

Book Review

Law and Society (Fourth Edition: 1994), by Steven Vago, Englewood Cliffs: Prentice-Hall.

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Introduction

I always believed that law has its own *truth*, that is, its own way of seeing the world. I believed that lawyers and jurists analyse law as doctrine (norms, rules, principles, concepts and the modes of their interpretation and validation), and sociologists are concerned with a fundamentally different study of behaviour, its causes and consequences. I did not mean to deny that sociological (or any other) perspectives have any special claim to provide understanding of legal doctrine. I simply never explored this aspect of legal studies before. Vago's book opens this window to my thinking and specifies what sociological understanding of legal ideas entails. It argues, to my fullest conviction, that such an understanding is not merely useful but necessary for legal studies. It insists, nevertheless justly, that legal scholarship requires sociological understanding of law and that the two are inseparable.

This is my first sociological exploration of the law, and I am intrigued by the legal sociologist's promise to examine behaviour in legal contexts. My primary interest in the subject is to analyse the interconnection between social and legal orders, and understand how the socio-legal environment reflects and influences different legal structures. I take up Vago's book "Law and Society" with this avowed purpose; and also to refine, or perhaps to realign, my *sociological imagination*. I am also interested in learning research techniques employed in the socio-legal context, and possible uses of such techniques in the area of law I work in. However, my review of Vago's book would also offer critique, especially in areas that I'm more familiar with. For example, I have made certain remarks over internal incoherencies of Vago's ideas about *law* itself in chapter one, and how he incorporates such ideas into his sociological thinking. Where appropriate, I have also identified information gaps in Vago's book, and illuminated certain areas where Vago could have utilised more provocative and detailed analyses not only to entice the reader but also to give a more comprehensive trajectory of the concepts and details of sociology of law.

Overall, I found Vago's book a straightforward and readable appreciation of sociological aspects of law. The book compares and contrasts different definitions, theories, and methods

used to explain the nature, functions, and consequences of law in sociological perspectives. At the outset, Vago introduces the reader to the precincts of the study of sociology of law:

“[T]he study of the interplay between law and society is fundamentally eclectic. Knowledge about it has accumulated haphazardly. Works on law and society are influenced by a number of theoretical perspectives, resulting in a variety of strains of thought and research. In a sense, more questions will be raised than answered.”
(Preface p. xii)

This proved true for me too, as after reading this book I have more questions about the socio-legal approach and how it benefits and would impact on my future research!

1. Chapter one

Vago indicates the intention and approach of his book in the introduction to chapter one:

“[N]o one particular approach to law and society has been taken, nor a particular ideology or theoretical stance embraced. . . Thus, the book does not propound a single thesis; instead, it attempts to expose the reader to a variety of sociological methods and theoretical perspectives used to explain the interplay between law and society in the social science literature.” (pp. 1-2)

Throughout, Vago remains committed to his stated aim and does not put forward or advocate a singular theory of sociology of law, although he discusses several of them in given contexts. Vago might have intended to portray his detached and balanced approach, however, leaves a mark on reader that there is a dearth of universally acceptable and workable theory in the field. Nevertheless, theoretical discussions are interesting and provoke innovative thinking, and have contributed exceedingly to my overall understanding of the subject.

The introductory chapter begins with an “overview” as to how non-legal mechanisms of social control and dispute resolution in traditional societies where interests are shared by virtually everyone are more effective as compared to the modern multipolar society where commonality of interests has diminished or is in the process of diminishing. Now a variety of laws are needed in the modern society, however, every legal system stands in close relationship to the *ideas, aims, and purposes* of a society, reflecting on the distinct legal cultures of every society. This is why laws emancipating from different societies, although

governing the same subject matter, might be different. Vago introduces the interaction of law and society as: (p. 2-3)

“Sociology is concerned with values, interaction patterns, and ideologies that underlie the basic structural arrangements in a society, many of which are embodied in law as substantive rules. Both sociology and law are concerned with norms – rules that prescribe the appropriate behaviour for people in a given situation. The study of conflict and conflict resolution are central in both disciplines. Both sociology and law are concerned with the nature of legitimate authority, the mechanisms of social control, issues of civil rights, power arrangements, and the relationship between public and private spheres.”

In the context of this frequent socio-legal overlap, Vago explains the primary premise of “sociology of law” as:

“Sociological jurisprudence is based on a *comparative study* of legal systems, legal doctrines, and legal institutions as social phenomena and considers *law as it actually is – the “law in action” as distinguished from the law as appears in books.*” (my emphasis) (p. 3)

This passage informs the reader of both the *comparative method* and *functional approach* of the sociology of law. However, at this point, Vago doesn’t clarify whether the comparative method to study legal *systems* would engage in comparisons between systems of different societies, or the comparisons would engage to study differences of opinion within a society on what is an appropriate system, that is, an engagement with internal social conflicts. This considerably limits Vago’s *purpose* of sociology of law. Additionally, Vago informs the reader that the purpose to study sociology of law is to bridge the “promise and performance of [*a*] legal system”. (my emphasis) (p.3). However, my addition of “*a*” in the last passage unnecessarily restricts the scope of sociology of law, to which Vago would have objected. Such limited scope of sociology of law doesn’t cover, for example, the transformation, including reunification and reception, of socio-legal systems influenced from other systems, and would be unfortunate or even incorrect.

In fact, Vago’s purpose of sociology of law is rather broad where “[s]ociological knowledge, perspectives, theories, and methods are not only useful but also essential for the understanding and possible improvement of [*both*] law and the *legal system* in society.” (my

emphasis) (p. 4) I found this distinction between *law* and *legal system* useful to understand and assign the expansive purpose of sociology of law, which covers not only the resolution of internal social conflicts but also the systemic improvements by identifying and resolving conflicts between different social/legal systems.

Vago also narrates some of the problems of socio-legal juxtaposition. (pp. 4-5) Apart from noting the differences in vocabulary, Vago points out that legal thinking is primarily *post-factual* or *reactionary*, whereas, social thinking is *hypothecated*. Law solves *predefined* problems, whereas sociology solves *emerging* problems. However, in this context, Vago assigns the role of “theory building” to sociologist only (pp. 5-6), which appears to be an underestimation of legal science, doctrine and technique.

Vago then turns his attention towards explaining the concept of law. (pp. 6-8) Keeping in sight the difficulty of the subject, he brings up “definitions” of law by Cardozo, Holms and Webber. Although his preference, from a sociological perspective, to Weber’s definition is obvious due to Weber’s emphasis on law as a legal *order* and the expansive inclusion of “other normative orders”, such as customs and conventions, within the domain of law (p. 7); Vago did not really clarify how Weber’s definition is *not* temporal in character as he criticised Holmes’ and other jurists definitions for their temporality. (p. 6) As a matter of fact, I remain to be convinced with Vago’s half-hearted explanation on the relevance of *temporality* of law and it’s in/significance for a sociologist. (p. 6)

Finally, to explain the concept of law, Vago relies on Black’s expression “social control”, i.e., penal, compensatory, therapeutic and conciliatory, to which a lawyer would have referred to as *legal remedies*. (p. 7) However, Vago explains that the law forms only one of the “devices for social control” (custom, traditions, usages and convention etc. being others), and the law becomes *meaningless* without interpretation and enforcement. For sociologists, such as Vago, law is a guide for action or a method for enforcement. The rest that a lawyer would include in law, such as doctrine, source, principles and legitimacy, is in fact sociology in Vago’s conception. (p. 8)

Chapter one further provides different types of law, distinguishing between substantive and procedural, private and public, civil and criminal, civil and common, and administrative and constitutional laws (pp. 8-10); and different legal systems such as Romano-German, Common Law, Socialist, and Islamic legal systems. Then the chapter introduces some of the functions of law, namely, social control, dispute settlement, and social engineering. All three

functions are expansively addressed in chapters five, six, and seven and I shall deal with them later in my discussion on these chapters.

Chapter one further discusses the two ideal conceptions of society, namely, the *consensus* and the *conflict* societies. In consensus societies, common values are already determined, and those opposing the common values within society are only in transition to join the consensus; whereas, conflict societies are struggling to develop such consensus, and interest groups are conflicting to promote their perspectives of values. (pp. 17-20) Here Vago's work could have become more interesting had he discussed conflict societies in more detail.

Chapter one concludes with an explanation of different approaches to the study of law and society; distinguishing between those who believe that sociology is a description of phenomena with empirical evidence, and those who believe that sociology goes beyond the description of phenomena into criticising with lesser focus on empirical evidence. Finally there are those who consider sociologist as the one who bridges gaps between theory and practice through "praxis", which is a revolutionary process of transformation from bad present to good future (pp. 20-21). This is perhaps the most interesting aspect of sociology of law, but unfortunately Vago's book doesn't go any further from giving a only brief description of praxis, which I found disappointing.

2. Chapter two

Chapter two offers a more detailed examination of different legal systems and theoretical perspectives. However, Vago begins with the affirmation that:

"At the outset, it should be recognised that there is no single, widely accepted, comprehensive theory of law and society (or of anything else in the social sciences). The field is enormously complex and polemical, and individual explanations have thus far failed to capture fully this complexity and diversity." (p. 26)

By the same token, Vago laments that several theories of law and society overlap, and explains different "disciplinary perspectives" to categorise these theories, such as jurisprudence, philosophy, and anthropology. (p. 26-27)

After presenting Turner's typology of the development of primitive legal systems; Friedman's typology of transitional legal systems; and Galanter's typology of modern legal

systems (pp. 27-32); Vago turns his attention to various theories of law and society. Vago believes that sociological theories of law offer two important explanations (p. 32):

1. Why did changes in legal systems take place?
2. What factors contributed to legal development from a historical perspective?

Vago reviews, in a chronological order, the works of Montesquieu, Spencer, Sumner, Maine, Marx, Weber, Durkheim, Dicey, Holmes, Hoebel, Black, and Unger. He also presents some current theoretical trends in law and society; describing functionalism, Marxist and conflict theories, the Critical Legal Studies Movement, and feminist legal theory. (pp. 33-54)

However, Vago's persuasion of Berghe's "tenets of functionalism" (p. 48) does not signify social change in *conflict societies* as part of the study of sociology of law, and therefore unnecessarily restricts the application of functionalism as a multifaceted theoretical approach. For example, in key point 5 at page 48, Vago notes:

"Change is fundamentally a slow adaptive process, rather than a revolutionary shift".

This does not embody societies facing fundamental social conflicts, where changes can be abrupt and revolutionary. Similarly, at key point 6, Vago notes:

"Change is the consequence of the adjustment of changes outside the system, growth by differentiation, and internal innovations."

This approach towards social change also rules out revolutionary changes and restricts the application of functional theory. In my opinion, the study of sociology of law from a functional perspective should not assume the momentum and conduits of social change, which makes this theory restrictive (see for example Vago's p. 49 second paragraph). On the contrary, the functional theory should focus on the 1 to 4 of the key points at page 48, which I rephrase as:

1. Historical analysis of society, and its interrelated parts, as a system;
2. Multiple and reciprocal relationship between social causes and their effects on legal development;
3. Internal *shock absorbers* to prevent systemic imbalances arising from both abrupt and indolent social changes; and
4. Mechanism to study and measure inter-social transplants, resulting from both types of conflicts that exist within a society and that a society has with other societies.

It appears that Vago nonetheless has a knack of finding alternative means for his favourite theoretical views for their application within the social sciences and their relationship with law. For example, Vago characteristically traces various and diverse attempts by a number of authors (such as Llewellyn, Hoebel, Frank, and Arnold (pp. 48-49)) at establishing a functionalist theory of sociology of law. At one point, Vago trusts the parameters of “legal anthropology” (p. 48), and at another he relies on the “functional jurisprudence” (p. 49) in creating some kind of a disguise or as a *crypto-natural* sociology of law.

Although Vago also gives a good description of criticism levelled against the functional approach (p. 49), he assumes and favours the Riche’s assertion “that most sociology of law theorists are adherent to structural-functionalist theory” (p. 49), without explaining as to why this is the case.

On the “conflict and Marxist” approaches to study sociology of law (p. 49), Vago seems to be over-occupied with the Marxist approach to study social conflicts. In the beginning of reading this part, I was under the impression that Vago would eventually discuss theoretical approaches towards the study of sociology of law in conflict societies, especially when Vago pointed out that “social behavior can best be understood in terms of tension and conflict between groups and individuals” (p. 49). However, Vago transplanted and translated this conflict approach with Marxist anti-capitalist stance; which, in my view, does not reflect the *true* conflict theory of sociology of law, such as the one advocated by Michalowski and Vold.¹

For most criminologists (and socio-legal scientists generally), social conflict is a natural consequence of *inter-group struggles* because it results from the definitions imposed by the (criminal) laws enforced by the powerful upon the disapproved strivings of the unempowered. In this context, Michalowski’s point of view on conflict theory is that conflict is a fundamental aspect of social life itself (not merely economic orientation particularly) that can never be fully resolved, and formal agencies of social control merely coerce the unempowered or the disenfranchised to comply with the rules established by those in power.² From this point of view on social conflict, law becomes a tool of the powerful, which is used

¹ See Raymond J. Michalowski, "Perspectives and Paradigm: Structuring Criminological Thought," in Robert F. Meier, ed., *Theory in Criminology* (Beverly Hills, CA: Sage, 1977), pp. 17-39; George B. Vold, *Theoretical Criminology* (New York: Oxford University Press, 1958), p. 205.

² Michalowski, *ibid.*

to keep *others* from wresting control over important social institutions. But where Michalowski's approach differs most from the Marxist approach of social control is that according to Michalowski social order, rather than being the result of any social consensus, "rests upon the exercise of power through law".³ Those in power must work continuously to remain there, although the *structure* (in terms of social institutions) which they impose on society, including of course patterns of wealth building. Unlike Marxist approach, however, Michalowski's conflict theory is not limited to wealth building alone, and includes circumstances under which the law-making by those in power authorizes the building and operation of different *social power houses* including primary and secondary legislation and military might.

Michalowski's remarkable description of conflict theory, which Vago did not discuss, can be described in terms of the following six key elements:⁴

1. Modern society is composed of diverse social groups. From the pluralist perspective, diversity is based upon distinctions which people hold as significant, such as gender, sexual orientation, social class, and the like;
2. Each group in society holds to differing *definitions* of *right* and *wrong*. Moralistic conceptions and behavioural standards vary from group to group;
3. Conflicts between groups are unavoidable. Conflicts are based upon differences held to be socially significant (such as ethnicity, gender, social class, etc.), and are unavoidable because multipolar groups, which are defined on the basis of these characteristics, compete for power, wealth, and other forms of recognition;
4. The fundamental nature of group conflicts centres on the exercise of *political power*. Political power is the key to the accumulation of wealth and to other forms of power;
5. Law is a tool of power and resources are scarce. Law secures and furthers the interests of those powerful enough to make it. Law allows those in control to gain what they define (through the law) as legitimate access to scarce resources and to deny (through the law) such access to the politically disenfranchised;
6. Those in power are inevitably interested in maintaining their power, and especially against those who would usurp it. The powerful strive to keep their power eternally.

³ Ibid.

⁴ Ibid.

Michalowski's elements clearly give a more comprehensive description of social conflict and conflict theory as compared to Marxist approach. From yet another important perspective that Vago did not discuss, Vold described social conflict as "a universal form of interaction" and said that social groups are naturally in conflict as their interests and purposes "overlap, encroach on one another and (tend to) be competitive".⁵ Vold also addressed the issue of social cohesion, noting that as inter-group conflict intensifies, it results in increased loyalty of individual members to their groups. Vold wrote "[i]t has long been realized that conflict between groups tends to develop and intensify the loyalty of group members to their respective groups", which results in an increased occasion of crime. But Vold's most succinct observation of the role that conflict plays in contributing to crime was expressed in these words:⁶

"The whole political process of law making, law breaking, and law enforcement becomes a direct reflection of deep-seated and fundamental conflicts between interest groups. Those who produce legislative majorities win control over the power," ... "and dominate the policies that decide who is likely to be involved in violation of the law."

In other words, Vold's point of view is also a more accurate representation of conflict societies from a criminologist perspective than the Marxist view that Vago adores. For Vold, powerful groups make laws, and those laws express and protect their interests; hence, the body of laws that characterise any society is a political statement, and crime is a political definition imposed largely upon those whose interest lie outside of which the powerful, through the law, define as acceptable.

In his description of conflict, Vold went so far as to compare the criminal with a soldier, fighting, through crime commission, for the very survival of the group whose values such soldier represents. In Vold's words:⁷

"The individual criminal is then viewed as essentially a soldier under conditions of warfare: his behavior may not be 'normal' or 'happy' or 'adjusted' - it is the behavior of the soldier doing what is to be done in wartime."

⁵ George B. Vold, *Theoretical Criminology* (New York: Oxford University Press, 1958), p. 205.

⁶ *Ibid.*

⁷ *Ibid.*, p. 309.

Vold's analogy appears to express that crime is a manifestation of *denied* (or perhaps rejected) needs and values, that is, the cultural heritage of disenfranchised groups who were powerless to enact their interests in a legitimate fashion.

Another early notable conflict theorist is Austin Turk, which Vago did not discuss. Turk maintains that in any attempt to explain criminality, it is more useful to view the social order as mainly a pattern of conflict rather than to offer explanations for crime based upon behavioural or psychological approaches. Turk, like most other conflict criminologists, saw the law as a powerful tool in the service of prominent social groups seeking continued control over others. Turk defined conflict theory in the context of criminality and describes that in the search for an explanation of criminality:⁸

“[O]ne is led to investigate the tendency of laws to penalize persons whose behavior is more characteristic of the less powerful than of the more powerful and the extent to which some persons and groups can and do use legal processes and agencies to maintain and enhance their power position vis-a-vis other persons and groups.”

Therefore, Vago's over-attachment to Marxist economic approach to describe conflict theory and study sociology of law is undoubtedly overemphasised.

Again, when describing Critical Legal Studies (CLS) movement, Vago shows his love for Marxist thoughts, and believes that the CLS movement was “greatly influenced by Marxist-inspired European theorists” (p. 51). Vago says that the CLS movement agrees to and advocates the “indeterminacy of law” and its inseparability from politics, economics and culture (pp. 51-52). According to Vago, CLS's legal reasoning cannot work independently and lawyers and judges cannot detach from social context in which they are acting. CLS advocates value oriented reading of law, however, believes in those values that are dominant in a given society (p. 51-52). This gives me Vago's impression (which of course is debateable) that if an existing norm in a particular society is opposed to moral conscience of humanity in general (in all possible senses implied, for example, child pornography, polygamy, drugs consumption etc.), CLS would consider that norm as valid. Misgiving of Vago's explanation of CLS further strengthens when, for example, Vago emphasises that this *negative majoritarian value creation* is one of the reasons why CLS is accused of creating

⁸ Austin Turk, *Criminality and Legal Order* (Chicago: Rand McNally, 1969), p. vii.

“illegitimate hierarchies” and for promoting “nihilistic” thinking which might result in a lean towards learning of the skills of corruption (p. 52).

Apart from the above incomplete, or rather distorted, explanation of CLS, Vago fails to offer the basic critique of the nature of Western liberal legal institutions presented in various forms by CLS scholars.⁹ Furthermore, Vago could have discussed difficulties to ascertain how the *Critics* would structure a post-liberal society, for which the radical theorists generally fail to advance concrete proposals.¹⁰ Vago could have discussed in more detail the CLS belief that the determination of *values* and *institutions* forming the basis for a future society must be postponed until it can be accomplished through truly democratic means.¹¹ The central flaw with *liberalism* is its isolation of the individual and the emphasis of *pluralism* on *balancing* competing interests while making no attempt to ascertain the overriding interests of society as a whole.¹² Vago could have discussed the role of CLS on a post-liberal society, where focus shifts to notions of *community* rather than determination of values within individual conflicting groups.¹³

Chapters three

Chapter three examines the organization of law without adapting to specific theoretical orientations as promised by Vago upfront. This chapter offers an overview of the structure and participants of the judicial, legislative, administrative, and enforcement systems. Vago explains the functions of courts and different categories of disputes that courts deal with (pp. 61-63); the organisation of courts (pp. 64-66); the role of different participants in court processes (litigants, lawyers, judges, and juries) (pp. 66-75); and the flow of litigations (criminal and civil) in the US courts (pp. 75-80). In my view, Vago’s focus on the US judicial system could have been more diversified through comparison with other jurisdictions.

Vago then explains the formation and functions of legislatures, including conflict management and integrative functions (pp. 80-81); the organisation of legislatures (pp. 81-82); participants in the legal process (legislators, the executive, and lobbyists) (pp. 82-86);

⁹ See for example, Richard W. Bauman, *The Communitarian Vision of Critical Legal Studies*, 291 *McGill Law Journal* 33 (1988).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

regulatory and administrative agencies, their organisation, and processes (investigation, rulemaking, and adjudication) (pp. 86-93); and the functions and organisation of law enforcement agencies, including police (pp. 93-101). Again, Vago's focus has remained primarily on the US.

One of the most interesting topics Vago discusses in this chapter is "police discretion" (pp. 99-101). Vago addresses the two most common interactions between police and society, namely the *traffic stop* and *maintenance of order*. However, Vago's focus is mainly explanatory and he does not reflect in detail on the *abuse* of discretionary authority by police (p. 101). The questions of police abuse are becoming increasingly important in the light of, for example, the Rodney King and other similar cases.¹⁴ The exercise of discretion is necessary for law enforcement to maintain social control; however, this has become more and more problematic for police officers not only in the US but also around the globe. This challenging issue can produce negative consequences in society when police officers make incorrect decisions. Additionally, there are no established legal criteria to determine the appropriateness of the use of discretion. As Groeneveld has rightly noted:¹⁵

"The challenge comes concerning indoctrinating line officers as to the differences of proper discretion and - "unnecessary", or improper discretion. Ironically, practitioners have used the term - "common sense" to illustrate much of the discretionary behavior needed for police work; however, such a vague and ambiguous expression is inadequate for the true complexities involving such professional judgment."

Police discretion is perhaps the biggest issue in the study of sociology of law which needs fuller attention. However, Vago in his *Sociology of Law* is satisfied with one page account of this important topic.

Chapter four

Chapter four begins with theories of lawmaking. Vago explains the *rationalistic*, *functionalist*, *conflict*, and *moral entrepreneur* lawmaking models (pp. 108-110). While giving the explanation of rationalistic law making, Vago could have discussed the concept of *rational-legal domination* or legitimisation of domination, which comes from Max Weber's

¹⁴ For information on the facts of this case, see http://en.wikipedia.org/wiki/Rodney_King.

¹⁵ Richard F. Groeneveld, *Arrest Discretion of Police Officers: The Impact of Varying Organizational Structures* (El Paso, TX: LFB Scholarly Publishing, 2005), 4.

tripartite classification of social authority (the other two forms being *traditional* authority and *charismatic* authority).¹⁶ All of those three domination types represent an example of Weber's ideal type concept; and according to Weber, in history those ideal types of domination are always found in combinations.¹⁷

I have already offered my criticism on Vago's understandings of the functional and conflict socio-legal theories in Chapter two. However, I would like to discuss here to some extent Vago's conception of *moral entrepreneurship* of law (pp. 109-110).

The *moral entrepreneur* theory attributes the occurrence of key social events to the presence of an enterprising individual or group. Becker's example of Narcotics Bureau of the Treasury Department's (NBTD) *two stage* prohibition of marijuana explains the development of criminal law where the NBTD acted as a moral entrepreneur, in that it attempted to create a new definition of marijuana use as a *social danger*. Here Vago could have discussed the concepts of *moral panic*.¹⁸ Moral Panic is not a new concept and Vago could have looked at how moral panics have occurred and how they have affected the lawmaking process, how we should take account of and study moral panics and in what ways should we do this.¹⁹

Vago then proceeds to a delineation of *legislative*, *administrative*, and *judicial* lawmaking and adjudication (pp. 112-114). Particularly, he explains the judicial lawmaking through *precedents*, and *interpretation of statutes and constitutions* (pp. 116-118). The discussion then turns to an exploration of the influences that *interest groups*, *public opinion*, and the *social sciences* have on lawmaking (pp. 118-126). Vago concludes the chapter with a review of several *sources* that can act as an impetus for creation of law. Here Vago explores scholarly analyses of *protest activity*, *social movements*, *public-interest groups*, and the *mass media*. (pp. 126-135)

Perhaps the most important topic in this context was the role of public interests groups, in particular the *amicus curiae* ("friend of the court") claims, in lawmaking. Although Vago

¹⁶ See for example, Max Weber, Politics as vocation, "Politik als Beruf", Gesammelte Politische Schriften(Muenchen, 1921), pp. 396-450. Originally a speech at MunichUniversity, 1918, published in 1919 by Duncker & Humblodt,Munich.

¹⁷ Ibid.

¹⁸ See for example, Matthew David, Amanda Rohloff, Julian Petley and Jason Hughes, The idea of moral panic - ten dimensions of dispute, Crime Media Culture 2011 7: 215.

¹⁹ Ibid.

explains that public interest groups have been instrumental in the initiation to a series of changes in the law designed to benefit and protect the public (p. 131), and also gives several examples of public interest organisations and discusses some quasi-public interest groups (p. 132). However, Vago never considers the role of *amicus curiae* claims that such public interest groups can bring into courts, and thus contribute towards the judicial lawmaking process. Vago writes (p. 133):

“For a group to effectively promote its interests and to provide an impetus of lawmaking, it naturally must have access to lawmakers. But access to lawmakers depends, at least in part, on the socio-economic status of the group.”

Vago, therefore, completely overlooked the role of public interest groups and organisations with respect to *amicus curiae* briefs. *Amicus curiae* interventions by public interest groups and organisations are becoming commonplace in national and international dispute resolution. Nevertheless, relevant scholarship, such as Vago’s, on judicial lawmaking has overlooked this trend. Vago’s work could have benefited by analysing *amicus curiae* participation in public interest cases.

For example, Vago could have explained the basic tenets of *amicus participation*, their *modes of knowledge production*, as well as the ways through which courts engage with and are influenced by *amicus curiae* briefs.²⁰ In contrast to Vago, Collins, for instance, explains how the US Supreme Court has become a “public policy battleground” in which organized interests attempt to engrave their economic, legal, and political preferences into law through the filing of *amicus curiae* briefs.²¹ Collins explores how organized interests influence the justices’ decision making, including how the justices vote and whether they choose to author concurrences and dissents.²² Public interest groups, nevertheless, engage in a systematic “knowledge production practice” of assigning meaning to important information for society, and influence judicial choice and decision-making, and play a significant role in shaping the justices’ socio-legal policy choices and eventual lawmaking.

3. Chapter five

²⁰ See, for example, Jr. Paul M. Collins, *Friends of the Supreme Court: Interest Groups and Judicial Decision Making*, (Oxford University Press 2008).

²¹ *Ibid.*

²² *Ibid.*

Chapter five, entitled Law and Social Control, enters the main course of the Vago's work. Vago explains the *social control* as (p. 140):

“Social control refers to the way members of a society maintain order and promote predictability of behavior.”

Vago discusses *internal* and *external* pressure as processes of social control (p. 140). Here he discusses the role of *negative* and *positive* sanctions as two elements of social control. However, while reading this part of the book, my predominantly lawyer's thinking kept on reminding me of the deontology of legal relationships, for example, the relationship between rights and duties, right and wrong, negatives and positive rights, rights and liberties and so on, which Vago did not discuss.

After defining the *informal* and *formal* mechanisms of social control, Vago explores some of the *legal methods* of social control. He begins with *criminal sanctions* in general. Vago describes that the process of “legalisation” moves norms from the social to legal level (p. 144). However, Vago did not explain the forces which trigger and carry through this process. He backtracks to the concept of “moral entrepreneurship” to explain the legalisation process (p. 145). He also discusses the “political” forces behind the legalisation process. However, I found Vago's description and analysis of both these legalisation processes incomprehensible. First, Vago could have discussed and further developed the conduits of moral entrepreneurship, including what are its constituting elements, how it operates and determines moral optimums, and how it carries through from ideas to ideals, from ideals to ideologies, and eventually resulting in binding legislations. Similarly, Vago's description of the political process of legalisation is underdeveloped. For example, I remain to be fully enlightened whether the political process according to Vago means *democratic* legislation or *revolutionary* uprising.

Then Vago moves on to the review of death penalty. He restates several arguments for and against death penalty (pp. 148-150). Interestingly, Vago brings the argument that “death penalty is more likely to affect the poor and minority group members than more affluent white” (p. 150). This explains the truth about the US criminal justice system, which is considered as deeply flawed being entirely rooted in a punitive approach to crime.²³ Stuntz,

²³ See, for example, William J. Stuntz, *The Collapse of American Criminal Justice*, (Belknap Press/Harvard University Press 2011).

for example, notes that beyond the harsh sentences, wrongful and racially motivated convictions (including innocents on death row), the US criminal justice system fails to support victims or reform criminals.²⁴

Vago then discusses civil commitment, white collar crime, the social control of dissent, and administrative methods of control, such as licensing and inspection. Vago makes an interesting addition to my knowledge when he says that people who commit “odd” actions (which I understand as a “socially disturbing” behaviour), which are not legally declared as crime can be kept in observational custody and may be referred for psychiatric assessments by police or court (p. 152). This is interesting in light of many devastating happenings, for example, the recent Wade Michael Page’s mass-slaying rampage at the Sikh temple in Oak Creek Sunday. In this case, shooter Page, who used to call non-whites “dirt people” and talked about “accomplishing positive results in society”, killed six people and tried to kill a cop who was helping the wounded. But to psychiatric nurse, despite obviously “odd” tattoos with obscure reference to white supremacist doctrine, Page was merely a “creepy quiet” guy.²⁵ In the wake of increasing evidence of psychiatric conditions in the US mass shooting incidents, including that of the shooter in the very recent Connecticut school shooting, it remains an open and important question as to what amounts to an *odd* behaviour to be referred to psychiatric assessment or kept under observational custody.

Towards the end of this chapter, Vago also examines crimes without victims, using the cases of drug addiction, prostitution, and gambling, to illustrate the way law is used to control what society defines as immoral behaviour. (pp. 143-172)

4. Chapter six

In chapter six, entitled Law as a Method of Conflict Resolution, Vago delves into the various methods of conflict resolution, and the role that courts play in this process. Vago explains different methods of conflict resolution (direct interpersonal violence, rituals and supernatural agencies, shaming, ostracism, lumping, and avoidance) (pp. 180-182). Vago then explains some *formal* and *hybrid* dispute resolution processes.

²⁴ Ibid.

²⁵ See, for example, <http://www.jsonline.com/news/crime/shooter-wade-page-was-army-vet-white-supremacist-856cn28-165123946.html>.

In the *formal* dispute resolution processes, Vago discusses negotiation, mediation, arbitration, and adjudication (pp. 184-186). Among these, arbitration is of my best interest, for which I found Vago's description and analysis incomplete. Presently, arbitration as a dispute resolution process has gone far beyond Vago's description, which has considered and analysed arbitration as merely a consensual dispute resolution process. Now arbitration is included in most private nature enactments as a necessary *first step* before parties can approach courts and start formal litigation. Such *statutory arbitration* has become compulsory, and disputing parties have no choice but to follow this procedure. Vago also did not discuss several national and international *arbitration institutions* that play an important role in not only dispute resolution but also in shaping the legal and social development, especially in relation to public policy or ethical issues.²⁶

Vago explains the *hybrid* dispute resolution processes as "rent-a-judge" process (pp. 186-187). Within this discussion, Vago makes empirical notes of the litigation explosion in the US. (pp. 190-201) He then uses the work of Galanter to outline a typology of litigants, and to review disputes between different types of litigants (disputes between individuals, and between individuals and organisations) (pp. 202-208). This review points to some interesting and illustrative examples, such as legal conflicts between faculty members and universities. (pp. 208-212) Vago then explains the nature and scope of disputes between organisations (conflict within an organisation and between organisations) and the activities of public interest law firms involved in environmental disputes (pp. 213-217). Again, Vago's work in this part could have benefitted from the public interest litigations initiated or joined in by public interest groups as *amicus curiae*.

5. Chapter seven

Chapter seven, entitled Law and Social Change, examines the two dimensional or cross-fertilised influences of the sociology of law, i.e., of social change on the law and of law on the social change. Vago begins with the controversy of Bentham and Savigny over the reciprocity of law and social change, and as to which follows the other. (p. 224) In examining the influence of social change on law, Vago briefly probes the impact that social, economic, and technological transformation can have on the law, and observes that such influence is

²⁶ See for example, Guidelines for Arbitration - New York State Bar Association (2009). The Domestic Guidelines were unanimously approved by Executive Committee and House of Delegates of the New York State Bar Association (NYSBA) in April 2009.

rather slow. (pp. 226-228) The bulk of chapter seven emphasizes law as an instrument of social change and reviews some of the benefits and drawbacks of this influencing apparatus. (pp. 228-250) Vago explains (p. 228):

“There are several illustrations of the idea that law, far from simply a reflection of social reality, is a powerful means of *accomplishing* reality – that is, of fashioning it or making it.” (emphasis in the original)

Starting with Nisbet’s exposition of Roman conceptualisation of social change through law, Vago cites the examples of Soviet Union, Spanish labour reforms, Nazi Germany and Eastern European countries, and Chinese Communist government to illustrate how law has been used to bring social changes. (p. 228) Vago observes that law, through the processes of *planning* and *disruption*, brings both *positive* and *negative* social changes, depending on one’s perspective. (p. 231)

On the positive side, Vago points to the respect for the legitimate authority of the law, using Weber’s typology. (pp. 234-235) He further notes the binding force of law which compels obedience and obligation, and the sanctions for disobeying the law. (pp. 235-238)

On the negative side, Vago emphasises the Weberian argument that the scope of legal instrument is limited by conflicting interests and, more specifically, by the fact that certain *interests* and *powers* will be able to use law to their advantage, while others with less power will not. (pp. 238-240) Vago also stresses on Dror’s “tunnel vision” of law as an instrument for social change (p. 240); Levine’s scepticism on “cause-and-effect” relationship between law and social change (p. 241); Devlin’s “prevailing morality and values” restrictions of legal instrumentality of social change (p. 241); Schur’s “unsupported law” analysis, particularly with the example of attempted constitutional ban on drinking (pp. 241-242); Kaplan’s example of failure of statutory ban on marijuana because “in democracy it is for the people to tell the government, not for the government to tell the people, what makes them happy” (p. 242); and Sumner’s example of “stateways cannot change folkways” (p. 243). Vago concludes his analysis by saying (p. 243):

“There is still much to be learned about when and under what conditions the law cannot “only *codify* existing customs, morals, or mores, but also . . . *modify* the behaviour and values presently existing in a particular society”. (emphasis in the original)

Under the heading “Resistant to Change” Vago also describes *social factors* (vested interests, social class, ideological resistance, and organised opposition), *psychological factors* (habit, motivation, ignorance, selective perception, and moral development); *cultural factors* (fatalism, ethnocentrism, incompatibility, and superstition); and *economic factors* that lead people to resist change and limit the efficacy of the law. (pp. 244-250)

However, where Vago could have advanced his study is the *converse* analysis, that is, the influence of social norms (in terms of individual and group behaviour, social organizations, and the processes of social change other than by law) on the creation and development of law. Vago could have developed the analysis further to include cultural effects on human behaviour, the organization and behaviour of social groups and their influence on legal development and change, social trade-offs and multipliers and legal development, and the creation, forms, operation, and influence of political and economic organizations and their impact on legal development.²⁷

Chapter eight

In chapter eight, Vago examines the profession and practical activity of law, specifically lawyers. Vago begins by sketching the professionalization of lawyers and overviewing the development of the profession. He continues by describing the various settings in which lawyers practice the legal profession; the influence of money on lawyers and legal profession; the effect of competition on the profession; and the *pro bono* legal services provided by lawyers to the needy. The chapter also examines the professional training of lawyers by discussing legal education and the socialization of lawyers. Vago closes the chapter with a review of the bar and the disciplining of lawyers through the code of ethics. (pp. 235-295)

However, my first impression from the title of this chapter, somehow, was that Vago will discuss the role of legal profession and practice in society, in terms of influencing *social change* through innovative legal practices and procedures or the vice versa, that is, influencing *legal change* through proclamation and incorporation of social changes in the legal profession and practices. There are several examples from around the globe of lawyers’ movements, collectively as a community supported by the bar and the bench, where they either rejected a legal change because such change did not attend to social reality or called for

²⁷ See for example, F. James Rutherford and Andrew Ahlgren, *Science for All Americans*, (Oxford University Press 1991) Chapter 7 (Human Society).

legal change to attend to social reality. Lawyers' movements recently in Egypt and Pakistan are ready examples. Vago's analysis, which is overwhelmingly focussed on the US obviously due to the expected audience, is, therefore, unnecessarily restrictive in this regard.

6. Chapter nine

Vago's text concludes with this chapter entitled Researching Law in Society. This very helpful chapter surveys various research methods employed by sociologists who study the law. Vago explains the *historical method*, i.e., "critical investigation of events, developments, and experiences of the past; a careful weighing of evidence of the validity of sources of information on the past; and the interpretation of the evidence" (p. 303); *observational method*, i.e., human observers (participant observers or judges) through field research, interviews, imaginative role-taking and so on (p. 305) or mechanical observers (cameras, tapes, recorders, and the like); *experimental method*, i.e., testing causal relationships by social scientists in a laboratory or in a field setting for the purposes of measuring phenomena before the introduction of the experimental variable and after, thus getting a measure of the change presumably caused by the variable (p. 307); and *survey method*, i.e., systemic and comprehensive collection of information about the attitudes, beliefs, and behaviour of people through face-to-face interviews, self-administered questionnaires, and telephone interviews (pp. 309-310).

Vago then discusses the contributions that sociological research has made to the development of law and policy. He discusses contribution of sociology to *policy recommendations* (pp. 312-315), and the contribution of sociology to *enacted policy* (pp. 315-317). The chapter and the book conclude with a discussion of the involvement that sociologists have had with evaluation research and impact studies (pp. 313-322).

Learning assessments and remarks

Vago's Law & Society is an involving book, which I read with great enthusiasm and interest. Overall, this is a strong text, which is readable, clear, well-organized, and schematically coherent. The above *parcel* view of the book clearly reflects that Vago's approach covers both the "sociological of law" and the "law of sociology" aspects. Although after reading the first chapter, I was a bit sceptical as to how my predominantly lawyer's mind would react to the *socialised version of law*, the book takes a very realistic and balanced stance on the socio-legal juxtapositions, and has convinced me on almost every taken perspective.

The emphasis in the book has remained on the cross-fertilisation of the two disciplines, the sociology and the law, rather than the mere impact of sociology on the development of law. The research methods employed by Vago himself in this book, in my understanding, are *comparative* when he deals with theory, and *descriptive* when he explains the socio-legal institutions, although with heavy focus on the US.

Vago's approach sometimes tends to be general, that is, much of the work deals with law as it exists in society as well as it influences and is shaped by society. However, this general analysis emphasises on the law in modern society. Keeping in sight my personal developing country background, I could have benefited more had the analysis included discussion on transitional societies. Similarly, I could have benefited more if the analysis and appreciation of conflict societies, as compared to consensus societies, were included in the book.

There is at least some cross-societal analysis outside the US when Vago, for example, compares the lawyers' population ratio of several countries and describes the social control of dissent through surveillance and suppression of speech in Islamic, African, and Asian countries. The analysis of the organization of law, lawmaking, legal profession, and most of the examples describing how law is used for social control, conflict resolution, and social change are based on law in the US society. Despite Vago's incline towards modern and the US society, the thrust of the book is theoretically oriented towards law and society in general and Vago's discussion on theories is rather broader and covers theorists from all parts of the world. More cross-societal analysis and comparisons would have strengthened the work. With the help of empirical evidence, which is both condensed and well organised in charts and tables, Vago has clarified his contentions very well.

The book introduces the first time reader, such as me, to the sociology of law, the basic concepts, theories, and subject matter of the topics thoroughly. The book covers a wide range of topics and offers the beginner a quality survey of the interplay between law and society. However, due to its limited coverage, the exploration of this interplay often lacks magnitude; and I would surely like to read a more advanced work on the sociology of law. I am particularly interested to read more in-depth analysis of the Marx, Durkheim, Holmes, and Unger's sociology of law theories, to which this book gives merely an introduction. I would also like to reconnoitre more on Michalowski's and Vold's view and theories that Vago did not discuss.

To me, chapter seven “Law and Social Change” and chapter nine “Researching Law in Society” remained most attractive and informative. I have had some insights in my previous reading and research on the role of *interests* and *values* in the formation and development of *norms*, and Vago’s elucidations have helped improve my conceptual understanding. Now I understand more how law forms a species of several kinds, i.e., it can be a coercive means to bring social change; a socially motivated reaction; or a remedial mechanism for a socially discouraged conduct. In chapter nine, I have learned some very exciting research methods and tools that I would surely like to employ in my future research. Vago has, therefore, undoubtedly enlightened my sociological imagination of law!

However, the book has certainly missed some very important details, especially with respect to the *amicus curiae* role of public interest groups in the judicial lawmaking, the criminological analysis of sociology odd behaviours, and, most importantly, detailed discussion of conflict and transitional societies.