint on workers' livelihood options. As mentioned above, workers had to time their negotiation with the manager to ensure that the duration of their social insurance contribution is less than 20 years at the time they "formally" terminate the labor contract. If workers who have 18 or 19 years of contribution can choose the lump sum (now) or the pension (later), those who have 20 years of contribution are left only with a monthly pension. Also, the law requires that employees only claim a lump sum if they have stopped social insurance contributions for 1 year after quitting their job. This requirement constrains workers, as entering into a new labor contract would mean a resumption of their social insurance contribution. So, after taking the lump sum, workers understand that they can only work illegally (without a contract), or work in the informal sector, for their living. There is no possibility of gaining a formal contract until 1 year after they have successfully obtained the lump sum.

This understanding of the law in turn influences workers' behavior. They satisfy the legal requirements for the lump sum by ensuring that their social insurance contribution is not over 20 years, that they have the official letter notifying termination of their labor contract, and that they do not engage in any formal work until 1 year later. However, none of their actions conform to the spirit of the law or the official interpretation of it, which is aimed at promoting and supporting workers' long-term welfare through the pension benefits. In other words, their actions undermine both the authority of the law and its aim of securing their welfare beyond retirement. Law is not irrelevant to them; rather, their understanding of social insurance law creates a dilemma of choosing between lump sum and pension. Such dilemma is closely related to their experiences of financial vulnerability and the need to fulfill family obligations. Ultimately, by undermining and taking advantage of the law for their present needs, workers are exposed to poverty and possibly precarious work in their old age.

Findings in this study are both consistent with and distinct from previous studies of legal consciousness conducted in post-socialist states. For instance, writing about intellectual property law in China, Su (2018) also considers shop owners' legal consciousness of resistance as crucial to their economic survival. However, while the shop owners see law as arbitrary and oppressive, the workers in my study acknowledge the benefits of law, and yet their consciousness changes according to their life circumstances. In He's (2005) study of rural–urban migrant entrepreneurs in China, livelihood is also central to understanding migrants' evasion of the law in obtaining business licenses in the city. Both studies touched upon individuals' livelihood strategies in explaining their legal consciousness, but did not conceptualize the complex, dynamic relationship between these two factors. In the present study, I introduce the idea of precariousness to conceptualize people's experiences of uncertainty and anticipation of future risks, and demonstrate the nuanced way in which these experiences shape or change people's legal consciousness. The empirical analysis fleshes out how the experiences of precariousness of the workers are interwoven with their familial moral obligations. Of course, their experiences are susceptible to structural, macro, and external conditions, such as the government's wage regulation and its economic management (including inflation control), business profits/loss cycles, demand in the global markets, and the job market. However, as I show, a sole focus on these structural dynamics fails to do justice to a genuine portrayal of workers' daily struggles and agency, especially when clouded by future uncertainty.

7. Conclusion

This study builds on law and society scholarship in transitional economies to examine how law operates in everyday life outside dispute and formal settings (Boittin 2013; Hendley 2011a). Existing scholarship has suggested a limited role of law in regulating social behavior. Law is made and proliferated only to be broken, contested, or avoided, as people place no trust in law or find it too distant and abstract from their social life. Sometimes people turn to law instrumentally and strategically, without subscribing to its values or claims to authority. This study shows that law matters to a greater extent within society than has been previously suggested in conventional scholarship. In a transitional, post-socialist context like Vietnam, it is critical to not disregard law as an analytical construct or as a subject of analysis, but to look for the nuanced ways in which law constrains or enables social actions, meaning making, and consciousness. Through factory workers' access to social insurance benefits in Vietnam, I have shed light on the way in which law shapes workers' views and survival strategies. The relationship between law and workers' livelihood is striking, due to the precarious nature of employment even when workers hold long-term labor contracts and are entitled to statutory rights. They use law to serve a purpose different from its objective, and their behavior is underpinned by a moral dilemma in which law plays a significant part.

The Law on Social Insurance was intended to develop and enhance the social security system in Vietnam, with a pension being one of the key insurance pillars. In reality, most employees, who are low-skilled and low-wage factory workers, seek early access to their social insurance fund, accessing it as a lump sum. The decision to claim the lump sum could be considered a defiance of law and the official interpretation of it, but such an interpretation misses other important insights concerning their daily struggles. By viewing social insurance benefits as a form of saving, as "their" money, workers have assigned new meaning and purpose to the law. They turn to "law" in a way that allows them to fulfill their needs and survive amidst legal restrictions. At the same time, workers also absorb the official discourse of law and acknowledge its benefits to their lives. In evaluating options regarding their social insurance rights, workers experience a moral tension between the lump sum (their immediate needs underpinned by familial moral obligations), and the pension (their rights granted by law and their future economic security). By turning to "law" instrumentally if not manipulatively, workers choose to forsake their substantial legal rights and consequently

put their employment security at risk. Law is central to generating and reinforcing the circle of precariousness in their daily struggles.

My analysis of workers' legal consciousness has fleshed out how consciousness manifests in different moments when workers justify their decision and evaluate the outcomes of their action. Their legal consciousness varies according to their life circumstances, and in particular, the way they experience and perceive precariousness. The notion of precariousness helps to shine a light on how people understand the law and whether, when and how they use, or avoid it. Precariousness is both empowering as well as constraining (Lorey 2015), leading people to mobilize the law in tactical ways to get better control of their life. Nonetheless, such tactics can ironically create outcomes that make their life worse rather than better.

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