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LIVING IN THE LEGAL LIMBO
A Socio-legal Approach to Sex Workers and Waste Pickers' Claims for Labour
Recognition

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To my family

...for constantly remind me the value of thinking in-between.

TABLA DE CONTENIDO

ACKNOWLEDGEMENTS	4
INTRODUCTION.....	6
PART ONE: ON THE LEGAL LIMBO.....	16
FOREWORD.....	16
CHAPTER ONE: THE LEGAL LIMBO	17
THINKING IN-BETWEEN	17
IN-BETWEEN SPACES IN LAW	23
THE LEGAL LIMBO	27
<i>Not the Same as the Grey Areas of Law</i>	<i>28</i>
<i>Not the Same as Law in Books and Law in Action</i>	<i>29</i>
<i>Shifting Focus to the Legal-Self.....</i>	<i>31</i>
INCOME-GENERATING ACTIVITIES IN LEGAL LIMBO	33
<i>Being at the Edge of Work.....</i>	<i>38</i>
<i>Being at the Edge of Criminality</i>	<i>43</i>
CHAPTER TWO: WASTE PICKING AND SEX WORK THE LEGAL LIMBO	48
WORK AND CRIMINALITY IN CONTEXT.....	49
<i>Labour Transformations</i>	<i>49</i>
<i>Security Transformations.....</i>	<i>53</i>
NEITHER CRIMINALS NOR WORKERS.....	56
WASTE PICKERS IN THE LEGAL LIMBO	57
<i>Waste Picking and the Law.....</i>	<i>61</i>
SEX WORK IN THE LEGAL LIMBO	67
<i>Sex Work and the Law</i>	<i>70</i>
AFTERWORD	81
PART TWO: THE DYNAMICS OF THE LEGAL LIMBO.....	84
FOREWORD.....	84
CHAPTER THREE:WASTE PICKERS LIVING IN A LEGAL LIMBO	87
<i>I. Speaking Out Loud.....</i>	<i>88</i>
<i>II. Conflicting Discourses</i>	<i>93</i>
<i>III. Dealing with the Edge of Work.....</i>	<i>102</i>
<i>IV. Dealing with the Edge of Criminality</i>	<i>114</i>
CHAPTER FOUR: SEX WORKERS IN A LEGAL LIMBO.....	125
<i>I. Speaking Out Loud</i>	<i>127</i>
<i>II. Conflicting Discourses</i>	<i>134</i>
<i>III. Dealing with the Edge of Work.....</i>	<i>147</i>
<i>IV. Dealing with Edge of Criminality</i>	<i>155</i>

AFTERWORD	180
PART THREE: EXITING THE LEGAL LIMBO	183
FOREWORD	183
CHAPTER FIVE: GRASSROOTS LEGISLATION	184
EXPIENTIAL KNOWLEDGE AS LEGAL SOURCE	186
DESCRIBING THE WORKSHOPS	191
SEX WORKERS' GRASSROOTS LEGISLATION	194
<i>The Backstage</i>	194
<i>The Meeting</i>	197
<i>Mobilization</i>	198
WASTE PICKERS' GRASSROOTS LEGISLATION	199
<i>The Backstage</i>	200
<i>The Meetings</i>	202
<i>Mobilization</i>	213
AFTERWORD	215
CONCLUSION	218
ANNEX : EPISTEMOLOGY, METHODS AND ETHICAL CONSIDERATIONS.....	228
EPISTEMOLOGICAL PERSPECTIVE	228
METHODOLOGY	231
1 st Stage: Pilot Study	233
2 nd Stage: Fieldwork with Sex Workers and Waste Pickers.....	242
3 rd Stage: Grassroots Workshops.....	247
ETHICAL CONSIDERATIONS	249
BIBLIOGRAPHY	252

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*“Knowledge emerges only through invention and re-invention,
through the restless, impatient, continuing, hopeful inquiry,
human beings pursue
in the world, with the world, and with each other.”*
Paulo Freire (Pedagogy of the Oppressed, 2005, 68)

Few hours ago, finishing the thesis at hand seemed as an endless enterprise. Now, writing this note of thanks made me rewind the past four years’ and realize how intense and enriching this research process has been. None of which would have been possible without the unique opportunities for travelling, sharing and learning the ‘Renato Treves’ International PhD program gave me throughout these years.

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INTRODUCTION

'We are workers' claim sex workers and waste pickers in the city of Córdoba, while denouncing an increase in criminalization. This thesis explores the relationship between work, criminality and law. It does so by understanding how the legal/illegal dividing line shapes, and is shaped, by the moving borders between work/non-work and crime/non-crime. The workers described in this thesis exist in an area of in-between in which socio-legal dynamics of power and resistance emerge. The notion of 'legal limbo' that is defined and explored in the thesis refers to activities, situations or orientations that are neither legal nor illegal in a specific legal system. In the search for an empirical account of the notion of legal limbo, this research uses income-generating activities that are not protected by labour law nor are they conceived as crime, as its primary focus of analysis: sex workers and waste pickers in the city of Córdoba-Argentina. Empirically, then, the thesis explores the betwixt socio-legal position of those workers. Therefrom, the key research question that therefore guides this inquiry is:

What are the socio-legal dynamics of power and resistance around sex work and waste picking in the city of Córdoba-Argentina?

The research is grounded and aims at enriching socio-legal scholarship for it focuses on social relations mediated, excluded, reproduced or contested in the legal terrain. However, it also borrows concepts from law and geography, from liminality studies, from anthropology, from labour studies, from criminology, social control, surveillance studies, from philosophy of law, from political economy, from urban studies, and from pedagogy of the oppressed in order to better comprehend and make sense of the empirical data. Those constant interactions with other disciplines have enriched this inquiry and posed further questions on the topic.

The notion of the legal limbo is an empirical concept that emerged from my master's thesis on legal perceptions in oppressive contexts. In particular, this research assessed the way in which organized women sex workers' perceptions of law related to their practices of resistance against oppression.¹ Among the theoretical outcomes it emerged

¹ The data was gathered through in-depth interviews, participant observation, field diary and secondary

that an understanding of the socio-legal position of sex workers as neither workers nor criminals was paramount to comprehending their perceptions and resistance strategies. That empirical outcome inspired this PhD research inquiry. In the master's thesis I have referred to that situation as 'margins of law'. However, in the process of shaping the research question I have found that the notion of 'limbo' better captures the idea of in-between spaces than the notion of 'margins'. These betwixt socio-legal positions challenge dogmatic approaches to law. Modern State law, but more emphatically perhaps positivist continental state law, rests upon the commanding principle of legality. The legality principle states what is not illegal is legal; thus, an activity, situation or orientation cannot be at the same time 'neither legal nor illegal'. As the thesis will show, this principle can build a mystified holistic vision of law as an all-encompassing system in which every situation, activity or orientation is either legal or illegal, which forecloses the possibility of spaces in-between.

Among the various situations, activities and orientations that may be in the legal limbo, I decided to stick to income generating activities for its theoretical and empirical significance. Thus, this research's empirical concern is with those whose income-generating activity is neither considered as labour nor considered as crime. The concept of legal limbo focused on income generating activities leads to a set of questions on the role of law in labour relations in tandem with the expanding edges of criminality. Moreover, the focus on income generating activities has implications at the level of resistance. The person whose activity is in a legal limbo finds it essential to their lives to cope, negotiate or resist the dynamisms within that limbo; especially when the activity performed means the daily subsistence of their families. In current global capitalism, having an income generating activity –particularly in urban areas- becomes essential to human existence. New and old forms of income generating activities are continuously challenging legal arrangements incapable of coping with material changes and the need of thousands to eke out a living. The rapid transformation in the labour relations

sources such as videos and newspapers. Interviews were the primary tool for data collection. They were open-ended, face-to-face, semi-structured interviews to adult and organized sex workers to twenty sex workers. I have analysed the data using Grounded theory and structuring the process of analysis in the following ten steps: general categories, emergent issues, primary encoding, sub-encoding, interim or provisional analysis of relevant issues, families of codes, data review, theory building, interview fragments extraction, final analysis (M. Fassi 2010).

worldwide shows the transcendence of focusing on labour struggles in contemporary scenarios. Certain regions in the globe are much more adversely affected by these transformations. This implies that, on the one hand, this can no longer be considered as geographically isolated phenomenon, and on the other hand inquiries on these issues must be contextually grounded.

Those who are in a legal limbo are not protected by labour law and labour law institutions, they cannot claim their labour rights through the traditional legal venues, nor do they have institutional channels to dialogue with the state or with those who they economically depend on. Their claim is not about the enforcement of labour law; their first claim is a claim for their official recognition as workers. Moreover, these groups' activities do not have an illicit object, which means they can openly claim for labour rights. That legal limbo opens a significant space for power and resistance; as I have argued elsewhere their position also allows them space for resisting and contesting hegemonic legal discourses (Fassi 2011). A simple, and common, example to illustrate the implications of living in legal limbo is to think of drug dealers and factory workers. Drug dealing is considered to be illegal in most legal systems; while industrial labour tends to be protected by labour law; it is regulated and has specific institutions formally established to address workers' demands. Drug dealers will most probably avoid claiming before the state for recognition as workers and for their labour rights. Factory workers, on the other hand, have already established legal avenues to claim for the enforcement of their legal rights, even if in practice economic and political forces might render their voices unheard. The notion of legal limbo is in itself a highly contextual concept. However, some examples could be: street parking attendants, sex workers, waste pickers, independent craftsmen, jugglers, windscreen cleaners, beggars, and street vendors, among others.

The empirical setting for this inquiry is the city of Córdoba in Argentina. Located at the centre of Argentina, Córdoba is a city of 1.330.023 inhabitants. According to the last national census, by the year 2010 Argentina had 40.115.096 inhabitants, Buenos Aires is home to 33% of the 60% that live in metropolitan areas. Thus, even though Córdoba is the second biggest city in the country, the population distribution is highly unequal. The city of Córdoba has been continuously transforming its physiognomy since 2001

and this is, by no means, serendipitous. These transformations respond to the ambitious plan of becoming a 'modern and neat' city. I do not expect to exhaust here the extensive reforms this plan implied. However, it is important to mention relevant urban and security reforms that have affected the life of those who eke a living in activities that are neither legal nor illegal. In the search of becoming 'modern and neat', Córdoba got by the year 2000 funds from the World Bank and the Inter-American Development Bank to launch the 'Córdoba State Modernization Program.' Córdoba was no exception in applying for and receiving this funding. Just to mention the impact of these policies, we can see that from 1989 to 2001 the World Bank and the Inter-American Development Bank did in Argentina 133 operations for the amount of 28 million dollars (Cingolani and Lardone 2006, 11). Córdoba got a loan from the Inter-American Development Bank (BID 1287/OC-AR) and another loan from the World Bank called "Córdoba Provincial Reform". These two loans, and the recommendations attached to them, were enacted in three consecutive provincial modernization laws: Citizen Charter (Act nº 8835), the State Modernization Act (Act nº 8836) and the Public Sector Private Capital Incorporation Act (Act nº 8837). Urban transformations in the city of Córdoba were a key reform to become a 'modern and neat' city. In this context, historical buildings were restored, public spaces were reformed, and vulnerable populations were relocated in social dwellings. The explicit aim of these transformations was to reduce poverty; however, the implicit outcome was an increase of marginality and vulnerability at various levels (Fassi and Manzo 2011). These massive re-localizations brought about social and geographical fragmentation; which reveals "a way of acting upon displaced families' economic reproduction processes and a way of actively regulating inter-class interactions" (Boito, Aimar, and Giannone 2010, 108). Furthermore, inherent to this gentrification process was the strengthening of security policies. During 2003-2004 Córdoba signed several agreements with both the Manhattan Institute and the Israeli Military Army Ldo. The Manhattan Institute is a USA based think tank that have been producing and exporting social control knowledge since the late 1990s. The Manhattan Institute has been at the core of zero tolerance policies expansion and the Israeli Military Army Company is specialized in counter-terrorist surveillance. This approach to security and control has been particularly problematic for vulnerable populations. These institutional, urban and security transformations set the background to the contextual struggles this thesis aims to explore. In the city of Córdoba there are different

groups living in a legal limbo. However, this thesis focuses on two of these groups: waste pickers and sex workers.

Waste picker, cardboard picker, urban recycler, scavenger, rag picker; these are some of the metonymic ways of naming and connoting the activity of collecting what other people throw away. The terms carry the stigma of what is dirty, disposable, contaminated. In contemporary capitalism, consumption and waste are consecutive practices of energy and resources' exhaustion system. In Scribano assessment, the "interaction logics of this depredatory world are constituted by elliptic torsions settled between the consumer and the waste" (2015, 151). This author argues that nowadays consumption rests upon its spectacularity; its paroxysm is reached if it is dramatized for someone else. "The social magic of joy consists in its capacity to break/join the public/private; we consume to be seen consuming" (2015, 145). In this sense, the waste is the sacrificial complement in a dialectic game between consuming, wasting and enjoying; this game re-organizes/re-structures social intra and inter-class relations, while it "repeats the extension of the capitalist system's conditions of possibilities" (Scribano 2015, 152). From this perspective, one might venture the reading of waste as fulfilling the disappearance fantasy. If consumption's social magic is fulfilled by its spectacularization; then, waste's social magic is fulfilled in its inverse fantasy: the disappearance of those objects that are 'thrown away', and with them the invisibility of those persons who eke a living out of it. Waste pickers income-generating activity is neither protected as labour power by the traditional labour law system, neither is it *per se* conceived as a criminal activity. The same occurs in the case of sex work.

Prostitute, whore, fallen woman, hooker, slut; these are some of the metonymic ways of naming and connoting the activity of exchanging sexual services for some form of financial gain. These terms carry along with them the stigma of what is deviant, obscene, perverse, amoral, and sinful. The exchange of sexual services for economic compensation is a complex social phenomenon. People offering and receiving sexual services are men and women of different ages and social classes. The exchange can be occasional or regular, for money or for other economic goods as in transactional sex. People can perform it autonomously but there are also a number of people who are sexually forced or exploited. As in every social relation, historical and current patterns

of power influence the configuration of this phenomenon. In 1978, the activist Carol Leigh attended a workshop at a Conference in San Francisco- USA, the title of which was: 'sex use industry'. In her own words, she felt embarrassed by those terms and argued: "[h]ow could I sit amid other women as a political equal when I was being objectified like that, described only as something used, obscuring my role as an actor and agent in this transaction?"(Leigh 2013, 230). That day, she coined the term 'sex work' as part of the political and symbolic struggle to redefine the activity by emphasizing the its labour dimension. The term has become a political identity nomination for organized sex workers worldwide.² In this thesis, I use the term 'sex work' to refer to the voluntary and adult exchange of sexual services for financial return. This definition is not accidental.³ Even though this is an extremely sensitive and complex issue, the definition aims at excluding from the income-generating activity other situations in which there is money and sex involved, such as cases in which the person is a minor, or is an adult but victim of sex slavery and/or sex trafficking. Sex work, as well as waste picking, is an income generating activity that is neither regulated as labour nor is it conceived as crime. Thus, these are both relevant groups to explore the socio-legal dynamics of power and resistance in the legal limbo.

² Notwithstanding, the symbolic use of the term 'sex work' has also been contested within the sex workers' movement. For instance, Gabriela Leite is a famous Brazilian prostitute activist who vindicates the use of the term 'whore' and proposes to use the term with proud and, by doing so, re-signify it. She claims, "If all whores didn't live with so much stigma in their heads, they would use the word. I think that we would even overcome prejudice before it occurs (...) And I also think that if we don't take words by the horns, we won't change anything" (Gabriela Leite in Laura Murray 2013, 0:20"-1:40").

³ Even though I acknowledge the potential disruptive use of the word 'whore', I will use the term sex work in this research. Not only because it is a term widely used by the sex workers movement, but also because I find it helps better to displace the stigma in the academic world; and I will only keep the word prostitution when describing norms that used that word. Prejudices in the academic world remain latent. I have been doing research on sex work over the last 6 years and it has been fascinating. Not only for the incredible people I met on the way, the vivid stories they shared with me, the rich and provocative literature, the endless inner contradictions with my own background and socialization; but also for the revealing reactions people would have when talking about my work. The academic world where I have been sharing my work (mainly Europe, Canada and Latin America) still has, in my experience, certain set of pre-notions around sex work. By way of example, once a colleague insisted that my research was on 'social work', no matter how many times I corrected him that it was on 'sex work'; until he got upset and told me that 'prostitutes have to be called for what they are: prostitutes'. Also, a common situation was the hegemonic understanding that sex work is a purely gender issue. Even though I proposed an abstract on waste pickers and sex workers, I have been constantly put in the gender panels, in which I had to constantly apologize for the disappointment of my colleagues who were there to discuss gender studies. In more activist/political academic settings I have been called 'confused' or even 'pimp' when I discussed sex workers' labour rights. Scholars in this area will probably find familiar some of these anecdotes.

Sex workers and waste pickers have plural and complex socio-legal relations. The focus of this thesis is on state law. Legal pluralism has expanded the scope of socio-legal research beyond state law. It is possible to affirm that every more or less stable social relation is a socio-legal relation for interactions tends to portray their own set of norms, rules, patterns, that become acknowledgeable. Inquiries on legal pluralism have expanded our knowledge on normative behaviours, understandings and interactions in various and enriching forms. Notwithstanding the importance of this broad approach to law, in this thesis the focus will deliberately be set on state law for pragmatic and theoretical reasons. The focus in state law has posit further readings on the role of the state and state actors in (re)shaping the structure of the legal limbo as well as the groups' claims and demands for labour recognition and against criminalization.

In order to empirically assess these two groups' dynamics in the legal limbo, this thesis adopts a qualitative methodology. The fieldwork has been divided in three stages. The first stage entailed a pilot study with groups whose income generating activity was in the legal limbo in the city of Córdoba. The aim of this pilot study was to explore which of the groups whose income generating activities are on the legal limbo could provide richer data to grasp the dynamics of power and resistance in the legal limbo. To do this, I relied on interviews, participant and non-participant observation, informal conversations, as well as on secondary data such as newspaper articles, press releases and legal documents (acts, bills, judicial decisions, and so on). Then, I made a comparative chart considering theoretical, practical and contextual issues of these groups and decided to continue the research with an in-depth analysis of sex workers and waste pickers. The second stage involved doing fieldwork with sex workers and waste pickers. I relied on interviews, legal documents, newspaper articles, press release, prior research, participant observation, public discourses. At this point, both the pilot study and the first steps in the fieldwork were leading me to focus on the conflicting discourses that emerge in the legal limbo to try to push the activity closer to legality or closer to illegality. Thus, I identified the most relevant actors in this struggle to strengthen the inquiry in this sense. This is when the theoretical inquiry about utterance, knowledge and the power to define became stronger. Therefore, I decided to include a third stage in which to explore how a legal response given by these groups would look like. The third stage involved series workshops to facilitate contextual debates about what these

groups want from the law. The workshops with sex workers and waste pickers were slightly different and I worked together with other people to whom I am very grateful. We relied on the pedagogic tools of popular education approach, and used the data from comparative law analysis, interviews, legal and non-legal documents to design the structure and content of the workshops. The data gathered in those three fieldwork stages has been organized in the thesis structure.

This thesis is divided in three parts. Parts one and two each have two chapters, and part three has one chapter. Each part starts with a 'foreword' and finishes with a 'afterword', which are short texts to provide the reader an introduction and concluding remarks on the chapters included in that part. Part One –The Legal Limbo- aims at theoretically and empirically developing the notion of the legal limbo. It has two chapters. Chapter One elaborates a literature review of different social and socio-legal approaches on betwixt spaces. It is important to establish here the nuances this notion has with other socio-legal concepts such as a-legality, the gap between law in books and law in action, and the grey areas of law. This chapter ends with a theoretical inquiry on income generating activities that are in that betwixt position, meaning that neither are protected by labour law nor conceived as crime. Chapter Two could be read as a snapshot of the socio-legal setting that justifies the study of waste pickers and sex workers as relevant groups to explore the notion of legal limbo. This chapter develops for each group an overview of their context and a description of the set of regulations these groups may confront in the city of Córdoba. Part One, then finishes with a brief set of reflections on the legal limbo as an analytic concept applied to sex workers and waste pickers in Córdoba.

Part Two –The Dynamics of the Legal Limbo- could be read as setting the snapshot described in Chapter Two into motion. The focus of this part is on the socio-legal dynamics of power and resistance that occur because these activities are in the legal limbo. Waste pickers and sex workers' claims and struggles of resistance will be the organizing vector around which the Chapters will be developed. Chapter Three –Waste Pickers Living in the Legal Limbo- offers a detailed empirical account of waste picking while Chapter Four –Sex Workers Living in the Legal Limbo- does the same with sex work. Both chapters revolve around the same four subsections. The empirical data has revealed each of these groups have been developing self-organizing mechanism and

have been raising their voices (Section I: Speaking Out Loud), they have been opposing conflicting discourses that try to push the activity closer to illegality or lack of labour recognition (Section II: Conflicting Discourses), sex workers and waste pickers have been claiming for labour recognition and have been negotiating the position of their income generating activity (Section III: Dealing with the Edges of Work), and they have been struggling against prohibiting policies and criminalization (Section IV: Dealing with the Edges of Criminality). Part Two ends with an analytic overview of these two empirical chapters.

Part Three –Exiting the Legal Limbo- draws upon sex workers and waste pickers claims for labour recognition and describes the workshops run with these groups to build a bill proposal. Here, the focus is on the value experiential knowledge has to build contextual legal responses. This part has only one chapter. Chapter Five –Grassroots Legislation- offers a sketch of key concepts used to build the grassroots legislation proposal from a perspective that values experiential knowledge for law making processes. This research stresses that this particular position in the legal limbo provides room for claiming labour recognition and for proposing legal responses that grasp their needs and experiential knowledge. Then the chapter describes the workshops run with waste pickers and with sex workers, to then offer an overview of this experience’s outcomes. Lastly, this part finishes with some last remarks on the potentials, limits and risk this proposal of building grassroots legislation may have.

These three parts are the body of research, which is revisited in the Conclusion. The theoretical and empirical exploration has inspired more questions than answers, opening a number of further inquiries around it. After summarizing some of the main points this thesis might contribute to, I briefly assess the further lines of inquiry latent in this research. Lastly, I provide an in-depth account of the epistemological perspective, the methodological design and the ethical concerns that have given ground to this research. All things considered, the overall presupposition here is that a socio-legal approach to the dividing line between legal/illegal binary from the perspective of those who embody the limbo provides analytical and empirical elements to assess the politics of betwixt positions in law. The legal limbo in which thousands eke a living has a powerful effect upon those who inhabit the betwixt spaces in law.

PART ONE:
ON THE LEGAL LIMBO

PART ONE: ON THE LEGAL LIMBO

FOREWORD

Part I in this thesis aims at elaborating on the theoretical, contextual and empirical account of notion of the legal limbo. To do so, it is divided in two chapters. Chapter One charts the theoretical approaches that have given ground to the reflexions on the betwixt zones in law. The notion of the legal limbo aims to look at the dividing line between legal/illegal as an area of in-between. This concern leaded me to explore further different theoretical approaches to betwixt spaces, in social theory in general and law in particular. The outcome of this theoretical exploration is described in the first sections of this chapter; it goes from the most general accounts in social theory to the particularities of betwixt spaces in law. Then the chapter turns to the specifics of looking at income-generating activities in the limbo. At this point, two concerns emerged in the research: one is how is the dividing line between work/non-work distinctions created and reproduced? What is the role of law in this divide? And the other concern was about the question on criminality and the definitions of what is it considered to be crime or not-crime. Thus, this first chapter sets the theoretical grounds for the contextual and empirical account of the legal limbo.

Chapter Two elaborates on the contextual description of the legal limbo and the edges of work and criminality in Córdoba-Argentina. It fist provides a contextual account of the edges of work and criminality in Córdoba-Argentina and then turns to describing the reasons why sex workers and waste pickers are relevant groups to study the legal limbo. In order to develop sex workers and waste pickers socio-legal position, I will provide a contextual reading of both activities as well as a description of their normative framework. Moreover, it may be the case that the Judiciary has had a paramount role in defining the groups' legal position; therefore, I will specify current judicial decisions upon this issue. Thus, while the first chapter focuses mainly on the work/non-work and crime/non-crime divide, the second chapter is a contextual description of how the edges of work and criminality and the legal limbo are constructed in the context under study. The description and analysis in Chapter One and Two will be revisited in the closing paragraphs of this first part.

CHAPTER ONE: *THE LEGAL LIMBO*

There cannot be an intermediate between contradictories, but of one subject we must either affirm or deny any one predicate. This is clear, in the first place, if we define what the true and the false are. To say of what is that it is not, or of what is not that it is, is false, while to say of what is that it is, and of what is not that it is not, is true; so that he who says of anything that it is, or that it is not, will say either what is true or what is false.

Aristotle, Metaphysics, Book IV, Part 7

“The notion of chhixi, as many others (allqa, ayni) obeys to the aymara idea that something is and it is not at the same time, that is, to the logic of the excluded third. A chhixi color grey is white and is not white at the same time, it is white and it is also its opposite black. (...) The power of that which is undifferentiated combines its opposites.”

Silvia Rivera Cusicanqui “Chhixinakax utxiwa. Una reflexión sobre prácticas y discursos colonizadores”, 2006,11)⁴

Thinking In-between

Modern western social and political thought relates uneasily with ambiguity. Forged from the Western Enlightenment, it embraces the principle of excluded middle, which states that ‘everything must either be or not be’. This notion, as Silvia Rivera shows when describing Aymara’s thinking, is not universal. “Complex thinking and ancestral knowledge (*philosophia perennis*) reveal that ‘the third always is,’ that is, it is impossible to base everything upon opposing binaries, because they tend to unite” (Castro-Gómez and Grosfoguel 2007, 86). This thesis is not about the vast notions, cosmovisions and understandings the experience of modernity/coloniality has subjugated; rather it is a socio-legal critique of the modern/colonial hegemonic exclusion of that-what-is-in-between.

Dussel postulates that there are two concepts of modernity: the first is Eurocentric, provincial and regional, and views modernity as the intra-European phenomenon of emancipation and maturity towards an effort to rationalization; the second is global and consists of rendering European states, armies, economy, philosophy, and so on, as the centre of world history (2000, 46). In this thesis I adopt the second understanding, and therefore assume a reading of modernity as braid together with coloniality (Castro-Gómez and Grosfoguel 2007; Escobar 2003; Mignolo 2003). Colonialism is not a trans-

⁴ All translations from Spanish are my own.

historical impulse to conquer but rather an integral part of capitalist development; it is “the forcible takeover of land and economy, and, in the case of European colonialism, a re-structuring of non-capitalist economies in order to fuel European capitalism”(Loomba 2015, 40).

This definition leads us to make explicit the point that modernity is, by no means, an exclusive inter-European experience. Modernity reshaped existing structures of human knowledge; moreover, “no branch of learning was left untouched by the colonial experience” (Loomba 2015, 71). Modernity/colonialism permeated local realms. It carved societies from within; which helps explaining why “the newly independent nation-state makes available the fruits of liberation only selectively and unevenly: the dismantling of colonial rule did not automatically bring about changes for the better in the status of women, the working class or the peasantry in most colonised countries” (Loomba 2015, 32). Among the various modern/colonial representations, practices and governing devices, the main concern of this thesis is with the ‘either/or’ binary assumption that divides ideas, people, and practices. Santos (2007) argues modern western thinking is “abyssal thinking” in its production of a radical divide in social reality into two distinct worlds. The main characteristic of abyssal thinking, notes Santos, is the impossibility of co-existence between both sides of the line; ‘this side of the line’ prevails for it covers the range of relevant reality, ‘the other side’ is non-existent, invisible, absent and no-dialectic (B. de S. Santos 2007, 4). Constructed in this way, a vast number of people are rendered the ‘inferior other’, which “was crucial for constructing a European ‘self’ and justifying colonialist practices” (Loomba 2015, 112). It is not argued here that those modern/colonial representations, practices and governing devices were automatically adopted in the colonies or in the metropolis; on the contrary, they were and still are contested, redefined and moulded through long lasting *local* social processes. Nonetheless, a pervasive hierarchization through binaries remains central to modern thinking and colonial experiences.

Feminist, anti-racist and postcolonial studies have been prolific in revealing the sets of binary oppositions used to subjectify those constructed as ‘inferior’ or who are placed

on the 'wrong' side of the binary. 'Civilized/savage', 'First world/Third world,'⁵ 'man/women', 'heterosexual/homosexual', 'white/black', are some of the hierarchical binaries that have shaped and reshaped the history of oppressed peoples. Those binaries have been criticized for the hierarchical connotation they acquire and the oppressive social effects these hierarchies produce upon the vast majority of the world's population, being the 'civilized, white, heterosexual, first world man' the iconic figure of superiority. The oversimplification of binary oppositions erases the "enormous differences within each of these categories as well as cross-overs between them" (Loomba 2015, 112). "The definition of civilisation and barbarism rests on the production of an irreconcilable difference between 'black' and 'white', 'Christian' and 'heathen infidel', self and other" (Loomba 2015, 72). During the formal Spanish colonial period, polarization and hierarchies between native and western culture were based on the opposition between Christianity and paganism as a cultural disciplinary mechanism (Rivera 1993). Talpade Mohanty (1988) has emphasized the reproduction of hierarchies within western feminist knowledge when the category 'women' is combined with the category 'third world' producing the analytic homogenous category of 'the third world women.' Edward Said's studies on Orientalism explored the knowledge produced by the west about the non-west and the way in which the statements, authorizing views, teachings and rulings on the Orient enforced Western domination and authority over the Orient (Said 1978, 3). Orientalism can also be transferred 'from the margin to the margin' as Taborda (2006) contends in his reconstruction of Latin-American orientalism in which the codification of social relations in explicit and implicit, hierarchical and monolithic terms travelled with experiences of colonialism/modernity. Thus, the identified binaries have totalizing effects upon each pole, erasing the complexities of that which is in-between.

Long before feminist, anti-racist and postcolonial studies critically disrupted binary assumptions, concerns with 'that which is in-between' could be found in early 20th Century modern western social scientists. Clearly, the critique was far from critical in its

⁵ The term 'Third World' has also been adopted as an accurate critical term in international law scholarship, particularly Third World Approaches to International Law (TWAIL), distinct from notions such as less-developed, crisis-prone, developing, underdeveloped or even 'the south'. B.S. Chimni stresses the importance in the use of this term to respond to the abstractions that do violence to difference and to organize and offer collective resistance to hegemonic policies (Chimni 2006).

challenge of binaries and hierarchical oppressions. In 1908, Van Gennep's anthropological account 'The rites of passage' (2004) showed how tribal rituals have a moment of in-between as they pass from one stage to the other. Coining the term 'liminal' to refer to those betwixt social spaces, Van Gennep's account ultimately fell in line with the hegemonic thinking at the time, for instance identifying superior and inferior levels of civilization. However, he mentioned that liminalities were also to be found in what he called modern societies. In the 1960s the term liminality was adapted by Victor Turner to look at transitional inter-structural situations in-between 'states', signifying "a relatively fixed or stable condition that included such social phenomena as legal status, profession, office or calling, rank or degree (...) degree of maturation (...) ecological condition, or to the physical, mental or emotional condition in which a person or group may be found at a particular time" (Turner 1967, 93). In his work, Turner stresses that "evolving species push back boundaries, so it is on boundaries that creative thought must dwell" (Turner 1975, 33). He coined the term 'liminoid' to refer to the liminal-like situations in complex societies (Turner 1995). From then on, the notion of liminality has been used to study and describe different social and cultural in-between states. Recent research across a range of disciplines has made use of this term. By way of example, in her study on those who undermine the man/women binary during the era of South African apartheid and the transition to democracy, Swarr (2012) employed the term 'liminality' to look at the unsettled and formative spaces within hierarchies and institutions, arguing this notion is not geographically or disciplinarily bounded, nor does it assume a static gender norm or political position. Haour applies the concept of liminality to archaeology to emphasize the consequences it has "in the daily interactions between people, and the consequences that the existence of 'charged' statuses has on the distribution of archaeologically recoverable material culture" (Haour 2013, 13). For Haour, it is reasonable to believe that all communities have a notion of socially liminal individuals, even if perceptions of liminality likely differ within and between communities (Haour 2013, 15). Thus, concerns with betwixt spaces have shown to be analytically and empirically relevant to comprehend social processes across disciplines and localities.

The concern with 'that which is in-between' has been accompanied by the concern for 'those who are in-between'. Indeed, this latter concern forms a central focus of my

research. Those who-are-in-between represent the organizing vectors of my research, as will be developed throughout these pages and specially stressed in the methodology annex. The inquiry into the liminal subject can be found in Turner's early work in which he examined the 'passenger' analyzing the structural position of those who inhabit the betwixt spaces. During the liminal period the state of the 'passenger' is ambiguous, has few if any of the attributes of the past or emerging state, and is structurally – if not physically -- invisible (Turner 1967, 94–95). This invisibility has a twofold character for the passenger, who is no longer or not yet classified, "their condition is one of ambiguity and paradox, a confusion of all the customary categories" (Turner 1967, 97). As he follows, "[w]e are not dealing with structural contradictions when we discuss liminality, but with the essentially unstructured" (Turner 1967, 98). For Turner, distinctions between rights and duties according to rank or status and the gradations of superordination and subordination tend to be eliminated (Turner 1967, 99). Hence, the liminal passenger is structurally invisible, ambiguous and neutral; the liminal is neither *this* nor *that*. More recent studies have also echoed the concern for those who are in-between, their structural, material and subjective experience. In her study of migrant women in Johannesburg, Kihato (2013) describes the inner city as an ambivalent place for women who "live between and betwixt their home country and country of origin, between a romanticized past and imagined future elsewhere" (Kihato 2013, 17). Kihato shows how such women encounter physical, social and psychological boundaries in a paradoxical liminality of uncertain life trajectory and undefined social structure. Kihato reveals the urban, social and legal conditions that set the ground for that experience of in-between and stresses the subjective experience of the liminal self in that environment. She reveals the interrelation between agency and structure and argues against the partial modern statecraft reading of the city that aims to organize urban space into readable administrative registers without giving voice to those who live and create the city; their understandings, tactics of resistance, knowledge, vocabularies and images reveal the subjective experience of the city and give a more nuanced approach to the making of the urban space (Kihato 2013, 115). In line with this effort to capture the liminal self, Ehler (2012), in 'Racial Identities', stresses the importance of the struggle against subjectification. The author explores the racial imaginary in the United States through an examination of a 1925 "racial fraud" case. In *Rhinelander v. Rhinelander*, a case about a marriage between two 'white looking' upper-class people who were

alleged of fraud when, a few days after the wedding, the newspapers claimed that the women may have black descendants. The justice in the case went through a process of determining whether she was black or white, and Ehler shows that “liminality is itself produced by dominant cultural norms; the binaries black and white as oppositional categories creates the idea of a subject who can be said to exist between these two realms” (Ehlers 2012, 76). Even though the judicial case came to ‘correct’ the performative impurities of social identity to reinstall them within the same system, Ehler emphasizes the performative disobedience of the figure passing as white which, to her mind, “points to ways in which subjects can reinitiate their subjectivity within the productive constraints through which they are constituted” (Ehlers 2012, 86). Hence, those who are in-between embody, confront and – one may expect -- resist within and beyond the productive constraints that are said to constitute their ambiguous ‘neither/nor’ position.

The focus on modern state law leads to the socio-legal issue of the politics of legal ambiguity for sovereign power. Departing from a somewhat different starting point, however still referring to those who are in-between, this account addresses Agamben’s homo sacer. In his seminal article ‘Homo sacer: Sovereign power and bare life’ (1998), Agamben inquires into the intersection between the juridico-institutional and the biopolitical models of power, an intersection at which rests the homo sacer, the banned person who can be killed by anybody but cannot be sacrificed. The homo sacer, as such, is inherently contradictory. “Neither position can account economically and simultaneously for the two traits whose juxtaposition, according to Festus, constitutes the specificity of homo sacer: the unpunishability of his killing and the ban on his sacrifice” (Agamben 1998, 48). The inclusion of this bare life in the political realm constitutes the nucleus of sovereign power (Agamben 1998, 11). Agamben argues those who hold this inherently contradictory and ambiguous homo sacer are at the very centre of sovereignty. Even though this is not intended to be a thesis explicitly on Agamben’s theories on bare life and state of exception, his arguments open and lead to a set of questions on the lingering persistence and governing effects of those-who-are-in-between. I will relate further to these points in the discussion about in-between spaces in law. The next section explores the socio-legal scholarship that has undertaken the question on law and in-between spaces, drawing also on a set of distinctions, which I

propose through an engagement with other socio-legal approaches to law, on the notion of legal limbo.

In-between Spaces in Law

Modern State law, but more emphatically perhaps positivist continental state law, rests upon the commanding principle of legality. The legality principle is the correlative reflex of the logic principle of non-contradiction into the legal field; in this sense, an activity, situation or orientation cannot be at the same time 'neither legal nor illegal'. This principle helped build a mystified holistic vision of law as an all-encompassing system in which every situation, activity or orientation is either legal or illegal, which forecloses the possibility of spaces in-between. This is what I will refer to as the myth of closure. Fitzpatrick (2002) has taken into the legal field the discussion on the relation between myth and modernity. The first myth to break down is that myths are a matter of the past and/or the uncivilized. Myth "contrasts negatively with history and science, forms commonly said to have displaced it" (Fitzpatrick 2002, 17). Hence, modernity is constituted in the denial of myth, "myth precedes and is negated by modernity. Modernity is what myth is not" (Fitzpatrick 2002, 28). Fitzpatrick explores the assumption that myth is outside of modernity illustrating the mythic composition of modern law.⁶ This is not, by any means, a simple rhetorical inquiry as he hints at the performative effect myths have upon social practices. "Myth is not only an expression (...) it imperatively guides action and establishes patterns of behaviour. This guidance is not merely subordinating. People employ it (...) to exert control in the here and now" (Fitzpatrick 2002, 20). The mythical effect of the legality principle works along those lines. The binary legal/illegal is a myth, but as a modern myth it is denied in the enlightened configuration of its rationality. This all-encompassing holistic myth of modern state law becomes reinforced once, following Agamben (1998), we accept that the sovereign decides upon its own borders. For Agamben, "the paradox of sovereignty consists in the fact the sovereign is, at the same time, outside and inside the juridical order" (1998, 17). The law is outside law itself, the law is even there where it is not; the sovereign declares itself all-encompassing through the boundary setting power of law.

⁶ In Fitzpatrick account the myth of modern law rests on its contradictory attributes "law is autonomous yet socially contingent. It is identified with stability and order yet it changes and is historically responsive. Law is a sovereign imperative yet the expression of a popular spirit" (Fitzpatrick 2002, x).

“The sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law” (Agamben 1998, 17). The sovereign, as the law, declares itself holistic and all encompassing. Thus, the holistic myth of law is reinforced by setting its own borders. Moreover, once those borders are set the holistic myth of law is once again reinforced from within. The principle of legality assures a binary division of all activities, orientations and situations that are now within those borders. Santos’ description of western modern abyssal thinking states that the only two relevant ways of existence before modern law, ‘from this side of the abyssal line’, are the legal and the illegal, which leaves aside as an unthinkable organizing principle the non-law, the a-legal, or the legal or illegal according to other non-official legal systems (B. de S. Santos 2007, 6).⁷ In the positivist tradition, the Kelsenian hierarchical norms pyramid provides the analytic tools to overcome possible contradictions, silences or inconsistencies. A hierarchy between the layers of legalities (bylaws, provincial law, national law, treaties, supreme constitutions, and so on) is established to provide the ‘proper understanding’ of the law. Dogmatic legal thinking states that objects of legal transactions are either against the law (i.e. the transaction renders illegal), or in conformance with the law (the i.e. transaction is legal). The main argument I want to push forward is that dogmatic thinking rests upon a mystical understanding of the holistic property of law. In legal education and in the everyday practice of law there is a hegemonic myth of closure that portrays law as a closed, self-sufficient system. However, the reader who does not concede this argument might concede that even if there is a ‘proper’ resolution to the determination of the legality or illegality of an activity, condition or orientation, there will always be a moment of ambivalence. Legal systems, as an always-changing human product, have areas that at first glance are inconsistent and do not provide a clear-cut answer to certain situations; which shows the limits legal systems have in their capacity of providing holistic answers to social situations. The legal limbo emerges from these limitations within legal systems and from the consequent impossibility to fulfil the myth

⁷ Santos’ concern is with negation and exclusion outside of modern law. In this research, my concern is mainly with what Santos refers to as ‘this side of the line’ distinction between legal and illegal. The main argument is that the legal/illegal binary on ‘this side of the line’ rests upon a mystifying holistic vision of law that does not reflect the socio-legal dynamics of power and resistance occurring in the in-between spaces of modern state law. Moreover, Part III ‘Grassroots legislation’ provides a dialogue with knowledge and experiences outside of the state law. Nonetheless, this research can be enriched with further lines of inquiry into legal pluralist approaches and non-western understandings of ‘in-between spaces’.

of closure. Hence, the invitation is to consider that, even if such a solution does exist, there will always be a time-frame or location from which, or a group of people for whom, that solution is not (yet?) set.

Socio-legal studies have not been alien to the concern of the betwixt. Two main socio-legal perspectives have explored in-between spaces in law: legal liminality studies, which draw upon the liminal paradigm approach; and law and geography, which borrows heavily from the Marxist geography tradition. Legal liminality is addressed in a recent text on migration, gender and social justice (Truong et al. 2014) in which contributors explored the notion as produced in “the clashes between national and supranational legal orders, tensions between state bureaucracies of the same government, or even ideologies regarding gender, race, and ethnicity, also in conjunction with formal legal orders”, illustrating the ways in which “actors respond[ed] to the exclusions associated with liminality” (Menjívar and Bibler Coutin 2014, 328). In a different piece, Menjívar (2006) uses the term ‘liminal legality’ to express the indefinite extension of the temporariness of the migrant condition. Examining the differences between documented and un-documented migration as a status of liminal legality, Menjívar contends that migration law creates and recreates an excluded population whose immediate lives are shaped by vulnerability and precariousness. Showing how this liminal condition is characterized by the ambiguity of being neither an undocumented nor documented migrant, and by a process that is neither unidirectional nor linear, Menjívar also turns to the experiences of contestation of migrants who have responded by organizing, working with the law, and contesting the conditions in which they live (2006, 1032). Spyridakis’ intervention on ‘the liminal worker’ addresses liminality from the perspective of the self, arguing that contemporary workers experience a “liminal existence through forced ‘rites of passages’ from stability to instability” (2013, 22). Through ethnographic research on tobacco workers, shipbuilding day labourers and bank employees in Greece, the author accounts for this crosscutting experience of liminality and at the same time shows how these agents react to their plight in polymorphous ways. Salient in this line of inquiry is the work of Chun, who has used the liminal paradigm to look at informal workers, pointing to the legal rationales that justify the continued legitimacy of downgraded forms of irregular employment. Chun also reinforces the relevance of struggles both at socio-economic

and symbolic levels recognizing that “influencing how people think and act in relation to each other is about more than just the art of communication” (2009, 4). In these diverse ways, therefore, socio-legal scholars drawn upon the liminality paradigm to advance the subjective experience, confrontation and struggle of those who deal with in-between spaces in relation to law.

In its own reading, law and geography studies has produced systematic knowledge on the relation between law and space.⁸ Delaney (2003) describes this inquiry as twofold: on the one hand it looks at law in space, examining how legal practices shape spatialities of social relations (i.e. legal interpretation and racial segregation, asylum seekers, etc.) – or the discursivity of space in which law refers to discursivity and space to materiality; on the other hand, it explores space in law, which means to see law as an intelligibility discourse that names a discourse among other discourses (i.e.: the rhetoric of liberalism is one that gives pride of place to ‘zones’, ‘realms spheres, ‘limits’ ‘boundaries’), here the spatial is understood to be discursive and intrinsic to the legal (Delaney 2003, 70). Law’s materialization is a major concern in Law and Geography studies. In this respect, law is not just a domain of reason or words; the materiality of law allows us to appreciate that “the violence that law authorizes or blocks happens on bodies and elsewhere in the material world” (Delaney 2003, 79). Therefore, “any effort to effect a dematerialization of law must be regarded with suspicion. It must, that is, be at least examined as a political manoeuvre” (Delaney 2003, 80). If law, he claims, is scrupulous about patrolling its own borders it is imperialistic. Thus, Law and Geography studies provide a vantage point to explore in-between spaces in law that challenge the holistic myth of closure. This line of analysis has pointed out that law seals itself off from the world but leaves nothing beyond legal signification (Delaney 2003, 71).

Ultimately, the theoretical background on betwixt spaces in social and socio-legal theory gives way to the analytic notion this thesis aims to push forward, the notion of ‘legal limbo’.

⁸ Legal geography studies have evolved into three modes or stages: the first mode is a cross-disciplinary study of legal scholars and neo-Marxist or poststructuralist human geographers; the second mode, following from significant influence of Critical Legal Studies, developed radical perspectives on the question of power. The third mode is characterized by a challenge to disciplinary scholarship, aiming to broaden the dialogue across disciplines and topics (Braverman et al. 2014).

The Legal Limbo

The thesis at hand consists of an effort to examine the betwixt spaces in modern state law by exploring the structural, material and subjective experience of those who inhabit that space. This, in turn, requires a recasting of the binary legal/illegal in a way in which the dividing line is conceived as an *area* where dynamics of power and resistance may emerge. The analytic concept of legal limbo refers to those areas in which groups' activities, situations or orientations are (still?) neither legal nor illegal. In this way, the legal limbo is defined as the socio-legal position occupying an activity, condition or orientation that is neither legal nor illegal. Hence, legal limbo is the position an activity, condition or orientation occupies at a certain time and space. As such it is contingent and dynamic. Thus, the issue of the legal limbo could be addressed by looking at the different societies and laws that exist in a particular context. As stated in the introduction, this research focuses on state law. In other words, the socio-legal position a group occupies may be different at different times and spaces, and even in the same time and space it may be different depending on the type of laws and social settings we consider in the analysis.

Hence, the notion of the legal limbo is contextual, written and performed. It is contextual because it depends on the set of regulations that the group confronts in a specific time and space, which is also why it is determined by the set of legal provisions (written) and the actual enforcement of those provisions (performed). It may be the case that a situation, condition or orientation is regulated by a set of norms that have not been enforced and thus fell into desuetude. Nonetheless, in a different time and space the same set of rules can be enforced again, thus, changing the configuration of the legal limbo. For instance, the Social Prophylaxis Act bans brothels in the country's territory; it has been enacted in 1937 but was not enforced in decades. Throughout that time, sex work remained in a legal limbo; however, as will be developed in this thesis, the enforcement or non-enforcement of this Act reshaped the inner structure and dynamics of the limbo in significant ways.

It is equally important to consider what the legal limbo is not about. To be in a legal limbo does not mean that groups do not encounter regulation (as in *a-legality*, discussed below). Neither does it mean that law exists but is not enforced (as in the difference

between 'law on the books' and 'law in action'). Nor does legal limbo purport that every socio-legal position is essentially ambivalent in line with certain understandings of legal interpretation. Furthermore, the legal limbo is not the same as grey areas of law. The gap between the simplification of theoretical analysis and the complexity of real-life makes some distinctions coexist in reality. For instance, sex workers in Cordoba, Argentina are in a legal limbo, and they use the grey areas of law to bolster their struggles, including by adopting favourable interpretations of existing legal provisions (Marisa N. Fassi 2011). However, this analytic distinction emphasizes how the idea of a legal limbo opens a different set of questions about the complexity of socio-legal relations than that offered by notions such as a-legality, grey areas of law, legal indeterminacy or the gap between law on the books and law in action.

Not the Same as the Grey Areas of Law

The difference between the grey areas of law and the legal limbo is at the level of the distinction between the strategic use of law (grey areas) and the position the group is in law (limbo). Nevertheless, a group in the legal limbo can strategically make use of grey areas of law. Law is a human product that uses language and meaning to communicate; thus, ambivalence ought to emerge. According to Mootz (2010), legal actors have troubles acknowledging the centrality of interpretation for it suggests that the law is ambiguous and requires the active participation of lawyers or judges to render the law meaningful (2010, 339). Systematic efforts have been done to surpass the problem of legal interpretation. Rosenfeld (1992) explains that two main attempts to solve the problem of legal interpretation has been raised: on one hand, a substantial approach which ties the validity of interpretation to a set of extra-legal values and, on the other, a procedural approach which justifies its validity by the procedure followed to interpret. Drawing upon a deconstructionist perspective, Rosenfeld emphasizes that any writing that gives the impression of reconciling identity and difference, unity and diversity and self and other is the product of ideological distortion, suppression of difference or subordination of the other; in particular modern legal discourse –with its universalist aspiration- “cannot achieve coherence and reconciliation so long as it produces writings that cannot eliminate from their margins ideological distortions, un-accounted differences or the lack of full recognition of any subordinated other” (1992, 153). This troubled relation between law and interpretation also provides grounds for socio-legal

struggles. Social agents take advantage of the way in which the law is socially constructed through interpretation of texts. The same holistic myth of modern law sets the ground for the strategic use of the 'one and only possible meaning' among multiple possible meanings.

However, the legal limbo is not the same as operating in the grey areas of law by taking advantage of textual vagueness and possible interpretations. Actors build strategies to manipulate law for their own benefit without necessarily interfering with the black letter of the law. Thus, social actors might operate in the grey areas of law taking advantage of indeterminacy. In this case it is actors themselves interpreting law in a particular way on their own behalf. On the contrary, the legal limbo is a socio-legal position that emerges regardless of the use that actors will finally make of the betwixt. Being in the legal limbo does not rest on the groups will, nevertheless the group can decide to manipulate legal indeterminacy to re-define this socio-legal position. Hence, even if liminal groups do not use the grey areas of law as a *strategy* their *position* in law may still be neither legal nor illegal. For example, organized sex workers have not only used the vagueness of legal texts as one of their strategies of resistance when negotiating their position in law but in fact have proven quite skilful in playing with law's ambiguity (Marisa N. Fassi 2011; Marisa N. Fassi 2014). Sex workers have negotiated agreements with the police. Similarly, waste pickers adopted different legal forms such as cooperatives or associations to render themselves a valid political interlocutor. Thus, groups in the legal limbo can use the interpretation of texts as legally (and socially) marginalized groups can take advantage of ways in which law is socially constructed through interpretations of text. However, the relation between the legal limbo and the strategic use of interpretation is one of possibility. Not necessarily every group in the legal limbo will make strategic use of interpretation. Moreover, previous research has suggested that this use is due to a raise in groups' consciousness of their oppression in the legal field and in their political networking (Marisa N. Fassi 2011).

Not the Same as Law in Books and Law in Action

The difference between the notion of the legal limbo and the notion of the gap between law on the books and law in action is at the level of legal rights' recognition. In the books-action gap, the right is recognized and enacted but it is not enforced. In the legal

limbo, there is no recognition of that right, and this may have a significant impact on the possible strategies that groups develop in their efforts to exit the legal limbo.

I will use Kamowan Petchot's text: 'The Right to Education for Migrant Children in Thailand: Liminal Legality and the Educational Experience of Migrant Children in Samut Sakhon'(2014) to explore the nuances between the two respective notions. This text is relevant for it uses liminality as an analytic category to designate what I believe may be better grasped by the notion of the gap between law on the books and law in action. Petchot uses the notion of legal liminality to refer to the situation of migrants in Thailand who register and become regularized but then find it hard or impossible to gain access to formal education, despite the existence of the legal right. The concept of legal limbo that I propose differs significantly from Petchot's study in which there is recognition but no enforcement. Studies on the gap between law in books and law in action are a suitable framework to explain such limits and obstacles that render legal rights unenforced. From the reading of the text, it seems that migrant children in Thailand do have institutional mechanisms to claim for the access to education. In that situation we find a tension between the conferral of rights and the access to those rights. On the contrary, the notion of the legal limbo refers to activities, situations and orientations that are neither legal nor illegal. There is no clear-cut institutional venue to approach to claim the protection of labour rights of sex workers in Córdoba, for the labour condition in itself has not been recognized as a legal right. This difference in the legal recognition of labour rights has a significant impact on the possible strategies that groups may develop if they want to exit the existing socio-legal situation. The legal limbo then provides different venues - both through law and against the law -- to struggle for legal recognition.

Nonetheless, the gap between law on the books and law in action may become relevant for the study of the legal limbo in the ideological setting where the legal provisions are being enforced render that same gap unbridgeable. In his 'Ambivalence and the postcolonial subject', Burton (2004) compares shared features across the writings of the Cuban slave Juan Francisco Manzano (1797?-1853) and the Irish-Catholic servant to the British crown Robert Madden (1798-1886). In relation to law, Burton shows that "mechanisms were developed to circumvent legislation enacted for the protection of

colonized subjects” (2004, 101). However, for the entire official administration the ‘cedulas’ that were meant to protect slaves had little or non-existent application in practice. Can we talk about a gap between law on the books and law in action in that context? Is that gap bridgeable when the legislation to protect certain subjects is designed in such a way that will not produce any relevant effect upon the legal enforcement of ideological structures? What is the purpose of this distinction when the subject has no possible way to access institutional channels to claim legal rights? In Kihato’s study of migrant women in Johannesburg the question of law is that of the subjective experience of law in these migrant womens’ everyday lives. As Kihato asks: what does being "legal" mean in a city where those with valid visas or refugee permits are considered "illegal" on the streets? (Kihato 2013, 114). Those further inquiries show the possible and probable interplay between the analytics categories discussed here. However, they do not disregard the analytic need to differentiate the notions of the gap between the law on the books and the law in action and the notion of the legal limbo.

Shifting Focus to the Legal-Self

The difference between the notion of the legal limbo and that of a-legality is at the level of legal enactment. The prefix ‘a’ means ‘lack of’ or ‘without’. The holistic myth in modern law sheds light to a critical analysis on the actual existence of an alegal realm. Nonetheless, one may argue that alegal rests on the ‘other side of the abyssal line’ in Santos’ terms. Moreover, one may see the complex operation by which the alegal is legalized in the drawing borders of the sovereign (*sensu* Agamben). However, the legal limbo is set ‘in this side of the line’, within modern state law. Being in a legal limbo does not mean that the groups do not confront any regulation. As will be developed in depth for the case of sex workers and waste pickers in Córdoba-Argentina, in the legal limbo there are regulations that refer to the condition, orientation or activity directly or obliquely of these groups. However, none of those regulations inscribe the activity as labour or crime. When looking at income-generating activities, this means the groups are not regulated by labour law or by penal law but are being regulated by other state norms in ways they are at the edge of the hegemonic legal notion of work and of criminality.

The notion of the legal limbo does not grasp the kind of situations that have been referred to as alegal. By way of example, the notion of alegality has been recently used by Hans Lindahl in 'Fault lines of globalization' (2013) to problematize the legal/illegal divide. Remarking that law cannot be reduced to the legal/illegal distinction, Lindahl uses the notion of a-legality to designate the emergent third or alien category. He engages the reader with an imaginary case set in Paris in which the Galerie Lafayette's director faces a number of various situations in which different actors try to get products out of the store without paying. He argues that "if legal and illegal behaviours call attention to the boundaries of legal order, a-legal behaviour reveals boundaries as the limit of legal (dis)order by intimating strange places, times, subjectivities and act-contents which interfere with the legal order they transgress" (Lindahl 2013, 13). Lindahl frames the issue from the perspective of those whose behaviour the law regulates in order to affirm that the imaginary cases drop outside the legal/illegal domain.⁹ Unwilling to renounce to the modern configuration of this binary, Lindahl's strategy is to curb the existing legal/illegal divide by adding an external category which, instead of surpassing the binary, reinforces the idea that in a legal dispute there is the legal, the illegal or that which is strange to legality: a-legality. Instead, the notion of the legal limbo aims at challenging the binary distinction from within. Nonetheless, it does not necessarily relate to the prefix 'a' in alegal in terms of absence of law. As we will see, waste pickers and sex workers may confront a number of different regulations.

Starting from this premise, I will argue that in order to overcome the binary legal/illegal distinction we will need to somehow employ a particular approach to law. This approach implies an analytical and conceptual shift that goes from understanding law as a system of rules and guidelines, permanent and compulsory, which are enforced by the state to govern behaviour, to understanding law from the perspective of the legal self, that is as a limited set of norms that a concrete social actor (group or individual) confronts in a particular context (space and time). Hence, this approach implies a shift *from the legal system to the legal-self*. Expressed differently, all of us encounter in our

⁹ Notwithstanding, it is hard to say that the examples given in the book are in the absence of law. If the penal code in France is at least similar to that of most continental law countries we can say that the director in these imaginary cases would easily fit into the description of the victim of extortion; which is 'that person who would not or could not have done the same action without the pressure, abuse of power or intimidation performed by the criminal'.

everyday life just a limited number of those rules that form the legal system. It may be argued that indirectly every norm *affects* everybody. But the invitation I want to make with this shift is to focus on the specific, identifiable and limited set of norms that a specific social actor may *confront* in their everyday life. By way of example, the Trust Deed Act is universal and enforceable to all subjects under the jurisdiction where the Act belongs; however, it is most likely that only investors will come across that norm in their everyday life. The same occurs with anti-vagrancy and loitering bylaws that will most likely be confronted by homeless people.¹⁰ The invitation is, then, to focus on the specific and limited number of regulations an actor (group or individual) may more likely confront in their everyday life.

As will be developed in the next, sex workers and waste pickers are not lawless or a-legal; they do confront a number of state regulations, none of which allow to position them in either the binary poles of the legal/illegal divide. The empirical examination of waste pickers and sex workers claims for labour recognition in Córdoba-Argentina aims at exploring the relevance of analytically differentiating the 'legal limbo' from other socio-legal categories. Thus, these nuances will be elaborated further in the Conclusion. Nevertheless, as starting points for the following discussions I will now turn to the specificities of looking at income-generating activities in the legal limbo.

Income-generating Activities in Legal Limbo

Out of all the situations, conditions and orientations that might be in the legal limbo, this research focuses on the activities people do to eke out a livelihood. These activities receive dramatically contrasted attention in policymaking, legal systems and social representations. In order to capture the broad, plural and heterogeneous activities that people engage in, I will use the term 'income generating activities'. This includes activities that produce profits (monetary or other returns), whether that profit is directly received by the person who performs it or it creates the necessary opportunities for somebody else to produce profits. This concept in itself makes no further references to the legal status of the activity, neither is it constrained by social or

¹⁰ Beckett and Hebert (2008) have shown that zero tolerance policies used for urban segregation target behaviours such as drinking, sleeping and urinating in public spaces, which have a major impact on the capacity of homeless people to negotiate urban space.

moral limitations on what can be considered work in a given context. Thus, income-generating activities are factory work, drug dealing, street juggling, pimping, housework, or being a company's CEO. The notion of the legal limbo allows to break down that concept and to emphasize the distinctive set of socio-legal relations that emerge under three different circumstances: when there are regulations but are not enforced, when the regulations do not exist, and when the regulations proscribe the activity as illegal. In most current literature informal work is the term used to refer to the first two situations. This equation is relevant to understanding the labouring conditions and the effects on poverty and access to quality life, and most importantly to acknowledge systematic patterns of exclusion for the populations living out of informality. However, the equation fails to acknowledge the enormous consequences for resistance and political struggle that each of those situations imply for groups itself.

The notion of legal limbo sets the ground to distinguish the practical and discursive implications of performing an activity that is regulated as work but not enforced, or an activity that is not considered as labour but does not have an illicit object, and an activity which is rendered illegal within the criminal system. Social forces operating at each of these situations are completely different, and therefore also are the strategies of resistance available to each of them. In simple terms, workers whose labour rights are enacted but not enforced have the formal possibility to claim for that conferral before legal institutions. For instance, in Argentina a rural worker can go before the Ministry of Labour in case the employer is not fully fulfilling the Rural Workers' Act provisions (Act nº 26.727). This opens up a number of questions and discussions related to the effective possibility for that claim to happen. It cannot be disregarded that a vast number of workers find it impossible to access justice despite this formal possibility to claim for the conferral of rights before legal institutions. From a critical perspective, Whyte ventures a thorough reading of how the clash between legal regulations and economic forces renders those workers as naked labour. Drawing upon Agamben's notion of bare life, Whyte (2009) unpacks the process by which labour is made naked, without right and without the protection of the state, alone and isolated, in capitalist social orders. For a vast number of workers their risk of injury or death and the practical impossibility to claim against those risks, set them as the bare life of a labour market in which "labour

exists in a zone of indistinction between formal right and economic force” (Whyte 2009, 61).

Furthermore, there seems to be a semantic vacuum in reference to groups who are not legal or illegal; those groups tend to be invisibilized in the general reference to informality as well as in the theoretical language on labour that renders them as invisible in the global economy. Traditional classifications divide the labour frame in terms of formal/informal work, standard/ precarious, legal/illegal. The binary division ‘precarious/standard work’ tends to be based on the hegemonic social understanding of labour, the ‘formal/informal work’ divide is used to refer to the boundaries of regulation and its enforcement by legal institutions, and the border between legal/illegal works is delineated by situations where certain labour activities either are permitted or tolerated within a legal system or have an illicit object. In practice these classifications may overlap, but there has been a proliferation of production of knowledge that addresses these differences. Not all informal work necessarily exists in a legal limbo. Literature has traditionally included in the concept of informality those activities that are not regulated or where regulations are not enforced. These workers cannot be named as ‘unemployed’ or ‘passive,’ their labour power is commoditized and subsumed under the logics of capitalism; and some of these groups may even work on dependency relations. In this section I propose to renew understanding of the traditional classifications of labour (formal, informal, standard, precarious) in order to show that those who are in a legal limbo are not just informal. The emergence of the term ‘informal sector’ can be traced to Keith Hart’s anthropological research in Ghana in the 1970s. In his pioneering work, ‘Employment, Incomes and Equality’, Hart refrained from portraying informal sector as itself negative; “it was rather a picture of self-sufficient economic transactions not dependent on organized capital” (S. Routh 2011, 211). In the 90th ILO Meeting in 2002 the concept of ‘informal sector’ was buried away and replaced by that of ‘informal economy’, “this change tries to reflect that it is not about an industrial sector or a specific economic activity, but rather that each time the group of workers and companies which operate in the informal realm is larger and more diverse” (Tokman 2004, 217). Nevertheless, it is worth mentioning that since its inception, informality is defined in relation to, or rather the opposite of, economic transactions regulated by the modern state. Following Routh, the formal/informal

divide has been explained by main theoretical conceptualizations: dualism and structuralism. The dualist perspective understands both sectors as operating simultaneously but unrelated to one another; in this sense, formality and informality are a parallel phenomenon. The structuralist approach, on the other hand, assumes an inherent relationship between the formal and informal sectors; under this perspective structural changes influence the capitalist mode of production modifying both formality and informality. By the end of the 1980s, Manuel Castells and Alejandro Portes incorporated a structuralist perspective into the studies of informality by contending informal economy as “a process of income-generation characterized by one central feature: *it is unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated*” (1989, 12). From this perspective, the study of informalization requires a redefinition of production relationship through the articulation of the juridical divide of labour activities as formal/informal, for “any change in the institutional boundaries of regulation of economic activities produces a parallel realignment of the formal-informal relationship” (Castells and Portes 1989, 12). Adopting a somewhat different approach to informality, De Soto understands it from the perspective of access to legality and, thus, proposes bureaucratic simplicity, legalization and institutional reform as a strategy against informality (De Soto 2000). Tokman (2004) has criticized this definition for it overestimates the weight of the legality element and pushes the debate away from poverty as a priority. It is confusing and misleading to believe that informal workers violation of the law is a deliberative subjective attitude, when it may be more about norms which prove difficult to comply with or for the government to enforce. In Tokman’s words, “exclusion is not just legal, but fundamentally economic, which is why informality public policies must contemplate institutional and legal reforms together with productive and assistential support to fight against poverty” (Tokman 2004, 212). These understandings of informality, I argue, fail to distinguish between activities that are regulated as work but are performed outside of legality, and those activities that are not regulated as work. This is a salient distinction for the legal limbo.

It may be argued that the income generating activities that are part of this research are informal activities and the set of distinctions I am proposing do not necessarily offer a new insight. It is true that the formal/informal divide sets these activities as informal.

Nonetheless, the notion of informality indicates that the activity in question does not tally with the legally established requisites of its protection as labour. A worker in a factory can be informal when he or she is paid under the table. It also may be argued that those activities are precarious. Even though these groups are precarious they live a specific form of precarity that does not have the possibility of becoming formal just by fulfilling certain legal requisites because they are not recognized as work. Hence, the activity is not regulated as labour power by labour law. On the other extreme, we find that there are income-generating activities that are illegal, thus the possibility to claim for conferral of labour rights regarding that activity becomes significantly non-existent. For instance, it is highly improbable that a group of drug dealers would demonstrate for labour recognition before the state. In any case, the political struggle should accomplish a number of other goals –such as the legalization of drug consumption- before claiming for the labour rights of those who sell it. Moreover, these groups performing illicit activities have to deal with legal institutions' duty to prosecute them; and in case they want to successfully keep doing it they will have to get around with the logic of secrecy.

In between those situations are the activities that are on the legal limbo. These activities are not officially recognized as labour by state law and do not have an illicit purpose (*objeto ilícito*). In these situations, groups do not have an institutional venue to make formal claims. By way of example, windscreen cleaners (also named as “squeegees”) in Argentina cannot go to the Ministry of Labour saying that their labour rights are not being enforced, even if he or she might be in a dependency relationship. However, squeegee-ing in the traffic lights is not considered per se to be illicit, meaning that it does not have to deal with criminal prosecution and it could allow a series of strategies to get labour recognition before the state. In so far as their activities do not have an illicit objective, workers in the legal limbo may be in a better position than other workers to innovatively struggle for their social and labouring conditions. Their claim is not about the misapplication of labour law but rather it is a claim for their official recognition as workers. On the other hand, these groups' activities do not have an illicit objective, which means that they have the possibility to claim for labour recognition. Hence, it is not just informal workers whose activities fall in legal limbo. They have been excluded from labour recognition in the work/non-work divide, however, they might still be the target of policing mechanisms; all of which situates these groups at the edge

of work and at the edge of criminality. The following sub-sections aim at exploring how the edge of work and the edge of criminality are constituted. To do so, I will describe the knowledge practices that shape, shrink or expand the dividing line between what is work and what is non-work, as well as the dividing line between what is criminal and what is non-criminal. I will emphasize the salient role of law in reinforcing such divisions. This account will be enriched in Chapter Two, where I will further elaborate on the contextual analysis of the main configurations and transformations on the edge of criminality and work in Cordoba-Argentina.

Being at the Edge of Work

The following discussion will provide a genealogical overview of the construction of the hegemonic work/non-work divide, and then it turns to address some of the key functions law has in (re)producing this division. This genealogical overview will be linked to the specific role that the law has had in reproducing the hegemonic notion of work. Once we look closer at circulating notions of work we might wonder: why do terms such as 'industrial relations' and 'labour relations' tend to be used in an undifferentiated way? Why is unemployment typically understood as 'passivity'? These are not fortuitous semantic issues; the representations of the notion of work/non work have been produced and reproduced by intertwined knowledge, practices and mechanisms developed within the context of modernity/coloniality to justify and reproduce colonial relations of exploitation in the metropolis as in the colonies. The following description will emphasize how the hierarchical organizing principle of colonial power has shaped the hegemonic notion of work in such a way that it has displaced the legality and legitimacy of other labour subjectivities and labour practices. As we shall discover in more detail in the discussion that follows, the hegemonic Eurocentric legal paradigm of labour is deeply rooted in the concept of work as a modern/colonial notion that excludes other experiences of labouring. That same hierarchical organizing principle of colonial power has built up an international and local division of work strongly determined by race and gender (Escobar 2003; Grosfoguel 2006). The hegemonic reification of certain income-generating activities such as *standard work* is produced by a number of representations and regulations, discourses and practices that converge upon the construction and reproduction of asymmetric relevance given to plural activities. These configurations may encounter

contextual differences, notwithstanding that the Eurocentric hegemonic reification of mercantile-wage-contractual work has been widespread in tandem with the configuration of capitalist nation-states. The ensuing binary of 'work/non-work' has led to further oversimplification of plural experiences, spaces, times and values related to activities that human beings perform as income generating activities. Accordingly, modern conceptions of work have been invariably constituted as 'singular collectives' by a violent tension of appropriation and synchronization of multiple times within the 'homogenous and empty' time of state and capital (Mezzadra 2011, 154).

In this respect, the notion of 'non-worker' remained central to the Eurocentric political economy of colonial powers for it justified primary accumulation and slavery during the early stages of colonization. Colonial subjects were relegated to a discourse of collective 'otherness;' they did not enter the capitalist logic of 'free selling' of time and work force; their race, their 'primitive condition,' and their 'lack of soul' were believed to inhibit them from entering the economic circuits as free persons. Their labour power was considered, in socio-legal terms, as emanating from property relations. That said, ownership relations to human beings were not exclusive of the colonies. They also emerged in the metropolis under a similar logic, although they were enforced more as a sanction to discipline the soon-to-be proletariat rather than encompassing the workers in the discursive fold of property ownership. During the early colonial era, multiple legislation was enacted in Europe to expand the quantity of 'workers' and worker categories in the metropolis. In Western Europe, Marx and Engels showed that at the end of the 15th century and throughout the 16th century, a bloody legislation against vagabondage included the possibility of enslaving the undisciplined soon-to-be proletariat (Marx and Engels Chapter 28). Hence, 'worker' and 'non-worker' categories did not depend on the activities performed, but rather on the status of recognition that the rising modern state attributed to a specific activity.

Since the mid-18th century, labour relations were at the core of European intellectual traditions. Relevant writers such as Marx, Weber or Durkheim "grasped the category of work as the locus of changed and, in most cases, worsened social relationships" (Hamilton 73). Karl Marx considered the working class and the bourgeois class as the two poles from which conflict of capitalist societies emerged. Max Weber focused on

protestants' attitudes towards work to explain the emergence of capitalism, and also stressed the proliferation of the bureaucratic machinery of the state – and thus of bureaucrats and public employment – in the process of rationalization of societies. Émile Durkheim advocated the creation of an occupationally oriented society based on the division of labour, which considers occupations valuable according to their mutual dependence and coordination between functional activities. In much the same way, George Simmel argued that the division of labour is central to the regulation of money in modern societies. In his study 'The Concept of Work: Ancient, Medieval, and Modern', Herbert Applebaum (1992) explores dominant ideas regarding the concept of work in Western literature throughout time. The book shows ideas such as those of John Locke and Richard Baxter, who believed that the origin of property lay in human being's capacity to work for every being possesses a property of his/her work and hands which in principle can also be applied to nature: "when one's work is mixed with nature, then one has the right to make the outcome his property" (1992, 358). Applebaum draws attention to how for Locke the best means for maintaining labour discipline was by means of a much more severe law against the poor: "Locke states that God would not have given mankind land unless he expected man to apply his labour to it ... Labour and work have become, through Locke's argument a fulfilment of man's natural law obligations, expressing the will of God" (1992, 361–364). Moreover, for Applebaum, Adam Smith's writings on wealth can be considered to be the first formulation of a modern theory of work

"Not only did he [Smith] postulate a labour theory of value, but he foreshadowed the modern malaise of work with its severe division of labour and monotonization of work. He also related work to the developing factory system, and formulated a theory of the free market and the place of work within that political and economic system" (1992, 388).

In the context of the utopian socialist ideas on work, however, Applebaum draws attention to Charles Fourier, Henri de Saint-Simon, Robert Owen and Karl Marx, all of whom focused their studies on the process of industrialization and urbanization in Europe and USA. Applebaum's book was published in 1992, his historical account of the concept of work ends in the twentieth century just before the sharpest edges of

neoliberal reforms to labour law in different parts of the world. Applebaum concludes that

Modern work and the modern work ethic are based on industrial society in which most people work for wages. The modern ethic is based on factories, offices, trucks, warehouses, large corporations, world-wide multinationals, capitalism, mixed capitalism, socialism, and state control of economies, mobility, ambition, and life which is fast-paced, fluid and stressful. Wage work does not exhaust all the work performed in society ... the work ethic is still strong enough to determine status and influence in society (Applebaum 1992, 571).

In this way, it is possible to witness how the advancement of industrial capitalism has conformed to this Eurocentric distinction between work/non-work by a hegemonic understanding of the foundations of labour relations. It was during the decades of the so-called 'Fordism' in Western Europe that the hegemonic idea of relatively stable waged dependent employment was widely spread as 'normal labour relation' (Mezzadra 2011, 157). The 'modern semantic of labour' are the series of representations that in the past two centuries have portrayed mercantile, waged and contractual labour over other types of work prevail (Santamaría López 2011, 27). These income-generating activities are highlighted in policy-making, official reports on labour relations, regulations, academic knowledge, and is settled upon social imaginaries of dignified work and its correlative dignified life.

The Law plays a salient role in the reproduction of this hegemonic Eurocentric notion of work. In law, similar knowledge practices then underpin the legal construction of labour markets. Across the world, labour regulations set the legitimate institutional understanding and definitions of work which, in turn, legal institutions are meant to protect. Particularly for the global South, dependent-mercantile-waged activities may not even represent the wide majority of income generating activities. Law Schools are essential sites for the reproduction of this hegemonic Eurocentric notion of work. Professors, students, scholars, professionals in the global South tend to shape our ideas of 'normal work' from conceptualizations that were built and developed for and within other contexts, and were then transplanted and systematically misapplied. In particular, in countries where there is a strong positivist tradition, Law Schools' curricula tend to

focus on the study of the triad 'wage, contractual, mercantile' when observing and practising labour laws. Such knowledge systems confront everyday practices of labouring as 'deviant', 'transitory', even 'marginal' even when those labouring practices may represent the majority or even half of the labour force in that country.

This mercantile-contractual-stable definition underpins the current definition of work in the Argentinean legal system. The legal concept of work in the Argentinean legal system states that work is 'any lawful activity provided for those who have the power to direct, by a remuneration' (art. 4, Act n^o 20.744), and its legal design is built on the notion of dependent, mercantile and waged activities (art. 5, 6, 7, 21, 22, Act n^o 20.744). Work, in this sense, is defined as an activity, which – in principle – is secure, stable, protected one that guarantees social security (art. 75, 77, 80, 90, 103bis Act n^o 20.744). However, labour studies show otherwise. For instance, according to the ILO in Argentina informal employment in 2009 registered at 49.7%, in which 97.0% of informal wage employees belonged to informal sector (ILO-International Labour Organization). Moreover, the state keeps boundaries between work and non-work without significantly challenging the Eurocentric logic of work/non-work. By way of example, a close look at the Small Taxpayer's Simplified Social Scheme¹¹ shows that not every activity may cross the borderline between work/non-work. The regulation specifically stipulates that the activities have to be "relevant for local development and social economy (...). Activities that are not considered to be relevant for local development are: catalogue selling, street parking attendants, among others" (Ministerio de Desarrollo Social 2015). Thus, a lingering effect of the hegemonic Eurocentric legal paradigms in the global South has been the exclusions it reinforces that retain socio-legal imagination from readdressing its own contextual realities. As Speakman states, "values and preferences implicit on the design and organization of work reveal the social meanings of work, which dominant groups have had the power to initiate and uphold within the labour social structure" (Speakman 1980, 141). In this

¹¹ The Small Taxpayer's Simplified Social Scheme is an optional tax regime, which was designed to facilitate and promote the incorporation of vulnerable and excluded populations into the formal economy. The state recognizes those income-generating activities and in exchange of a fairly small amount of money a month, the worker has access to retirement pension, health system and can issue bills and get contracts with the state.

respect, “labour law also plays a significant role in constructing the institutions and identities it describes” (Klare 2004, 4). Hence, knowledge practices and legal constructions have (re)produced a hegemonic understanding of the division between work/non-work. However, activities that are excluded from the hegemonic notion of work do not necessarily fall into the legal category of crime. They are neither legal nor illegal, existing in a legal limbo. This is why the crime/non-crime divide is also worth exploring.

Being at the Edge of Criminality

The following description aims at exploring how the edge of criminality has been constituted bearing in mind latest urban security transformations, particularly the expansion of criminalizing regulations within and outside the penal system. This is why I refer to criminality instead of crime. More and more civil and administrative law is being used to criminalize and target populations, which challenges the crime/non-crime divide and expands significantly the edges of criminality including a number of situations that are not caught by the criminal system but are forbidden and punished. The edges of criminality do target certain income generating activities and the groups that perform them, especially poor and vulnerable populations. These transformations have occurred in tandem with the neoliberal ethos “premised on the values of individualism, freedom of choice, market security and minimal state involvement in the economy (...) Joblessness becomes an individual rather than a social problem; the poor are stigmatized and made personally to blame for their own situation” (Comack and Balfour 2004, 40). Moreover, De Giorgi stresses the goal of the expansion of criminalized situations is control per se, and not discipline of the ‘social surplus,’ which is shown in increasing difficulty “to establish clear boundaries between the deviant and the precarious worker, the criminal subject and the ‘illegal’ immigrant, the hidden worker and the informal labourer, that prompts the regrouping of human ‘diversities’ into dangerous classes” (2007, 259).

The expansion of these regulations is the result of an aggressive approach to minimal behaviour promoted by zero tolerance policies (Beckett and Godoy 2010; De Giorgi 2007; Comack and Balfour 2004; Young 2003). The knowledge practices that have justified this shift are known as the actuarial approach. Actuarialism involves a

transition where justice is not as important as harmful minimal behaviours, and where the causes of crime and deviance are not vital to the solution of crime "you want above all to avoid trouble rather than to understand it" (Young 2003, 526). The term 'actuarial' means the quantification of risk probabilities distributed along homogeneous risk groups, a quantification that is translated into values to determine the level of risk of a group. Once those values are studied in relation to others it becomes possible to obtain benefits by classifying and managing collectivities. Under this logic, what matters is not the individual risk but the risk of the group one belongs to. As such, as De Giorgi notes, it is clear that group risk overlaps with social class (De Giorgi 2005, 60). In the seminal journal article 'Broken Window,' Wilson and Kelling (1982) stated that disorder and crime are inextricably linked, thus strong measures must be taken towards disorderly people (such as panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed) in order to avoid further incivilities and crimes and, by doing so, strengthen neighbours safety feeling. This thesis was a breakthrough for a number of urban security policies that result on more aggressive approach to minor violations. As De Giorgi warns, risk-oriented strategies regroups human diversities into dangerous classes (2007, 259). Becket and Hebert explain that some of the main characteristics of these new urban security policies is that they tend to explicitly produce spatial exclusion, combine elements of criminal, civil and administrative law and broadened police discretionary power, and create a number of new offences and increased short-term jail stays. As Beckett and Herbert assert, "these new social control techniques represent a significant extension of the State's authority and dispersal of its surveillance capacity throughout the urban landscape"(Beckett and Herbert 2008, 16). De Giorgi argues that zero tolerance policies led to a double dislocation of control functions: on the one hand, social control becomes auto-referential in its justification and loses its disciplinary aim, on the other hand, control is displaced from jails to dispersed sites in the urban and metropolitan environment (De Giorgi 2005, 58). As Campesi explains, "these instruments of criminal policy had another internal logic, when this deterrent logic proved ineffective, they could still function as instruments by which to remove from sight those who were perceived as a source of ungovernable dangers" (Campesi 2009, 43). Hence, criminal policies expand outside the penal system.

As with the reproduction of the work/non-work divide, the Law is also a significant site for the reproduction of the shifts in relation to criminality. In this sense, law is more than codes of conduct, it is also “series of *strategies* that constitute both the identities of legal subjects and their social relations with each other”(Comack and Balfour 2004, 34). In contexts in which poverty and lack of opportunities abound, an aggressive approach to ‘dangerous groups’ is more likely to bring about significant social fragmentation and institutional violence, among a number of noxious effects.

Zero tolerance policies were enforced in New York city under the Giuliani administration. At the time it was made public that the crime rate declined and the number of misdemeanour arrests increased by about 80 per cent, from 129.403 in 1993 to 224.668 in 2000 (Beckett and Godoy 2010, 284). Soon after, firms such as Giuliani Partners and The Bratton Group L.L.C., and think-tanks such as the Manhattan Institute, sought to influence regional and municipal policing practices and crime policies (Beckett and Godoy 2010, 279). Beckett and Herbert (2008) argue that municipal governments across USA are implementing legal tools that rest upon a complex mixture of civil, administrative and criminal legal authority aimed at cleaning up contested urban spaces. Gowan (2002) explains that minor offences passed in US cities forbidding sleeping or loitering in public places have marginalized and incarcerated most homeless people in those cities. Even though some of these regulations existed long before actuarial criminology, the content and use of these legal tools increased significantly.

Minor offences fell outside of the penal system; therefore, they tend to lack the constitutional guarantees that aim at balancing coercive state power. Anitua explains administrative law is the legal domain that regulates the site for governments’ discretion, regulating the ‘non-law’ to which police duties were ascribed (2009, 49). Minor offences tend to be enacted by local governments with the proceeding carried out by the Police and in highly discretionary terms. This means that the Police have a quick tool to act upon populations discretionally. This mechanism also allows the incarcerations of segments of the population without the requirement of a judicial proceeding. Places of detention for minor offences are not institutions for resocialization. People can be incarcerated up to 90 days without any judicial intervention. Moreover, Codes of Conduct make it possible to measure ‘police

efficiency', not because it is efficient in crime prevention but rather as a way to justify the police's budget and show that 'something is being done' (Sánchez 2014, 110). These legal designs have been criticized for being extremely vague and employing unclear procedural methods. Elsewhere (Marisa N. Fassi 2014), I have argued that legal ambiguity is a site upon which police power is located and reinforced in its mutual relation with the law. This notion of legal ambiguity draws upon a nuanced conception that differs from the idea of law as a limit of power and from the idea of law as inherently ambiguous (a property of language). This means that the law is not considered to be a clear boundary that sometimes police officers need to flexibilize to resolve certain unexpected situations. Equally, the law is not seen as inherently vague or ambiguous. The law uses language to inform its provisions; as language itself it is open to interpretation. The legal ambiguity I am referring to here imply a specific use of language that relocates power from legal provisions to police practices. This relocation is done through extremely vague legal provisions, which have such an open texture that can capture an almost unlimited number of situations.

As will be further described next chapter, in the city of Córdoba the strengthening of security policies was inherent to the ambitious plan of becoming a 'nice and neat' city. These shifts brought about the spread of groups and activities at the edge of criminality and the raise of police discretion, which is justified to control dangerous classes, to act upon suspects. Debates over discretionary power far exceed my object of study; nonetheless, it worth pointing out that "by definition the exercise of police discretion defines who is deviant in any social context and how that deviance is controlled. Nevertheless, the groups whose income-generating activities did not fell into the new status of workers have been target of local security policies. Local regulations, particularly minor offences codes, refer to certain income generating activities by banning a way to perform the activity (i.e. near a school) or a limit in the income one may get from it (if they do it beyond the need of subsistence) or the means to do it (if they use a horse and cart). Legal constructs around these income-generating activities can also refer to them in terms of pity. A number of provisions draw a line upon criminalization when the income-generating activities are performed to survive and to avoid hunger. For instance, in the province of Cordoba-Argentina, the Infringement Code requires five days of prison for those who are able to work or secure a livelihood

but perform professional vagrancy except for those who are involuntary without livelihoods (art 47, Act nº 8431). A similar norm can be found in the Citizen Security Code of Buenos Aires-Argentina which states that street selling is allowed only when it helps gain daily subsistence (art 83, Act nº 1472). Thus, the legal system extends compassion and pity towards those who are unable to work and only on the limits of subsistence. Those income-generating activities are thus permitted on the basis of pity and compassion. Waste pickers, street parking attendants, sex workers, and street vendors, among others have been targeted by these regulations. Some of those regulations have existed since the late 19th Century (such as the regulations on prostitution). However, for the purpose of this thesis it worth considering that the zero tolerance approach brought about the expansion of repressive mechanisms, particularly for vulnerable populations. The crime/non-crime divide is blurred and criminality expands upon a number of situations and activities. In the next chapter we will explore the context in which groups who live at the edge of work and crime are embedded, as well as the main labour and security transformations they have confronted. The theoretical background in Chapter One, together with the contextual analysis in Chapter Two, will be resumed in Part One 'Afterword'.

CHAPTER TWO: *WASTE PICKING AND SEX WORK THE LEGAL LIMBO*

This second chapter charts the most salient characteristic and complexities of sex workers and waste pickers in the legal limbo. The aim is double. First, I will explore the labour and security transformations in the context under study. This will give the background upon which sex work, waste picking and other income-generating activities take place. This brief account is the contextual continuation of the theoretical debate on the edges of work and criminality (Chapter One). After setting the background in relation to labour and criminality I will elaborate on the reasons why I argue sex work and waste picking in Córdoba-Argentina are in a legal limbo. Thus, the labour and security transformations developed in the first part of this chapter will be articulated and help understand the context in which the legal limbo is embedded throughout the thesis. In order to develop sex workers and waste pickers socio-legal position, I will provide a contextual reading of both activities as well as a description of their normative framework. The concern is not with the question of whether these two income-generating activities are comparable. Differences among them abound and many similarities may be overlooked in this account. Rather, its objective is to show that these two groups in Córdoba-Argentina are in a socio-legal position I refer as: 'the legal limbo,' as well as to show the reader that these activities are performed in a complex political, economical, urban, moral, social and legal scenario. I will make brief references to the global context as a reminder of the increasing interconnection in contemporary socio-legal process. I will go into details when it comes to develop the context of Córdoba. Also, I will provide an in depth account of the series of regulations that waste pickers and sex workers confront in their everyday life in the city of Córdoba. I do not expect, however, to exhaust the multiple vectors that affect those activities; each of which can motivate a new research question. The goal in this chapter is rather to offer the reader an image, as complete as possible, of the socio-legal configurations these activities adopt in the city and the background in which they are embedded. This image could be understood as a snapshot of the socio-legal arrangements that frame the activities. In the following two chapters (Part II: Chapter Three and Four), the snapshot will be turned into motion to show the dynamics of power and resistance that the legal limbo presents.

Work and Criminality in Context

The following description aims at providing a brief account of the labour and security transformations in the context under study. This will give the background upon which sex work, waste picking and other income-generating activities take place. This brief account is the contextual continuation of the theoretical debate on the edges of work and criminality. I will first describe the main labour transformations in each of the stages in which Argentina adopted different political economy models. I will then turn to the main security transformations that have expanded the edges of criminality. In the following chapters (Chapter Four and Five) the dynamics of the limbo will hint at the interconnection between work and criminality.¹²

Labour Transformations

Labour macro-structural transformations are braid together with changes in the State's political economy. In the 20th and 21st Century, Argentina has gone through different periods that we can understand as being characterised by three distinctive models of political economy (Novick 2010). Those models are: 1) the import substitution development model, 2) the neoliberal model, and 3) the post-convertibility model. The first period goes from 1930-1976, it is known as the Import Substitution Development Model for it was based in an increase of national industrialism as the motor of local development in detriment of foreign imports. It is characterized by a strong role of the state, particularly from 1945 onwards under Peronism; it prompts a sustained bond between economic and social policies, and it sets social security as a corollary of formal labour inclusion. This model started to be dismantled by the end of the 70ies under military regimes, which started the shift towards the second political economy model: neo-liberalism (2010). The neoliberal model de-linked the relation between economic and social policies and emphasized notion of efficiency over equity. At the core of this model was an unrestricted opening to international markets, indiscriminate

¹² Nonetheless, it is worth mentioning that in Argentina, workers and subaltern groups' criminalization is not a recent phenomenon. According to Rafart (2011), the beginning of the 20th century workers, anarchists and migrants were the 'potentially criminal class' targeted by positivist criminologists and conservative policies. Then, in the 1940ies Peronism prompted a new status for [some] workers, the new approach to labouring conditions and safety regulations aimed at protecting workers and promoting institutional reforms to grant workers rights. From that year on, the working class is looked upon from a rights perspective instead of a criminal point of view; nonetheless, acts of resistance and protest were still criminalized as an attack to the new order (Rafart 2011, 87).

deregulation, privatization of public goods and assets, as well as social protection policies disrupt. This model was adopted in accordance to the Washington Consensus framework. According to its followers, this new model was going to provide a positive trade-off to revert the slow growing the country have had during the previous thirty years (Novick 2010, 167). During the last decades of the 20th Century, many countries in Latin America have showed how the labour-market transformations associated with neoliberal policies have significantly enlarged socio-economic gaps.¹³ By 1980s, the so-called 'developing' countries were embedded in an endemic process of debt and debt-servicing payments, alongside with structural adjustments imposed by IMF and the World Bank. These policies operating at different global sites have enlarged the gap between the rich and the poor, in the 1980ies "we saw the emergence of capacities that push toward concentration at the top rather than toward the development of a broad middle" (Sassen 2014, 14). Sassen sets this process at the core of current counter-geographies of globalization and as the genesis of alternative survival circuits (2003; 2005). As the author explains, "rather than becoming "competitive" the countries subjected to structural adjustment have remained deeply indebted (...) [and] a growing number of middle-income countries are also caught in this debt trap (...) from 1982 to 1998, indebted countries paid four times their original debts, and at the same time their debt increased four times (...) structural adjustment programs have contributed to an increase in unemployment and in poverty" (2003, 266–267). In Argentina, this model rested upon a strict monetary policy that aimed at giving stability to the national currency tightening it to the US dollar (1 Argentinean peso= 1 US dollar), which is why this neoliberal period is also known as 'convertibility period' and the following period as the 'post-convertibility period'. During neoliberalism, labour conditions were severely flexibilized. The main labour law reforms included a set of new precarious labour contracts that reduced or eliminated social security contributions and dismissal compensations, extended trial period, promoted outsourcing benefits, and tied salaries to productivity indexes (Neffa 2012, 6–13). Unregister work raised up to 29,6% in 1991, 37,3% in 2000 and 44,8% in May 2003 (Novick 2010, 168 quoting Roca 2005). The neoliberal policies implemented during the 1990ies brought about high levels of unemployment, poverty and inequality; producing the institutional collapse in 2001.

¹³ See for instance Berry (1998), Altmir (1993), Fortuna and Prates (1989).

This crisis was the corollary of an unprecedented process of exclusion and social marginalization that Argentina experienced in little less than twenty years; by 2002 Argentina reached its highest poverty peak, affecting 54,3% of the population (Novick 2010, 163).

The third socio-economic model came right after the high instability experienced during the crisis. This is known as the 'post-convertibility' period. The conceptual grounds were to consider decent labour as a fundamental vector for economic and social development, as a constitutive element of citizenship and as the main economic engine to create wealth; labour was not seen merely as a problem of the labour market (Novick 2010, 171). The official aim was to revert the previous model by identifying decent work as an enduring agenda to overcome cyclic crises in the global and local economy. By 2004, 'decent labour' was included as part of the millennium goals.¹⁴ This inclusion prompted the active participation of the private sector in the elaboration of a coordinated program among the public-private sector for social responsibility and decent work.¹⁵ These reforms were complemented by a large number of programs aimed at prompting labour inclusion.¹⁶ In this line of policies stand out: a) the *Small Taxpayer's Simplified Social Scheme*,¹⁷ enforced since 2004, that allows informal self-employed workers access to health insurance and retirement benefits. It also makes them eligible for direct contracts with the State and to issue bills; b) the set of *migration reforms* enacted in 2004, which can be considered as an indirect policy to promote

¹⁴ In the year 2000 the UN adopted the Millennium Declaration in which nations committed to a global partnership to reduce extreme poverty and setting out a series of time-bound targets due to 2015. The Millennium Development Goals are quantified targets to protect basic human rights . The goals are: 1- eradicate extreme hunger and poverty, 2-achieve universal primary education, 3-promote gender equality and empower women, 4-reduce child mortality, 5-improve maternal health, 6- combat HIV/AIDS, malaria and other diseases, 7- ensure environmental sustainability, 8- develop a global partnership for development. (see <http://www.unmillenniumproject.org/goals/>)

¹⁵ The coordinated program includes national and multinational companies that voluntarily joined the Corporate Social Responsibility and Decent Work Network and the UN Global Compact Network. Enterprises in both networks follow coordinated actions in the country designed to lead to labour standards good practices. Further information on the local policy can be accessed at: *Objetivos de Desarrollo del Milenio*, available at <http://www.politicassociales.gob.ar/odm/publicaciones.html> (site visited 30 September 2014). Further information on the coordination at UN level can be accessed at: United Nations Development Group, Argentina Coordination Profile, available at <http://www.undg.org/unct.cfm?module=CoordinationProfile&page=Country&CountryID=ARG&fuseaction=UN%20Country%20Coordination%20Profile%20for%20Argentina> (site visited 30 September 2014).

¹⁶ For a full description of these programs see Neffa (2012), Bertranou and Casanova (2013).

¹⁷ *Small Taxpayer's Simplified Social Scheme*, (Monotributo Social), 2003 (n# 25.865)

labour registration because once migrant workers could regularize their residence permits the number of registered migrant workers increased (Bertranou, Casanova, and Sarabia 2013, 43); c) the *Housekeeping Act* n° 26.844, enacted in 2005, which introduces tax reduction policies for housekeeping service employers to promote registration, and in 2011 regulates the activity under a specific labour regulation to protect housekeeping as work; d) the *Rural Workers Labour Regime Act* n° 26.727, also enacted in 2011; e) the *Housewife Pension* or Pension without Retirement Payment,¹⁸ which was enforced since 2014 to entitle housewives to access the retirement system and benefits even without the retirement payment precondition. The Judiciary was not indifferent towards the post-convertibility reforms. Between October and September 2004, the Supreme Court of Justice declared unconstitutional a number of labour flexibilization reforms adopted during the neoliberal era in Argentina, such as the maximum for dismissal compensation ('Vizzoti'¹⁹ case); the tariff system for workplace accidents ('Aquino'²⁰ case); and the monthly payment of labour compensations ('Milone'²¹ case).

According to CEIL-CONICET Report (2015), the total Public Debt, which by 2002 raised 166% of the GDP, was reduced to 42% in 2011. In 2002, Argentina allocated 22% of the General Tax Income to pay debt interests, and by 2012 that allocation was reduced to 6%. The unemployment rate in urban areas was reduced from 21,5% in May 2002 to 7% by the end of 2012. The Decent Work Coordinated Program, fully implemented since 2006, has shown, by 2010, relevant improvement in the regularization and access to labour rights for the enterprise-based concept of informality.²² Those policies have shown substantial progresses in relation to employees who were working for companies or productive units that had informal characteristics (i.e. legal status, registration of the company or of the employees, bookkeeping practices, etc.). Nonetheless, FLACSO reports show that regardless of those changes there are no significant variations in relation to the structural heterogeneity, wealth

¹⁸ Integrated Retirement System, 2014 (n# 24.476).

¹⁹ *Vizzoti, Carlos Alberto v. AMSA S.A.*, (2004) V. 967. XXXVIII (CS), (reaffirmed by the recent case *Mansilla, Carlos Eugenio v. Fortbenon Co. Laboratories S.A* (2014) M. 1391. XLVII)

²⁰ *Aquino I. v. Cargo Servicios Industriales* (2004) A. 2652. XXXVIII

²¹ *Milone, J.A v. Asociart S.A ART*, (2004) M. 3724. XXXVIII

²² Further information can be accessed in the Report DECENT WORK AND SOCIAL RESPONSIBILITY IN ARGENTINA, available at: http://www.trabajo.gov.ar/downloads/responsabilidad/trabajo_decente.pdf (site visited 10 September 2014).

concentration and allocation of the productive system in foreign capitals process started in 1975-76 (CEIL-CONICET 2015). The ILO Report *Statistical update on employment in the informal economy* (2012),²³ sustained that in 2009, Argentina had 49.7% workers engaged in informal employment and 32.1% employed in the informal sector. Thus, notwithstanding the notable labour transformations, a significant portion of the Argentinean population remains in a state of profound marginalization. Through global lenses, the structural gap that reinforces the concentration at the top and the marginalization at the very bottom of the socio-economic arrangements could be read in line with what Saskia Sassen has called new phase of advanced capitalism, which has reinvented mechanisms of primitive capitalism. “We face shrinking economies in much of the world, escalating destructions of the biosphere all over the globe, and the re-emergence of extreme forms of poverty and brutalization where we thought they had been eliminated or were on their way out” (Sassen 2014, 12). Those set at the margins, those who eke a living in survival circuits, are expanding in number. Local and global economic transformations shape qualitatively and quantitatively the labour market. Claims for labour recognition are embedded in these contextual transformations. In the following chapters (Chapters Four and Five) we will explore the dynamics of power and resistance in the legal limbo; waste pickers and sex workers claims for labour recognition do have this social, political, economic and legal background behind their struggles.

Security Transformations

As stated in the previous chapter, the edges of criminality are reshaped in tandem with security transformations. Since the year 2001, the city of Córdoba has undertaken an ambitious plan of becoming a ‘modern and neat’ city. Urban transformations in Córdoba

²³In the first half of 2011, the ILO compiled statistics by sex on employment in the informal economy from 47 medium and low-income countries. The statistics relate to the number of persons who in their main (or only) job were employed in a non-agricultural informal sector unit (employment in the informal sector) and the number of persons whose main (or only) job was informal (informal employment). Employment in the informal sector and informal employment refer to different aspects of informality. Employment in the informal sector is an enterprise-based concept and covers persons working in units that have “informal” characteristics in relation to, e.g., the legal status, registration, size, the registration of the employees, their bookkeeping practices, etc. Informal employment is a job-based concept and encompasses those persons whose main jobs lack basic social or legal protections or employment benefits and may be found in the formal sector, informal sector or households. See ILO, *Statistical update on employment in the informal economy*, June 2012, ILO – Department of Statistics, available at http://laborsta.ilo.org/applv8/data/INFORMAL_ECONOMY/2012-06-Statistical%20update%20-%20v2.pdf (site visited 25 September 2014).

were a key reform to pursue this goal. In this context, historical buildings were restored, public spaces were reformed, and vulnerable populations were relocated. The explicit aim of these transformations was to reduce poverty; however, the implicit outcome was an increase of marginality and vulnerability at various levels (Fassi and Manzo 2011). This program displaced a large number of waste pickers to re-localize them in social dwellings. These massive re-localizations brought about social and geographical fragmentation; which reveals “a way of acting upon displaced families’ economic reproduction processes and a way of actively regulating inter-class interactions” (Boito, Aimar, and Giannone 2010, 108). Inherent to this gentrification process was the strengthening of *security policies*. During 2003-2004 Córdoba signed several agreements with both the Manhattan Institute and the Israeli Military Army Ldo. The Manhattan Institute is a US based think tank specialized that have been producing and exporting social control knowledge worldwide. The Manhattan Institute has been at the core of zero tolerance policies expansion and the Israeli Military Army Company is specialized in counter-terrorist surveillance. The Manhattan Institute Agreement was signed in 2004. According to the public declarations done in the city of Córdoba by the Institute’s representative for Latin America, Carlos Medina, the goal was to “eradicate from the streets prostitution, noises, micro-drug dealers, squeezers because those are the ones who increase the sense of insecurity upon which major criminals take advantage” (Capellino 2011, 71). The Israely Military Army Agreement was signed in July 2008, to promote concerted security program, to train the Police Force and detention facilities personnel, and to provide equipment and technological resources to fight insecurity (Decree nº 835/04 ratified by Act nº 9195). During the parliamentary debate, the opposition showed concerns toward the implementation of security policies that would target ‘urban terrorists,’ just as the Agreement with the Manhattan Institute was doing.²⁴ That same year Parliament members debated upon a report request to the Administration on purchase of armament and munitions of Israeli and Turkish origins for the Provincial Police Force.²⁵ Under these reforms, the police force increased its number and a special police force command, called ‘tourpol’ was created to patrol touristic sites. The Misdemeanour Code was enforced as the main police legal tool to

²⁴ Agreement Approval, Córdoba Provincial State-Israely Military Industries Ltd. Parliament. 44th Meeting. 17-XI-2004. Page 2955.

²⁵ Report Request. Point 36. Parliament. 44th Meeting. 17-XI-2004. Page 2941.

'clean the city', systematically excluding vulnerable populations by using the legal entity of 'loitering' or 'public disturbance', among others. Córdoba is not an exclusive example of this gentrification/securization process interconnection. There is an established body of research that links the two in cities such as Porto Alegre-Brazil (Coletto 2009; Campos 2011), Guayaquil-Ecuador (Allán Alegría 2011), Bogotá-Colombia (Beckett and Godoy 2010; Donovan 2010), and Buenos Aires-Argentina (Perelman 2011).

This approach to security and control has been particularly problematic for vulnerable populations. "These new social control techniques represent a significant extension of the State's authority and dispersal of its surveillance capacity throughout the urban landscape" (Beckett and Herbert 2008, 16). These security transformations have not been implemented without resistance. On November 17th, 2015 the main streets of Córdoba witnessed for the ninth consecutive year one of the major demonstrations in the city, which is called 'Cap Protest' ('Marcha de la Gorra'). This protest gathers together an estimated of 20.000 people demonstrating against the discriminatory security policies. The number of participants reflects the vast number of people who suffer the noxious effects of the expansion of criminality and the way in which it builds 'dangerous groups'. In 2010, Horacio Etchichury, a law professor at the National University of Córdoba, requested official data on minor offences detentions, the statistics available showed that 37.976 people were detained for minor offences in the year 2010, which represents an estimate of one detention every 13 minutes. The following year, upon the same data request, the government denied access to this information arguing it 'is part of the strategic plan for citizens' security'. Those statistics were made public afterwards, revealing that the police have started over 73.100 minor offences proceedings people whom the vast majority spent up to 72hs in detention.²⁶ Notably, judicial data reported only 10 condemnatory decisions in relation to minor offences.²⁷ In this context a parliament member of the governing party declared that 'Without the Minor Offences Code social peace in Córdoba will be very complicated'.²⁸ In 2013, the data on minor offences detentions was denied once again arguing it will

²⁶ 2012.11.21_[CBA] Código de Faltas/ el PJ no sacará la figura de "merodeo" | Día a Día

²⁷ 2012.08.26_[CBA] Código de Faltas/ 38.000 detenidos, 10 condenados | Día a Día

²⁸ 2012.11.21_[CBA] Código de Faltas/ el PJ no sacará la figura de "merodeo" | Día a Día

represent a danger to peace, security and public order.²⁹ Since the year 2011, a special commission was set to study amendments to the Minor Offences Code; four years have passed without such changes.³⁰

The edges of criminality in Córdoba-Argentina have expanded significantly; as it is to expect, vulnerable populations have been target of this expansion. Those who remain in a legal limbo, whose activities are neither legal nor illegal, have been dealing with the expansion of criminality since it sets their activities closer to illegality. In the following chapter we will explore the dynamics of power and resistance in the legal limbo; waste pickers and sex workers claims for labour recognition and against criminalization. Those struggles do have this social, political, economic and legal background.

Neither Criminals nor Workers

The notion of legal limbo points at income-generating activities that, according to a specific legal system, are neither crime nor work. They exist in a betwixt zone of law, they are neither legal nor illegal; those income generating activities are in a legal limbo. It is to expect that labour and security transformations reshape the quantitative and qualitative configuration of those betwixt zones and the experiences of those-who-are-in-between. In this thesis I will focus on sex work and waste picking in Córdoba-Argentina in order to elaborate on the notion of the legal limbo. The following description aims at showing the reasons why those two groups are relevant to explore the legal limbo. This socio-legal position is contingent and dynamic; nevertheless, in the four years of this research neither waste pickers nor sex workers have been recognized as workers neither the performance of this income generating activities has been directly punished by the penal code. They have remained in a legal limbo. The aim is to describe below the socio-legal position of sex workers and waste pickers from the

²⁹ 2013.11.27_[CBA] Código de Faltas/ la Provincia no dice cuántas personas detiene | La Voz del Interior

³⁰ 2013.12.04_[CBA] Código de Faltas/ Policía ya no juzgará contravenciones | La Voz del Interior

2014.02.03_[CBA] Críticas y cautela por el anuncio de De la Sota sobre el Código de Faltas | La Voz del Interior

2014.12.10_[CBA] Los 20 cambios clave del Código de Faltas | La Voz del Interior

2014.12.11_[CBA] Código de Faltas/ 64 oradores para la audiencia pública | La Voz del Interior

2014.12.16_[CBA] La reforma del Código de Faltas pasó para el año que viene por falta de consenso | La Voz del Interior

2015.08.22_[CBA] Código de Faltas/ retomarán el debate | La Voz del Interior

perspective of the legal-self, which implies showing the contextual and concrete set of regulations these two groups confront nowadays in Córdoba-Argentina. The notion of the legal limbo is contextual, written and performed. Not all those provisions are or have been necessarily enforced, which is why I will mention specifically the cases in which there has been no actual enforcement. This being a socio-legal analysis, I will elaborate on the context as well as on the normative provisions. As I will try to show, sex workers and waste pickers socio-legal position challenge the holistic myth of closure (see Chapter One).

Waste Pickers in the Legal Limbo

Waste pickers, also known as carters, are those who collect material that would otherwise be rubbish to resell it for recycling purposes. The history of waste picking is spawn from and reflex of its times' political economy and labour transformations. The shifts on the political economy models developed at the beginning of this chapter have had qualitative and quantitative impact on the activity. In his research, Schamber (2007) goes as back as to 1860 to show that waste picking trends have not only changed alongside State's political economy, but also alongside its policies towards waste management and the commodity price of recycled material. In Argentina, the number of people doing this activity grew exponentially right after the economic crisis in 2001. The deep socio-economic crisis brought about a rapid reconfiguration of survival circuits. Picking up rubbish for recycling became a survival strategy to eke a living under pressing economic conditions. Fajn (2002), postulates that this crisis produced new vulnerabilities; which situated the 'scavengers' or waste pickers at the end of a double de-linking process in relation to work and relational inclusion, generating a deep isolation.

In the city of Córdoba, the crisis has also had a significant impact on the number of waste pickers. Nevertheless, the history of waste picking in the city is much longer and remain in the memory of those who are proud to be the heirs of a long waste picking tradition reproduced generation after generation. Chinina is one of the most iconic waste pickers in the city. 'The cart was my crib,' she says while narrating her family story in the cart. Her words reveal the way people's everyday life is permeated by macro-economic and socio-political transformations. Chinina lives in a neighbourhood

called Villa Urquiza; which is one of the oldest neighbourhoods in the city and it is considered being a 'carters neighbourhood' due to the large number of its inhabitants who are waste pickers. The neighbourhood is more than 100 years old; its physiognomy reveals the shifts of the activity itself. Walking around the neighbourhood, one can see almost one cart per house and the horses grazing by the river. That river divides Villa Urquiza, which is one of the most vulnerable neighbourhoods in the city, with Urca, which is one of the wealthiest neighbourhoods in the city. As in a hideous urban metaphor, Villa Urquiza is crossed by a street called 'Equality', while both neighbourhoods are linked by a street called 'Holy Family'. The first person Chinina talks about is her father Nicolas. He was descendent of a native community in Argentina known as Comechingones.³¹ Her father's story is the starting point of a carters' family tradition that has been succeeding itself for more than five generations.

"[T]he first thief here was Columbus. They come and say he discovered America?! We were here! And then they saw it was rich and they started to disembark and to kill us and to take everything. They've killed so many generations. [The Comechingones] were exterminated! My grandma's parents were riddled with bullets in the back, and the little girl -my grandma- was hidden under a rock to save her. She could be saved, but the ants ate her eyes; she was blind. And she raised my dad, blind like that. So, I come from cruel stories (...) they took everything away, the fields, everything. They lived in La Tahona. He stayed there with his mum. She was blind. When the mum died, the landowner who stole it [the land] from them, kicked my dad away. So, he always used to say: that is how they left me, with a horse and cart" (Chinina. Itw 25. WP).

Nicolas' story is the story of radicalized dispossession and extermination in the region. Displaced from his place and his community, the horse and cart was the means he had available to generate income and eke a life. In those days the horse and cart, also known as sulki, was a generalized mean of transport and a work tool.

³¹ Comechingones is the colonial name given to two ethnic, hênîa and kâmiare, which inhabited the areas of what are today the provinces of Córdoba and Santa Fe.

“before there were many of us, many, many. Because everybody used the sulki, or hackneys couch to move around and do stuff...there was no bus, nothing. There were many more of us.” (Chinina. Itw 25. WP).

The dictatorship appears in Chinina’s account as the second main iconic dispossession moment.

“[W]hat happened was that in times of repression they took everything away. They took my dad’s hackney couch, the one he used to take to the square, dressed up in a tuxedo, a top hat and a monkey...he took visitors around...he made a living” (Chinina. Itw 25. WP).

There are few data on waste picking available from this period. In the years before last and cruellest dictatorship in the country (1976-1983), there is data on what it seems to be the first waste pickers cooperatives, called “El Huanquero.”

“the first [waste pickers organization] experience here was in the 1970s. It was a cooperative that worked pretty well; most its members were disappeared. It was called “El Huanquero,” I don’t know if you heard of it. They were politicized comrades. (...) That was a very positive experience. Only the ones who were not so active survived. But the authorities of “El Huanquero” disappeared” (Marcelo. Itw 9. K.I –WP-. URPA³²Director).

We can also know about the existence of this cooperative for it took part of a social project in the Architecture School-National University of Córdoba. The project was called Total Architectonic Composition Workshop; the aim was to “find a way to help vulnerable populations get their shelter through communitarian self-help” (Novillo et al. 2008, 27). That project was dismantled during the dictatorship and many of the participants were killed; the dictatorship disrupted the first waste pickers’ cooperative experience in the city. As stated before, it was not until the economic crisis that the activity grew exponentially. In 2001, the money currency devaluation produced an abrupt fall in imports that generated a raise in the price of materials and stimulated

³² URPA stands for of the Urban Recyclers’ Protection Area, which is a sub-secretary of the Provincial Human Rights’ Office.

waste picking (Schamber 2007). The market value increase in collected material has qualitatively and quantitatively impacted the activity. Moreover, this shift affected not only those who pick up rubbish but also the correlated expanded networks related to this activity. Waste picking is embedded in a net of formal and informal relations braid together in the waste management system. Waste management has four basic stages: collection, separation, storage, and sell. Each of those stages expands the net of actors and complexities brought into the forefront. Fortuna and Prates (1989) show how there is a multiplying chain of informality in each stage; for instance, recycling companies only buy clean polythene, meaning that who collects the material also needs someone who cleans it, all done in the informal economy. Moreover, each of these stages can be regulated in different ways, with or without waste pickers' participation, with or without public or private investors.

In the city of Córdoba, there are two main waste management policies that have mostly affected the activity: one is the replacement of open air dumping grounds for controlled dumpsites, and the other is the shifts between the statization or privatization of the urban hygiene service. On the one hand, the shutting down of open air dumping grounds moved the activity to the streets. In 1999, the province launched the program 'Clean Córdoba,'³³ which replaced open air dumping grounds for controlled dumpsites. Historically, the activity of picking up rubbish was done in the physical space of an open air dumping ground (Schamber 2007). Once these spaces were closed down, the activity moved into the streets. On the other hand, the privatization/statization shifts in the service provision also had an impact in waste picking. In the last decades, the privatization model has prevailed; "the government had a business approach to waste management with a tendency to constant upraising costs" (D'hers and Shammah 2015, 37 quoting Levstein et al). In November 2008, a state company called CRESE was created to provide waste management service. This company worked until the year 2012 when it was outsourced to two private companies: Lusa and Cotreco.³⁴ It was in

³³ This project was the outcome of the Provincial Urban Waste System Diagnosis in 1999. Further information at: <http://www.cba.gov.ar/programa-Córdoba-limpia/>

³⁴ The day after, the main local newspaper made public that over the last three years the outsourced companies service cost raised 182,2%, it went from charging to the municipality 37,2 million pesos for the service to charge 105 million pesos. 2015.03.29_ [CBA] Lusa y Cotreco, con prórroga de dos años | La Voz del Interior

this period that the government opened a special Area for the Protection of Urban Recyclers under the Provincial Human Rights and Environment Office, which promoted the use of alternative carts for recycling.

“We signed, from this Office, an agreement (...) we developed a cart called zootropo. We designed it in this office. We talked to the factory that was going to build them. We had the political commitment to make progress in this line. These are the human rights today. This sector has been stigmatized throughout the last decades...and it was the only group that did not lose the work culture despite all the changes that our Argentina lived. This is valuable” (Marcelo. Itw 9. K.I -WP- URPA Director).

In that period the municipal government had a public explicit goal to include waste pickers in the waste management process. At the time, the government signed an agreement to create eleven recycling green spots in the city that would include waste pickers. The green spots' project did not make significant progress to date. Out of the 11 green spots planned, only two are actively working. Privatization brought along new actors to negotiate the waste management service. Nowadays, the bigger green spot work with two waste pickers cooperatives; which do not represent a significant number of the total waste pickers population. To summarize, waste picking has been changing and shifting along political economy, waste management and commodification of waste transformations. The role of waste pickers has also changed in its relation with the state and the social relevance given to the activity they perform. Nonetheless, the normative arrangements show the activity is performed in a legal limbo.

Waste Picking and the Law

According to regional evaluations, the estimated number of waste pickers in Latin America is as significant as 3.8 million people, and there are more than one thousand waste pickers' organizations (Terraza and Sturzenegger 2010, 7). Each jurisdiction has various legal approaches towards this income generating activity. It may be that this activity is protected as legal and legitimate work, or it may be that it is forbidden and criminalized. Even if it is neither legal nor illegal, it may happen that norms waste pickers confront are found in other areas in law. This set of regulations may condition

or enable certain practices in their everyday life and reveal these actors socio-legal position.

According to the current legal system, the activity of picking rubbish to resell is not a crime but it is not protected as labour either. In any case, workers protected by labour regulations are those working for a waste management company. In this case, their contract with the company protects their labour relations. Outside this contractual bond, and in relation to the group focus of this thesis, labour law remains alien. However, other state's laws do refer to the activity. For instance, these regulations can be found in environmental law, in administrative law such as the Bid Specifications of the Waste Management Tender, or in the minor offenses code, codes of conduct, among others. Each of which may push the activity closer to legality or closer to illegality. But the issue is not simple and seems even less so when another point is considered. As mentioned before, a vast number of waste pickers use horse and carts to collect the material. The Argentinean penal code punishes since the year 1954 animals' mistreatment. This provision is known as Sarmiento Law³⁵ and sanctions animal mistreatment and cruelty with 15 days to 1-year imprisonment and with the animal confiscation. As we will see along this thesis, waste pickers have had to deal with this regulation in the dynamics of power and resistance that emerge within the legal limbo.

Waste pickers confront in their everyday life that set of provision I have emphasized when referring to the expanding edges of criminality. Minor Offences Codes and Codes of Conducts have target this activity affecting those who perform it in several ways.³⁶ Each province and municipality has jurisdiction to enact its own code of conduct. Provinces may even sanction the activity with detention. Norms that waste pickers may confront are minor offences that forbid:

- To leave animal drawn vehicles in a way that may affect traffic (art. 47 y 74 inc c in Buenos Aires, art. 56 y 78 in Ciudad de Buenos Aires, art. 92 in Catamarca, art. 100 y 143 in Formosa, art. 85 y 86 in La Rioja, art. 81 y 82 in Mendoza, art. 170 in

³⁵ Act n° 14.346.

³⁶ The examples given here, as well as the examples given in the case of sex work, are meant to illustrate the content minor offences have or have had. They do not necessarily represent the set of valid regulations at the moment of writing this dissertation.

San Juan, art. 66, 97, 98 y 104 in Santa Fe, art. 170 in San Juan, art. 79 y 80 in Chaco, art. 114bis in Chubut, art. 68 y 69 in Corrientes, art. 34 y 48 in Santiago del Estero, art. 14 in Tucumán);

- To transport waste without authorization (art. 94bis in Buenos Aires, art. 91 bis in La Pampa);
- To pick up rubbish (art 2. 24. in Tierra del Fuego);
- To throw objects or substances in unauthorized sites (art. 107 y 107 bis in Chubut);
- To oblige minor age children to pick up rubbish (art 84 in Santiago del Estero);
- Animals' mistreatment (art. 117 in Catamarca, art. 124 y 125 in Chaco, art. 114 en Chubut, art. 71 in Neuquén, art. 75 in Rio Negro, art. 131 in Santiago del Estero).

The Córdoba Minor Offences Code specifically refers to those who use horse and carts for collecting material. Art. 73 sanctions, with arrest of up to 15 days or fine, those who leave in open or public spaces animal drawn vehicles without the necessary means to avoid risks. As we will see in the next chapter, waste pickers claim the abusive use of certain legal provisions such as 'loitering', which are used to control the group in certain parts of the city. This minor offence sanctions with up to 5 days' arrest or fine, those who prowl around buildings, vehicles, and other facilities, with a suspicious attitude and without a justifiable reason producing unease in neighbours, landowners or pedestrians (art. 98. Act n° 9444).

Furthermore, regulations targeting waste pickers can also be found in environmental law. The provincial law n° 9088 forbids "uncontrolled waste picking (scavengers) in places where there are controlled dump sites" (art 7 inc b. Ley provincial n° 9088). This law, enacted in 2003 is framed in the constitutional mandate to regulate the National Environment Minimum Measures Law. According to the National Constitution (art 41), the national government dictates the minimum measures for environmental protection and each province dictates complementary norms. In 2004, the National government enacted this law (25.916) and defined domestic waste as "all the elements, objects and substances produced by consumption processes and human activities and that are abandoned or thrown away" (art 2 ley 25.916). At the municipal level also, there are

infringements referring directly or indirectly to the activity. Such is the case of the hygiene infringement that sanctions those who throw away waste in unauthorized sites of the city (art 37, Bylaw n° 8854). Another norm alike is the environment infringement that sanctions those whose acts put in danger the city's hygiene (art 2. Bylaw N° 8978).

Other set of regulations do acknowledge waste pickers role in the waste management system, pushing the activity in the limbo closer to legality and recognition. In this sense, the Bid Specifications of the Waste Management Tender have specific regulations that have target waste pickers as a group. According to the positivist hierarchy in norms, this is an inferior regulation. Nonetheless, this regulation is more likely to affect groups' everyday life in significant ways. In January 2013, the Municipality called for a Waste Management Tender Process (Municipal Bylaw n° 12.147). This process was supposed to start once the outsourced contract expires with the companies Lusa and Cotreco. In August 2015, that contract was extended for two more years; thus, the Bid Specifications has not been enforced. Notwithstanding, as we will see in Chapter Three, the conditions described in the Bid Specification are already at play. This Bid Specification gives waste pickers a fundamental role to fulfil the waste progressive reduction mandate; it promotes selective separation of waste and recycling material (art 5). It specifies an inclusion principle by which it recognizes the pre-existence of urban recyclers as legitimate actors in waste management services and defines the group as "those who selectively collect dry solid waste and are registered in the Urban Recyclers Cooperative Register (RECOOP)" (art 5). According to the Bid Specification these groups would be included gradually in the waste management process, prioritizing work creation and a strict control over informality, unhealthy situations and minority, among others. It explicitly determines that the Municipality has the total disposition and exploitation of all waste in the city, and that the licensee has no right for compensation in case of any modification in waste volume or weight as a result of the work of urban recyclers or other. It also sanctions any blocking to waste pickers collection by the licensee. Albeit, in the same Bid Specification the Municipality explicitly keeps the right to modify the service at its exclusive discretion, this criterion may be (or not) related waste pickers organization level (pto II.3). Particularly problematic in this Bid Specification are the conditions in relation to slums' waste management. According to it, the licensee has no obligation to enter public spaces in the

slums, instead it should plan urban hygiene program with the inhabitants of these neighbourhoods, provide training and give them cleaning elements for their common areas (p. III.1.1). In Chapter Three, I will describe how this approach has prompted a number of waste pickers struggles.

Another law that waste pickers confront in their everyday life is the regulation of debris dump sites. This norm gives priority to administer the sites to “those social groups with major needs that live nearby the debris dump sites” (Municipal Bylaw nº 10.102). These sites are generally located nearby the slums where many waste pickers live. Each Municipality sign the agreements to administer the debris dump sites in their jurisdiction (art 5). Other regulation that explicitly mentions waste picking is the Fight against Dengue Fever Act (nº 9666) enacted in 2009, it includes waste pickers as an essential part of the disease prevention and control strategy. It prompts coordinated work with “social groups with experience in working with urban waste” (art. 2).

All those legal provisions coexist towards the activity. The description shows the position in the legal limbo emerges out of the set of norms that shape the legal-self. Some may push the activity closer to legality and recognition, other give the bases for the expansion of criminalization. Those provisions regulate waste picking directly or obliquely; nevertheless, none of those regulations shifts the socio-legal position of waste picking towards labour law neither towards criminal law. This income generating activity is in a legal limbo.

It may be the case that the Judiciary has had a paramount role in defining the groups’ legal position; therefore, it becomes relevant to reveal the approach current judicial decisions have had upon this issue. In this sense, it is important to mention that in the context under study the Judiciary has hardly pronounced on waste picking lawfulness or unlawfulness. Judicial statements on waste pickers’ recognition as workers or on their criminalization have been oblique. I will describe here one of the paradigmatic and most recent judicial cases in relation to this issue, known as ‘Herrera case.’³⁷ This case illustrates some of the complexities I have been referring so far, but mostly shows that the judicial intervention does not necessarily places the income-generating activity

³⁷ Herrera Claudio Alberto p.s.i. infraction Act nº 14.346 (Judicial File nº 723948)

outside of the legal limbo.

Claudio Herrera is a waste picker. One day he gets paid to bring sand from the riverbank to a neighbour's house. He takes his horse and cart, picks up the sand, and the over-effort makes the mare collapse. The mare was pregnant. Police, vets, and witnesses arrive to the scene. The mare is confiscated and taken care. Herrera is prosecuted for animal's mistreatment "involving: not feeding the animal properly, pressuring the animal to work, make the animal work excessive hours, use it to pull a vehicle that clearly exceed its strength."³⁸ In June 2013, the first instance court decides the case has to be dismissed. This decision was based on the existence of a legal justification cause known as 'justifying state of need'. The decision considered that Herrera lives under precarious conditions, marked by poverty and marginality, he is the family support, he has to care for two children, one of whom is disable and the other suffers asthma. It was also weigh that the mare malnutrition was not caused by indolence or negligence but for the same poverty and marginalization his owner suffers. Hence, the judicial sentence considers that Herrera avoided a major harm –which is not feeding his family- before a minor harm –which is using the mare exceeding its strength-. This decision refers to diverse ways to understand 'work', to cultural patterns that are part of the activity, and to marginalization as the unavoidable background of the legal conflict. This judicial decision stresses at the end that poverty should not be criminalized "on the contrary, we should rebel –in the best sense of the word- before any subtle or abrupt for of 'control' over social exclusion and marginality".³⁹ This decision was appealed; the lawyer of animals' rights NGO intervened as private prosecutor. In December 2014, the Court of Appeal rejected the previous decision and declares Herrera guilty of animals' mistreatment having to face a sentence of 20 days in prison in suspense and costs. This decision weigh that Herrera cannot be blamed for the animal's malnutrition because it is a consequence of his own the state of need. Nevertheless, it argues the large empirical knowledge on horses implies he perfectly knew the specific care the mare needed. The tribunal also considered that once the mare was confiscated, Herrera borrowed another animal to work, which means he could have done so when he saw the mare could not take the over-effort. The defence appealed this sentence. In November 2015, the

³⁸ Ibidem.

³⁹ Ibidem.

Supreme Court of Justice of the Province of Córdoba rejected the appealing. The court underlined that Herrera knew the animal was not in the proper physical condition to do the activity it was used for; therefore, the subjective element in the accusation was proven, thus Herrera must respond. Herrera was condemned to 20 days in jail in suspense, costs and a course against animals' mistreatment. The last two judicial decisions did not make explicit references to different understandings of work neither about criminalization. With respect to the argument being made here, this case shows that judicial interventions do not necessarily make a statement over the legal limbo fulfilling the holistic myth of closure. The Judiciary pronounced over the situation without changing waste picking legal position in the legal limbo.

Sex Work in the Legal Limbo

As stated in the introduction, sex work refers to the adult and consented exchange of sexual services for monetary compensation. Therefore, the term excludes children prostitution and sexual slavery. Nevertheless, those distinctions have not been as neat in public policies and legal arrangements. The socio-legal history of sex work has been braided together with different conceptions around sexuality, morality, public health and social control. Moreover, unlike waste picking, there is an extensive, rich, plural and complex knowledge developed around the issue of sex work, which expands the debate. Notwithstanding the plural concerns related to this issue, feminist and gender studies have led the discussions over sex work/prostitution creating deep divisions within this field. Within feminist studies there are different perspectives on the issue, and little agreement. Bernstein (1999) has proposed a distinction between: 1) radical feminism, for which sexuality is at the core of gender inequality and women's oppression; 2) pro-sex feminism, for which sex workers have a feeling of control in the exchange of sex for money, 3) contextual feminism, for which the meaning of sex work is empirical and must be understood in its cultural and historical specificity; it is possible to add a fourth type of discourse, which is 4) subaltern or postcolonial feminism, for which colonial and neo-colonial knowledge has reproduced the assumption that 'poor' 'third world' women do not and can never consent to exchange sex for money (Marisa N. Fassi 2012). Colonial representations relegate 'third world women' to the status of object and, thus, justify interventionist policies upon their bodies and subjectivities (Mohanty 1988; Doezema 1998; Scoular 2004). Each of these various approaches have emerged and

developed throughout time drawing upon a complex and sophisticated set of arguments and counter-arguments; they have had diverse impacts on public policies at different times and locations.

In the city of Córdoba, there have been swings and sways in the enactment and enforcement of sex work related policies. The biographical accounts of those who have been sex workers many years back recall those shifts. Beatriz was over 70 years old when we met in the sex workers' association Ammar. She was attending a literacy course because she stresses 'it is never too late.' She told me she has been a sex worker for over 54 years; 'I have always worked by my own,' she stressed. She recalls the times when she started being a sex worker in Córdoba,

“they put us in those car and took us to the police station, if you could see how they took us, how they treated us in there.” (Beatriz. Itw M. SW)

She even remembers the cars they used to detain them

“they took us in those zunder cars. I don't know if you've seen those...you can see them in the movies, but we really saw them (...) and they took us as animals up there, to take us to make the exam, and to take us to other police station.” (Beatriz. Itw M. SW)

Public health concerns were a significant vector that affected sex workers everyday live. Benita recalls when the military regime enforced the sanitary card.

“Once during the military regime they allow us to be in the streets, they gave us a sanitary card. That was a lot...(…) that was in the year 1955” (Beatriz. Itw M. SW).

Patricia is one of the most active members in Ammar, she also remembers the time when they had to have a sanitary card

“I don't know why they gave us that card, it detailed if you had or not a disease, but they would detain you anyways and take you to make the exams” (Patricia. Itw M.SW).

She stressed compulsory exams were practiced upon sex workers

“while you were on detention and if the gonorrhoea or syphilis exam went wrong they left you in prison until they gave you a penicillin shot” (Patricia. Itw M. SW).

Moreover, their biographical accounts reveal the moral vectors and policing practices over sex work in the city. Patricia recalls that before the sex workers’ organized, a nouns’ congregation called ‘Adoratrices’ used to visit them in prison

“they used to go, they could take you out, they talked to the sheriff (...) they were allowed to enter the prison and women had to attend the courses they had: hairdressing, dress making, they used to make kitchen rags, they gave you a bag of groceries (...) you had to quit this work, you had to regret being a sex worker, you could not work in the streets anymore” (Patricia. Itw M. SW).

Blanca started working in the 1980s when she was 22 years old; at that time detention was almost a certainty.

“you went out to work and you knew they were going to detain you because theoretically, well not theoretically but you thought and they made you think that you had no rights, that you were committing a crime and they had to put you in jail. If not they tell you ‘I don’t take you but give me money or pay my pizza or let’s play boyfriends...as you want to call it. But you had to make an arrangement.” (Blanca. Itw M. SW)

Elsewhere, I have elaborated on the significant impact the organization have had upon sex workers’ legal perceptions and actions of resistance (Marisa N. Fassi 2011). In the context of Córdoba, sex work has been target of a number of repressive, corrupted and violent institutional behaviour. In different pieces of work, I have focussed on the pattern of exclusion, police harassment and violations sex workers have confronted in the city. Normative arrangements show those struggles and practices were performed in a legal limbo.

Sex Work and the Law

Sex work regulations may range from designing a particular labour regime to considering it a serious crime. Following Arella et al. (2006), there are four traditional models that legal orders adopt: 1) reglamentarist, which regulates sex work through an oppressive system that aims to prevent sexually transmitted infections through compulsory control of sex workers; 2) prohibitionist, which criminalizes the activity; 3) abolitionist, which rejects the possibility of legalizing and also of criminalizing sex workers, and aims to eliminate prostitution through banning related activities; 4) labour legality perspective, which pursues labour legal rights to protect sex workers. In current accounts of sex work and the law in the city of Córdoba there are mainly two perspectives in dispute; one is the labour law approach for it is the claim organized sex workers have been pushing forwards in Córdoba, and the other is abolitionism for this approach has significantly grown in the region producing policy reforms and discourses that reshape the legal-self. The dynamics around the push and pull in sex work legal treatment will be developed in depth in Chapter Four. Nevertheless, the description below on sex work and the law aims at arguing that sex work is still in the legal limbo in the context under study.

Sexuality, hygiene, moral, religious and gender policies, practices and discourses have interplayed throughout the history of the modern state in a non-linear, and sometimes contradictory, manner. These tendencies and contradictions can be found in black letter law, in the institutional practices and on the discourses found in parliamentary debates. The vacillation in policy making is representative of the discursive swings at the time, and the capacity of certain actors to influence the public agenda on this issue. Furthermore, the black letter law in a specific legal provision does not necessarily correspond to its enforcement. Neither is it necessarily deleted once a new legal provision is enacted. As we will see in the Argentinean case, this means that the same legal system may have legal provisions that reflect different approaches to sex work. In the following description I will briefly refer to the tendencies and contradictions around sex work in the history of the Argentinean legal system, making particular emphasis in the case of Córdoba. These shifts will be contextualized in broader local and international debates. I do not expect to exhaust here the impressive amount of literature, data and positions developed to date on this topic. That research alone can be

a PhD thesis. Rather, the aim of this section is to organize the different approaches and understandings around the Argentinean legal provisions on the topic, in order to stress the point that sex work remains in a legal limbo.

A chronological overview of the legal provisions shows us the following history line. Argentina declared its indecency in 1810, but it was not until 1913 that prostitution became part of the national political agenda. Before that, sex work regulation was a municipal matter. Córdoba, Buenos Aires and Rosario were at the time the most thriving cities in the country, and all of them had legal provisions to regulate prostitution. “Prostitution appeared by then as an appeasing formula; problems that limited the regular couple’s life could find solution in the brothels, which spread all over the country in exceptional levels and numbers, the sexual unbalances produced by the arrival of migrants, mostly man, was one of the main incentives to install brothels” (Barrancos 2007, 160). This first period matches with what is known as the reglamentarist approach to sex work; meaning that it regulates sex work as a source of venereal diseases by imposing a set of mechanisms of hygiene controls (i.e restricted zones for brothels, compulsory medical treatments, etc). Thus, sex work was neither considered as work nor as crime, but the activity was regulated by a set of legal provisions that responded to public health and moral concerns. The first prostitution bylaw enacted in Córdoba in 1883 regulated the location of brothels in specific parts of the city.⁴⁰ In 1900, a second bylaw increased surveillance upon visibility. According to Dain and Otero (2001), this bylaw represented a turning point in the regulation of sex work because, even though it still adopted the reglamentarist approach, it increased surveillance and control upon the women performing prostitution. The provision read that windows must be unglazed, shutters cannot be opened, doors can only be open from 8pm to 2am in summertime and 7pm to 1am in wintertime, the location where brothels can be located were more restrictive than the previous bylaw, it forbidden prostitutes to ‘serve’ clients whose genitals show evidences of a venereal disease, and it only allowed the registration and entry in brothels of people over 18 years old.⁴¹ In 1902, this bylaw was amended one more time. It increased the minimum age to 22

⁴⁰ Act n° 2721 to 2829 (Dain and Otero 2001).

⁴¹ Bylaw n° 771, 29-XI-1900. In Garzón Maceda, t. III, 1917: 385 (Dain and Otero 2001).

years old.⁴² The last amendment to this law was done in 1912; this provision forbidden prostitutes to exit the brothels after 5pm in summertime and 4pm in wintertime. Notably, this amendment pointed at the prostitute subject not only as the risk-self upon which to prevent the spread of venereal diseases and public amorality. The policy turned to the possibility of women prostitutes' moral recovery; it gave women who want to exist prostitution the opportunity to spend three months in the 'Buen Pastor' Religious Asylum as a proof of their willingness to abandon this 'way of life', and thus recover a good name and reputation.⁴³ The discourses around prostitution fit the moral compass at the time, which consider it a problem of morality of the individuals performing it (they mainly understood commercial sex as a product of the economic goals, unlimited ambition or corruption of the women prostitute), as well as the medical-hygiene image of prostitution as a source of infection (Dain and Otero 2001, 107).

The following year, prostitution started being part of the national political agenda when the socialist Alfredo Palacios obtained the majority of parliament votes to pass a law that criminalized pimping. This law was enacted in 1913 and is known as 'Palacios Law,' it sanctioned this crime with up to 15 years.⁴⁴ The main contextual event related to this enactment was the international scandal of the sex trafficking organization called Zwi Migdal that since 1906 was operating in the country. In 1921, those crimes were incorporated into the new Penal Code crime of pandering and trafficking was sanctioned in its art. 125-127. Hence, the national policies towards prostitution targeted those who made profits or forced people into prostitution; however, the adult and voluntary exchange of sex for money was not considered as crime.

In January 1937, the Venereal Disease Prophylaxis Act⁴⁵ was enacted. This law bans brothels, imposes compulsory treatment and forced hospitalization of contagious people and emphasizes the need to protect the health of soldiers and Navy members. Elsewhere, I have argued that despite the common reference to this law as the first

⁴² Municipal City Hall Debate Transcripts, 20-VI-1902. In: AHM, t. A-1-30, f. 157 a 162. (Dain and Otero 2001).

⁴³ In: AHM., t. A-1-39, 13-XII-1912, f. 322. (Dain and Otero 2001).

⁴⁴ Act n° 9143, also known as 'Palacios Act.'

⁴⁵ Act n° 12331.

abolitionist law in the country, this law is the continuation of the reglamentarist approach (Marisa N. Fassi 2015a).⁴⁶ This regulation was the translation into law of the hygienists' struggles at the time to prevent the spread of venereal diseases. This law mandates compulsory medical treatments and hospitalization (art. 7 and 9); it sanctions with imprisonment those who consciously transmit the disease; and it creates an Institute dedicated at providing public education to prevent the spread of venereal diseases. Moreover, the regulation translates the prevailing sexuality division in which men were to enjoy their sexuality freely and diversely, while women were divided into the decent/deviant sexual binary. In this schema, men were undoubtedly promiscuous;⁴⁷ while decent women, who were to get married, were undoubtedly virgins. This naturalization was translated into the venereal disease act in the regulation of prenuptial venereal tests, which were mandatory for men but not for women; moreover, those who were in a contagious period were not allowed to get married (art 13). On the other side of the binary were the 'deviant women,' the prostitutes. They were the main hygienist targets. Brothels or any other site where there could exist or could incentive prostitution was forbidden; those who administer those brothels were sanctioned with a fine and, in case of relapse, with jail. From 1937 onwards, brothels banning would have swings and sways in its enforcement. In 1994, a new contextual

⁴⁶ Abolitionist proponents argue that Argentina is an abolitionist country since the enactment of this Act, which bans brothels. However, this argument is neither historically nor legally correct. The Venereal Prophylaxis Act was enacted in the so-called 'despicable decade' (1930-1943) in Argentina, when the country was a pseudo-colony of Great Britain. During that decade a number of corrupt deals between both countries resulted in poverty and inequity and Great Britain gained a significant influence in Argentinean public affairs.⁴⁶ The normative design of Argentinean law follows the same logic as the British 'Contagious Disease Act'. Both regulations impose compulsory treatment, forced hospitalization of contagious people and emphasize the need to protect the health of soldiers and Navy members. It is contradictory to argue that a law that has this content is abolitionist. In fact, the abolitionist movement organized in the UK domestic campaigns against the Contagious Disease Act (Iglesias Skulj 2013). This regulation raised a strong objection by Victorian women because it forced women into medical treatment violating their autonomy. This group of abolitionist Victorian women coined the representation of 'prostitutes as poor victims'; moreover, not content to impose this on women in Britain, Victorian women also sought to extend their reach to women in the colonies (Scoular, 2004). Hence, it is historically contradictory to argue that the purpose of the Argentinean Venereal Prophylaxis Act was to adopt an abolitionist approach. This is what Scoular terms *rhetorical historicization* 'whereby history is interpreted through preconceived categories (...) [i]n limiting analysis to fit an ideological framework, more complex meanings and ambiguities are over-looked' (Scoular 2004, 350). Furthermore, it is legally inconsistent to state that this law has any other purpose but to prevent epidemics; the law has a sanitary goal which finds in sex work a social risk of infection and, thus, the closure of brothels is in the legal text the way to eradicate potential sources of infection.

⁴⁷ As Barrancos explain, "brothels largely represented a second home for men who wanted to make their sexual fantasies become real, the experiences with prostitutes reached the large majority of the masculine population in our country, which pressured hygienists worried by the venereal diseases sexual contagion, particularly syphilis" (Barrancos 2007, 153).

event prompted the amendment of the brothel banning policy. A number of military cadets were found having sex with upper class men: the compass at the time blamed the homosexual behaviour on the banning of brothels. Thus, the Dictatorship Regime imposed in the country at the time allowed to re-open brothels nearby military bases.⁴⁸ During the first years of Peronism, in 1946, brothels were banned again in the decree that created the Institute of Social Hygiene.⁴⁹ Brothels were reopened in peronism's twilight by 1954 (Miranda 2012, 112).⁵⁰ The following year, in 1955, the de facto regime banned brothels one more time and returns to the Venereal Disease Act provisions.⁵¹

The creation of the United Nations in 1945 and its consolidation in the following years brought about a proliferation of international conventions, agreements and pacts. In line with this, Argentina ratified in 1957 the 'Convention for the suppression of the traffic in personas and of the exploitation of the prostitution of others,' which in its art. 1 reads "The Parties to the present Convention agree to punish any person who, to gratify the passions of another: 1- Procures, entices or leads away, for purposes of prostitution, another person, *even with the consent of that person*; 2- Exploits the prostitution of another person, *even with the consent of that person*" (emphasis added).⁵² The debate on consent this convention brings about did not have an impact on local regulations. Moreover, the Penal Code reform in 1999 did not mention consent. It criminalized those who promote or facilitate the entry or exit (traffic) in and out of the country of persons with purposes of sexual exploitation and to those who promote or facilitate the prostitution of a person under 18 years old, even if it is within the country's frontiers.⁵³ In the year 2002, Argentina ratifies the Convention on Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.⁵⁴

⁴⁸ Decree n° 10.638/44; Dictatorship Regime, amendment Act n° 12.331.

⁴⁹ Decree n° 9863/46 (Miranda 2012; Rodriguez 2001).

⁵⁰ Decree n° 22.532/54 (Miranda 2012).

⁵¹ Decree n° 4863/55, Dictatorship Regime.

⁵² Decree n° 11.925/57, reconfirmed by Act n° 14.467/58 and Act n° 15.768/60. The debate around what does consent means in sex work/prostitution far exceeds this thesis. For a thorough analysis on this issue see (Campbell 2014).

⁵³ Act n° 23.087.

⁵⁴ Act n° 25.632.

All these years' sex work was neither considered to be work nor crime; it remained in the legal limbo. In 2005, the National Plan against Discrimination was enacted setting the right to social security for sex workers in its art. 17.⁵⁵ Even though, this norm is not a sex work labour law, it does recognize labour rights as a way to fight against discrimination. However, this regulation did not have an impact on labour regimes. Moreover, the following years were prolific in anti-trafficking and anti-slavery regulations, which opened the debate into the conflation of sex work and sex slavery (see Chapter Five). These regulations and their enforcement started by targeting labour and sex slavery and trafficking. In 2007, Argentina creates the National Program for the Prevention and Suppression of Traffic in Persons and its Victims Assistance;⁵⁶ and by 2008 passed a law under the same name, which regulates the program and incorporates in the Penal Code the sex trafficking and slavery. This law did not consider adult and consent sex work as trafficking or slavery; sex slavery and trafficking was defined as the lack of consent in persons older than 18 years old and in any case under that age.⁵⁷ It criminalized the recruitment, transport and relocation of a person with purposes of exploitation, that is: to reduce the person to servitude, to extract his or her organs or human tissue, to impose forced labour, to profit from the person's sexual commerce when he or she is under-aged or a coerced adult. This law placed the redefinition and prosecution of contemporary trafficking and slavery in the public agenda. Even though empirical data on modern slavery did raise concern,⁵⁸ the statistics were not enough to incorporate the matter before 2008 in Argentina. It was not until the Anti-Slavery Act was enacted that there was a clear political will to prosecute those cases.⁵⁹

⁵⁵Art 17 Decree n°. 1086/05, page 156 in the National Plan.

⁵⁶ Decree n° 1281/2007

⁵⁷ Act n° 26.364

⁵⁸Bravo states that there are 27 million people under slavery conditions in the world, between 4 million to 800 thousand are victims of human trafficking among countries; moreover, this is an industry of between 5 and 7 billion dollars per year (2007, 209). In 2002, it is estimated that there are at least 17.4 million children working in Latin America and the Caribbean, 50% are in rural areas, and in Argentina, there are about 252.000 children working between the ages of 10 and 14 years old (ILO-International Labour Organization 2002)

⁵⁹ Moreover, that same year a federal judge dismissed the accusation against three company directors for enslaving Bolivian workers in their textile factories. The judge's argument was that there was no exploitation because those working conditions were part of the Bolivian community cultural pattern inherited from indigenous populations so companies could not to be blamed. The case raised political concern and the topic of slavery started to escalate in the public agenda. The debate has become much more vivid since the late 2010, after the prosecution of alleged slavery cases such as: vegetable pickers

In May 2011, the decree on the suppression of commercial sex advertisement was enacted and a special monitoring office in charge of its enforcement was created.⁶⁰ By that year, the conflation of trafficking to sex trafficking and of sex work with human trafficking became apparent in the public discourse and the enforcement of the law. In 2012, the anti-slavery law was amended regarding exploitation for commercial sex. This amendment was prompted after a questionable judicial decision in the sex trafficking case known as 'Marita Verón' case. Maria de los Angeles Verón, known as 'Marita,' disappeared on April 3rd, 2002 in Tucumán-Argentina. A judicial investigation has shown she was kidnapped for sexual slavery by trafficking networks. Marita remains missing. After the investigation thirteen people were accused of participating in her disappearance. In 2012 was conducted the trial against the accused perpetrators of María de los Ángeles Verón kidnap and sex traffic took place. The tribunal issued a judgement of acquittal to the thirteen accused. The court alleged that the testimonies – mainly from sex workers and victims of trafficking 'were not to be trusted.' The sentence is highly questionable and has raised social repudiation. The Anti-Trafficking Act amendment, right after Verón case decision, brought about the inclusion of the definition of exploitation of child pornography and compulsory marriage; the designs of institutional arrangement for the treatment of victims; and the provision that victims' expressed consent does not elude perpetrators' criminal responsibility.

The year 2012 brings us back to the local level government. Even though since 1913 the issue of sex work/prostitution became part of the national political agenda, that did not mean local governments renounced to the regulation of this activity according to their own competence and jurisdiction. In Córdoba, the regulation of prostitution has adopted a reglamentarist approach. The Minor Offences Code sanctions 'scandalous prostitution' with detention of up to twenty days and mandates compulsory medical examination, detection of venereal STDs and curative treatment in all cases (art. 45 Act n° 9444). In May 2012, a second provision was added to the Minor Offences Code, which bans brothels in the provincial territory (art. 46bis Act n° 9444). Most Minor Offences

working for Frutihortícola S.A in Buenos Aires, rural workers of Nidera S.A in Buenos Aires, citrus workers of Citrusvil in Tucumán, textile workers of Vitnik company in Córdoba, among other.

⁶⁰ Decree n° 936/11

Codes⁶¹ have regulations that explicitly target and punish sex work or activities related to it in some form.⁶² Those provisions can be found in different jurisdictions, such as:

- Scandalous prostitution: those who engage in prostitution making public offer or incitation disturbing people or causing scandal (art 68 in Buenos Aires, art 81 in Catamarca, art. 56 in Mendoza, art 61 in Misiones, art 54 in Santa Cruz, art 83 in Santiago del Estero, art 15 in Tucumán), which will be punished with arrest or fine and *compulsory* medical treatment (65 y 66 Chaco, art. 42 Corrientes, art 60 la Rioja, art 54 Mendoza, art 124 San Juan). Some of these codes explicitly refer to women prostitutes or homosexuals as the only possible perpetrators of this offence (art 54 in Mendoza, art 98 in Formosa, art 58 in Neuquén, art 58 in Río Negro, art 55 in Santa Cruz). And some codes punish the person responsible for the places or vehicles where the scandalous prostitution occurs (art 69 in Buenos Aires, art 60 in Rio Negro, art 60 in Neuquén).
- Definition of prostitution: only as *women* who exchange sex for money (art 60 in La Rioja, art 56 in Mendoza).
- Dangerous prostitution: those *women* who perform prostitution while infected of a venereal disease, which is punished by arrest or fine and *compulsory* medical treatment (art 62 in La Rioja, art. 55 in Mendoza, art 125 in San Juan). Some codes only refer to *women* dangerous prostitutes (art 62 in La Rioja, art. 55 in Mendoza, art 125 in San Juan).
- Maintained (free loader) or idle: those who allow a prostitute to support them financially, if the prostitution is not free and consented (art 82 in Chubut, art 65.1 in San Luis), if the person has the means to support him or herself (art 57 inc 1 in Jujuy, art 88 in Santa Fe, art 87 in La Pampa), if it is a women prostitute, a homosexual or sexual vicious (art 61 in Neuquén).

⁶¹ Two provinces abolished norms alike as the result of organized sex workers' claims; in the province of Entre Ríos this norm was abolish in 2003 and in Santa Fe in 2010.

⁶² The examples given here, as in the case of waste picking, are meant to illustrate the content minor offences have or have had. They do not necessarily represent the set of valid regulations at the moment of writing this dissertation

- Prostitutes companions: those who live with or to regularly be in companion of a prostitute (art 57.2 in Jujuy, art 18. 1 in Tierra del Fuego)
- To protect a woman prostitute: those who protect a *women* prostitute obtaining any kind of financial gain (art 83 in Chubut, art 65.2 in San Luis). This is the minor offence that has the higher sanction of all: up to 90 days arrest (art 83 in Chubut).
- To enrich with prostitutes gains(art 56 in Santa Cruz, art 85 in Santiago del Estero), being the gains from a women prostitute, a homosexual or a sexual vicious (art 61 in Río Negro)
- Brothels: the places where prostitution is perform are forbidden sanctioned with a closure order in all cases (art 127 in San Juan), or in some codes only the places where *evident* prostitution is perform are sanctioned with a closure order of a minimum of 2 months and a maximum of one year (art 61 in La Rioja, art 54 bis in Mendoza).
- To promote or facilitate prostitution: when the penal code is not applicable (art 66 in Buenos Aires, art 67 in Chaco).
- Prostitutes' whereabouts: those prostitutes who are regularly found in bars, public parties, dances, etc.(art 57.7 in Jujuy), or are seen in a suspicious attitude after midnight (art 57. 7 in Jujuy).
- Public sexual offer: those who offer sexual intercourse in public spaces (art 86 in La Pampa, art 64 in San Luis), or those who offer and demand sexual intercourse in unauthorized public spaces (art 81 in CABA).
- Sexual provocation: those fallen *women* who provoke other to enter their domiciles (art 51 in Jujuy) or offer carnal sex (art 3.2.g in Tierra del Fuego).

Those norms translate a particular approach to prostitution; a large number of regulations reproduce the binary decent/deviant women and uphold prostitutes as sources of public diseases and amorality. Moreover, other minor offences sex workers may confront are –as in the case of waste pickers- norms such as the prohibition of ‘loitering’ or ‘resisting arrest’. These income-generating activities are not a-legal. As described, both sex workers and waste pickers may confront a number of different

regulations. Nevertheless, the argument I aim to push forwards is that none of those regulations have set sex work outside of the legal limbo. It is still not considered to be work neither crime.

Contrary to the case of waste picking, the Judiciary has pronounced both against and in favour of the activity's lawfulness. Recently, the Judiciary has pronounced in favour of sex work lawfulness in two cases, one related to anti-slavery proceedings and the other related to a municipal administrative proceeding in Buenos Aires. In the first case, the police were investigating a private apartment in which sexual services were offered. During one of the police operative, they went undercover to this apartment and found three women offering sexual services; there was no evidence of pimps, exploitation or slavery. The judicial decision stated "The activity is licit, ever since there is no evidence of exploitation, promotion, facilitation of prostitution";⁶³ it stressed the exchange of sexual services under these conditions is a licit activity. The second case refers to the judicial complaint a sex worker filled after municipal inspectors entered her apartment and requested the opening licence to provide 'personal direct services'. She was sanctioned for not complying health and safety regulations. The judicial decision⁶⁴ stated the exchange of sexual services for money is a licit activity but has not been included in the list of 'personal direct services'; therefore, the state cannot request an opening licence. Moreover, the judicial decision stresses that a sex work regulation is a historical debt society has with this sector.⁶⁵

On the other hand, other recent judicial decisions have pronounced against considering the activity's lawfulness. In Córdoba, a judicial decision explicitly argued prostitution is not work. In this case one brothel owner and six sex workers interposed writ of *amparo* against a new 'brothel banning' minor offence. The judge argued 'no distinctions should be made between prostitution and forced or voluntary slavery, neither between children or adult prostitution, nor between minor age or people over 18 years old,' for those distinctions legitimate practices of sexual exploitation. Moreover, the judge urged the Administrative branch of the state to provide "the possibility of having dignify work

⁶³ 2012.05.10_[NAC] Polémico fallo avala prostitución en departamentos de Buenos Aires | La Voz del Interior

⁶⁴ "M. C. s/ Inf. Art. 2.2.14 - L 451"

⁶⁵ 2015.03.23_[NAC] Una sentencia por el trabajo sexual

that allow them to exit the vulnerability situation”.⁶⁶ The decision stressed “it cannot be considered as work because the exploitation of prostitution is a form of violence against women, a violation of human rights, (...) it is a fundamental institution in the construction of a sexuality based on the masculine domain and feminine submission and the objectivization of our bodies. It is not an expression of women sexual freedom (...) there is no possible contract between a client and a woman because it is not possible to talk about consent in cases of deep inequality (...) considering prostitution work favours slavery and the legality of pimps by transforming sexual exploitation into a legal business.”⁶⁷

These cases show there may be contradictory judicial interventions that push the activity closer to legality or closer to illegality without necessarily making a statement over the legal limbo or fulfilling the holistic myth of closure.

So far, I have tried to cover a number of debates and descriptions that converge into the elaboration of the notion of the legal limbo. In the following section (Part I-Afterword) I will resume back the main arguments in Chapter One and Two in order to try to push forwards the relevance and accuracy of the legal limbo as an analytical and empirical concept.

⁶⁶ Ibidem.

⁶⁷ 2012.10.01_[CBA] "La prostitución no es trabajo", según una jueza de Río Segundo | La Voz del Interior

2012.10.01_[CBA] Jueza de Río II consideró que “la prostitución no es un trabajo”

2012.10.02_[CBA] Rechazan amparo porque “la prostitución no es trabajo” | La Voz del Interior

AFTERWORD

Sex work and waste picking are income-generating activities performed in a betwixt zone of law; neither legal nor illegal; neither work nor crime. They exist in a legal limbo. Their socio-legal positions challenge the mystified holistic vision of law as an all-encompassing system in which every situation, activity or orientation is either legal or illegal.

The empirical account shows the legal limbo emerges out of the set of norms that conforms the legal-self; meaning: a limited set of norms that a concrete social actor -in this case sex workers and waste pickers- confront in a particular context -in this case Córdoba-Argentina. The legal limbo is contextual, contingent and dynamic. In the years of this research the socio-legal position of sex workers or waste pickers could have changed; but it did not. The description showed the legal limbo is not a-legal. These groups confront a number of regulations in their everyday life, which refer to these income-generating activities directly or obliquely. However, the set of regulations the group confronts retains it from being inscribed in either the binary poles legal/illegal that sustain modern law. Neither is it the same distinction as the gap between law in books and law in action because there is no clear-cut recognition of sex work and waste picking as workers or criminals. Moreover, an account of the judicial decisions on those topics showed that the 'proper understanding' of these activities' lawfulness may be an on-going contested debate. The image we get from law is not of a closed self-sufficient system but rather of a contested field of dispute. It also revealed that the legal limbo is not just the ambivalence that ought to emerge out of the use of language to communicate legal provisions. The legal limbo is a much deeper ambivalent position in which certain norms, judicial decisions and legal practices may push the activity closer to legality and closer to illegality without changing the socio-legal position of these groups in a betwixt zone of law.

These income-generating activities are, then, at the edge of work and criminality. These are not just informal activities, waste pickers and sex workers do not have the possibility of becoming formal just by fulfilling certain legal requisites because the activity is not regulated as labour power by state labour law. The triad wage-

contractual-mercantile work confronts every day practices of labouring as 'deviant', 'transitory' or even 'marginal'. The ensuing binary of 'work/non-work' has led to further oversimplification of plural experiences, spaces, times and values related to activities that human beings perform as income generating activities. The hierarchical organizing principle of colonial power has shaped the hegemonic notion of work in such way it has displaced the legality and legitimacy of other labour subjectivities and labour practices. By excluding waste picking and sex work out of the labour law the law reproduces the hegemonic Eurocentric work/non-work divide. In the legal limbo, the edges of work meet together with the edges of criminality, which are being reshaped by security transformations. More and more civil and administrative law are being used to criminalize and target populations, which challenges the crime/non-crime divide and expands significantly the edges of criminality including a number of situations that are not caught by the criminal system but are forbidden and punished. The edges of criminality do target certain income generating activities and the groups that perform them, especially poor and vulnerable populations. As with the reproduction of the work/non-work divide, the Law is also the quintessential site for the reproduction of the shifts in relation to criminality. Zero tolerance approach brought about the expansion of repressive mechanisms, particularly for vulnerable populations. Those who are in-between embody, confront and -one may expect- resist within and beyond the productive constrains their ambiguous 'neither/nor' position. Part II of this thesis - The dynamics of the legal limbo- aims at unwrapping the way in which sex workers and waste pickers have been dealing with the edge of work and criminality in the public realm.

PART TWO:
THE DYNAMICS OF THE LEGAL LIMBO

PART TWO: THE DYNAMICS OF THE LEGAL LIMBO

FOREWORD

This chapter aims to address the socio-legal dynamics of power and resistance that occur within the legal limbo. The previous chapter charted the main characteristics and complexities of sex work and waste picking as an income-generating activity that is neither legal nor illegal. It described, as in a snapshot, why one could affirm that these groups in fact are in a legal limbo. This chapter draws upon this description and turns the snapshot into motion. It shows the set of socio-legal dynamics that emerge in the legal limbo *because* the activities are neither legal nor illegal.

In order to describe these dynamics one could take a number of standing points that would most probably give a rather different image of the legal limbo. For instance, one could look at it from the perspective of the state and state institutions and empirically describe the discourses and perceptions of these actors towards the activity. In this thesis, there is an intentional and upfront decision to describe the dynamics of the legal limbo from the perspective of sex workers and waste pickers. This is, from the perspective of the liminal self as described in the first chapter. This organizing vector on those-who-are-in-between has irradiated the whole research process, but is particularly relevant for this and the next chapters.

In order to look at the dynamics of the legal limbo, this chapter deals with sex workers and waste pickers' subjective experiences, arguments, claims and understandings that circulate in the public realm. While the following chapter will draw upon the subjective experiences that emerge when those perceptions are inquired in face-to-face interviews, workshops, and participant observation. As we will see, in general terms, subjective experiences and claims concur in both scenarios. Nonetheless, it is to expect that not all subjective experiences and claims, circulating in a more intimate setting, do get to acquire the level of utterance to reach the public realm. In brief, this chapter's description of the socio-legal dynamics that occur in the legal limbo tries to reflex the subjective experience and claims of sex workers and waste pickers according to the

accounts that permeate the public realm (for further description see the Methodology Annex)

Hence, the following two chapters are dedicated to empirically exploring the socio-legal dynamics of power and resistance in the legal limbo. Chapter Three will revolve around waste picking and Chapter Four will focus on sex work. Both chapters will follow the same structure in order to answer to the main set of inquiries around the dynamics of the legal limbo. First, the section *Speaking Out Loud* will describe the groups (waste pickers and sex workers) self-organizing mechanisms, the network and alliances they have built, their main claims over the years. Particularly, it will focus on the role of law in (re)shaping the capacity to speak out loud. Second, the section *Conflicting Discourses* will develop the discourses waste pickers and sex workers oppose to. In the legal limbo there are actors who try to push the activity closer to legality and closer to illegality. These actors deploy their capitals and articulate their discourse in order to promote their ways of understanding the income-generating activity. Law is in this struggle an intelligibility matrix that different actors tried to appropriate. This second section describes these social actors, the capitals they deploy in order to push their own understanding of the activity's lawfulness or unlawfulness, the disqualifying or qualifying mechanisms they use, and the way they use law in the dispute. Even though in both groups disputes are complex and diverse, it was possible to identify one specific policy that condensed and reveal the push and pull to bring the activity closer to legality and closer to illegality. Those policies are: in the case of waste pickers the blood traction vehicles eradication, and in the case of sex workers the latest anti-trafficking policies. Revealing the conflicting discourses and the practices of state and non-state actors around those policies showed to have an explanatory power in understanding the dynamics of power and resistance in the legal limbo. Then, section three and four turn to the actual configuration of the edges of work and criminality. Thus, the third section *Dealing with the Edge of Work* looks at the way in which the division between work/non-work and the hegemonic notion of mercantile-contractual-stable work is (re)shaped and challenged by sex workers and waste pickers. Fourthly, the section *Dealing with the Edge of Criminality* provides an account of the way in which the expansion of criminality operates obliquely upon these groups and how both sex workers and waste pickers contest the expansion of criminality. I will divide the account

on the edges of criminality in two parts: a) dealing with the Criminal System, b) dealing with the Minor Offences Codes. This distinction is relevant for it allows a better understanding of the nuances these two types of regulations and their enforcement have for the struggles of those who perform the income generating activity; even though it is important to recognize these regulations' mutual interactions in shaping the legal limbo. Both in the case of sex workers and waste pickers, the analytic division between criminalization and work should not overstressed since these claims interplay in juncture. As stated before, in the legal limbo the tensions between labour recognition/criminalization are never completely surpassed.

CHAPTER THREE:WASTE PICKERS LIVING IN A LEGAL LIMBO

“We are workers”.
*“This is decent work”.*⁶⁸
*“We demand to be respected as workers”.*⁶⁹
*“Thanks to the cart I eke a living and raise my kids”.*⁷⁰
“We are doing the recycling that nobody else is doing in the city”.
*“None of us went to Harvard (...) but we are the ones who know this job the most”.*⁷¹

Waste pickers claims for labour recognition are inscribed in a set of dynamics due to their socio-legal position in the legal limbo. Waste pickers’ interventions in the public realm will be the organizing vector to address those dynamics. In the period under study (2010-2015), there is one salient policy around which the dynamics of the legal limbo have been set, which is: blood traction vehicle prohibition policy. Waste pickers are also called ‘carters’ for they tend to collect the recycling material like cardboard using a horse and cart. The use of horses (blood traction) to perform the activity has been at the centre of current disputes over waste picking in the city of Córdoba. In general terms, some social actors have been struggling to forbid blood traction vehicles, while organized waste pickers have been defending the use of horse and carts. This dispute irradiates the dynamics of the legal limbo in significant ways. Waste picker relate to this conflicting discourses when dealing with the edges of work and criminality, as well as when self-organizing.

The research focus on the legal limbo showed four dynamics of power and resistance, which will be developed in each of the following sections: a) waste pickers have self-organized with material and symbolic aims, and the juristic forms have played a salient role in this organization –Speaking Out Loud-, b) they confront conflicting discourses that have prompted a different understanding of the income-generating activity – Conflicting Discourses-, c) they have claimed for labour recognition and conditions of

⁶⁸ 2010.09.22_[CBA] Carreros. La muni les prometió un plan y pidió no tirar basura.

⁶⁹ 2014.09.17_[CBA] Comunicado de prensa La Esperanza. Movilización hacia la Municipalidad.

⁷⁰ 2012.06.17_[CBA] Con su trabajo de carrero, cuidó a los 9 | La Voz del Interior.

⁷¹ 2012.01.28_[CBA] Carreros. Todos podemos comer del reciclado.

labouring before the state and society -Dealing with the Edges of Work-, d) they confront the advance of criminality in their everyday life -Dealing with the Edges of Criminality-. In each of those sections, I will make particular emphasis on the juristic forms in shaping those dynamics.

I. Speaking Out Loud

Urban waste pickers, also known as *carters*, are a heterogeneous group. Some may embrace their activity as permanent while others may take it as temporary. Some waste pickers combine this activity with other occasional jobs and struggle along. There are 'traditional carters', who belong to a family who has been doing the activity generation after generation; and there are 'new carters' who are doing it as a consequence of lack of employment opportunities after the economic crisis in 2001 (see Chapter Two). Bermúdez shows that those who are traditional carters have more social, symbolic and economic capitals than 'new carters'; moreover, 'new carters' tend to claim for opportunities to go back to their previous work (2009, 109). Furthermore, being a carter comes with a symbolic capital that identifies, contains and dignifies those who perform the activity by turning them away from the social linkages with crime and social stigmas of the neighbourhoods where they live (Bermúdez 2009, 63). In neighbourhoods, such as Villa Urquiza or Sangre y Sol, in which most inhabitants are dedicated to this activity, the symbolic capital is larger and, thus, so is the social legitimacy of waste picking as decent work within the neighbourhood.

In this plural scenario, 'new' and 'traditional' waste pickers have been dealing with the edges of work and criminality in several ways. Some have used individual strategies to sustain their economic circuit; however, most have self-organized and have built networks and alliances. Self-organizing mechanisms have responded to material and symbolic aims. They have gathered to start economic productive units as cooperatives and associations, to negotiate with state and non-state actors, to raise their voices, to access certain benefits or social programs. In the city of Córdoba, there are currently over seven cooperatives that organize waste pickers. Amongst the oldest cooperatives, which are still active, we find 'The Carters Cooperative' of Villa Urquiza. Waste pickers in Villa Urquiza started self-organizing during the last dictatorship; however, it was not until 1994 that they were formally recognized as a cooperative. The organization

started organizing as a means of challenging state control, they claimed against horses' confiscation and zoning exclusions (further explored latter on), which banned horses and carts in city's downtown. Moreover, as we will see in Chapter Five, their claims reflex their whole subjective experience of exclusion, which is interconnected with their claims for labour recognition and conditions of labouring. The fact that Villa Urquiza is a carters' neighbourhood makes it more likely to find claims which braid together with the exclusions lived in the neighbourhood. Thus, their claims throughout these years have not only been about waste picking, about accessing downtown to collect material, about stopping horses' confiscation; but have also included claims about access to water, roads, electricity and other urban services in the neighbourhood. When referring to the caravan waste pickers in Villa Urquiza organized during the last dictatorship [1976-1983], Chinina stressed:

“we needed things, we didn't have electricity, we didn't have water, we drunk water from the river, no buses came here, we didn't have a medical dispensary (...) in Urca [the wealthy neighbourhood just across the river] they were doing roads and everything (...) and they were taking our horses away, they didn't leave not even one horse here in Villa Urquiza, nor in the whole of Córdoba I think; as they are doing now. Well, they entered the neighbourhood and did a razzia [raid], you know when they say we are going to do a razzia and they take everything from you, the chickens, the pigs, the horses, everything (...) I started gathering the carters, I talked to them all. They all came. We were a lot! We blocked the streets of Córdoba. We bought horses and carts again, the old ones knew how to build the carts...They didn't give us anything. It's like we did that and nothing happened. From the government we got nothing. But it was how we got to form the cooperative. (Chinina. E24. WP)

More cooperatives were formed over the years and they have developed a variety of organizing strategies and networking mechanisms among themselves and with other associations, NGOs, or professionals. As an heterogeneous group, waste pickers have been developing heterogeneous organizational strategies over the years. At a national level we can mention the initiative called MoCaR (National Movement of Cardboard

pickers and Recyclers) that started in 2006.⁷² It has been launched as an initiative of some political activists and some waste pickers to bring their political actions into prominence by gathering together members of different associations and cooperatives in the main cities of Argentina. Another example is the MTE (Excluded Workers Movement), which identifies itself as an independent network of political parties and which has among its goals to safeguard urban waste pickers against politicians, the police, and corrupt practices of the companies. The labour union CTA has included cardboard pickers into its structure, helping in integrating their claims in the larger political agenda; among their achievements stands waste pickers formal incorporation in the Urban Hygiene Social Management Public System in Buenos Aires. Waste pickers organizations have gathered at Urban Recyclers National Meetings as well, the first of which was held in 2012 with the specific aim to exchange experiences and to demand for formal labour recognition. As representatives in that Meeting stressed: “we are providing a public service, we want the state to guarantee our work safety (...) we are the only socially, economically and environmentally viable alternative for waste management”.⁷³ That encounter also gathered members of other countries’ waste pickers organizations such as the Bogotá Recyclers Association, which represents 17 cooperatives and associations.

In his work, Sorreche (2015) has shown transnational exchanges have been paramount in providing new sets of understandings and possibilities to push waste pickers claims forwards. Two transnational organizations are particularly relevant in this sense: Avina and WIEGO (Women in Informal Employment Globalizing and Organizing). The author also points out those exchanges could bring some internal disputes within the cooperative itself. In the context of Córdoba, Villa Urquiza Cooperative has been having a fluid exchange with Avina over the last five years. ⁷⁴

Some of those encounters with local and transnational associations, NGOs, or professionals were successful; while obstacles and asymmetric exchanges signed other

⁷² See generally National Movement of Cardboard pickers and Recyclers, available at <http://www.mocar.org.ar> (site visited 30 September 2014).

⁷³ 2012.08.04_[NAC] Arg_Página/12 // Sociedad // El cartoneo, un trabajo formal.

⁷⁴ By the time I got involved with this cooperative, they were working in a project supported by Avina. Moreover, the grassroots legislation workshops were done within the activities of this project, to whom I am very grateful.

encounters, especially when they needed to negotiate within the bureaucratic labyrinths of the state or other funding organizations. In the city of Córdoba, a leading member of one of the cooperatives, while referring to a particular experience of exchange with professionals and/or members of NGOs, pointed out

“they took advantage of us, stole the money that was for us, because we are illiterate and we don’t know about those things” (Pedro. Itw 15. WP).

Other member of a different cooperative, while describing their multiple organizing strategies, added

“I have started primary school again because we are tired of getting ripped-off for being illiterate... so many times they took advantage of us” (Lucrecia. Itw 13.WP).

A member of a third cooperative pointed out they gained confidence and communicate skills when networking with NGOs and professionals. Thus, these complex exchanges have provided possibilities and constrains in pushing waste pickers claims forwards.

Juristic Forms

Juristic forms significantly shape the possibilities of accessing and participating in the public realm. The state sets specific regulations to being able to access benefits, negotiations, or even to being considered as representatives of a sector. In the case of waste pickers, it is important to distinguish between a simple association -as the gathering of a group of people in search of a specific aim- and a cooperative -as the specific juristic form acquired after a formal recognition proceeding before the state that ascribes to specific social values in relation to labour relations-. As Maldovan (2014) explains in relation to waste pickers in Buenos Aires, the cooperative appears more as the legal tool than an aim of the workers to ascribe the cooperative social values. In this sense, the author proposes the notion of labour association as an analytic tool to comprehend the experiences in which workers sustain productive activities collectively in the pursuit, distribution and control of circulating resources (2014, 77).

This analytic tool allows an empirical approach to the association beyond the juristic forms.

The juristic form sets enabling and constraining conditions for waste pickers associations. In adopting juristic forms, social groups are required to enter the bureaucratic labyrinths of the state. In the city of Córdoba, the government have favoured negotiations with cooperatives. Adopting this juristic form has been a compulsory requisite to become part of certain programs (such as the green point project described below). By November 2012 the Municipal government was announcing the creation, in the following year, of a Waste Pickers' Cooperatives Register, the aim was to include those cooperatives in the future waste management system.⁷⁵ In their work on waste pickers in the Córdoba, Lisdero and Vergara have suggested that the legal form of the cooperative could be read as a way of flexibilizing the labour ties between the parties involved, such as the state (2014, 103). Moreover, D'hers and Shammah have analysed the experience of waste pickers cooperatives in five Argentinean cities and warns that the cooperative formal recognition and inclusion in the waste management system does not necessarily materialize in better labouring conditions or earning for the workers (2015, 46).

In adopting this juristic form, groups signed by socio-economic vulnerabilities are forced into a set of regulations, conditions, a particular language, identification processes, paperwork, which makes them dependent of professionals and/or facilitators. Lawyers and accountants are important to get them through the tedious bureaucratic procedures to become legal persons. The following case illustrates this point. In 2010, two cooperatives were included as part of the governmental recycling process after a hard bargain with the government representatives. For one of those cooperatives lawyers were, in the bargaining process, a nexus between the government and the carters. The role of this kind of nexus becomes extremely important since the legal language is in itself an exclusionary mechanism that widens the gap between governmental bureaucratic arrangements and the most vulnerable populations. A change in one word, or sometimes a comma, may make the difference in the contractual conditions. The carters took their own substantial decisions and the lawyer had to be

⁷⁵ 2012.11.02_[CBA] Habrá recolección diferenciada, tres zonas y límite al gasto | La Voz del Interior.

able to consciously guard that the intricate legal language technicalities would not empty the substance of the carters' will. A bond of trust linked the two. Carters played an important role as political backups for negotiations. Whenever the negotiation got into a blind spot, carters would develop active political strategies such as demonstrations or road blockades. Carters developed a number of creative urban interventions to push for their claims: one morning drivers passing by the city downtown encountered that the most important traffic lights had been occupied by a group of carters dressed up like pieces of rubbish showing signs under the motto 'we want to pick up rubbish, not to be treated as such'. At times those encounters with lawyers and accountants were problematic, mainly for the same asymmetric exchanges pointed out when referring to NGOs and professionals in general.

Hence, in waste pickers plural scenario, they have self-organized to pursue material and symbolic aims. In doing so, they have deployed a number of networking strategies and alliances, which were enriching but also have been signed by asymmetric exchanges and obstacles. In this sense, juristic forms have been enabling and at times constraining for waste pickers. The possibilities and benefits that may come along with the adoption of a juristic form (such as becoming a cooperative) are accessible only through entering the bureaucratic labyrinths of the state, which reveal again the asymmetric exchanges waste pickers have to deal with to become valid spoken persons before the state. Those self-organizing mechanisms have enabled waste pickers to speak out loud in the public realm, in doing so they have been able to contest conflicting discourses as well as to deal with the edged of work and criminality.

II. Conflicting Discourses

Is waste picking in horse and carts work or is it animal mistreatment?

Some believe waste picking with horse and carts is –in all its forms– animal mistreatment, and consider that the use of horses for the activity should not be allowed. Some confront this position and claim it should not be criminalized while it is not implying animals' mistreatment. In the legal limbo those actors' discourses and practices conflict in trying to push the activity closer to legality and closer to illegality. These actors deploy their capitals and articulate their discourse in order to promote their ways of understanding the income-generating activity. This section describes

these social actors, the capitals they deploy in order to push their own understanding of the activity's lawfulness or unlawfulness. Particularly, it will emphasize that law is in this struggle an intelligibility matrix that different actors tried to appropriate. On the one hand, I will describe the position of those who believe blood traction vehicles should be forbidden. I will refer to these actors as 'the protectionists', mainly because it has been the way in which they have been referring to themselves as well as the way in which they are referred in the media and by waste pickers. On the other hand, I will describe the response given in the public realm to these discourse. This contestation is done by organized waste pickers. Nonetheless, this distinction consciously over-simplifies the nuances within those groups for there likely are protectionists and waste pickers who perceive the income-generating activity otherwise. However, those positions have permeated the public realm in opposing struggles; thus, justifying this division as relevant to address the dynamics in the legal limbo. The following description will keep a chronicle account of the conflicting discourses, the capitals deployed by those actors, the qualifying and disqualifying mechanisms and, particularly, the role of law in these dynamics.

In the year 2009, a NGO called 'Caballos libres' (Free Horses) organized a signature drive to support a formal petition before the municipality to ban horses in the city and, in the case of waste pickers, to exchange the horses for motorbikes. As members of the organization stated: "we demand for the creation of an official entity that would promote and defend animals' wellbeing (...) confiscated animals should be looked after (...) and put up for adoption to whom requests it".⁷⁶ Transnational exchanges were not alien to this struggle. In the year 2011, it became public that a Swiss foundation called 'Franz Weber' was going to provide what they called a 'horses sanctuary' to send waste pickers' confiscated horses. This initiative was part of a larger transnational campaign for animals' rights, which includes the participation of famous actors in advertisement campaigns. A member of the Weber Foundation, originally from Córdoba and based in Spain, argued that the aim of the campaign was to forbid horses circulation in the city as a way of eradicating the animal's owner marginality,

⁷⁶ 2009.09.28_[CBA] Quieren que se termine la tracción a sangre | Día a Día.

“people feel pity for the circulating horses and thus discriminates the waste picker even more. People do not see waste pickers’ reality”.⁷⁷

The year 2012 was particularly prolific in the public spread of this intelligibility matrix. From the second half of 2012 the conflict between opposing circulating discourses raised up to a seemingly irreconcilable polarization. In July, 2012 the media published the story of an animals’ rights activist called Laura Baggio, who formed her own foundation named ‘Laura Baggio’ Foundation which aims at eradicating blood traction vehicles

“not just for the hell that horses live but also because it carries along children mistreatment and exploitation, they should be studying and playing. (...) Poverty does not justify cruelty. I am not against waste pickers but against the blood traction vehicles”.⁷⁸

Another relevant local actor is the ‘Sin Estribos’ (Without Stirrups) Foundation. One of its most active funding members is called Andrea Heredia de Olazabal; she is a lawyer who has put her position and capitals at play to push this intelligibility matrix forwards. She has opened an Animals’ Rights Division in the Córdoba Bar Association and a course on Animals’ Rights at the National University Law School. Thus, initial social capitals are reproduced expanding the symbolic capitals as well. By way of example, in November, 2012 ‘Sin Estribos’ Foundation and the ‘Animals Right Division of the Bar Association’ organized an event called ‘24 hours for horses’, which aim was to raise awareness on animals’ exploitation, carters’ civil responsibility in case of traffic accidents, carters’ labour dignity, childrens’ exploitation, dumping grounds, public health and horse robbery.⁷⁹ Then, it is not just one person pursuing a goal, but the institutional actors built by that person that help expanding the symbolic weight of the capitals set in the struggle. In this sense, becoming institutional actors reproduce significantly the primitive capitals an individual actor may have. Those capitals then become a qualifying mechanisms, meaning that it can be used to sustain positions with larger legitimacy. For instance, a public policy proposal supported by the Animals’ rights division of the Bar

⁷⁷ 2011.06.01_[CBA] Un santuario para caballos en Alta Gracia | La Voz del Interior.

⁷⁸ 2012.07.09_[CBA] La sensibilidad hacia los animales se aprende | La Voz del Interior.

⁷⁹ 2012.12.13_[CBA] El miedo a los buenos | La Voz del Interior.

Association incorporates the legitimacy of the institution it belongs to, thus, enlarging the initial capitals of the actors behind the proposal.

By the end of 2012 and 2013, the conflict between these actors and waste pickers escalated. This escalation will be described in depth in the following sub-sections of this chapter. Nonetheless, the circulating discourses in the public realm at the time help us grasp a larger perspective on the intelligibility matrix these actors are pushing forwards. In December 2012, a newspaper article written by Andrea Heredia Olazabal appeared in the most highly distributed newspaper in the city. In this article she stresses her position upon waste picking with horse and carts. According to her view, the situation can be described in terms of civilization/in-civilization, for

“no civilized city allows horses in the streets, pregnant mare and kids leaving school to go pick up rubbish (...) no civilized city, respectful of citizens’ rights, of those who pay their taxes and make an everyday effort to teach social values to their children and their students, can tolerate the violence in the streets, the repetition of a picture of exploitation on those who are the most vulnerable (kids and animals), exhibiting kicking, whippings, insults and everything remains unpunished”.⁸⁰

In this description, we can see the civilized/incivilized binary operating as a Eurocentric disqualifying mechanism towards the opposing understanding. Moreover, disqualifying mechanism may also enter moral and emotional grounds. In this actor’s view, those who support waste pickers considered themselves as the ‘good guys’ but in her view are ‘hypocrites, immoral and ignorant⁸¹’, and she asks the question

“is it Christian and merciful to make a child into a slave of our rubbish? Or avoid hunger by exploiting a horse to death? Will they stop committing crimes by subjecting others who cannot defend themselves? (the state

⁸⁰ 2012.12.13_[CBA] El miedo a los buenos | La Voz del Interior.

⁸¹ 2012.12.13_[CBA] El miedo a los buenos | La Voz del Interior.

allows uncontrolled crime) as if there is an implicit justification in poverty”.⁸²

In January 2013, the protectionists pointed at the the progress/anachronism binary to refer to the act by arguing that the use of horse and carts is an “anachronism that should not be allowed (...).⁸³ Moreover, it stresses the way in which this discourse portrait the work/non-work divide,

“waste pickers and their families should have a legal and decent work (...) their children should not be on the streets, with the risks that imply, they should be doing the only thing kids should do: play and go to school”.⁸⁴

The use of disqualifying mechanisms can also be found when the journalist asked to the members of the ‘Sin Estribo’ Foundation: “is there a persecution against waste pickers? Are you against everyone who earns a living with a horse?”⁸⁵ The answer was:

“that is the perspective of those who give an opinion without any knowledge on the matter. The confiscated horses are in very bad shape (...) If you really care about the carter and you want a better life for them, how does the state do not look after the kid that goes in a horse and cart in an avenue? Does it care for it to fall and be hit by a bus?”⁸⁶

Expert foreign knowledge is one of the symbolic capitals these actors used in pushing their intelligibility matrix forwards. This symbolic capital may operate as a qualifying mechanism to support the protectionists discourse. As we will see in the case of sex work, not every foreign expert knowledge is valuable, but those which benefit from (neo)colonial patterns of knowledge/power relations. Experts from USA or Europe clearly have more influence in the public arena than an expert coming from Paraguay, Bolivia or Indonesia, which is directly related to an Eurocentric perspective that has been criticized and challenged in different moments in history but that is still enduring.

⁸² 2012.12.13_[CBA] El miedo a los buenos | La Voz del Interior.

⁸³ 2013.01.26_[CBA] Los carreros, un problema social | La Voz del Interior.

⁸⁴ 2013.01.26_[CBA] Los carreros, un problema social | La Voz del Interior.

⁸⁵ 2013.09.01_[CBA] Por el derecho de los animales | La Voz del Interior.

⁸⁶ 2013.09.01_[CBA] Por el derecho de los animales | La Voz del Interior.

This capital can be an asset or not depending on the context in which it is trying to be used. For instance, protectionists used this capital as an asset to support their intelligibility matrix in the public arena. In September, 2013 a newspaper article informed on the videoconference given by Steven Wise, a legal scholar on animals' rights at Harvard University. The article reads: "while progress is being made in USA and Europe, what happens in Córdoba?".⁸⁷ Hence, the civilization/in-civilization binary projects a Eurocentric legacy to its substantial content.

Furthermore, in that same newspaper article the 'Sin Estribos' Foundation made public the record they keep on judicial proceedings against animals' mistreatment and emphasized a confiscation case in which the waste picker ran away "leaving a kid behind (...) the horse had an injury and malnutrition".⁸⁸

The solutions to the use of horses, given by the protectionists in the public realm, are relevant to comprehend the disputes in relation to labour recognition and criminalization we will see in the following subsections, but also to fully understand the grassroots legislation debates in the last part of this thesis. The ideal solution, the goal towards which the Sin Estribos organization works is the eradication of blood traction vehicles and proposes to replace horse and carts for motorbikes,

"motorbikes' gas is much cheaper than feeding a horse. (...) We respect carters and we have invited them to fight together with us to provide them with better living conditions and stop using horses as a working tool".⁸⁹

During the following months, other voices appeared in the public arena from a perspective closer to waste pickers the standpoint.

"If I were a carter, I would tell you that I have to eke a living going through wealthier peoples' rubbish (...) and it is not that I'm a vagrant, but I am an unprotected worker. If I were a carter, I would tell you that the best way

⁸⁷ 2013.09.01_[CBA] Por el derecho de los animales | La Voz del Interior.

⁸⁸ 2013.09.01_[CBA] Por el derecho de los animales | La Voz del Interior.

⁸⁹ 2013.09.01_[CBA] Por el derecho de los animales | La Voz del Interior.

to reduce mistreated animals suffering is giving relief to their owners' suffering. (...) If I were a carter, I probably could not say any of these things even if I felt them; and if I could, who would listen? But I am not a carter; I am a lawyer. And I can tell you that prosecuting one of the most vulnerable groups in our society has to turn on our consciousness alarm. I can say that we are the ones who are at fault, not them".⁹⁰

Waste pickers' rejected this policy in the public debate for a number of reasons: a good number of waste pickers are illiterate and cannot get a driving licence; others are too old to learn how to drive a motorbike without putting themselves and others at risk; zootropos do not have the same loading capacity making the work non-profitable; the maintenance cost is too high; and last but not least, they emphasize their close relationship with the horse.⁹¹ This point will be revisited in section IV below –Dealing with the Edge of Criminality-. As we saw in Chapter Two, the use of horse and carts is not new but has been the traditional way to perform this income-generating activity.⁹² Waste pickers are a heterogeneous group, however, a persistent position around participants as well as in circulating discourses in the public realm was to defend the use of horse and carts up to the limit of animal's mistreatment; they have as well requested subsidies to guarantee horses wellbeing without success.⁹³

While the protectionists pursue a change in public policies, they took part in the destination for confiscated horses. A good number of confiscated horses were given in judicial deposit to Andrea Heredia de Olazábal, who hold them in her private home. By mid-2014, the Foundation announced the opening of a shelter; Olazábal then declared:

“we want to use the place to heal these mistreated animals and at the same time see if we can do activities such as equine-therapy for those who

⁹⁰ 2013.11.21_[CBA] Si fuera carrero | La Voz del Interior.

⁹¹ 2014.05.16_[CBA] Un intento por utilizar zootropos que no prosperó | La Voz del Interior.

⁹² This close relationship with the horses has found echo in the public realm; by way of example, in 2009 we could find a newspaper article describing the moment when the horse of a well-known waste picker died and the neighbours expressed their condolences. 2009.08.07_[CBA] Don Silva llora a Mora, su amiga más fiel | Día a Día.

⁹³ 2010.11.24_[CBA] Carreros pidieron ayuda para manutención de animales.

need it”.⁹⁴

The Foundation advertised guided horse tours to be held in the shelter’s premises, the advertisement reads: “Guided tours in a natural environment, escape the daily routine and come live an unforgettable moment”.⁹⁵ After this announcement was made public, the waste pickers cooperative ‘La Esperanza’ replied the Foundation was discriminating and excluding waste pickers;

“we are not surprised (...) we are seeing disguised racism, we know they chase us because we are poor, because we are black, because we are carters, not for our horses (...) we work with horses because we need to, Sin Estribos makes the horses work for the wellbeing of rich people”.⁹⁶

Olazábal answered the organization was not against using horses in general but against animals’ mistreatment”.⁹⁷ Nonetheless, the Foundation withdraw the project and made public declarations denying that the guided tours were going to be made using confiscated horses while they were being recovered from mistreatment; however, Olazábal made clear that

“if the vet says the horse is in a good shape, the horse cannot stay still. It should not be, because it benefits from that relationship with man [*sic*”].⁹⁸

In June 2014, the conflict between protectionists and waste pickers reached one of its highest peaks. The polarization escalated around the banning or not of blood traction vehicles. At the time, legal claims were used in the dispute. ‘Sin Estribos’ filled a formal criminal report accusing the cooperative of defamatory public declarations;⁹⁹ and the

⁹⁴ 2014.08.12_[CBA] Sin Estribo inauguraré un refugio para caballos maltratados.

⁹⁵ 2014.10.08_[CBA] Carreros denuncian discriminación por parte de la Fundación Sin Estribo | La Voz del Interior.

⁹⁶ 2014.10.08_[CBA] Carreros denuncian discriminación por parte de la Fundación Sin Estribo | La Voz del Interior.

2014.10.08_[CBA] Comunicado de prensa La Esperanza. ¿De qué dependen los estribos?

⁹⁷ 2014.10.08_[CBA] Carreros denuncian discriminación por parte de la Fundación Sin Estribo | La Voz del Interior.

⁹⁸ 2014.10.08_[CBA] Por ahora, caballos de carreros no se usarán en cabalgatas | La Voz del Interior.

⁹⁹ 2014.06.26_[CBA] Proteccionistas, a la Justicia contra “injurias” de los carreros.

2014.06.27_[CBA] Fundación Sin Estribos va a la Justicia por acusaciones de carreros.

2014.06.30_[CBA] “Sin Estribo” se presenta ante la Justicia por acusaciones de Cooperativa de carreros.

day after the foundation did a demonstration before the Municipality reinforced their claim to ban the use of horses.¹⁰⁰

In this dispute the use of statistics was a qualifying mechanism to reinforce their claims. On that same day, a private survey was published in the newspapers reporting that 70% of Córdoba inhabitants do not want blood traction vehicles.¹⁰¹

In November 2014, the conflict between protectionists and waste pickers was again reaching a high peak. The news recount the story of a woman who stopped a cart runned by two teenagers of 16 and 17 years old, in order to check the animal and, in her words,

“in the moment they wanted to run away I see my bag got stuck and it dragged me along and they hit me with the whip to let go. I was stuck and I got hit all over my body”.¹⁰²

As a consequence, ‘Sin Estribos’ organized a demonstration and made public declarations

This is not about ‘Sin Estribos,’ it is about a woman trying to protect an animal, to stop a crime, a violent attack of criminal... It can happen to any of us (...) These are the workers to whom the state pays subsidies with our taxes. These are the ones who victimize themselves with the famous ‘I’m poor’. (...) What we are noticing is the degree of violence they have. That is why we are here in the Municipality asking the Major to give work to that people, so they stop waste picking with their kids on top of animals, and they change the blood traction vehicles system because the horses are exhausted.¹⁰³

It is possible to identify a polarized discourse signed by the ‘us/them’ binary, in which ‘the’ waste pickers are homogenized and identified as batterers. I will revisit the effects

¹⁰⁰ 2014.06.27_[CBA] Colorida protesta contra la tracción a sangre | La Voz del Interior.

¹⁰¹ 2014.06.27_[CBA] Siete de cada 10 cordobeses no quiere carreros en las calles.

¹⁰² 2014.11.03_[CBA] Denuncian golpiza al intentar frenar maltrato animal | La Voz del Interior.

2014.11.04_[CBA] Demandan a dos carreros por agresión a una proteccionista.

¹⁰³ 2014.11.03_[CBA] Denuncian golpiza al intentar frenar maltrato animal | La Voz del Interior.

of homogenizing discourses in part III of this thesis to point out the effects these discourses may have for legal responses and law making processes.

Thus, waste pickers have been confronting conflicted discourses. In general terms, protectionists have pushed blood traction vehicle prohibition in the public real. In the legal limbo actors have deployed a number of capitals, as well as qualifying and disqualifying mechanisms, and have also used the law as part of their dispute. These conflicting discourses have irradiated as well as have set a background on the way in which waste pickers deal with the edges of work and criminality.

III. Dealing with the Edge of Work

“We are workers”, waste pickers assert in the public arena. They request to be formally incorporated into the Hygiene Urban System, which –they argue- would be a way of recognizing the activity they have been doing for many years now.¹⁰⁴ This income-generating activity formalization, as well as the role waste pickers play in waste management policies, may vary in degrees of formalization, at different times and places. For example, in Buenos Aires environmental local policies have incorporated ‘urban collectors’ as a legitimate and leading figure for waste management. In this sense, Maldovan stresses this protagonic role that, at least nominally, waste pickers play in the regulations, “from then on they should be in charge of administering the waste clasification and comercialization centres” (2014, 76). This section will explore the socio-legal dynamics of power and resistance in relation to waste pickers claims in the public realm for labour recognition and conditions of labouring in Córdoba-Argentina; particularly, it will focus on the way in which juristic forms (re)shape those dynamics.

Waste pickers labouring conditions are complex and involve plural actors and situations. This section will mainly focus on the relationships with the state. Nevertheless, waste pickers also deal with non-state actors, such as neighbours who hire their services or warehouses who by the collected material. Warehouses are important actors in the value chain; they have a large impact on the price of the collected material and waste pickers. In 2008, the financial crisis affected the

¹⁰⁴ 2010.09.22_[CBA] Carreros. La muni les prometió un plan y pidió no tirar basura. 2012.01.28_[CBA] Carreros. Todos podemos comer del reciclado.

international prices of recycling material that dropped the prices waste pickers got from the warehouses. Regardless of the actual shifts in the commodity price, the situation revealed the dependency waste pickers have with those warehouses. In this context a member of a waste pickers' cooperative explained:

“They say it is the world crisis, but it also has to do with the way in which monopolies work, they put everything the price they want (...) the warehouses are the ‘big winners’ nowadays because they pay us peanuts, they store it all and then they will sell it when the price rise again (...) they end up cover in gold and we are the same or worst than before”.¹⁰⁵

By 2011 there were 30 warehouses in the city of Córdoba,¹⁰⁶ most of them located in the slums. The transnational NGO Avina together with a local NGO called 'Raíces' Association and members of the Villa Urquiza Cooperative started out a project called 'Recycling Values', in which they built one of these warehouses to recycle plastic bottles called cooperative 'Cor Cor'.¹⁰⁷ These relations with non-state actors shape their conditions of labouring significantly. Nevertheless, in the following description I will emphasize the role of the state for it more clearly reveals the dynamics of the legal limbo for state modern law. It is important to note as well that the division between the edges of work and criminality are mainly analytic and should not be overstressed. Claims for labour recognition interplay in juncture with the claims against criminalization.

Claiming before the State

The State has a double relationship with waste pickers. On the one hand, the state has its traditional governing powers: it can limit the activity in certain areas, it can forbid certain ways of performing the activity, it can provide support and subsidies to promote the activity, and so on. On the other hand, the state is the one in charged of providing urban hygiene to the city; this responsibility sets the state in a particular position when it deals with waste pickers. This position has the attributes of an employment

¹⁰⁵ 2008.11.14_[CBA] Commodities bajas, cartoneros secos | Día a Día.

¹⁰⁶ 2011.05.07_[CBA] Las villas son claves en el negocio del cirujeo | La Voz del Interior.

¹⁰⁷ 2011.05.07_[CBA] Las villas son claves en el negocio del cirujeo | La Voz del Interior.

relationship but has not been framed as such. That is why I will refer to this relationship as one of *pseudo-employment*. State policies in each of these double relationships may collide for the state is not a homogeneous and coherent actor. Moreover, the Provincial state may have a different approach to the Municipal state, or the legislative branch to the executive branch. This double relationship complicates the way in which waste pickers deal with the edge of work. Their claim for labour recognition does not only imply appealing to the state governing power in providing the legal and material setting for protected labour relations, but also points at the state deficiencies in providing a service and responding as an employer.

a. Waste Pickers and the State as a Pseudo-employer

The Municipality is responsible for the city's waste management system and for providing, on its account or by hiring third parties, the urban hygiene system. This particularity opens up a set of questions regarding the legal bond that is created when the state pays waste pickers to provide a service of its own responsibility. In Córdoba, the juristic forms developed around the pseudo-employment bonds reveal constant tension and an enormous effort not to frame it as a labour relationship and significantly affect waste pickers conditions of labouring. The following description shows the different scenarios in which the pseudo-employment relationship emerge; and emphasizes the way in which, in each of those scenarios, the hegemonic eurocentric notion of mercantile-contractual-stable work is challenged by a set of juristic forms and socio-legal practices.

There are at least three scenarios in which this relationship of pseudo-employment has emerged: 1- when waste pickers are paid as dumping sites custodians to make sure other waste pickers, or any other person, do not throw rubbish in unauthorized places, 2- when waste pickers are paid to clean public areas in which the urban hygiene company does not enter (mainly slums and some schools), 3- when waste pickers are paid to separate the recycling material that the urban hygiene company deposits in the Municipal Recycling Green Points.

In the first scenario, waste pickers are paid as *dumping sites custodians*. This policy

started in 2009 as a response to the more than 90 open-air dumping sites in the city.¹⁰⁸ Abandoned lands or the areas along the riverbank were continuously transformed into informal dumping sites. The government at the time decided to habilitate 25 of those sites as formal dumping sites and pay waste pickers to organize and control them during the day.¹⁰⁹ Those who perform the activity are called ‘eco-collectors.’

The justitic forms adopted for this relationship challenges the hegemonic notion of work and sets the income-generating activity at the edges of between work/non-work. The legal bond is established between the government and waste pickers cooperatives, the cooperative is then committed to provide the service and fill the positions. They sign a six-months contract and the payment they receive is not considered to be a salary but a ‘scholarship’.¹¹⁰ Furthermore, once the first six-months-contract expired waste pickers did a protest denouncing their precarious contractual situation; “They don’t want to pay December and they don’t want to negotiate the new agreement either,”¹¹¹ “in September the agreement expired, but then why did they pay October and November?”¹¹² This scenario, as the following one, show the way in which juristic forms can be used to maintain precarious conditions of labouring. The second scenario is similar to the former. Waste pickers receive a monetary return from the state for *taking the rubbish out from certain parts of the city* where the company does not enter. This policy is part of the program ‘My Clean Slum’¹¹³. Waste pickers are paid to collect and take the rubbish out of the slum for the company to collect it.¹¹⁴ As described in Chapter Two, waste management is not obliged to enter vulnerable neighbourhoods. In February 2014, around 30 waste pickers cut the grass and cleaned the school and dispensary colliding areas in two of these neighbourhoods.¹¹⁵

¹⁰⁸ 2009.10.03_[CBA] Carreros Unidos contra basurales | Día a Día.

¹⁰⁹ 2009.05.05_[CBA] Carreros tienen 25 puntos para sus descargas | Día a Día.

2009.10.03_[CBA] Carreros Unidos contra basurales | Día a Día.

¹¹⁰ 2009.05.31_[CBA] General Savio, el primer punto de acopio para los carreros | Día a Día.

¹¹¹ 2013.01.17_[CBA] Nueva protesta de los carreros | La Voz del Interior.

¹¹² 2013.01.02_[CBA] Nueva protesta de carreros | La Voz del Interior.

¹¹³ Translation note: the word in Spanish ‘Villa’ (that is short for ‘Villa de Emergencia’) does not find a literal translation in English. It does refer to poor neighbourhoods but does not have the same pejorative connotations as the word ‘Slum’, this is why it the word ‘Villa’ can be found in public policies, regulations, or academic work.

¹¹⁴ 2012.11.01_[CBA] Dividirán en tres la ciudad para la recolección de basura | La Voz del Interior.

¹¹⁵ 2014.02.26_[CBA] Carreros limpian terrenos en escuelas de Villa Retiro y Campo de la Ribera | La Voz del Interior.

In these two first scenarios, waste pickers have systematically claimed for better payments and for the provision of appropriate and necessary working tools. Moreover, organized waste pickers have claimed that those positions are not enough considering the total amount of waste pickers in the city and the constant demand to provide that service, particularly in vulnerable neighbourhoods. They have asked for more positions.¹¹⁶

In framing the payment as ‘scholarships’ the state did not comply with labour standards such as the minimum wage. For example, in 2010, the government was paying 50 eco-collectors the amount of \$1000¹¹⁷ a month for five-hour work, from Monday to Friday; and the activity could also include covering road bumps, moving the rubbish from one site to the other.¹¹⁸ In 2012, there were 60 eco-collectors receiving \$1500¹¹⁹ and in 2014, the payment was of \$1800.¹²⁰ Notably, the minimum wage each time almost doubled the amount of the scholarship. Waste pickers have continuously denounced this situation.

“We are in a dumpsite full of rubbish, seeing dead dogs and we cannot be earning \$1800. This is mockery”¹²¹

“the living cost increases highly and we as workers need an immediate scholarships adjustment”.¹²²

In this sense, the juristic form of the ‘scholarship’ reinforces precarious conditions of labouring. The activity appears more as an social assistance benefit than work, it is justified as a social inclusion policy and by doing so it skips labour standards.

In this context, a particular dynamic emerged which reveals the links between the edges of work and criminality in the legal limbo. The government systematically failed to pay

¹¹⁶ 2012.04.18_[CBA] Carreros protestaron en el centro | La Voz del Interior.

2012.06.17_[CBA] Carreros reclaman un buen trato | La Voz del Interior.

¹¹⁷ In the thesis, money rates will always refer to Argentinean pesos.

¹¹⁸ 2010.04.27_[CBA] Hay 25 custodios de basurales en Capital | La Voz del Interior.

¹¹⁹ 2012.01.28_[CBA] Carreros. Todos podemos comer del reciclado.

¹²⁰ 2014.09.17_[CBA] Caos en el Centro por protestas.

¹²¹ 2014.09.17_[CBA] Caos en el Centro por protestas.

2014.09.17_[CBA] Continúa la protesta de carreros en el Centro.

¹²² 2014.09.18_[CBA] Carreros protestaron pidiendo un ajuste en las becas de trabajo al municipio.

on time the scholarships. As a consequence, demonstrations demanding the actual payment of those scholarships were constant and persistent. This dynamic turned into a *demonstration-versus-payment system*, in which the Municipality responded to its obligations after the protest. Waste pickers use the public realm to denounce persistent negligence of the state. They did demonstrations against payment delays in January¹²³, April¹²⁴, and October¹²⁵ 2013; in June¹²⁶, September¹²⁷, October¹²⁸ and December¹²⁹ 2014; in February¹³⁰ 2015. Their claims reveal the way in which their relation with the state puts them at the edge of work and they contest this position.

“Today we have to be again out in the streets because we are fighting for our right to decent work and decent life. (...) The neighbourhoods where we live in are abandoned and we want to work to restore them”.¹³¹

“In exchange for this work we get a scholarship that is the family’s breadwinner. The Municipality owes us money for work we already did”.¹³²

This claim is intertwined with the expansion of the edges of criminality, particularly in what respects to protest criminalization. For example, in December 2014, the Infantry Regiment and the Specialized Tactic Police Division blocked a waste pickers demonstration against the lack of payment.¹³³

“Last year they did not pay us during holiday season either. They do not

¹²³ 2013.01.23_[CBA] Protesta de carreros en el centro cordobés | La Voz del Interior.

¹²⁴ 2013.04.10_[CBA] Protesta de carreros frente a la sede del municipio | La Voz del Interior.

¹²⁵ 2013.10.25_[CBA] Abrazo contra la tracción a sangre y protesta de carreros.

¹²⁶ 2014.06.18_[CBA] Carreros protestaron por deuda municipal.

2014.06.18_[CBA] Carreros reclaman fuera de la Municipalidad y presentaron pedido en la Fiscalía General | La Voz del Interior.

¹²⁷ 2014.09.18_[CBA] Carreros protestaron pidiendo un ajuste en las becas de trabajo al municipio.

¹²⁸ 2014.10.14_[CBA] Carreros exigen el pago de becas de trabajo frente al municipio.

2014.10.14_[CBA] Carreros reclaman aumento de becas frente a la Municipalidad de Córdoba | La Voz del Interior.

2014.10.15_[CBA] Carreros exigen pago de becas de trabajo.

¹²⁹ 2014.12.19_[CBA] Carreros reclamarán por deuda en el Palacio 6 de Julio.

¹³⁰ 2015.02.27_[CBA] Carreros reclaman frente a la Municipalidad por atraso en el pago de sus servicios | La Voz del Interior.

¹³¹ 2014.09.17_[CBA] Comunicado de prensa La Esperanza. Movilización hacia la Municipalidad.

¹³² 2014.12.19_[CBA] Carreros reclamarán por deuda en el Palacio 6 de Julio.

¹³³ 2014.12.19_[CBA] Tensión/ bloquean paso de carreros al centro.

pay and they don't want to let us protest either. They sent the Police, the blocked the road".¹³⁴

As will be described in the following section, there has been a circulating bill proposal to restrict protest in the city. Which, in this context, implies that the state provides the conditions for demonstration and at the same time forbids it, which (re)produce more precarious laboring conditions while interlacing the edges of work and criminality.

The third scenario is when waste pickers are paid to *separate the recycling material in the Municipal Recycling Green Points*. In this case two waste pickers cooperatives are incorporated into the management system to provide the services of recycling material collection and separation. The project is divided in two sectors, one involves collecting recycling material from downtown area and the second implies separating the material the waste company brings into the Green Point. The state company CRESE, in charge of the waste system, provides the premises and working tools. By 2011, more than a hundred waste pickers were working in these facilities.¹³⁵ One of the waste pickers working in these projects stressed

"We are fine; in the 30 years I've been waste picking I have never been like this. (...) We have support and work for the younger generations. (...) There is a group who do not want to join civilization, they don't want to improve their quality of life".¹³⁶

The binary civilization/inciviliation is brought back into the scene as a disqualifying mechanisms for those who are not part of these projects. In line with the neoliberal ethos, it seems as if conditions of labouring are dependent of individual choices and will.

In this Green Points a peculiar legal architecture takes place in order to maintain waste pickers at the edge of work. In this case, again the state negotiates with the cooperative. Those cooperatives have to have been previously registered in the public records as a legal person and in the specific cooperatives" registration system. The state provides

¹³⁴ 2014.12.19_[CBA] Bloquean el ingreso de carreros que iban a protestar al Centro | La Voz del Interior. 2014.12.19_[CBA] Carreros continúan su reclamo por una deuda municipal.

¹³⁵ 2011_[NAC]Rev. 23_Carteros siglo XXI.

¹³⁶ 2011.02.28_[CBA] Ya se recuperan 133 mil kilos mensuales | La Voz del Interior.

the capital and the cooperative provides the workers. In this point, it becomes paramount to stress that the profits from the recycling material sells do not belong to the cooperatives, it is the state who is in charge of selling and of the economic return. Then, the cooperatives gain a percentage of that sell. The state company does a payment advance to the cooperative to pay the workers, then at the end of the months the state company sells and the returns compensate with those advances. If there is remnant after the state company's costs, it is divided among the members. Other labour standards such as social security benefits or health systems are covered by the waste pickers inscription of the National Simplified Small Payers Social System (see Chapter One). A state company key informant explained they have to develop specific mechanisms to avoid labour judicial claims against the state company. After facing labour demands in cases of accidents, the lawyers of the Green Point have reshaped the juristic forms to distance the relationship from an employment relationship. The state company representatives do not give directives to the members of the cooperative, only to the leader, they sign new agreements to lend them space for the training courses, and so on. There is an ad hoc architecture built around the relationship with the state company. The Green Point Project supervisor emphasizes the aim behind this approach is to provide social inclusion and give support and counselling to the cooperatives

“The cooperatives are not ready to administer companies. Then the question is, should I get involved as government and teach them, and I run the risk of someone coming and saying ‘this is work under the table’ ‘you are using them’, right? Or you leave them to their fate, they go into bankrupt, they have tax debts that today or tomorrow a bunch of people have no more work and are replaced by a new cooperative; until five or six cooperatives bankrupt until one maybe makes it...I don't know, I prefer the support approach, so we can prevent these things to happen”

(Ana Villarrolla)

Hence, each of these three scenarios reveal a pseudo-employment bond with the state in providing the waste management system. Juristic forms are (re)created in ways in which the mercantile-contractual-stable hegemonic notion of work will not capture those relationships. In their work on waste pickers in Córdoba, Lisdero and Vergara

have suggested that the legal form of the cooperative could be read as a way of flexibilizing the labour ties between the parties involved, such as the state (2014, 103). That flexibilization seems to be justified in the public realm by discourses on social inclusion. This discourse gives the impression that the labour waste pickers provide to the waste management system was a form of social assistance provided by the state. This approach reshapes the edges work through a peculiar, bureaucratic and prolific set of socio-legal practices, which reinforce the socio-legal position in the legal limbo. The next section turns to address how the dynamics of the legal limbo take place when the relationship with the state is not one of pseudo-employment but it revolves around the state governing powers.

b. Waste Pickers and the State's Governing Power

Waste Pickers demand, reject or question state governing powers around three main issues: zoning, subsidies and, as we saw before, blood traction vehicle exchange. In these cases the state is not a pseudo-employer but its governing powers affect waste pickers labour conditions. *Zoning* is a kind of policy in which the waste picking activity – or some ways to perform it- is forbidden in certain parts of the city (this policy will also be found in the case of sex workers). As I will suggest further down, zoning policies can be enacted in a specific regulation. In this cases there is a normally a bylaw mapping the areas in which an activity is allowed and where it is forbidden. Nevertheless, zoning policies can also be enforced in practice without any regulation that supports it. These policies are mostly related to ‘cleansing’ policies in the city, particularly under zero tolerance approach. Those city exclusion practices can be traced through an empirical account of the open air borders which prevent certain groups to access certain urban spaces.¹³⁷ The zoning policy describe here is the kind of policy that has been enacted in a specific regulation, mainly because in this scenario state governing powers are exercised through the institutional legal channels and because the existence of a specific regulation does change the possibilities for resistance. As described before, one of these

¹³⁷ In this research, interviewed waste pickers have suggested areas in which they would be constantly prevented by the police to transit, other areas in which they would allow women waste pickers to transit but not men or teenagers in groups. These data would allow to map the legal limbo. However, the data collected in this fieldwork is not enough to set patterns and inconsistencies in relation to this point. This line of inquiry could be developed in further researches.

zoning policies was enacted during the dictatorship, banning horses and carts to enter downtown. That policy detonated the first waste pickers demonstration, out of which the Carters Cooperative of Villa Urquiza was born. Zoning bylaw was not enforced until the year 2002, right after the Argentinian economic crisis (see Chapter Two). The regulation was enforced in a context in which waste picking was significantly expanding as a survival circuit. Eight waste pickers were detained for violating the zoning exclusion. A massive demonstration followed, claiming for their liberation and for the abolition of zoning bylaws. They also claimed access to the recycling material. That demonstration has been referred to as “one of the most shocking demonstrations the city remembers”.¹³⁸ At the time, the Major tried reaching a middle ground solution by which waste pickers could park their carts nearby downtown and access the central area with manual carts. The large and growing number of carters showed the new zoning policy to be unrealistic; the legal response was alien to the contextual transformations that the city and the country were living. In 2004, the bylaw had to be abolished.

The second issue around which waste pickers relates to state governing power are *subsidies*. In this case the state is not acting as a pseudo-employer but as a supporter of the activities in case of vulnerabilities, inequalities or need. In November 2013, the Provincial government offered a waste pickers’ cooperative one hundred positions as part of a social plan called “First Steps Program,” by which different private or public companies hire 18 to 25 years-old beneficiaries to do different kinds of work and the state temporarily pays their salary. The cooperative rejected this offer.

“This is a cooperative, it is useless to have 100 beneficiaries if we are 700 members”.¹³⁹

“It is not the right thing to do. There are people who have a pension (...) the disability subsidies will expire”.¹⁴⁰

¹³⁸ 2010.06.29_[CBA] Seis mil familias viven de la basura | La Voz del Interior.

¹³⁹ 2013.11.13_[CBA] Los carreros le tiran la cincha a la Provincia para trabajar | Día a Día.

¹⁴⁰ 2013.11.13_[CBA] Un grupo de carreros protestó en el Centro Cívico | La Voz del Interior.

Instead they requested a labour agreement for at least one year “for 100 waste pickers and then they can rotate for other 100 to take their place, in that way the other 600 waste pickers can access paid jobs”.¹⁴¹

These policies were not long lasting and collapsed with the debate around banning or not blood traction vehicles. *Vehicle exchange* is the third police in which the state have deployed its governing powers towards waste picking. This policy implies exchanging horses for specific motorbikes called ‘zootropos’. This issue is directly related with horses’ wellbeing as well as with criminalization policies and conflicting discourses. However, this exchange policy does not necessarily implies banning horse and carts, which is why I decided to describe it in this section on work and not just in the section on criminality. The state has tried to implement this exchange policy since the year 2008. It has been implemented for waste pickers working in the Green Points and promoted by non-state actors; and the government has been announcing year after year this policy as part of the future waste management system. Waste pickers’ rejected this policy in the public debate for a number of reasons, as showed before, such as: a good number of waste pickers are illiterate and cannot get a driving licence; others are too old to learn how to drive a motorbike without putting themselves and others at risk; zootropos do not have the same loading capacity making the work non-profitable; the maintenance cost is too high; and last but not least, they emphasize their close relationship with the horse¹⁴². We will return to these points in the chapter on Grassroots Legislation (Chapter Five) in which I describe the debates around this policy among waste pickers.

In 2009, five zootropos were used to collect material in downtown area, but this lasted just a few months. During the year 2013, the struggle to forbid blood traction vehicle grew and the vehicle exchange policy was part of the debate. In June 2013, the experience in the city of Río Cuarto was promoted as an example of successful prohibition and exchange for zootropos; and with this example in mind a bill proposal was presented to the municipality to create a Provincial Program “to eliminate the presence of kids collecting rubbish, to dignify the informal collector and to eradicate the

¹⁴¹ 2013.11.13_[CBA] Un grupo de carreros protestó en el Centro Cívico | La Voz del Interior.

¹⁴² 2014.05.16_[CBA] Un intento por utilizar zoótropos que no prosperó | La Voz del Interior.

use of horse and carts”.¹⁴³ In October 2013, the Municipality announced the purchase of 50 zootropos and the future purchase of 150 more for July 2015.¹⁴⁴ The quantity was not significant considering the approximate 3.000 waste pickers in the city. In May 2014, the municipal government announced the zootropos were going to be given to waste pickers under a loan for use (commodatum) contract, who must keep them in good conditions.¹⁴⁵ Those announcements were not fulfilled by the end of this thesis.

Waste Pickers claims around these three issues -zoning, subsidies and blood traction vehicle exchange- show that state governmental powers do shape the edges of work without necessarily recognizing the income-generating activity as labour neither as crime.

As a final remark to the way in which waste pickers deal with the edges of work it worth mentioning the actions taken beyond the state. At the beginning of 2014, the waste pickers’ cooperative ‘La Esperanza’ decided to occupy abandoned land to build a recycling Green Point. After long negotiations they reached an agreement with the Provincial Ministry of Social Development by which the Province was committed to make an offer in the next 20 days on where else the cooperative could build the Green Point instead of those lands.

“We have been soliciting for two years now with the Municipality and the Province to build a recycling green point and to generate new work positions, but we never had any answer.”¹⁴⁶

“This is a request, not an occupation for housing. It is an investment the state should do in something that will be beneficial to all, and mostly so for the society (...) we have decided to occupy this land because they have expulse us as recyclers (...) we want to contribute society with a green

¹⁴³ 2013.06.09_[CBA] CBA_proyecto de ley para carreros.

¹⁴⁴ 2013.10.25_[CBA] Quieren sustituir los caballos de los carreros por motocargas | Día a Día.

¹⁴⁵ 2014.05.16_[CBA] Carros en las calles, un serio peligro para el tránsito urbano | La Voz del Interior.

¹⁴⁶ 2014.03.10_[CBA] Carreros levantan la toma del predio tras negociación con el Gobierno | La Voz del Interior.

point”¹⁴⁷.

The cooperative, for its part, committed to peacefully dislodge the area.¹⁴⁸ So far, this action have not had major impact in the public realm. Therefore, the process of negotiation falls short to provide data for the analysis being made here. Nonetheless, I have mentioned it to address that actions beyond the state could be read in line with waste pickers ways to deal with the edges of work.

To summarize, waste pickers are claiming for labour recognition while performing their income-generating activity in ways that pose a challenge to the work/non-work division and the hegemonic Eurocentric notion of ‘mercantile-contractual-stable’ work. Waste pickers in the public realm confront and deal with precarious conditions, which are reinforced by the juristic forms adopted when the state operates as a pseudo-employer and in its government powers reshape waste pickers conditions of labouring and labour recognition. These claims interplay in juncture with the claims against criminalization; thus, the analytic division between the two should not be overstressed. The edges of labour are intertwined with the edges of criminality.

IV. Dealing with the Edge of Criminality

Waste pickers deal with the edges of criminality in their everyday life. Even though the activity itself is not considered as crime, there are a number of regulations that target the group through direct or oblique criminalization. I will divide the account on the edges of criminality in two parts: a) dealing with the Minor Offences Codes, b) dealing with the Criminal System. This distinction is relevant because it allows for a better understanding of the nuances these two types of regulations and their enforcement have for the struggles of those who perform the income generating activity. However, it is important to recognize these regulations’ mutual interactions in shaping the legal limbo. In the ‘Minor Offences’ sub-section, I will describe the set of prohibiting policies that have targeted waste pickers’ activity or the ways to perform it. The dynamics of power and resistance around these prohibitions have had different outcomes, at times the policy is enacted and enforced, and at times, the mere announce to enact it has had

¹⁴⁷ 2014.03.10_[CBA] Carreros toman predio para construir planta de reciclado | cba24n.

¹⁴⁸ 2014.03.11_[CBA] Acuerdo entre carreros y el Gobierno, tras toma de tierra | La Voz del Interior.
2014.03.11_[CBA] Carreros ocupan un lote para "reciclar" | Día a Día.

effects on the group. Prohibiting policies have been the response to mainly two issues: one is open-air dumpsite and the other is the use of blood traction vehicles, or sometimes one policy tries to give a legal response to both these problems. The Municipality and the Province can enact their own Minor offences code or Codes of Conduct. In the case of waste picking I will be mainly referring to the set of municipal prohibiting policies and I will specify when the prohibiting policy respond to a Provincial provision. In the 'Criminal Law' sub-section, I will describe the dynamics of power and resistance in relation to the enforcement of an old provision against animal's mistreatment, also known as 'Sarmiento Law', which involves horses confiscation.

Dealing with the Minor Offences Codes

Minor Offences Codes or Codes of Conduct prescribe the set of forbidden behaviours and their sanctions. In the public realm, waste pickers have confronted four different types of prohibiting policies: 1- prohibition to enter dumping grounds, which has CCTV systems as a surveillance mechanism, 2- prohibition to hire waste pickers, which involves a fine to neighbours, 3- prohibition to use blood traction vehicles, which have included compulsory vehicle exchange, 4- other minor offences that target those who perform the activity.

The *prohibition to entering dumping grounds* was enacted as a response to uncontrolled dumping and to the consequent growing spread of informal dumping sites. In 2010, the number of environmental fines trebled its number.¹⁴⁹ Waste pickers are pointed out as the main responsible for this situation. However, municipal inspectors publicly admitted how hard it was to control both waste pickers and wealthy neighbours who used those sites as informal dumping grounds at night. In 2012, this prohibition was complemented by a CCTV system.¹⁵⁰ This surveillance mechanism was seen as a way of proving waste pickers were not the main responsables. In the words of a waste pickers' cooperative leader

¹⁴⁹ 2010.01.18_[CBA] Se triplicaron las multas ambientales | Día a Día.

¹⁵⁰ 2012.03.07_[CBA] Pondrán cámaras para controlar los basurales de Córdoba | La Voz del Interior.

“society is hypocritical and only recognize waste pickers as the ones who produce dumpsites, and with those cameras they will see that there are expensive cars, trucks and other vehicles throwing rubbish away”.¹⁵¹

Even though the municipality did acknowledge informal dumping sites were not an exclusive responsibility of waste pickers, the legal responses were severely targeting waste pickers. This is revealed in the prohibition to hire their services.

The *prohibition to hire waste pickers’ services* has been announced in several opportunities and this announcement has, in itself, affected waste pickers activity. The policy announcement in 2010 brought about a demonstration in protest; even though the fine was for the neighbour who hired the service, the main economic consequences were going to be felt by waste pickers. In the public realm this policy appeared as a way of pointing fingers away from waste pickers and sanctioning clients instead.¹⁵² Even though the sanction would be for the neighbours hiring the service, the consequences of that prohibition will affect waste pickers. Therefore, the policy operates as an oblique criminalization of waste pickers. They have contested this situation stressing that the activity is their work

“Many of us were raised in the horse and cart, this is the only breadwinning source we can daily count on to feed our families”.¹⁵³

“Today they want to cut the income generating activity of hundreds of excluded families just like ours, this goes against human dignity”.¹⁵⁴

“The reason why we are here [demonstrating] is because they have threatened neighbours not to give us work”.¹⁵⁵

In 2012, the same policy was announced once again. This time, other voices appeared in the public realm recalling neighbours’ stories who hired waste pickers as a consequence

¹⁵¹ 2012.03.08_[CBA] Los carreros apoyan el Gran Hermano en los basurales | Día a Día.

¹⁵² 2010.09.13_[CBA] Conducta, sanción e inclusión | La Voz del Interior.

¹⁵³ 2010.09.21_[CBA] Carreros protestaron frente al Palacio 6 de Julio | La Voz del Interior.

¹⁵⁴ 2010.09.14_[CBA] Los carreros pidieron que no se sancione a sus clientes | La Voz del Interior.

¹⁵⁵ 2010.09.15_[CBA] Carreros protestaron frente a la Municipalidad de Córdoba | La Voz del Interior.

of the deficient service the outsourced company is providing.¹⁵⁶ In 2014, the municipality announced fines for hiring unauthorized waste picking services were going to be 600% more expensive than in the previous proposals, which represents the equivalent of five times a minimum wage.¹⁵⁷ In the following months waste pickers continued demonstrating against this bill proposal. Their claims reveal the intertwined laces between the edges of work and criminality.

“It does not only forbid us to work, leaving families without economic support to eke a living; but it is also neighbours who will only have as their only option to hire a container of a private company that costs five times more”.¹⁵⁸

“Not only we earn so little, they now also want to fine people who hire us, at the end we will have to steal. (...) We want to be legal”.¹⁵⁹

“This proposal goes against our main source of income”.¹⁶⁰

“This directly affects our source of labour, because the activity represents our main income as the precarious workers that we are; it is an arbitrary policy even for the rest of society”.¹⁶¹

The *prohibition to use blood traction vehicle* is at the core of conflicting discourses as it is at the core of the push and pull to bring the activity closer to legality or closer to illegality. This section focuses on the consequences this policy have had to (re)shape the edges of criminality. As described in Section II above, in 2009 the NGO ‘Free Horses’ collected 500 signatures to request the municipality to enforce this policy but it was not enacted.¹⁶² In 2011, the Franz Weber Swiss Foundation opened the ‘horses sanctuary’

¹⁵⁶ 2012.06.27_[CBA] La recolección de restos de poda, un servicio poco eficiente | La Voz del Interior.

¹⁵⁷ 2014.12.23_[CBA] El Código de Convivencia prevé multas más caras | La Voz del Interior.

2014.12.23_[CBA] Prometen duras sanciones a quienes contraten carreros | La Voz del Interior.

2014.12.23_[CBA] Una actividad informal complicada para ordenar | La Voz del Interior.

¹⁵⁸ 2015.02.22_[CBA] Marcha de carreros el lunes por la mañana | La Voz del Interior.

¹⁵⁹ 2015.02.23_[CBA] Carreros amenazan con “salir a robar” si se aprueba la norma.

2015.02.23_[CBA] Carreros protestaron contra el nuevo Código de Convivencia.

¹⁶⁰ 2015.02.23_[CBA] Carreros protestan contra el nuevo Código de Convivencia.

¹⁶¹ 2015.02.23_[CBA] Marcha de Carreros hasta el Concejo Deliberante | La Voz del Interior.

¹⁶² 2009.09.28_[CBA] Quieren que se termine la tracción a sangre | Día a Día.

2009.09.29_[CBA] Cambiar caballos por motos | Día a Día.

and claimed for the same policy.¹⁶³ The year 2013 represents the one with the major conflicting discourses circulating in the public arena. That year the first case against animals' mistreatment was brought to trial in Córdoba. The 'Heredia case' (see Chapter Two) brought into the judicial strand the debate on poverty criminalization vs. animals' mistreatment, 'Sin Estribos' Foundation became a 'private prosecutor' against these judicial cases, and horses confiscation grew significantly. The main actors in this struggle were 'Sin Estribos' Foundation and the waste pickers cooperatives. Section II above has developed the conflicting discourses towards this activity, as well as the qualifying and disqualifying mechanisms to push it forwards. By September 2013, a group of protectionist NGOs launched a campaign to collect the signatures legally required to start a popular initiative law, the event media covering stressed that

“promoters, all of whom were lawyers, agreed that it was necessary to abolish cruelty against animals, specially those who belong to (not all) waste pickers, which are punished and sometimes faint dead on the streets (...) municipal and provincial authorities must be committed to giving waste pickers source of work by providing motorbikes or bicycles with carts”.¹⁶⁴

In 2014, the struggle to eliminate blood traction vehicles continued. In May, two City Council members introduced bill proposals in relation to this issue; one of which proposed to eliminate blood traction vehicle and create instead more Green Points in which waste pickers could work “while their kids go to school or nurseries”.¹⁶⁵ The other project pushed forwards the popular initiative¹⁶⁶ bill proposal, in which every 30 days the municipality will expand the prohibited areas to circulate with horses until it reaches the whole city. In this point we can see again the way in which capital reproduction of capital can be then strategically used to push one or other intelligibility matrix forwards. In the public arena this project was shown as having the support 'Sin

¹⁶³ 2011.06.01_[CBA] Un santuario para caballos en Alta Gracia | La Voz del Interior.

¹⁶⁴ 2013.09.03_[CBA] Iniciativa popular para prohibir la tracción a sangre en Córdoba | La Voz del Interior.

2013.10.09_[CBA] Protesta de carreros frente al Centro Cívico | La Voz del Interior.

2013.09.04_[CBA] Juntarán firmas para que se prohíban los caballos en carros | La Voz del Interior.

¹⁶⁵ 2014.05.17_[CBA] Piden sustituir tracción a sangre con otras políticas de inclusión.

¹⁶⁶ Translation note: popular initiative is a democratic participatory mechanism through which citizens can gather signatures and propose a bill to the parliament.

Estribos' Foundation, the Protectionists Roundtable, the Bar Association Animals Rights Department,¹⁶⁷ while each of those institutional actors are constituted by the same social actor; thus, becoming an institutional actor reproduces the single actor's capitals. In June, after a horse died as a consequence of a traffic accident, protectionists did a demonstration before the Municipality insisting on the need to enforce the bill proposal; protest aesthetics showed body painting and colourful signs.¹⁶⁸ Waste pickers did demonstrations to protest against the campaign to start a popular initiative bill proposal under the motto 'Stop criminalization, we want inclusive policies'.¹⁶⁹ In the public realm they claimed argued against this policy, again stressing the income generating aspect of the activity and its links to criminality.

"This is our way of living. There is no way we will accept this proposal. They never considered us in this proposal".¹⁷⁰

"Today more than ever we are sure they prosecute us because we are poor working with horse and carts (...) councilmen and protectionists want to enact this law that does not acknowledge our needs (...) none of them know what a horse means in the life of a carter and their families".¹⁷¹

"This shows the poverty criminalization that our families suffer and the only thing they get in return is to leave thousands of families without their only income-generating activity".¹⁷²

Last but not least, there are *other prohibitions* that target those who perform this income-generating activity. These prohibitions do not refer to the activity itself or ways to perform it, but waste pickers are going to be confronted by them. One example is the Minor Offences Code amendment project, in 2014, to forbid forms of protests and demonstrations, which stated that those who obstruct free trafficking circulation would

¹⁶⁷ 2014.05.20_[CBA] Dómina presentó un proyecto para eliminar la tracción a sangre de las calles.

¹⁶⁸ 2014.06.27_[CBA] Colorida protesta contra la tracción a sangre | La Voz del Interior.

¹⁶⁹ 2013.09.10_[CBA] Carreros protestaron por iniciativa de sacar caballos de la calle.

2013.09.10_[CBA] Protesta de carreros en el Centro de Córdoba | La Voz del Interior.

¹⁷⁰ 2013.10.01_[CBA] Carreros protestaron por iniciativa de Fundación "Sin Estribos".

¹⁷¹ 2014.05.22_[CBA] Carreros protestaron contra la ordenanza de prohibir la tracción a sangre.

¹⁷² 2014.05.22_[CBA] Carreros protestaron contra la ordenanza de prohibir la tracción a sangre.

be sanctioned with a \$15.000 to \$75.000 (which minimum represents five times a minimum wage). The Major at the time publicly declared

“we all have to understand that our right finishes when it impinges the right of others. We don’t want to limit protest, but if they are going to block a road they can only block half way”.¹⁷³

This policy is particularly significant if we bear in mind the demonstration-versus-payment system described in the previous section. The same bill announced the prohibition to hire waste pickers.

Another set of regulations that add complexity to the waste pickers struggle is the Provincial Minor Offences Code. As discribed in Chapter One and Two, this Code largely expands Police discretionary powers and, unlike the Municipal Code of Conduct, sanctions can involve detention up to 60 days. Extremely lax legal figures, such as loitering or resisting authority, have allowed the systematic detention of vulnerable populations. In 2014, the Provincial government proposed new amendments to this code and waste pickers challenged what they considered to be an even larger expansion of Police discretionary power. The new project included the prohibition to leave beast of burden in public spaces, this regulation does not mention waste pickers but clearly and directly target the group.

“This project goes against the right to free circulation carters also have. We have the right to circulate as the citizens that we are, and as the workers that we are”.¹⁷⁴

“[The Minor Offences Code] criminalizes our work, we are prosecuted for being poor and organized”.¹⁷⁵

“This is a new attack against poor populations. It goes against workers

¹⁷³ 2014.12.23_[CBA] Mestre defendió los cambios que impulsa el Código de Convivencia | La Voz del Interior.

¹⁷⁴ 2014.12.17_[CBA] Nueva movilización por la derogación del Código de Faltas | La Voz del Interior.

¹⁷⁵ 2014.12.11_[CBA] Carreros continúan con su reclamo por el Código de Convivencia.

and our children”.¹⁷⁶

In December 2014, more than 300 waste pickers in horse and carts protested in one of the main downtown streets against the Provincial Minor Offences Code

“We are out again in the streets to let the government know that we disagree with any Minor Offences Code amendment; against any law that penalize our work and our dignity, they will hear us louder”.¹⁷⁷

These four type of prohibiting policies have prompted waste pickers contestation in the public real, which reveal the way in which they deal with the edges of criminality. For a complete reading on this issue, the following subsectin describes the way in which they deal with the criminal system.

Dealing with the Criminal System

The criminal system protects horses and any other animal from mistreatment and cruelty; the sanction goes from 15 days to 1-year imprisonment according to the Animals Mistreatment Act nº 14.346 (better known as *Sarmiento Law*). The fact that a fair number of waste pickers use horse and carts to collect and transport the recycling material sets this regulation as part of the variety of norms waste pickers may confront in their everyday lives. This norm is part of the regulations that conform the legal-self in this case (see Chapter One and Two).

Cases of animals’ mistreatment appeared in the public realm in June 2010 when a 19-years-old waste picker was detained for excessively punishing its horse¹⁷⁸ and then in December 2011 when waste pickers did a demonstration against the confiscation of two horses in which the Animals’ Welfare Association took part.¹⁷⁹ After the year 2012, in which ‘Sin Estribos’ Foundation became publicly active, we can see a clear increase in the public debate around Animals’ Mistreatment Act as well as in this regulation

¹⁷⁶ 2014.12.11_[CBA] Críticas a la reforma del Código de Faltas en la audiencia pública | La Voz del Interior.

¹⁷⁷ 2014.12.11_[CBA] Infantería desalojó la protesta de los carreros en pleno centro | La Voz del Interior.

¹⁷⁸ 2010.06.26_[CBA] Lo detienen por castigar a su caballo | La Voz del Interior.

¹⁷⁹ 2011.12.06_[CBA] Protesta de carreros en avenida Fuerza Aérea | La Voz del Interior.

enforcement. In June¹⁸⁰, August¹⁸¹ and October¹⁸² 2012, waste pickers demonstrated against the way the Sarmiento Law was being enforced.

“The Police and the inspectors are stealing our horses, they are punishing us because we use horse and carts”.¹⁸³

In October that year, the cooperative ‘La Esperanza’ also filed a writ of amparo against horse confiscations. The lawyer of the cooperative ‘La Esperanza’ explained:

“we are requesting objective criteria. Our cooperative does not defend those who mistreat animals, we defend those who look after their horses, with vaccination and vets”.¹⁸⁴

Few days’ later, a member of ‘Sin Estribos’ Foundation stopped a horse and cart in the streets that was showing signs of malnutrition, the Police confiscated the animal that was then given to the Foundation in custody; this person joined the judicial case using the legal figure of ‘private prosecutor’.¹⁸⁵ In the year 2013, conflicting discourses polarized even more the tension between protectionists and waste pickers. Horse and carts ‘stop and search’ and horses confiscations continued and increased; and it became more common to see the waste pickers detained in these proceedings. Cases like that appeared in the public arena in June¹⁸⁶, July¹⁸⁷, September¹⁸⁸ and October¹⁸⁹ 2013. Waste pickers did a number of demonstrations expressing their position against this situation.

“We are protesting because they are taking our horses away (...) a protectionist lady stops you to take your horse and cart away”.¹⁹⁰

¹⁸⁰ 2012.06.17_[CBA] Carreros reclaman un buen trato | La Voz del Interior.

¹⁸¹ 2012.08.16_[CBA] Carreros protestaron frente al Palacio 6 de Julio | La Voz del Interior.

¹⁸² 2012.10.11_[CBA] Carreros protestan por detenciones arbitrarias | La Voz del Interior.

¹⁸³ 2012.06.17_[CBA] Carreros reclaman un buen trato | La Voz del Interior .

¹⁸⁴ 2012.10.11_[CBA] Carreros protestan por detenciones arbitrarias | La Voz del Interior.

¹⁸⁵ 2012.10.26_[CBA] Rescatan a un caballo desnutrido en el centro | Día a Día.

¹⁸⁶ 2013.06.10_[CBA] Acusan a un carrero de maltrato animal | La Voz del Interior.

¹⁸⁷ 2013.07.19_[CBA] Los detienen por supuesta infracción a la Ley Sarmiento | La Voz del Interior.

¹⁸⁸ 2013.09.02_[CBA] Detuvieron a un carrero como infractor de la Ley Sarmiento | La Voz del Interior.

¹⁸⁹ 2013.10.17_[CBA] Detuvieron a carrero acusado de infracción a la Ley Sarmiento | La Voz del Interior.

¹⁹⁰ 2013.10.09_[CBA] Protesta de carreros frente al Centro Cívico | La Voz del Interior.

“We want our horses back, and we want them to let us work as always”.¹⁹¹

“Those who don’t understand or respect the work that poor people do, go against the workers’ rights (...) this is very unfair and it is a dangerous precedent of workers’ criminalization. (...) They are even taking fat horses away”.¹⁹²

Waste pickers claim the bases of that criminalization was not effectively committing the crime of mistreatment, but rather this juristic form was being used as a way of forbidden the activity as a whole. From this standpoint, even though the activity in itself is not a crime, the enforcement implies an oblique criminalization for waste pickers. Another point should be added. Police detentions, as well as state and non-state actors ‘stop and search’ practices did not have a significant impact on animals’ mistreatment judicial prosecution. By May 2015, the gap between the street law enforcement (number of reports and police detentions against animals’ mistreatment), and judicial enforcement (actual judicial prosecutions and pre-trial detentions) expanded the edges of criminality in relation to waste pickers. They have contested this practice as an act of discrimination towards the activity.

“I never went to court, but we are detained and go through traumatic situations. Waste pickers have been discriminated our whole life. They don’t accept this is decent work, and that we are not stealing, we are working (...) When they detain us it means that those families won’t have anything to eat. We have no degrees, most of us do not know how to do anything else but to work recycling.”¹⁹³

“in the last five years the organization [La Esperanza Cooperative] took notice of 97 cases against the cooperative members. In only 59 of them the District Attorney did some judicial intervention. (...) Out of all these cases, not even one ended up with a judicial decision or even an

¹⁹¹ 2014.12.10_[CBA] “Hasta nos han llevado caballos por gordos” | La Voz del Interior.

¹⁹² 2014.12.10_[CBA] “Hasta nos han llevado caballos por gordos” | La Voz del Interior.

¹⁹³ 2015.03.30_[CBA] Muchas denuncias a carreros, pocos juicios | La Voz del Interior.

indictment”.¹⁹⁴

A district attorney publicly admitted that virtually zero pre-trial detentions are requested in these cases. “The Sarmiento Act is against mistreatment, not in case of abandonment of physical deterioration”.¹⁹⁵ Thus, waste pickers are contesting the homogenizing discourse that equates waste pickers to batterers as thus uses the street level enforcement to expand the edges of criminality towards this activity.

This chapter went through the way in which waste pickers have self-organized to make their voices heard as well as to pursue material goals. That self-organization helped them confront the conflicting discourses towards the activity, particularly those coming from the group referred as the protectionists. At the core of these disputes is the blood traction vehicle prohibition policy. In this sense, circulating discourses in the public realm showed the qualifying and disqualifying mechanism and the use of law to try to push the activity closer to legality or closer to illegality. Waste pickers are living in the legal limbo and their socio-legal position brings about a set of dynamics of power and resistance to deal with the edges of work and criminality. Next chapter attempts to provide a similar reading of the dynamics of the legal limbo in the case of sex work.

¹⁹⁴ 2015.03.30_[CBA] Muchas denuncias a carreros, pocos juicios | La Voz del Interior.

¹⁹⁵ 2015.03.30_[CBA] Muchas denuncias a carreros, pocos juicios | La Voz del Interior.

CHAPTER FOUR: SEX WORKERS IN A LEGAL LIMBO

*“We want an end to prosecution, and also to criminalization and pimps.
We want real solutions for our activity (...)
Sex work is not crime; it is a licit activity that is always relegated to secrecy (...)
Stop criminalization! We want inclusive policies!”¹⁹⁶*

The exchange of sexual services for economic compensation is a complex social phenomenon. People offering and receiving sexual services are men and women of different ages and social classes. The exchange can be occasional or regular, for money or for other economic goods as in transactional sex. People can perform it autonomously, but there are also a number of people who are forced or exploited. The issue raises a number of moral, public health, legal, political, economic, gender and urban concerns. And, as in every social relation, historical and current patterns of power influence the configuration of this phenomenon. This complexity can enrich a number of perspectives upon the subject matter.

As stated in the introduction, I use the term ‘sex work’ to refer to the voluntary and exchange of sexual services for monetary return amongst adults who are above the legal age of consent (18). This definition is not serendipitous; it aims at excluding other situations in which there is money and sex involved. Therefore, cases of child prostitution or cases in which the person was kidnapped or their documents were retained have been excluded from the analysis. With this in mind, this section describes the socio-legal dynamics of power and resistance around sex work in Córdoba-Argentina.

In the period under study (2010-2015), there was one salient policy, around which the dynamics of the legal limbo have been set, which is: anti-slavery policies. Sex trafficking and slavery is one of the cruellest, inhuman, profitable and complex crimes worldwide. The issue, as such, requires in-depth and committed research to prevent and fight against sex slavery and trafficking globally. This thesis does not aim at providing an

¹⁹⁶2012.05.21_[CBA] GACETILLA DE PRENSA (1)por concentracion en la legislatura.

account of this complex phenomenon, but rather at giving a systematic account of the discourses surrounding the anti-slavery policy proposals in the context of sex workers struggles for labour recognition. There is not one and only way to fight against trafficking and slavery. Opposing proposals may have opposing justifications. Moreover, it may occur that the enforcement of a particular policy in a specific context brings about a corollary unwanted effects. Positions as well as actors are plural, complex and heterogeneous in this proliferous debate. Nevertheless, according to the data it is possible to affirm that, in general terms, some social actors have been struggling to include prostitution as a case of sexual exploitation and slavery, while other actors have been claiming for the recognition of sex work as labour. This dispute irradiates the dynamics of the legal limbo in significant ways.

Sex workers' interventions in the public realm are the organizing vector to address those dynamics. Within sex workers' organizations, as within any social grouping, heterogeneous approaches can be expected to emerge. Moreover, not all sex workers' organizations have the same approach to what they see as best practice law and policy for the sex industry. In this thesis I will refer mainly to the discourses of a women sex worker organization called AMMAR-Córdoba (Argentina). As stated before, the aim of this Part (II)- 'Dynamics of the legal limbo' is to uncover the way in which different actors try to push the activity closer to legality or closer to illegality in the public realm in Córdoba, Argentina. This is particularly relevant because actors' discourses, visibility, claims and relationships differ across different settings.¹⁹⁷ By way of example, the Transsexual, Transvestite and Transgender Association (ATTTA) has been less prolific in Córdoba than in Buenos Aires, where it plays a key role in advocating for trans-women working in the sex industry. For that reason, the description of how sex workers organized to make their voices heard, and also the question of how they confront conflicting discourses and deal with the tightrope between work and criminality, will significantly revolve the sex workers' organization AMMAR-Córdoba, in the absence of organisations to represent trans-sex workers. Nevertheless, the data gathering revealed other organizations or individual sex workers' discourses in the public realm, which will also be included in the description.

The focus on sex workers' 'legal limbo' demonstrates four dynamics of power and resistance, which will be developed in each of the following sections: a) sex workers have self-organized with material and symbolic aims, and the juristic forms have played a salient role in this organization (Section I. Speaking Out Loud); b) they confront conflicting discourses that have prompted a different understanding of the income-generating activity (Section II. Conflicting Discourses); c) they have demanded labour recognition and conditions of labouring before the state and society (Section III. Dealing with the Edges of Work); d) they confront the expanding edges of criminality in their everyday life (Section IV. Dealing with the Edges of Criminality).

I. Speaking Out Loud

Sex workers are a heterogeneous group that includes men, women, transsexual, transgender, transvestite, homosexual, heterosexual, bisexual and queer people; who can be younger or older, and from different socio-economic backgrounds. Undoubtedly, capitals and social factors such as gender, class and race have a qualitative and quantitative impact on current configuration of sex work, labouring conditions and the capacity to struggle vis-a-vis state and non-state actors.

The self-organized sex workers' movement in Argentina has been characterized by the collectivisation of sex workers of vulnerable socio-economic backgrounds. This has mostly included street sex workers who could no longer resist police violence on their own and to whom self-organizing represented a resistance strategy. Moreover, the organization has become paramount in publicly denouncing their situation. Secrecy and stigma significantly affect sex workers' political participation and public interactions. Stigma "not only overtly discourage[s] women from participating in AMMAR for fear of identification, but also discouraged participation in more subtle, intangible ways" (Hardy 2010, 175). Moreover, stigma and secrecy makes public visibility a risk. Therefore, when they do publicly denounce, they tend to do it anonymously, to wear masks or disguises in demonstrations, or to make their voices heard collectively through sex workers' organizations.

In Córdoba, female sex workers have been organized since the year 2000. The organization AMMAR started to struggle against constant detentions and violence, particularly from the police and, over the years, it has struggled to redefine sex workers'

position in the law and in society. AMMAR has a prolific set of activities, including education activities such as a literacy programme (formally approved and financed by the Provincial Administration), an official primary school, kindergarten, nursery, theatre course, library, computer skills training workshops, as well as hairdressing and dressmaking; all of which are open to the wider community. Health promotion activities are also undertaken, including HIV prevention campaigns, the training of sex workers as health promoters, work with public hospitals to guarantee sex workers' medical care, sexually transmitted infection studies by volunteer doctors and the supply of more than 10,000 condoms to sex workers. A third area of activity of AMMAR involves union organising through activities such as meetings with government departments and the local Chief of Police, organising demonstrations and media coverage for their claims, and seeking the amendment of the Minor Offences Code.¹⁹⁸

Across the country there are autonomous AMMAR organizations that struggle in their specific context in favour of sex workers' rights. Kate Hardy's (2010) research on political geographies of sex worker organizing in Argentina looked at five of those organizations (AMMAR-Nacional, AMMAR-Capital, AMMAR-Córdoba, AMMAR-Parana, AMMAR-La Plata). This research shows that "differing priorities and strategies for improving women's material and social well-being were varyingly mobilised in different places and contexts across the country" (Hardy 2010, 220). That plurality prevents from over-simplifying generalizations in the country or elsewhere.

AMMAR-Córdoba has built alliances with other sex workers organizations as well as with other social and political actors. At the local level, AMMAR-Córdoba built a strong alliance with the labour union CTA. As we saw in the previous chapter, this is the same labour union that built alliances with waste pickers. I will expand and revisit this point below (see Chapter Five). AMMAR-Córdoba also found support from a coalition of sex workers, social organizations, artists, activists and researchers who built the 'Network for the Recognition of Sex Work' (RRTS- Red por el Reconocimiento del Trabajo Sexual). This network started in August 2012 vindicating sex work as labour and struggling

¹⁹⁸ For an extended account on AMMAR-Córdoba's history and organizing process from a socio-legal perspective see (Marisa N. Fassi 2011; Marisa N. Fassi 2012; Marisa N. Fassi 2014; Marisa N. Fassi 2015b; Hardy 2010; Brandán and Avalor 2015; Dreizik and Roveres 2013).

against sex workers' rights violations. As we will see in the following sections, the creation of this network was almost simultaneous to the 'Anti-slavery Act' amendments.¹⁹⁹

AMMAR has also built international alliances. All over the world, sex workers have organized to make their voice heard²⁰⁰. Most of these organizations started in the 90s "representing a new wave of global sex workers' rights activity and movements" (Kempadoo 1998, 167). In Latin America and the Caribbean, sex workers' organizations have built a network called Red TraSex in 1997. It gathers together sex workers' organizations across thirteen Latin American and Caribbean countries²⁰¹. The network reaches an estimated 100,000 people.²⁰² One of its main goals is to participate of international areas where programmes, policies, and regulations related to sex worker's conditions are being discussed and elaborated.²⁰³ Red TraSex²⁰⁴ opposes the discourse that considers their income generating activity and themselves as deviants or as victims. Instead they argue that their income generating activity should be recognised as work. The organization has gained recognition and has participated in global campaigns for HIV prevention.²⁰⁵ Thus, all these various local and international exchanges, networks and alliances have provided possibilities and constrains in pushing sex workers claims forwards.

Juristic forms

Juristic forms can be as enabling as constraining in the process of speaking out as a collective actor. In 2011, AMMAR filed a formal request before the Provincial

¹⁹⁹2012.08.30_[CBA] Una red cordobesa impulsa una normativa para el reconocimiento del trabajo sexual.

²⁰⁰ Such as COYOTE in USA, AMMAR in Argentina, Davida in Brazil, EMPOWER in Thailand, DURBAR in India, STELLA in Canada, Red TRASEX, Latin-American and Caribbeannetwork, Asociación La Sala in Costa Rica, GIRASOLES in Nicaragua, MODEMU in DominicanRepublic, AMEPU in Uruguay, ONAEM in Bolivia, Sindicato Angela Lina in Chile, REDTRABSEX in Ecuador, Orquideas del Mar in El Salvador, Mujeres Unidas in Honduras, AsociacionMiluska Vida y Dignidad in Peru, and so on.

²⁰¹ <http://www.redtralsex.org.ar/pag3.htm> .

²⁰² <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Media-Room/Case-Studies/2009/Latin-america-sex-workers-AIDS/>.

²⁰³ <http://www.redtralsex.org.ar/pag7A.htm> .

²⁰⁴ <http://www.redtralsex.org.ar/pag7A.htm> .

²⁰⁵Red TraSex<http://www.redtralsex.org.ar>. Visited on October 12, 2013. Activist members of Red TraSex assert their participation in the definitional and enforcement policy process has been neglected and they do not want to be taken just as "labour" of those programs (Reynaga, 2008, 3).

Administration Office of Legal Personhood to be recognized as a legal entity. This recognition would allow the association to have legal rights and obligations, as well as to sign contracts, receive funding and to be able to ask for participation at specific governmental forums and committees. The Administrative branch of the state is in charge of attributing or denying social organizations the status of legal personhood. Moreover, organizations depend on this recognition to gain access to tax reductions, local or international funding, formal participation in certain public debates or committees, etc. In this sense, organizations depend on adopting a particular juristic form in order to access certain rights or benefits. Therefrom, the juristic form can also be an excluding mechanism for those who cannot reach it. Hence, the Administrative branch recognition put organizations in a power imbalance position before the state.

In Argentina, social organizations have to comply with a series of legal requirements to be recognized as non-profit association, one of the basic requirements is that its goal should contribute to the common good²⁰⁶. The criterion to recognize legal personhood has, in the past, been quite flexible. However, some specific groups have had to take judicial actions in order to gain recognition. Such was the case of the Homosexual Community of Argentina (CHA),²⁰⁷ to whom the Administration denied legal personhood, arguing that CHA did not comply with the legal requisite of contributing to the common good. These judicial decisions demand moral, political and legal analysis that exceed the aim of this section. At the time it was highly criticized for being discriminatory and the organization took the debate to court. The judicial decision adjudicated the right to be recognized as a legal person. The point to be stressed in this sub-section is that the juristic form of legal personhood is an enabling and constraining mechanism which allow to strengthen or weaken a social actor's capacity to become a valid spoken person in certain settings, as well as to deal with the edges of work and criminality.

²⁰⁶ The new Civil Code have changed this wording, which now reads: 'the aim shall not be contrary to the common good'.

²⁰⁷ Comunidad Homosexual Argentina v. Resolución Inspección General de Justicia s/ personas jurídicas (1991) C. 474. XXIII y (I) C. 474. XXIII.

In December 2012, the Provincial Administration denied this recognition to AMMAR arguing the organization does not contribute to the common good.²⁰⁸ In order to revert this decision, the association had to exhaust all available administrative remedies to then be able to access judicial remedies. The Executive branch of the state enacts several resolutions in what is called the jurisdictional capacity of the Administrative branch. Before the Judiciary can intervene, those who aim at reverting those decisions have to exhaust internal (administrative) complaint proceeding. AMMAR-Córdoba appealed the denial of personhood recognition before the Administration and in May 2013, once again the Administration denied them this recognition. There was still one more administrative remedy left before exhausting the Administrative complaint proceeding. Thus, AMMAR appealed for a second time. No decision was made upon this last appeal. The internal complaint proceeding called for a last remedy, which implies requiring the Administration to dictate a resolution. This last remedy was not used and instead, in December 2013, AMMAR, together with the Public Interest Legal Clinic NGO, filed a judicial petition for writ of *amparo*²⁰⁹ to claim for the recognition as a legal person in court.

The dispute revolved around a substantial debate on the notion of ‘common good’ and on the existence or not of ‘harm’, and a formal debate on the fulfilment of procedural requisites. The dispute on the common good was essential to legitimize the justifications given in the administrative denial resolution. The debate around ‘harm’ was paramount to give legitimacy to the judicial claim, because only in cases of harm it is possible to fill a writ of *amparo* claim (“no harm, no case”). The proceeding argument was that the delay by the Administration was producing concrete harm, and thus, AMMAR was entitled to access justice.

In their defence, the plaintiffs argued the Provincial Administration denial violates the constitutional right of association in the arbitrary, discriminatory and detrimental resolution against the sex workers’ organization. They stressed that the same day the Administration recognized legal personhood to organizations such as the Association of

²⁰⁸ Resolution n°593/12, Inspección de Personas Jurídicas de la Provincia de Córdoba.

²⁰⁹ As mentioned before, the word ‘amparo’ has no equivalent in English or US proceedings. The purpose of this writ is to provide for an expeditious claim to preserve rights and freedoms recognized in the Constitution.

Orchids Growers of Córdoba and denied the same recognition to AMMAR, which is running campaigns to fight against HIV, human trafficking, violence, discrimination and exploitation. It made the judge consider the question: what is it that the orchid growers do for the common good that AMMAR does not? AMMAR argued in the judicial proceeding that the denial was harmful because it excludes the association from the possibility of acquiring legal rights and obligations, such as the ability to sign contracts, receive funding and to ask for participation at specific governmental forums and committees. They claim this was not just a potential, but actual harm suffered by the association, because they lost an international funding for a campaign against trafficking because they did not have the legal personhood. AMMAR argued that the continuous harm they faced made it possible to file the judicial claim without having to exhaust the administrative remedies.

The Provincial Administration argued that AMMAR's associative goal does not contribute to the common good because the common good is not just the interest or goal of those who are part of the association, but rather of all the community, which - according to the decision- is not the case. Moreover, it argued the State is already fighting against trafficking, thus there is no detrimental consequences for society if AMMAR does not get funds for this campaign. The Provincial Administration strongly argued that the last appeal in the Administrative proceeding was not decided yet, therefore they did not fulfil the formal requisites of the writ of *amparo* and the claim should not be heard in court.

In February 2014, the court of first instance's decision ordered the Administration to recognize AMMAR as a legal person and described the denial as arbitrary and discriminatory.²¹⁰ In this decision, the judge argued that the denial implies a form of discrimination and produces socio-economic disadvantages, because the requisite of having legal personhood is a crucial condition for participating in international or local funding projects, as well as for gaining access to justice and protection against legal vulnerability; moreover, the omission to pronounce a resolution of the last administrative appeal was violating the association rights and producing continuous

²¹⁰2014.02.25_[CBA] La Justicia ordena otorgar la personería jurídica a AMMAR | La Voz del Interior
2014.02.28_[CBA] En pos de la igualdad | La Voz del Interior.

and current harm.²¹¹ The Administration appealed this decision, and the Court of Appeal revoked the first instance decision arguing formal and procedural reasons because it did not exhaust the administrative remedies.²¹²

Ultimately, it was not the Judiciary who brought the dispute to an end. AMMAR decided to directly address the Ministry of Justice and Human Rights, which is the branch of the Administration in charge of dealing with the Office of Legal Personhood. The Provincial Administration then reconsidered its position and finally recognized AMMAR as a Legal Person.²¹³ In response to the legal personhood recognition organized sex workers declared

“AMMAR Córdoba has been building grassroots popular power, we are the ones who are speaking out loud to transform our present and future, that is why it is necessary that they allow us to be legal so we can face the new challenges in the conquer of our rights”.²¹⁴

Thus, juristic forms are not alien to the capacity of a social grouping to become a valid spoken person. The legal personhood recognition enables as well as may exclude actors from social action and participation. Self-organizing mechanisms, as well as the juristic

²¹¹ This decision argued the denial was discretionary and arbitrary when it considers that goals such as ‘promoting sex workers human rights’ or ‘fighting against venereal diseases’ does not contribute to the common good. She also argues that this denial contradicts the basic principles of the Rule of Law. The judge argued that the denial represented a continuous harm because it excludes the association from applying for local or international founding. The judge emphasized that the requisite of having legal personhood is a crucial condition to participate in international or local founding projects, as well as to gain access to justice and protection against legal vulnerability.

²¹²2014.04.01_[CBA] Revés judicial para AMMAR por la personería jurídica | La Voz del Interior
The Court of Appeal divided its vote. The majority considered that to agree that the Administration denial was harmful violates the principle of legal certainty. The majority considered that AMMAR did not fulfil the formal requisites to admit the claim in court because it did not exhaust the administrative remedies. Therefore, this basic formal defect implies the nullification of the judicial decision. The minority vote agreed that the recognition of legal personhood to the Association of Orchids Growers on the same day showed that the decision against AMMAR was arbitrary and it was harmful for the association not to be able to show to local or international founders the required legal personhood; she considered that it was a continuous economic harm for it excludes them at any time of the possibility to access tax benefits as any other civil association. The minority vote considered that the position of the majority implies a denial in the access to justice. *Aravena, M. et al. v. Superior Gobierno de la Prov. Córdoba –Amparo. Expte 251172 (37)*.

²¹³2014.05.14_[CBA] AMMAR logró que la Provincia le otorgue la personería jurídica | La Voz del Interior.

²¹⁴2014.05.14_[CBA] AMMAR logró que la Provincia le otorgue la personería jurídica | La Voz del Interior.

form actors adopt, (re)shape the way in which sex workers deal with the edges of work and criminality in the public realm.

II. Conflicting Discourses

Is prostitution work or is it sexual exploitation?

Some believe prostitution is always sexual exploitation, a human rights violation that should be eradicated from social relations. Others consider the voluntary and adult exchange of sexual services for monetary return as 'sex work', and therefore see the lack of labour recognition as a human rights violation that should be reverted by the enactment of legal rights. The first approach will be referred to as 'abolitionism' and the second as the 'labour recognition' approach. Social actors who have been pushing forward each of these conflicting understandings have gained diverse influence in the public realm over the years. As described previously (Chapter Two), these are not the only approaches that exist in relation to thinking about sex work/prostitution. However, in the period under study (2010-2015) those opposing notions have been the most powerful that have been circulating in the public realm. Those conflicting discourses grew exponentially with the advance of anti-trafficking policies in the country. Organized sex workers have criticized the abolitionists' discourses and practices, some of the policies that follow this framework or the enforcement of these policies, because they conflate sex work and sex slavery, which increases sex workers' vulnerability. Before developing a description of the conflicting discourses around those issues in the public realm, it is paramount to provide three clarifications.

First, there is no necessary correlation between abolitionism – as a theoretical intelligibility matrix – and the discourses, proposals or practices of abolitionists in Córdoba. This section's aim is neither to criticize abolitionist theory, nor to address the efficacy of the conversion of this theoretical approach into practice. The aim is to describe the way in which the legal limbo becomes a terrain of struggle to define the socio-legal position of those-who-are-in-between. Moreover, since the data used here focuses on circulating *public* discourses, it does not reflect the complexity of those activist practices beyond the public realm.

Second, the distinction between actors prompting abolitionist policies on the one hand and organized sex workers claiming for labour recognition on the other, consciously over-simplifies the nuances within those groups. It is likely that there are abolitionists or sex workers who perceive this income-generating activity in a different manner than the ones that have circulated in the public realm in Córdoba, Argentina. Moreover, some of the actors mentioned here have reconsidered their perspectives throughout time and may not even sustain the as previously. However, at the time, those positions have permeated the public realm in opposing ways, (re)shaping the manner in which sex workers had to deal with the edges of work and criminality; thus, justifying this division as relevant to address the dynamics in the legal limbo.

Third, decriminalization cannot be conflated exclusively with one perspective or the other. The last section of this chapter – Dealing with the Edge of Criminality - will revisit this point. However, it has not been a prolific circulating discourse with an entity of its own in the context of Argentina. Proposals for decriminalization in this case have been mainly linked to the recognition of sex work as work. For example, the 2012 provincial bill proposal to decriminalize prostitution proposed provisions for cooperation and nullified the minor offence of ‘scandalous prostitution’, but it criminalized clients when there was a pimp or third person involved.²¹⁵ Other decriminalization proposals have explicitly argued against abolitionist policies, but have refrained from promoting a labour law approach as a necessary part of decriminalization. Such was the case of Amnesty International public document on sex work, which has had repercussion in the local debate. In February 2014, a leaked document suggested that this might be the organization’s approach.²¹⁶ However, Amnesty’s position was not made official until August 2015. After a worldwide consultation process that lasted over two-years the organization publicly stated:

“Sex workers are one of the most marginalised groups in the world, who in most instances face constant risk of discrimination, violence and abuse. Our global movement paves the way for adopting a policy for the

²¹⁵2012.05.31_[CBA] Advierten que no se protege a las trabajadoras sexuales | La Voz del Interior.

²¹⁶2014.02_[INT] Leaked Amnesty International Document Calls for Decriminalization of Sex Work | OurGroup.org.

protection of the human rights of sex workers which will help shape Amnesty International's future work on this important issue (...) The organisation's view is that existing laws around prostitution, such as the 'Nordic Model' where sex workers are decriminalised but clients and pimps still face criminal sanctions for buying sex, still create problems for sex workers. We know it's controversial and people have very strong feelings on this but our responsibility is to look at human rights abuses and how to stop them".²¹⁷

Bearing those three clarifications in mind, the following description mirrors the structure of the account provided in the previous chapter on waste picking. The aim is to describe the opposing discourses that have circulated in the public realm in relation to sex workers making demands for labour rights. These conflicting discourses are, without any doubts, in practice, much more complex than as described below. In order to stress the dynamics of the legal limbo and present some analytical clarity, I consciously over-simplify below. The following description will provide a chronicle of the conflicting discourses, the differing capitals deployed by those actors, the (dis)qualifying mechanisms and, particularly, the role of law in the configuration of those dynamics.

The period under study (2010-2015) starts with an iconic event. In June 2010, an International Conference on Gender Violence was held in Buenos Aires, which prompted an abolitionist debate among important and influential representatives, activists and scholars all over Argentina. Transnational exchanges were paramount in the debate. One of the main speakers was US radical feminist Catherine MacKinnon, who has been one of the main referents of the abolitionist theory as well as an assiduous activist in pushing this particular intelligibility matrix forward. MacKinnon's expert knowledge was used as a qualifying mechanism to support local circulating discourses to support abolitionism. Elsewhere I have demonstrated (Marisa N. Fassi 2015b) how this author's ideas about sex work/prostitution appeared in the local newspapers, how a judge of the Supreme Court publicly supported her position, and the ways in which law reforms were implemented within a few weeks of this event. Members of the

²¹⁷2015.08.11 [INT] Amnesty International backs decriminalising sex work – Telegraph.

parliament specifically thanked Catherine MacKinnon for her advice in the document drafting (File 5458-D-2010).

The second iconic event that received significant media coverage was the Second National Conference on Slavery and Exploitation held in in May 2011. The notions on sex work/prostitution circulating around this debate show the conflicting understandings on this income-generating activity. Alicia Peresutti and Alejandro Lopez from the NGO 'Vinculos en Red' were quoted as arguing prostitution is systematic rape in exchange for money.

“We believe prostitution is not work. We don’t judge people, we think that once you enter this world it is very hard not to fall into mafia networks (...) If it were a job, we would teach prostitution at universities, it would be an option. Besides, we don’t think that this type of life is chosen”.²¹⁸

“We are not talking about a religious thing (...) Prostitution is serial rape of a person in exchange for money, we don’t think that’s a life option (...) If it would be regulated, then we will immediately leave the doors opened to a lot of organizations that will be able to legally complaint (...) They want the benefits but not the obligations when they talk about regulation (...) In this case there should be a sanitary card, clients control, etc. and they don’t want that”.²¹⁹

In prompting this understanding, they used quantitative arguments as qualifying mechanisms. They argued they had interviews with over 700 women that support their point of view. This qualifying mechanism is similar to the use of statistics (see Chapter Three); however, it does not disaggregate variables. Those women are framed as a homogenous group.

The other actor in this line of thought was Sara Torres from the NGO Red Alto al Tráfico y a la Trata (RATT). In this case she used her own expertise as a qualifying mechanism.

²¹⁸2011-05-11_[CBA]entrevista AMMAR no somos esclavizadas, sino trabajadoras precarizada.

²¹⁹2011-05-11_[CBA]entrevista AMMAR no somos esclavizadas, sino trabajadoras precarizada.

When asked about AMMAR's arguments that autonomous sex work exists, the RATT member said:

“(...) it is in each persons' right, but I have been working on this issue for many years and I can tell that in both cases, independent or exploited by a pimp, they all suffer the same traumatic psychic damage, lack of self-esteem and other pains (...) The person who consumes sexual services pays to dominate the other person, it is a matter of power and subjugation (...) they don't have the attitude to protect themselves (...) there is always a relative, a father, a special client (...) There is always someone else who facilitates this”.²²⁰

This discourse homogenises all experiences through the use of the word 'always' or 'they all'. In this case the conflation between sex work and exploitation is explicit. The homogenization of experiences together with the reference to psychic damage operates as a disqualifying mechanism towards those who self-identify as independent or as workers. In line with this understanding of the income-generating activity, she argued there could not exist a legal sex workers' union:

“there could not be a union in an abolitionist country (...) Those associations have been saying the same things over the years, it seems as if it is the only argument they have to defend themselves (...) People have the right to associate as they want, but exploitation is a crime, it would be then as an association of clandestine gamblers”.²²¹

Chapter Two has down the set of regulations that shape sex work, demonstrating that from a socio-legal approach, the argument that Argentina is an abolitionist country can be criticized. Nevertheless, in this case, the naturalization of the country as 'abolitionist' operates as a qualifying mechanism because it dictates the approach policies shall be pursuing and disqualifies others as 'outside' the nation.

²²⁰2011-05-11_[CBA]entrevista AMMAR no somos esclavizadas, sino trabajadoras precarizada.

²²¹2011-05-11_[CBA]entrevista AMMAR no somos esclavizadas, sino trabajadoras precarizada

The year 2012 represents one of the highest peaks in the debate around sex work/prostitution in Córdoba. That year the Provincial government debated, enacted and enforced the so-called anti-slavery law, which punishes as a minor offence those who administer, manage or sustain brothels. The circulating discourses around this debate will be described in depth in the sub-section 'Dealing with the edge of criminality'. However, I will briefly address here some of the conflicting discourses that reveal the opposing understandings towards the income generating activity.

In April 2012, AMMAR denounced the noxious effects the conflation of sex work and sex slavery has for sex workers' everyday life and their capacity to remain independent:

"All those discourses conflate sex slavery with autonomous and voluntary prostitution, and independent or not because there are women who work in brothels without being compelled to do so, without being victims of slavery; all those discourses are functional to the mafias and to keep things as they are now".²²²

In May 2012, Alberto Ilieff, coordinator of the Abolitionist Network against Prostitution and Slavery, also published an opinion piece, in which he argued:

"If women are kidnapped and deceived and taken to brothels, how can we separate prostitution from slavery. Those who choose are a minority. Anyways, all act of prostitution, being the mis-named 'forced' or the mis-named 'voluntary,' is an act of violence against women, because it uses and abuses a body. A sir objectifies a person thanks to his economic capacity. He chooses a sexual object to satisfy himself. There is no relationship between two persons; the woman on one side is a simple recipient, a hole where to download. Here there is no sexuality involved, because sexuality is built out of desire, will, it implies a free choice. When we talk about prostitution we talk about paying in exchange for the use and abuse of a hole. When the sir goes away, he doesn't even know her

²²²2012.04.19_[CBA] trata no igual a prostitución revista 23.

name, neither does he care about the history of that woman. For him, they are all whores”.²²³

In this case, the quantitative argument is used to disqualify ‘those who choose’ as relevant subjects for public policies. However, the following sentences contradict the former because violence erases consent. In this discourse, the homogenizing argument reaches men who pay for sex. Those experiences are homogenized in neat and absolute roles. Moreover, the emotionally charged way of framing the discourse strengthens the homogenizing effect.

Also in May 2012, the director of the National Institute Against Discrimination (INADI) in Córdoba, Adriana Dominguez, wrote an opinion piece in a key journal in Córdoba. In this case, the director (re)produces their capitals as an institutional state actor. The capacity to push their intelligibility matrix forwards is more significant for those who occupy a position of power in the state. The opinion piece reads:

“What work? Those who adduce the alleged freedom to be a prostitute and try to convert that activity into work, do not fool yourselves, do not fool us. In a capitalist society, the worker gives his labour force; he does not sell himself. Neither does he sell his intimacy. What he puts in the labour market is his productive capacity, not his human flesh, striped away from its human condition. It is a patriarchal view of women. (...) Those who assertively defend it is work are those who economically benefit from it, call them businessman, pimps. They lie to us when they try to separate slavery from prostitution, when they say they want to legalize exploitation from prostitution to protect women. What they want to legalize are pimps, give them the hierarchy of sex businessman; clients will be more respected than now and women will be the same”.²²⁴

This discourse repeats the use of homogenization of experiences and an emotionally charged way of framing it. Furthermore, it uses the truth/lie binary to disqualify the opposing understanding of prostitution. It refers to the notion of sex work as a lie, and

²²³2012.05.31_[CBA] Siempre es un acto de violencia | La Voz del Interior.

²²⁴2012.05.24_[CBA] Responsabilidad de la sociedad en la lucha | La Voz del Interior.

those who pursue it as liars who want to 'fool us'. By doing so, this actor is identifying with the reader as being on the same side of the binary, which is the side of the truth and everyone else diminished as nothing more than a 'fool'.

Following the chronicle account, in June 2012, the Ecumenical Association of Cuyo organized a Mercosur Conference against Human Trafficking and Slavery. The session on 'links between prostitution and sex exploitation slavery' was coordinated by the Coalition against the Trafficking in Women (CATW)²²⁵. This global NGO is one of the (if not the) most powerful and prolific organization in pursuing an abolitionist approach to prostitution. Salient members of CATW are Catherine MacKinnon and Janice Raymond. Both scholars have had significant influence in the configuration of the local conflicting discourses around sex work/prostitution, as well as in the promotion of legal transformations (see above). These exchanges point at the need to expand socio-legal inquiries on the transnational dimensions within local struggles.

That same month, June 2012, the local NGO 'Vinculos en Red' organized a talk on slavery prevention at a local high school, which stressed 'prostitution is not work' as one of its main topics. The 'Vinculos en Red' member, Alicia Peresutti, stressed that:

"Prostitution is not work...If it was it could be learnt in a workshop, at school, somewhere, and society would recognize it as such (...) Besides, who of you would send a sister, a friend to learn how to be a prostitute?"²²⁶

One of the students asked why did she said prostitution is not work if they have a union, to which she answered back:

"What a question! You are right (...) But the union starts out of the prostitutes needs. They don't discuss salaries neither teach prostitution.

²²⁵2012.06.10_[INT] 1º Congreso del Mercosur contra la trata de personas.

²²⁶2012.06.13_[CBA] En las escuelas ya se hace prevención de la trata | La Voz del Interior.

They have a school, but it is a normal school, for those who could not finish the school or are illiterate".²²⁷

In this discourse, the homogenizing effect emerges out of the rhetorical question on the participant/reader individual point of view. The question of 'What would *you* do/like/desire?' in the context of a social issue disregards the democratic take on plural configurations of, in this case, sexuality. This mechanism disqualifies those who may answer otherwise because it forecloses the question on, for instance, 'what would you do/like/desire if someone would do/like/desire differently than you? Would you find those different intakes should be protected or punished?'. Moreover, this discourse keeps pointing at women as the only (not as the majority) of persons involved in prostitution and, by doing so, it homogenizes the experiences.

That same month, in June 2012, in response to AMMAR's proposal to start independent sex work cooperatives, the Anti-Slavery Office Secretariat -Amelia Chiofalo- pronounced against recognizing sex work as labour "Prostitution is not a crime, but it is not work either"²²⁸. In September 2012, she elaborated further on this issue in an opinion piece published in one of the main journals. She argued:

"From language, which is never neutral, it is insisted to denominate prostitution as 'sex work' and prostituted persons as 'sex workers.' The clear equivalent is that pimps and slavers are then, what? Businessman? Employers? Where are the check stubs? And the retirement contributions? Do we recommend this 'work' to our daughters, sisters, wives, and mothers? Do we open high schools oriented towards sex work to prepare our young generations to this 'work opportunity'? (...) How is it that what is crime until you are 18 years old then becomes automatically 'work' the day after? Is this the 'job' for women and the poor? (...) As Nelson Mandela said 'poverty is not an accident. As slavery and apartheid,

²²⁷2012.06.13_[CBA] Los chicos no tuvieron reparos para preguntar | La Voz del Interior.

²²⁸2012.06.01_[CBA] Impulsan cooperativas para que meretrices sigan trabajando | La Voz del Interior.

it is a human creation and it can be eradicated with human actions.’
Slavery and prostitution, as well”.²²⁹

This individual actor (re)produces its capitals as a state institutional actor and her discourse replicates similar qualifying and disqualifying mechanisms as the former.

Another example of individual actors’ (re)production of capitals is the case of Cecilia Conci, who is the vice-dean of the National University of Villa María, a city in the province of Córdoba. In October 2014, she publicly declared that:

“As a University we undertake an abolitionist approach to slavery, considering prostitution is not work and that social, economic and cultural conditions must be modified so women can have more and better opportunities”.²³⁰

This declaration has a homogenizing effect towards the position within the University. This homogenization is more problematic for institutional actors such as universities than for the government or NGOs, mainly because the latter are expected pursue a specific and defined position towards this or any other social issue. However, the *universitas* is expected to contain and foster the whole, the plural, the *totum*. Thus, the homogenizing effect of this type of public declaration may operate as a disqualifying mechanism towards those who dissent and have different understandings on the subject matter within the University.

Continuing with the chronology, in November 2014, the Vatican Symposium against Slavery and Prostitution received wide media coverage. The links were apparent, the Argentinean Pope and the active participation of local actors (such as the NGO ‘Vinculos en Red’ and Eduardo Accastello, the Major of Villa María city) were reasons enough to provide media coverage. The stories were stories of slavery, however the title conflated slavery and prostitution²³¹. This event is also an example of the need to adopt a transnational take into socio-legal local struggles.

²²⁹ 2013.03.07_[CBA] Córdoba, un modelo para replicar | La Voz del Interior.

2012.09.23_[CBA] La voz de las víctimas | La Voz del Interior.

²³⁰2014.10.28_[CBA] Universidad de Villa María aporoto su trabajo sobre trata de personas en Costa Rica.

²³¹2014.11.23_[CBA] Historias del submundo de la trata | La Voz del Interior.

Lastly, I will refer briefly to the criminalisation of clients. At the moment of writing, this policy has not yet been enacted. It is neither a minor offence nor a crime to purchase sex from an over-age person. However, it is important to mention the announcement of this bill proposal has had an oblique effect that expands the edges of criminality. As it happened with the fine against residents who hire waste pickers, the criminalization of clients aims at stopping the chain as a way to eradicate the relation as a whole without criminalizing the group (waste pickers or sex workers) itself. Clients' criminalization has been one of the most debated abolitionist proposals. This policy has been prompted both at the national level to amend the Penal Code, as at the local level to amend the Minor Offences Code. At the national level, in August 2010, a bill proposal was presented to include the provision in the criminal code. The provision sanctioned from 6 months to 3 years to those who give a monetary or economic return in exchange of the sexual use of a person victim of trafficking, in a vulnerable situation or if it involves abuse of power. Marcela Rodriguez, the parliament member who introduced this bill, declared:

“the criminalization of the conduct of buying a person for her sexual use is not based upon a simple punitive conception, nor does it constitute an intromission in private life, but the action of buying implies a damage for the victim's freedom and integrity, as for her free will. It is simply a one of the many ways of sexual exploitation”.²³²

In 2013, two more national bill proposals circulated which proposed clients' criminalization into the penal code. Anibal Fernandez proposed the criminalization of slavery victims' clients, arguing that:

“We believe that those who consume [sex] must be criminalized to prevent women from being exploited, kidnapped or manipulated in any place of this country. So we can make it happen so that this despicable activity does not exist (...) If we cannot convince (clients) through honour, morality, we will have to convince them with the penal policy, because

²³²2010.08.09_[CBA] Proponen penalizar a quienes paguen por sexo | La Voz del Interior.

they cannot consume our women, nor our young ones, less even our girls".²³³

Marcela Rodriguez introduced again a bill that, in line with the abolitionist approach did not distinguish between clients of victims of slavery and clients of sex workers. It includes 'all those who pay for the sexual use of a person.' She publicly stated:

"Prostitution is always exploitation (...) independently of who is doing it, or whether they are doing it by choice (...) Studies have shown that in Sweden clients criminalization model is working fine, because it reduces significantly slavery and prostitution (...) children and women slavery has almost disappeared (...) prostitution came down almost 80% in some cities (...) Actually, there is nothing to discuss. If a man knows a woman is a victim of slaver, he is participating in the crime".²³⁴

This bill proposal works also as an illustration of the importance that transnational exchanges have in the debate. This proposal's justification draws upon the former United Nations Special Rapporteur, Sigma Huda, Report on victims of trafficking human rights, especially children and women; which stated that:

"(...) it is extremely hard, if not impossible, as a matter of fact, that prostitution consumers can avoid using enslaved prostitutes, even if in good faith they try not to do it. Most prostitution, as it is nowadays practicing worldwide, gathers the requisites to be considered as slavery. It is rare to find a case in which the motives that drag a woman into prostitution, and the experiences of that person within prostitution, does not include at least a minimum of abuse of power and/or a minimum of vulnerability".²³⁵

Huda is also a board member of CATW. In November 2010, a member of the Supreme Court of Justice prompted clients' criminalization considering that the client commits

²³³2013.03.29_[NAC] Aníbal Fernández busca sancionar a los consumidores de prostitución | La Voz del Interior.

²³⁴2013.04.02_[NAC] Comienza el debate sobre la penalización del cliente.

²³⁵2013.04.02_[NAC] Comienza el debate sobre la penalización del cliente.

the crime of ‘failure to render assistance’ when the client does not denounce the person is being exploited.²³⁶ In July 2011, this same judge pointed at police collusion and stressed that:

“if society does not understand that paying for sex is contributing to prostitution, this cannot be fixed (...) If society believes a normal thing that people pays to have sex with another, if that is not made right, if society keeps taking this as normal, there is nobody, nor government nor judges, neither laws nor jails, nothing that can revert (slavery)”.²³⁷

At the local level, there were proposals to include clients’ criminalization as a minor offence. In May and June 2012, a bill proposed sanctioning clients with arrest and detention from 60 to 120 days. The proposal read that at the moment of the detention no action could be taken against prostitutes.²³⁸ In September 2012, the District Attorney in charge of slavery connected crimes added her voice in an opinion piece published in one of the main local newspapers in which she pointed that ‘brothel closure’ is not addressing the social or penal responsibility of the one who consumes the offer of sex.²³⁹ In 2014, Amelia Chiofalo, at the time former director of the Provincial Anti-Slavery Office introduced a new bill proposal at the local level to sanction prostitution clients, which stated that clients would be sanctioned with fine and up to 15 days community work and a compulsory educational course against slavery; in the case of reoffenders, they would receive up to 6 days detention. This proposal included the nullification of ‘scandalous prostitution’. She argued that the proposal did not intend to intrude private life, but to show that:

²³⁶2010.11.07_[CBA] Para la Justicia hay que cerrar los prostíbulos | La Voz del Interior.

²³⁷2011.07.22_[NAC] Argibay. La trata es un problema grave.

²³⁸2012.05.23_[CBA] Presentan proyecto para castigar al cliente de la prostitución.

2012.06.23_[CBA] Presentan proyecto para penar al cliente de la prostitución | La Voz del Interior.

2012.06.23_[NAC] Trimarco elogió el proyecto contra la trata de personas | La Voz del Interior.

²³⁹2012.09.23_[CBA] La responsabilidad del cliente | La Voz del Interior.

2014.11.26_[CBA] ONG avala proyecto para penalizar al cliente de la prostitución | La Voz del Interior.

“the monetary exchange for sex is a form of gender violence and it is what permits slavery and prostitution and prostitutes networks to subsist; the money of clients pays for the whole framework”.²⁴⁰

The bill’s statement of motives reads that “the tight and deep relationship between slavery and prostitution, in which the first nurtures the second with human flesh, which is fed by clients and pimps’ insatiable voracity is an unquestionable truth”²⁴¹. Without further reasons, the proposal was rejected by the current governor, who has the majority in the provincial parliament²⁴².

To summarize, this set of discourses show the opposing discourses to sex work as labour. The conflation between sex work and sex slavery operates through a set of disqualifying and qualifying mechanisms actors put forward. Individual, collective and institutional actors have deployed a number of capitals in trying to push their understandings of sex work/prostitution forwards. These conflicting discourses have influenced the way in which sex workers deal with the edges of work and criminality.

III. Dealing with the Edge of Work

“We are workers”, sex workers assert in the public arena. They ask the state to enact a sex work labour law to protect their rights. The state has had different approaches to sex work throughout the years. This section will explore the socio-legal dynamics of power and resistance in relation to sex workers claims in the public realm for labour recognition and to improve their labour conditions in Córdoba, Argentina.

As in the case of waste pickers, sex workers are also claiming for labour recognition while performing their income-generating activity in ways that pose a challenge to the work/non-work division and the hegemonic Eurocentric notion of ‘mercantile-contractual-stable’ work. The analytic division between criminalization and work should not be overstressed in this case either, since these claims interplay in juncture. As stated before, in the legal limbo the tensions between labour recognition/criminalization are never completely surpassed; however, at times

²⁴⁰2014.09.22_[CBA] Legisladora quiere sancionar al cliente de la prostitución en Córdoba | La Voz del Interior.

²⁴¹2014.09.23_[CBA] Presentan proyecto que penaliza al “cliente” de prostitución.

²⁴²2014.10.02_[CBA] De la Sota le bajó el pulgar a proyecto para sancionar a clientes de la prostitución.

different actors succeed to push the activity closer to legality and labour recognition, or closer to illegality and criminalization.

Sex workers' labour conditions are complex and are shaped by a number of actors and situations. The following description focuses on sex workers' claims before the state in relation to the state's governing powers, particularly towards policies related to zones of work, health requirements, and a set of prohibitions, conditions and obligations. These circulating discourses have also contested the abolitionists' proposals and provided alternatives to address the precise problems that sex workers face in the context in which they live and work.

The voices of organized sex workers have appeared in the public realm claiming for a sex work labour law that recognizes and protects them. They denounced the problems and risks they are facing, as well as claiming and proposing solutions for the sector. They stress the need for health and safety conditions, retirement pension and social welfare. Sex workers claim that this lack of safety is a source of exploitation:

“There are comrades who believe they need protection, so they end up working in one of those places [indoor venues], that is why we work to make them understand that their activity is not crime, they have no obligation to pay a percentage of their work to be protected”.²⁴³

Relatedly, sex workers have raised their voices against police discrimination and abuses. In 2011, they claimed that those who are independent and autonomous sex workers suffer police harassment the most²⁴⁴. AMMAR have suggested that police should undertake courses on gender and human rights to prevent police harassment²⁴⁵. Police harassment is still a major concern and the situation was persistently worst in the provincial countryside.

“The police who patrol the streets must understand that a woman who is standing on a corner is not committing any crime, beyond the moral

²⁴³2014.05.05_[CBA] Entre prejuicios y derechos | La Voz del Interior.

²⁴⁴2011.05.26_[CBA] Escenario de complicidades | La Voz del Interior.

²⁴⁵2011.06.02_[CBA] "Nuestra utopía es que el trabajo sexual no sea por necesidad" | La Voz del Interior.

standards of each person”.²⁴⁶

Sex workers argue that discriminatory treatment and the anti-trafficking policies and enforcement have had detrimental consequences upon sex workers’ health control. In 2012, on the occasion of the World Aids Day, AMMAR emphasized:

“Organized sex workers are indispensable allies in the fight against the pandemic. However, we face many difficulties on the way, one of which are the governmental abolitionist policies (...) It is a pity that those policies make us more vulnerable and make our everyday activity more unsafe”.²⁴⁷

In this sense, they publicly denounced the Anti-Slavery Division for using condoms as penal evidence:

“this means that the most fundamental way of preventing HIV and STDs has become an incriminating evidence (...) More and more our comrades want to be far away from condoms, fearing they will be detained”.²⁴⁸

Moreover, they stress the situation in the countryside of the province of Córdoba is worse. For example, police have taken sex workers handcuffed into the public hospitals to do compulsory STD tests²⁴⁹. These claims in the public realm show the intertwined relation between criminality and labouring conditions, which will be explored further below. Nonetheless, that intertwined relation has fuelled sex workers claims for labour recognition.: “we have no labour rights, it is a work that exists and everybody knows it exist.”²⁵⁰

²⁴⁶2014.05.05_[CBA] Entre prejuicios y derechos | La Voz del Interior.

²⁴⁷2012.12.01_[CBA] 1° de diciembre Día Mundial de Lucha contra el SIDA/ Las políticas abolicionistas nos dejan más vulnerables. | La Voz del Interior.

²⁴⁸2012.12.01_[CBA] 1° de diciembre Día Mundial de Lucha contra el SIDA/ Las políticas abolicionistas nos dejan más vulnerables. | La Voz del Interior.

²⁴⁹2012.12.01_[CBA] 1° de diciembre Día Mundial de Lucha contra el SIDA/ Las políticas abolicionistas nos dejan más vulnerables. | La Voz del Interior.

²⁵⁰2011.12.19_[CBA] Para el municipio, no hay whiskerías | La Voz del Interior.

They have requested the enactment of a sex work labour law and they have asked for inclusive policies that improve their living conditions and also that give alternative opportunities for sex workers who want to quit this activity:

“We ask for sex work regulation, a sex work law, so the state grants sex workers health and safety conditions (...) Sex work is in a legal vacuum, that is why we think it is time to enter in the public agenda. It is not crime, but it is not regulated, it exists but nobody does anything about it, not to look for better working conditions nor to give other options to those who prefer to do something else”.²⁵¹

“As an organization, we demand a law that regulates autonomous sex work in the country. In Uruguay there is a law that recognizes sex work and improves the sector’s quality of life, it provides health insurance and retirement pension”.²⁵²

The sex workers insist that this will help preventing exploitation because secrecy increases pimps’ power over sex workers as well as their impunity to operate. They claim sex work labour recognition is part of the solution to sex slavery and exploitation.

“We insist that sex work must be regulated; prostitution is not the same as sex slavery. Brothels have to move out of secrecy, the state has to intervene in them, know how are the women who are working there doing, how are labour conditions, see that there is no exploitation, it has to be able to enter to detect if there are children or victims of slavery”.²⁵³

“We support the creation of cooperatives, built by women by their own, without pimps, who are never in the brothels and are the ones who take the major profits (...) We do not promote prostitution, but if it exists, it cannot be in bad conditions, labour rights must be recognized”.²⁵⁴

²⁵¹2012-04-19_[CBA] trata no igual a prostitución revista 23.

²⁵²2012.10.03_[CBA] AMMAR pide ley que regule la prostitución autónoma.

²⁵³2011.06.02_[CBA] "Nuestra utopía es que el trabajo sexual no sea por necesidad" | La Voz del Interior.

²⁵⁴2011.06.02_[CBA] "Nuestra utopía es que el trabajo sexual no sea por necesidad" | La Voz del Interior.

The legislative branch of the state did not echo these claims in the period considered in this research. In the province of Mendoza, one bill project was presented to legalize autonomous sex work and provide labour rights to sex workers. The project mentioned the requisites to be able to register as workers: to be older than 18 years old, participate in health and rights courses, biannual health exams and vaccination. The state also has to provide the means to ensure all sex workers finish their education and guarantee access to university for those who want to do so; prompting the creation of a Sex Work Protection Office.²⁵⁵

Organized sex workers do not deny the fact that a number of sex workers would rather find a different job. Moreover, they insist their ultimate goal is to reach a point in which sex workers are only doing it out of choice.

“Our utopia is that sex work would not be out of necessity but out of choice”.²⁵⁶

In this sense, they claim this framework must be complemented with a set of alternatives and opportunities for those who do not want to do sex work. In 2010, AMMAR subscribed a provincial program called ‘Córdoba con ellas’ (Córdoba with women’), which entitles vulnerable women access to a four-month state subsidised position in a company to gain qualifications. However, none of the twenty women subscribed to this program found a place in those companies:

“It is good that there are 20 women who want to change their lives, to search for other options, but we don’t find a company that is willing to take them”.²⁵⁷

In June 2011, it was publicly known that the provincial state provided financial support for AMMAR's training courses in hairdressing, dressmaking, as well as art courses and a nursery, and adult primary school.

“Apart from the kids that go to the nursery, many sex workers started

²⁵⁵2014.09.15_[NAC]Buscan legalizar el trabajo sexual en Mendoza.

²⁵⁶2011.06.02_[CBA] "Nuestra utopía es que el trabajo sexual no sea por necesidad" | La Voz del Interior.

²⁵⁷2010.12.19_[CBA] Meretrices piden inclusión laboral | La Voz del Interior.

participating in the courses, from literacy courses to training courses. This is about searching for an alternative for all of those who want a different way of living”.²⁵⁸

By 2012, the Province had withdrawn much of the support. AMMAR asked for state subsidies to grant sex workers the means to attend labour training courses for those who do not want to keep doing the activity, “we took the proposal to the province but the answer is always that ‘there is no money’”.²⁵⁹

The year 2012 was a turning point in the conflation of sex work and sex slavery. Sex workers had previously denounced the enforcement of policies targeting both slavery and prostitution as equated. In response, sex workers publicly promoted cooperation as a way of performing the activity regardless of state official authorization and regulation. The sex workers’ organization promoted these experiences:

“Our proposal is that they organize by themselves, we cannot do anything against the law. Women have two alternatives: to work on the streets – something that most of them refuse- or to self-organize. An option is to do it as a labour cooperation”²⁶⁰.

Even though sex work co-operations were not new, the sex work and sex slavery conflation made those experiences appear in the public arena as an alternative that would provide safety without entering exploitative relations. However, sex workers have argued that anti-slavery police operations have not distinguished between a brothel (run by managers) and a cooperation (involving collaboration between workers) and, thus, sex workers working in cooperatives were prosecuted. In 2012, the media covered stories of ‘those who got the courage to be independent’, such as the case of Sol, who got together with other three independent sex workers to share expenses:

“We started this to eke a living and see how can we be legalized (...) we are doing fine, nobody bothers us, nobody obliges us to do anything (...) We

²⁵⁸2011.06.02_[CBA] "Nuestra utopía es que el trabajo sexual no sea por necesidad" | La Voz del Interior.

²⁵⁹2012-04-19_[CBA] trata no igual a prostitucion revista 23.

²⁶⁰2012.06.01_[CBA] Impulsan cooperativas para que meretrices sigan trabajando | La Voz del Interior.

are against slavery, there should be no pimps who take 50%, but there should be a solution for us in the law”.²⁶¹

Other story narrates the experience of two women who were exploited in Córdoba for years by a network that has over 13 private apartments, they underline that nobody obliged them into prostitution and reject being called ‘rescued victims’. However, they stress they were exploited because the pimp would set the rules and keep 50% of the profits. Those two women started a cooperation and raised their voices to argue:

“we want to make it clear that we support the new [brothel banning] law, but we question that nobody considers that behind each sex worker who ends up in the street there is a whole family”.²⁶²

The Human Trafficking Prevention Provincial Secretary, Amelia Chiofalo (see above), publicly spoke against this initiative:

“prostitution is not penalized, but it is not work either. Then, there could not be labour cooperatives. We should see what is the real goal they have. If those are going to be disguised brothels, a legal provision to avoid the law and the prohibition (...) women who want to keep doing the activity freely, they can do it. (...) but the individual performance of prostitution is minority (...) Respecting the freedom of those who want to do it, we cannot leave the rest of society defenceless before mafias”.²⁶³

In response to this last statement AMMAR argued:

“the government could check the affiliates lists to know who works by their own, or go check the lists in the Preventive Medicine Department. There are ways to check if someone is pretending to be something he or she is not. We are not going to fight in favour of brothel owners”.²⁶⁴

Other localities showed similar struggles and their claims reached the public realm in

²⁶¹2012.06.01_[CBA] Las que se animaron a ser independientes | La Voz del Interior.

²⁶²2012.09.06_[CBA] La explotación sexual en primera persona | La Voz del Interior.

²⁶³2012.06.01_[CBA] Impulsan cooperativas para que meretrices sigan trabajando | La Voz del Interior.

²⁶⁴ 2012.06.01_[CBA] Impulsan cooperativas para que meretrices sigan trabajando | La Voz del Interior.

Córdoba. In June 2015, one of the two informal sex workers' cooperatives in the city of Rosario organized a mural painting outside their workplace; the mural read 'Neither slavery nor pimps. My body, my decision'. The aim was to visibilize their position and build an identity. They claim that the police entered their premises with a search warrant looking for human trafficking and slavery and the sex worker who rents the house remained two months in detention. She stated that when she came to Argentina from Dominican Republic she was victim of trafficking and sexual exploitation and nobody rescued her then. They sustain that most sex workers are not used to work in the streets and that it implies a risk to their physical integrity and economy:

“Each time a police search comes we end up in the street. Fortunately, we are informed and we know we don't have to give anything to anyone, but that means we are exposed. Besides, clients abuse if they see there is no safety”.²⁶⁵

They denounce that it was *vox populi* that their place worked as a cooperation and that the police operations were an excuse “this is political propaganda. They don't go after the real places where are those crimes”.²⁶⁶

The following section shows the claims against the expansion of criminality. Suffice to say here that the expansion of a framework of criminality implied a turning point in any support away from sex workers' labour related proposals. The claim for labour recognition continued, but the fight against criminalization prevailed in the public interventions in Córdoba. For instance, in April 2015, sex workers in Buenos Aires found a different strategy to make their voice heard. In the international workers' day, they issued receipts in which they described the service provided and the money paid in return. This strategy was aimed to stress their claim for labour recognition:

“the idea is to erase the stigma we carry and show, to whoever wants to see, that we are workers, we are rights-bearing subjects; who do not have a legal frame that regulate our activity and because the state is absent to grant rights, then that is when in that secrecy we can became subject to

²⁶⁵2015.06.22 [NAC] “Queremos trabajar tranquilas” | Diario El Ciudadano y la Gente.

²⁶⁶2015.06.22 [NAC] “Queremos trabajar tranquilas” | Diario El Ciudadano y la Gente.

exploitation".²⁶⁷

In Córdoba, organized sex workers supported the initiative but did not replicate it at the time for they assessed that fighting against the increasing criminalization was taking up much of the time they could commit to organizing efforts:

“it is an interesting move, but here in Córdoba we are now much more worried about the repressive police assault, they are detaining many of our members”.²⁶⁸

To summarize, sex workers claims for labour recognition in the public realm confront and deal with precarious conditions denoted by health and safety risks. These claims interplay in juncture with the claims against practices of criminalization against workers. Moreover, the sex work and sex slavery conflation has reoriented organizing efforts away from improving sex workers' conditions towards contesting the constant criminalization of sex workers. Thus, the analytic division between the two should not be overstressed. The data shows the edges of labour are intertwined with the edges of criminality.

IV. Dealing with Edge of Criminality

Sex workers deal with the edges of criminality in their everyday life. As in the case of waste pickers, even though the activity itself is not considered as crime, there are a number of regulations that target the group through direct or oblique criminalization. They have mainly denounced an increase in detentions, discrimination and violence as a consequence of certain anti-trafficking policies that conflate sex work and sex slavery. This section aims at describing the way in which sex workers deal with the edge of criminality in their interaction with the Criminal System and the Minor Offences Code, in similar ways as the same section in the previous chapter relating to waste pickers. It is argued here that in the period under study, sex workers' contestations towards their activity's criminalization surpassed their claims for labour recognition.

²⁶⁷ 2015.04.29 [NAC] Simbólicamente, trabajadoras sexuales entregarán boletas de monotributo | Día a Día.

²⁶⁸ 2015.04.29 [NAC] Simbólicamente, trabajadoras sexuales entregarán boletas de monotributo | Día a Día.

Dealing with the Criminal System

In the period under study, sex workers' have pointed to specific juristic penal forms, and their enforcement, as expanding the edges of criminality in terms of the ways in which their income generating activity is talked about and dealt with. In particular, they have pointed out the noxious effects of the re-enforcement of the Social Prophylaxis Act, the enactment of the sexual offering advertisement crime, and the non-prosecution of pandering.

The *Social Prophylaxis Act* had not been actively enforced for several decades (see Chapter Two). However, in the period under study there was a renewed attention to enforce this regulation as a tool to fight against sex trafficking and slavery. In April 2010, an unexpected police operation searched around 30 brothels in different provincial localities. As a consequence, around 57 persons were detained. From May 2010 until the enactment of the Anti-Slavery Minor Offence in May 2012, the Social Prophylaxis Act was enforced, despite not having been enforced in the previous decades. During the first proceedings, news in the media showed women found in those brothels were detained²⁶⁹. However, by October 2010 they were listed as witnesses in the proceedings. In October 2011, brothels became a prolific public debate topic, in which police and politicians' collusion, municipal tolerance, bylaws authorizing brothel functioning, women denigrating conditions in those places were at the centre of the debate²⁷⁰. The debate pointed at the contradictions between Municipal regulations (some of which requested sanitary cards to the persons working in brothels) and the prohibition of brothels set by the Prophylaxis Act (see Chapter Two). The Public Prosecutor Special Unit for the Investigation of Kidnapping and Human Trafficking (Ufase) published a report in which they present brothel as:

“fertile ground for women sexual slavery and establish a discriminatory social practice that affects human rights (...) even if someone is condemned, it communicates a highly powerful impunity message; everybody knows there is a judicial proceeding in relation to one place of

²⁶⁹2010.05.09_[CBA] Clausuran una whiskería en Alcira Gigena | La Voz del Interior.

²⁷⁰2011.10.10_[CBA] Lugares donde las mujeres son mercancía | La Voz del Interior.

2011.10.10_[CBA] Prostíbulos/ aun prohibidos, los toleran | La Voz del Interior.

exploitation and they could think nothing has changed, thus, the notion of general prevention given to law would make no more sense”.²⁷¹

Moreover, the report points out the need to intensify investigations on police collusion and police control of brothels. The media echo the Ufase annual report in 2012, in which it stressed conflicts between the federal and provincial justice system in the prosecution of those cases, since the federal system is in charge of human trafficking and slavery and the provincial system is in charge of sexual exploitation cases²⁷². That year, the Ufase also stressed police collusion as a major problem in the fight against human trafficking and slavery

“There are brothels that open under euphemisms, they require women sanitary cards, they keep book registers controlled by the police (...) police cannot control a place that is illegal, when they do, they assure it is to control if there are minors in there, but that is a contradiction because it is an illegal activity regardless of that, that is why everything must be closed down”.²⁷³

In 2012, the province enacted the brothel banning policy as a minor offence. Thus, both regulations replicated the prohibition to establish brothels in the province. However, the minor offences code added to the brothel closure an incarceration penalty to those who sustain the brothels. Sex workers and other actors raised their voices against this policy. The next sub-section will develop in depth the circulating discourses in favour and against this policy.

Sex workers have also raised their voices against the enactment of the sexual offering advertisement crime. The *prohibition to advertise sexual services* was enacted by presidential decree in July 2011 as part of the set of anti-trafficking policies. The National Institute against Discrimination (INADI)’s director, Adriana Dominguez, publically supported the decree, demanding the criminalisation of clients, arguing that:

²⁷¹2012.01.08_[CBA] Piden a la Justicia que cierre prostíbulos | La Voz del Interior.

²⁷²2012.01.08_[CBA] Problema de competencias | La Voz del Interior.

²⁷³ 2012.04.15_[CBA] "No se puede controlar un lugar que es ilegal" | La Voz del Interior.
2012.04.15_[CBA] Municipios a contramano de la normativa nacional | La Voz del Interior.

“only the voices of the ones who are unionized are against it, but they represent a very low percentage of women prostitutes”.²⁷⁴

The National Network Stop Trafficking (RATT) also supported the decree “because behind those ads there are prostitution and slavery networks”²⁷⁵. Viviana Caminos, a member of RATT argued that it is not the same as prostitution, which:

“is legal and they should not be prosecuted (...) most women in prostitution start when they are very little and without consent, they have no chance to choose; it is obvious that latter, without having learnt otherwise it is very hard to exit”.²⁷⁶

The regulation was enacted by presidential decree. The president at the time, Cristina Fernández, publically justified this regulation as a measure to protect women’s rights, by declaring that:

“It is not possible to require the government to fight against slavery in the newspapers’ first pages and in the last pages publish advertisements that humiliate women and show women as business (...) it does not condemn women, but the media and those who use this means as instruments of direct exploitation or exploitation advertisement in the media (...) we will never condemn a woman, because in most cases nobody chooses they life they got”.²⁷⁷

Diverse voices aroused against the detrimental effects this policy has had upon sex workers. As a pattern, they felt the need to clarify they agree on the need to fight against slavery and trafficking, but not on this specific strategy as a way to pursue that goal. The voices, stories and claims of independent sex workers circulated in the media, such as the story of a 42 years-old law student who sustains that she publishes ads with her

²⁷⁴2011.07.07_[CBA] Polémica por el decreto que prohíbe avisos que promuevan la oferta sexual | La Voz del Interior.

²⁷⁵2011.07.07_[CBA] Polémica por el decreto que prohíbe avisos que promuevan la oferta sexual | La Voz del Interior.

²⁷⁶2011.07.07_[CBA] Polémica por el decreto que prohíbe avisos que promuevan la oferta sexual | La Voz del Interior.

²⁷⁷2011.07.06_[NAC] Por decreto presidencial, prohíben avisos que promuevan la oferta sexual | La Voz del Interior.

contact number to arrange the meeting, and that everything she earns is for herself, with no intermediaries or pimps. She raised her concerns with the prohibition of the adverts because it is forcing her into secrecy and into dependency on pimps as third parties.

“Now I’m obliged to throw myself into one of those places [brothels] (...) the police have a direct cooperation with pimps, everybody knows that”.²⁷⁸

Along the same lines, another autonomous sex worker shared her experience anonymously in the media to argue that, even though she is in favour of fighting against trafficking and slavery, this type of policies should not disregard the effect they have upon independent sex workers.

“Who is going to exploit me? I’m almost 30 years old. They have harmed me with this... but I’m in favour of doing something against slavery because the guys that exploit children were also advertising”.²⁷⁹

AMMAR also denounced the noxious effect this regulation was having upon those sex workers who work independently and use advertisement to grant their autonomy from pimps or brothels.

“We understand these [anti-trafficking] policies as clearly punitive, they don’t have other consequence than to keep dragging women into secrecy and [under the control of] big mafias”.²⁸⁰

ATTA stated that sex workers could not pay their rent and questioned the fact that the regulation did not considered the impact on sex workers’ everyday life. They requested:

“urgent policies, training, jobs, micro-credits for those who want to quit this life (...) these days, over 20 women called me out of desperation

²⁷⁸2011.07.13_[CBA] Denuncian complicidad policial con los prostíbulos de Córdoba | La Voz del Interior.

²⁷⁹2011.07.13_[CBA] Meretrices dicen que sin publicidad ya no pueden pagar ni el alquiler | La Voz del Interior.

²⁸⁰2011.07.06_[NAC] El Gobierno prevé cerrar también páginas webs con ofertas sexuales | La Voz del Interior.

because they have to pay rent and do not have the same incomes, so they have to go back to the highways, to the street. We are trying to get micro-business projects”.²⁸¹

Mass media companies also raised their voices against this policy; some of which pointed out that advertisements could be a tool to fight against slavery because they could be used to target where the places were:

“If they suspect those ads hide slavery networks, why don’t they use them to detect the cases and detain those responsible? (...) It is not the advertisement that prevents giving solutions, it is secrecy. Inaction. Ineptitude or complicity. That’s the core of hypocrisy”.²⁸²

A newspaper filed a writ of *amparo* for the policy violated freedom of expression and it discriminated a licit activity (see Chapter Two). In 2014, a special report showed that sexual services were still being advertised under euphemisms such as ‘massage rooms’²⁸³.

That same year the Parliament House of Commons approved an amendment to that law that would include the prohibition to advertise sexual services on the Internet. This bill was announced in 2011 when the mass media advertisement was banned²⁸⁴. However, in November 2014 the debate was renewed in the Parliament²⁸⁵. This amendment was questioned for it would bring more marginality to the sector and would increase exploitation. Moreover, it would give the government major powers to control the circulating information on the web because the law entitles a content blocking system under the control of the Administrative branch of the State. Members of Parliament appeared in the media against this amendment, stating that it:

²⁸¹2011.07.13_[CBA] Meretrices dicen que sin publicidad ya no pueden pagar ni el alquiler | La Voz del Interior.

²⁸²2011.07.10_[CBA] Contra la trata, sin hipocresía | La Voz del Interior.

²⁸³2014.07.03_[NAC] Siguen publicándose avisos sexuales en diario del monopolio.

²⁸⁴2011.07.06_[NAC] El Gobierno prevé cerrar también páginas webs con ofertas sexuales | La Voz del Interior.

²⁸⁵2014.11.14_[NAC] Pagina/12 // Sociedad // Cerco legal para avisos hot.

“excludes autonomous prostitutes’ freedom (...) they are being dragged into greater marginality, dragged to the streets, towards pimps (...) and this is the first step the Parliament is giving advancing into Internet (...) the most democratic mean of ideas circulation (...) freedom of expression is at stake”.²⁸⁶

Hence, the prohibition of advertising sexual offers brought about a renewed struggle against sex workers’ criminalization, which contested not only the noxious effects towards independent sex workers but also the corollary consequences for new means of surveillance.

Lastly, in dealing with the criminal system, sex workers have denounced the non-prosecution of pandering. The *crime of pandering* punishes those who promote, exploit and facilitate prostitution. This exploitative and abusive power relation was at the core of the anti-trafficking debate. However, criminal prosecutions and police investigations were not reflecting that concern. In 2014, a group of forty transsexual sex workers filled a public complaint against a man who claimed to ‘control the street’ where they worked. ATTTA claimed that:

“for over a year our comrades have been suffering this situation from a guy who is the head of a prostitution network; he has them in fear and they were fed up (...) they [were sprayed with] pepper spray and brutally beaten, that is why they resist paying to this pimp or answer to any other requirement to be able to work”.²⁸⁷

Sex workers claimed that the police department was extremely reluctant to accept the complaint and once they did, there were no protections for sex workers, the person remained free and harassed them to compel them to take the complaint back:

“At first, there was reluctance to fill the claim, but after insisting for more than one hour they took it (...) the next night the complainants were

²⁸⁶2014.11.14_[NAC] Pagina/12 // Sociedad // Cerco legal para avisos hot.

²⁸⁷2014.02.01_[CBA] Lluvia de denuncias de mujeres trans contra un proxeneta | La Voz del Interior.

threaten in the street by this guy and a gang who told them to withdraw the complaint, if they don't want this to end up badly".²⁸⁸

One month later, this case appeared in the media as the first prosecution of pimping since the Human Trafficking Act amendments, the judicial resolution made explicit reference to the legal provision that states victims' consent does not remove perpetrator's liability²⁸⁹.

Thus, in the period under study, sex workers have contested the noxious effects of the re-enforcement of the Social Prophylaxis Act, the enactment of the sexual offering advertisement crime, and the non-prosecution of pandering. These juristic forms, they claim, fail to accomplish its goal but rather the enforcement reinforces independent sex workers' vulnerability. For a complete reading on the edges of criminality, the following subsection describes the way in which they deal with the Minor Offences Code.

Dealing with Minor Offences

Sex workers have been confronted mainly by two minor offences: scandalous prostitution and brothel banning. As described in Chapter Two, the 'scandalous prostitution' minor offence reads:

those who engage in prostitution making public offer or incitation disturbing people or causing scandal shall be punished with detention of up to twenty (20) days. This case also involves those offers made from inside a building but in view of the public or neighbours. In all cases the medical examination and detection of venereal STDs shall be compulsory and, where appropriate also curative treatment. (art. 45, Bylaw nº 9444: Minor Offences Code of Córdoba)

As stated in Chapter Two, this norm has a regulatory approach to sex work, which was enforced together with abolitionist policies. In the period under study, sex workers contested the enforcement of this minor offence. In 2010, the media covered the

²⁸⁸2014.02.01_[CBA] Lluvia de denuncias de mujeres trans [contra un proxeneta | La Voz del Interior.

²⁸⁹2014.02.21_[CBA] Una imputación inédita por proxenetismo | La Voz del Interior.

detention of 14 sex workers in a brothel for scandalous prostitution²⁹⁰. In 2011, AMMAR emphasized that the situation in provincial countryside is even worse than in the capital city:

“article 45 criminalizes sex work, it cannot be penalized because it is not crime. So they try to find the way to criminalize it, because there are other articles in that Code that sanction scandal (...). It is discriminatory to have a special article to sanction sex workers”.²⁹¹

In April 2012, before the anti-slavery minor offence was enacted, the media covered an operation against ‘scandalous prostitution, in which the police entered three brothels, detained seven women age 20-50 years old, and used condoms as evidence²⁹². A month later, two of these women together with other eight sex workers who were part of an anti-slavery proceeding gave an anonymous interview in the media where they all denounced police mistreatment and harassment. The women who were detained for scandalous prostitution argued:

“I’ve started in prostitution five years ago and I’ve been detained over 10 times (...) the place is mine, we have no pimps, we do everything by our own, it is legal, we do no ‘scandal’. Since the end of last year, they detain us for nothing (...) they don’t leave us alone, they stop the car in the corner and if they don’t detain me they scare clients away (...) the patrol comes, detain us, take us to the station, fill a file, they take three hours to deal with us, score a proceeding, and do not look for thefts”.²⁹³

They argue that the police detain them to fill-up paper work without looking for the real victims or the real criminals²⁹⁴. In November 2012, while the provincial government was enforcing an abolitionist set of policies, eight sex workers were sanctioned with 10

²⁹⁰2010.03.15_[CBA] Detienen a prostitutas en local del Centro | La Voz del Interior.

²⁹¹2011.10.13_[CBA] La prostitución no es escandalosa.

²⁹²2012.04.09_[CBA] Volvieron a clausurar tres prostíbulos en Pueyrredón | La Voz del Interior.

2012.04.19_[CBA] Allanaron 3 prostíbulos con el Código de Faltas bajo el brazo.

2012.04.19_[CBA] Allanaron tres prostíbulos y detuvieron a 7 mujeres _ cba24n.

²⁹³2012.05.28_[CBA] "Ni siquiera nos preguntaron si teníamos algo para comer" | La Voz del Interior.

²⁹⁴2012.05.28_[CBA] "Ni siquiera nos preguntaron si teníamos algo para comer" | La Voz del Interior.

days' detention for 'scandalous prostitution'.²⁹⁵

In 2013, in a city nearby Córdoba the Municipal Human Right Secretariat made public the police's commitment to stop sex workers' detentions in the cases in which they were being discreet in their behaviour.

"Women committed to be prudent and the police talked about reviewing some internal issues. There is good predisposition to find solutions (...) they respond to direct provincial directives (...) brothels were closed but prostitution came out to the streets. Society has a double standard: it condemns and criminalizes and on the other hand it consumes".²⁹⁶

In July 2013, AMMAR protested in front of the police station after the detention for scandal of five sex workers who were on the way to the organization.²⁹⁷ In July and August 2014, AMMAR denounced a 'cleansing policy' in the city downtown. They claimed sex workers' arbitrary detentions grew significantly during that year and request the elimination of the 'scandalous prostitution' offence because it criminalizes sex work.

"When our comrades call us because they are about to be detained, we go to the place and we got to stop many detentions. But we are being prosecuted, harassed and taken aside; we feel they want to 'clean' downtown".²⁹⁸

"the legal provision in the Minor Offences Code brings about sex work criminalization, with sanctions for up to 20 days it pushes us into secrecy (...) this is also used by the police to take money out of our comrades, to require sexual favours, it is the main tool of police damaging and limitless behaviour".²⁹⁹

In December 2014, the Government announced it will support AMMAR request to

²⁹⁵2012.11.13_[CBA] Aplican 10 días de arresto a detenidas por prostitución.

²⁹⁶2013.03.31_[CBA] La ruta 158, "liberada" para el trabajo sexual | Día a Día.

²⁹⁷2013.07.04_[CBA] Protesta por detención de trabajadoras sexuales _ La Voz del Interior.

²⁹⁸2014.08.18_[CBA] Trabajadoras sexuales sienten "que quieren limpiar el Centro" | Día a Día.

²⁹⁹2014.08.18_[CBA] Trabajadoras sexuales sienten "que quieren limpiar el Centro" | Día a Día.

eliminate 'scandalous prostitution' from the Minor Offence Code³⁰⁰; however, it announced the incorporation of 'nudist behaviour' as a minor offence, which will sanction:

"Those who, failing to commit obscene exhibition crime, practice nudism in public spaces or manifest in public places or private places that can be involuntary seen by others".³⁰¹

The second minor offence is 'brothel banning', which is also known as the Anti-slavery law. This minor offence states that:

Regardless of the penalties established in other legal provisions, those who violate the prohibition to install, administer, sustain, promote, advertise or exploit in any form or configuration brothels or alike shall be punished with detention of up to sixty (60) days, non-redeemable with fine. (art. 46 bis, Bylaw nº 10.060)

This minor offence replicated the prohibition of brothels the Prophylaxis Act orders, and adds to it a detention penalty. The following description aims at unwrapping the circulating discourses around this provision enactment and enforcement. Sex workers have denounced this policy, which they claim brought about a series of noxious effects to their everyday life, not least relating to the constant harassment they face and the ongoing threat of detention.

In September 2011, the member of the provincial parliament (and future Anti-Slavery Office director) Amelia Chiofalo announced this bill proposal. The bill's explanatory statement drew upon a series of justifications among which stands Janice G. Raymond's article 'Ten reasons for *not* legalizing prostitution and a legal response to the demand of prostitution' (Raymond 2003)³⁰². Chiofalo justified this bill proposal in the same line as

³⁰⁰ By October 2015, when this dissertation full draft was submitted, those changes were not produced.

³⁰¹ 2014.12.03_[CBA] Nuevo código de convivencia/ la oposición y ONG siguen disconformes | La Voz del Interior.

2014.12.10_[CBA] Los 20 cambios clave del Código de Faltas | La Voz del Interior.

³⁰² Parliamentary debate transcription. 22nd Meeting, 18th Ordinary Session. 20th of May 2012. Page 57. Available at: <http://www.cba.gov.ar/legislacion-trata-de-personas/>

the arguments discussed in the previous section (Conflicting Discourses page XX)³⁰³. Moreover, she publicly emphasized there are no differences between children and adult prostitution³⁰⁴ and stressed clients should be criminalized, but that women should not be prosecuted.³⁰⁵

During the parliamentary debate, AMMAR required one main reform in the bill proposal. In particular, organized sex workers claimed that the definition of brothel should acknowledge the existence of independent sex work:

“they should make it clear that there are independent women working on their own, without exploitation or slavery”.³⁰⁶

“This really affects us because it will increase secrecy, exploitation and slavery. There are no policies to address sex work; there has been a legal vacuum throughout the years (...) as always happens, we are left aside in the discussion. It seems as if we don’t exist”.³⁰⁷

“To keep with that fundamentalism that all places must be closed, when in fact what it is forbidden is to administer places to promote prostitution and those places exist anyways, it is to continue with a discourse that is not enforced in practice”.³⁰⁸

In May 2012, AMMAR published a press release denouncing police harassment and racist discrimination in a special operation undertaken three days before at a sex work

³⁰³There are people who believe that legalizing or decriminalizing prostitution they are dignifying and professionalizing women in prostitution. But to dignify prostitution as work does not mean to dignify women, it only dignifies sex industry (...) If we count women in sex work as workers, pimps as business man, buyers as clients of sex services – legitimizing and considering all sex industry as an economic sector- then governments will abandon the responsibility to find proper and licit jobs to women. 2011.09.22_[CBA] Proyecto de ley para cerrar todos los prostíbulos | La Voz del Interior

³⁰⁴The statement followed: “Children labour is forbidden (in our country the age is 14 years old) but it promotes training education of children for their future jobs: technical schools, education training, etc. If prostitution is a job, how will you form little girls into it? Which will be the training courses? Sex work oriented high schools? Who will they practice with? Will it be with their parents, their uncles, their teachers?” 2011.09.22_[CBA] Proyecto de ley para cerrar todos los prostíbulos | La Voz del Interior.

³⁰⁵2011.09.22_[CBA] Proyecto de ley para cerrar todos los prostíbulos | La Voz del Interior.

³⁰⁶2012.05.23_[CBA] Meretrices reclamaron a la Legislatura por ley “anti trata”.

³⁰⁷2012.05.16_[CBA] Trata de personas/ ahora, invitan a debatir a los involucrados | La Voz del Interior.

³⁰⁸2012.04.19_[CBA] trata no igual a prostitución revista 23.

cooperation³⁰⁹. A few days later, AMMAR denounced that anti-slavery operations are criminalizing sex workers:

“there are comrades who end up 40 days in detention (...) Prostitution, according to our Constitution, is not crime; slavery and pimps are (...) We support sex work cooperatives, by women in their own, without pimps who take the major profits”.³¹⁰

Other voices within the Parliament echoed this claim. For instance, the parliament member Roberto Birri supported this approach and agreed:

“this is hypocritical, it is vox populi that it is the same police who harass sex workers who work on their own, in apparent collusion with the prostitution mafia in Córdoba”.³¹¹

The parliamentary debate brought about the visibilization of a number of contradictory and ambiguous norms in the different provincial municipalities. Before the project was enacted, brothel’s municipal legal provisions became public and part of the debate. Most municipalities had some sort of brothel regulation and only in three cases they were banned by municipal bylaws.³¹² Some localities prohibited the opening of new brothels, but allowed the already existing ones; other municipalities reduced brothels’ opening hours, others ordered specific conditions such as a minimum of two lights on, sanitary cards, medical exams, STDs controls, others required a special authorization issued only if it does not affect the neighbourhood peace and safety³¹³; other cities had no regulations in this respect, etc.³¹⁴ The Mayor of one of those localities pronounced against banning brothels:

³⁰⁹2012.05.18_comunicado de prensa AMMAR.

³¹⁰2012.05.28_[CBA] "La prostitución en nuestra Constitución no es delito" | La Voz del Interior.

³¹¹2012.05.16_[CBA] Más críticas de la oposición a los proyectos de ley sobre trata y narcotráfico | La Voz del Interior.

³¹²2012-05-16_[CBA] Solo hay tres municipios con ordenanzas sin eufemismos _ La Voz del Interior.

³¹³2011.10.10_[CBA] Prostíbulos/ aun prohibidos, los toleran | La Voz del Interior.

³¹⁴2011.10.10_[CBA] Algunos no los permiten y otros los reglamentan | La Voz del Interior.

“I think it is not a solution for sex slavery, what the prohibition will do it to drag them into secrecy”.³¹⁵

In the city of Córdoba, the Department of Public Entertainment reported there were zero brothels in the city. AMMAR replied back saying there are more than one-hundred brothels in the city in which there is no control and brothel owners retain more than 50% of sex workers’ income.³¹⁶ The following year, the recently created Anti-Slavery Provincial Department gathered information that showed more than 150 brothels in the Province and declared that it will prosecute also private apartments.³¹⁷

When this norm was enacted it collided with a number of municipal provisions all over the Province that regulated, allowed or tolerated brothels. One of the major debates around this norm was the apparent police collusion with these places owners’. The Anti-slavery minor offence was enforced first to brothels and then also to private apartments. The case of Córdoba was soon showed as an example in the war on trafficking and other provinces adopted the same provision in their own Minor Offences Codes.

A brothel owner filled a writ of *amparo* requesting the re-opening of the place; and the judicial decision denied this request (see Chapter Two). Their lawyer argued that:

“they are in favour of fighting against pimps and drug dealing, but they pay taxes, the have municipal control and sanitary control. Everything is done by the book and they don’t have any brothels in their bars (...) there is no prostitution in there. If they want to go with someone that is their own business; nobody obliges them”.³¹⁸

Even though this argument does not go in line with the struggle against the conflation of sex work and sex slavery, it does point at the regulatory and surveillance intervention

³¹⁵2012.05.18_[CBA] Capilla del Monte ya sancionó una ordenanza que prohíbe prostíbulos | La Voz del Interior.

³¹⁶2011.12.19_[CBA] Para el municipio, no hay whiskerías | La Voz del Interior.

³¹⁷2012.05.16_[CBA] Si hay trata en departamentos, la Provincia dice que igual va a actuar | La Voz del Interior.

³¹⁸2012.05.22_[CBA] Propietarios de locales nocturnos ya plantean rechazo a la ley de trata | La Voz del Interior.

the state has been having within the legal limbo. It speaks of the systematic and active control municipalities have had of those places requiring sanitary cards.

On May 30, 2012 the bill was enacted; it bans brothels and explicitly states those who voluntarily perform prostitution should be protected in the police operations.³¹⁹ Even though this law was compulsory in all the provincial territory, in the following days different localities voluntarily adhere to this norm while others pronounced against it.³²⁰ The anti-slavery minor offence enactment had a large media impact. Almost every day there were news on the ‘brothel ban’ enforcement, which show stories on brothel closure, on the police operations, on exploitation and brothel networks, on the transformation of soliciting spaces, on independent sex workers, on public policies after brothel closure, on justice claims in favour or against brothels.

One of the first discourses that began to circulate after the enactment was on independent sex workers who opened a cooperative:

“We cannot work on the streets, we are afraid we do it in the door, but we know they can prosecute us. And this week much less clients came. We have children to support, we are all single mums”.³²¹

The following days, a particular case got media attention; it was the case of a small provincial countryside town, which claimed to economically survive almost exclusively from brothels. The city Mayor said:

“I didn’t consider the economic impact of this activity in the community until I started hearing neighbours’ stories on their business and how it has affect their profits”.³²²

³¹⁹2012.05.30_[CBA] La Legislatura aprobó la ley que prohíbe los prostíbulos | La Voz del Interior.
2012.05.30_[CBA] Se sanciona la ley que prohíbe burdeles | La Voz del Interior.

³²⁰2012.06.01_[CBA] Villa María, la primera localidad en adherir | La Voz del Interior.
2012.06.09_[CBA] La semana próxima se comenzará a aplicar la ley de trata | La Voz del Interior.
2012.06.15_[CBA] Buscar consenso, la tarea más complicada | La Voz del Interior.
2012.06.15_[CBA] Resistencia en algunas localidades del interior | La Voz del Interior.
2012.06.13_[CBA] La Provincia aún no reglamentó la ley de trata | La Voz del Interior.
2012.06.13_[CBA] Pilar no adhiere a la ley de trata | La Voz del Interior.

³²¹2012.06.01_[CBA] Las que se animaron a ser independientes | La Voz del Interior.

³²²2012.06.03_[CBA] O’Higgins, el pueblo que ya no puede vivir de las whiskerías | La Voz del Interior.

In that town, sex workers had to get a sanitary card and pay to keep it updated, they also paid a monthly tax to get a permit.

“In other times, the income on that field was enough to pay the chemist and the doctor who did the controls, but now we have to get money because they ask for five or six sanitary cards only”.³²³

A sex worker in town assured she does not know of a safer place for sex workers and argues the new regulation will affect that safety³²⁴:

“there is no other place in Argentina where I can work with these levels of safety and freedom (...) Here nobody ever asks me for bribes and night clubs owners only kept the money they made of drinks (...) Everywhere else they keep half your profits”.³²⁵

“Now, women and minors, are going to go to the highways to work for \$30-40 and they will be exposed to be beaten up (...) Besides, they won't have to do sanitary controls and that the risks of getting sick is high”.³²⁶

In June 15, 2012 Brothel closure enforcement was publicly announced. The law specifically stated that women found in brothels were not going to be detained and if they were to be undocumented or in an irregular situation, the government publicly promised to give them assistance in a refuge.³²⁷ That same day, AMMAR argued:

“Closing brothels do not solve the problem. If they keep forbidding and do not address reality, our comrades will fall more and more into secrecy (...) What they are doing with brothel banning is to put them in a different soliciting space they don't know, more secret, because they don't know it,

³²³2012.06.03_[CBA] O'Higgins, el pueblo que ya no puede vivir de las whiskerías | La Voz del Interior.

³²⁴2012.06.03_[CBA] Sí a la lucha contra la trata, pero no a la ley | La Voz del Interior.

³²⁵2012.06.03_[CBA] O'Higgins, el pueblo que ya no puede vivir de las whiskerías | La Voz del Interior.

³²⁶2012.06.03_[CBA] O'Higgins, el pueblo que ya no puede vivir de las whiskerías | La Voz del Interior.

³²⁷2012.06.15_[CBA] Comienza esta noche el cierre de whiskerías | La Voz del Interior.

2012.06.16_[CBA] Comenzó anoche el cierre de whiskerías en Córdoba | La Voz del Interior.

or they are dealing and doing business out of it”.³²⁸

The day after, it became public that police operations closed 35 brothels, mainly in the southern part of the province,³²⁹ and detained 42 people, the Chief of Police declared:

“93 prostitutes were found, out of which 45 were taken to the Provincial Anti-Slavery Office, 11 are Dominican, 9 from Paraguay, 25 Argentinean and most of them from the northern provinces”.³³⁰

Closures continued in the following days³³¹ and by June 29, the provincial minister of Security announced there were no more brothels in the province:

“Unfortunately women in those places have been taken away and those brothels were re-opened in other provinces, as we knew it would happen”.³³²

However, a month later it became public that a brothel located nearby the Infantry Regiment remained open during those two months after the law’s enactment.³³³ In September, October and December 2012, new closures got media coverage, in those police operations condoms were retained as evidence, women found in those premises were assisted by the Anti-slavery psychological team, there were women in those premises explicitly asked not to be ‘rescued’.³³⁴ Even though it is not the aim of this thesis to do a media discourse analysis, it is worth noticing that the news referred to those women as ‘rescued’ or ‘freed’ prostitutes. In January, February and June 2013 and

³²⁸2012.06.15_[CBA] Dudan que el cierre de whiskerías elimine los prostíbulo y la trata | La Voz del Interior.

³²⁹2012.06.17_[CBA] El cierre de whiskerías se concentró en el sur provincial | La Voz del Interior.

³³⁰2012.06.16_[CBA] La Policía clausuró 35 prostíbulo en la provincia y hay 42 detenidos | La Voz del Interior.

³³¹2012.06.24_[CBA] Siguen las clausuras/ cierran una whiskería en Alejandro Roca | La Voz del Interior.

³³²2012.06.29_[CBA] Según Paredes, ya no quedan prostíbulo en la provincia | La Voz del Interior.

³³³2012.07.20_[CBA] Ley de trata/ casi dos meses después, clausuran prostíbulo cerca de Infantería | La Voz del Interior.

³³⁴2012.09.09_[CBA] Cierran whiskería y detienen al dueño en Cosquín | La Voz del Interior.

2012.09.15_[CBA] Clausuran whiskería en Totoral y hallan a una adolescente de 17 años | La Voz del Interior.

2012.10.07_[CBA] No había trata, pero cerraron dos prostíbulo | Día a Día.

2012.10.13_[CBA] Detuvieron a dos personas tras allanamiento en prostíbulo de Colonia Caroya | La Voz del Interior.

2012.10.13_[CBA] Una whiskería al lado de una escuela | Día a Día.

2012.12.09_[CBA] Clausuran tres prostíbulo al hilo | Día a Día.

August 2014 more brothels closure and those practices appeared in the media.³³⁵

Fifteen days after brothels were banned, stories emerged of brothels re-opening as bars.³³⁶ By the end of August, the same brothels that were closed before were re-opened and some had re-closed.³³⁷

Organized sex workers' contestations against the enactment and enforcement of this regulation reveals the way in which they have been dealing with and denouncing the expansion of criminality. In August 2012, a sex workers' demonstration was organized under the motto 'sex work is not the same as sex slavery'.

"We condemn they say they are freeing or rescuing women sex workers, when what they are doing is to leave us in the streets without income (...) They must be more serious when talking about rescuing women. We cannot keep taking those lies. They ask women if they want to go to the slavery refuge. We say 'no' because we are not victims of slavery. Or they

³³⁵2013.01.23_[CBA] Carlos Paz/ clausuran un local donde se ejercía la prostitución.

2013.02.09_[CBA] Detienen a dos encargadas de regentar a prostitutas en la Capital | La Voz del Interior.

2013.06.10_[CBA] Clausuran bar que funcionaba como prostíbulo en el sudeste provincial | La Voz del Interior.

2014.08.01_[CBA] Provincia clausuró cinco prostíbulos | Día a Día.

³³⁶2012.07.01_[CBA] Cierran un bar que funcionaba como prostíbulo en Villa Carlos Paz | La Voz del Interior.

2012.08.03_[CBA] En Río Cuarto, tres ex cabarés fueron habilitados para abrir como bares | La Voz del Interior.

2012.08.12_[CBA] 17 mujeres en dos prostíbulos reciclados | Día a Día.

2012.08.27_[CBA] Río Tercero/ detienen al encargado de un bar que funcionaba como prostíbulo | La Voz del Interior.

2012.09.03_[CBA] Procedimientos antitrata en lugares conocidos por oferta sexual | La Voz del Interior.

2012.09.22_[CBA] Pidieron auxilio desde un prostíbulo y las rescató la Policía | Día a Día.

2012.06.24_[CBA] Cerraron cabarés y las meretrices se van o trabajan a escondidas | La Voz del Interior.

³³⁷ A tv-show did a special report on the anti-slavery law enforcement, it transcribed phone conversations with the brothels in which they requested sexual services and asked if the police may arrive, the person on the other side of the phone said 'No, it is all settled. That is why there are these three places in the middle of downtown.' (Sources: 2012.08.31_[CBA] Carlos Paz/ cierran whiskería que seguía funcionando pese a la clausura | La Voz del Interior; 2012.12.24_[CBA] Prostíbulos que habían sido clausurados seguían funcionando | La Voz del Interior; 2012.09.22_[CBA] Pidieron auxilio desde un prostíbulo y las rescató la Policía | Día a Día).

Stories of exploitation and brothel networks circulated in the public realm. The most famous case was the case of 'Broile' who was detained and prosecuted for sexual exploitation, sexual abuse, promotion of prostitution and running more than seven brothels in the city. The case got wide media coverage. The brothels Broile owned were still functioning even while he was in jail; journalists would go to those places to check if they were still functioning, they would get media coverage and would be re-closed. (Sources: 2012.11.12_[CBA] "Ya está todo arreglado, todas estamos tranquilas" | La Voz del Interior; 2012.06.18_[CBA] Las historias de explotación que surgen tras el cierre de whiskerías | La Voz del Interior).

offer a ticket to go back to their places of origin (...) Instead of facing reality, they try to disguise it and hide it, and now, even send it to other provinces”.³³⁸

Atta-Rio Cuarto also argued against this law:

“out of 40 street prostitutes the number raised to 150 (...) I would like to know if there are any detentions in the city for slavery. (...) I think there must exist controls, and nobody has evaluated to give support to those unprotected women. Besides, there are women who do prostitution because they want to and they take it as a job and they have all the right in the world to do so. (...) Today women are adrift and face much more risks than before. They are going back to alcohol and drugs, something that have had started to change. Now everyone is complaining they are at every corner”.³³⁹

Days after the ‘brothel banning’ enforcement it was shown that soliciting spaces were changing. Prostitution was not necessarily diminishing but rather was shifting towards private apartments or to other brothels in other provinces, ‘sex delivery’ (under a restaurant or pizzeria cover) or street prostitution.³⁴⁰

Other complaints in relation to the enforcement operations revolved around what happened with those women during and after the closure proceedings. As part of the rescue proceeding, women who were found in brothels were asked for their place of origin. In case they were originally from other provinces, they were offered a ticket to go back to their localities of origin.³⁴¹ AMMAR criticized this policy as a cleansing policy.

³³⁸2012.08.03_[CBA] Piden reapertura de los prostíbulos | Día a Día.

³³⁹2012.08.16_[CBA] Prostitución callejera/ en Río Cuarto, aseguran que se cuadruplicó | Día a Día.

³⁴⁰2012.06.24_[CBA] Cerraron cabarés y las meretrices se van o trabajan a escondidas | La Voz del Interior.

2012.07.25_[CBA] El cierre de whiskerías cambia la modalidad de la oferta sexual _ La Voz del Interior.

2013.11.17_[CBA] La explotación sexual trata de cambiar | Día a Día.

³⁴¹2012.07.23_[CBA] Pasajes para que las prostitutas se vayan | La Voz del Interior.

“[women] are neglected after the police proceedings (...) they are closing even our own homes; they leave us on the streets or if we are from other provinces they give tickets back home”.³⁴²

But also other anti-slavery NGOs and abolitionist NGOs criticized this measure because - even if you assume they are all victims- a trafficking victim cannot be sent to the recruitment site without major policies that grant their safety.³⁴³ The Anti-slavery Office director defended this policy arguing:

“First we offer them to go to a refuge or hotel, then the possibility of getting a subsidy or even work. (...) Most victims do not assume as such, we approach to bring into light how did they enter the circuit, fear and depersonalization”.³⁴⁴

The regulation clearly states that the rights of those who are voluntarily providing sexual services must be protected. However, the complaints against the regulation enforcement showed otherwise. Sex workers publicly denounced police harassment, discrimination and abuse.

“There was no need for the abuse, no matter the law (...) They ask our name, where do we live and profession, I said sex worker, and they asked me: how should I write it ‘whore’ or ‘prostitute’? (...) they have no need to mistreat us. We told them the money was to divide among us, that we have no money to go back home, and they offer we go back in a police patrol. I’m not going to arrive to my home in a police patrol if I haven’t done anything wrong!”³⁴⁵

Women who went through those police operations denounced that they were taken to a hotel to talk to a psychologist and then they were offered to stay in a refuge or get a

³⁴²2012.12.16_[CBA] Más críticas a la política contra la trata de personas en Córdoba | La Voz del Interior.

³⁴³2012.12.15_[CBA] Pasaje para salir de Córdoba | La Voz del Interior.

2012.07.23_[CBA] Pasajes para que las prostitutas se vayan | La Voz del Interior.

2012.07.25_[CBA] Meretrices cuestionan el pago de pasajes | La Voz del Interior.

³⁴⁴2012.07.23_[CBA] Pasajes para que las prostitutas se vayan | La Voz del Interior.

³⁴⁵2012.12.15_[CBA] “No hacía falta el atropello” | Día a Día.

ticket back to their places of origin.³⁴⁶ After two years of this law's enactment, those who applied for social and financial assistance from the Anti-slavery Office argued those subsidies were not being paid.

"They said they were going to give us a labour solution, economic help until the end of the training courses or work but they did not do it (...) When they closed the apartment they said they were going to give us \$3.300 for six months. They paid only once, last year, in October,"³⁴⁷ other woman said she applied for a scholarship to start her own project "in December they promised that the help will arrive in February, but until now there are no news on it. Few days ago in the [Anti-slavery] Office they said that the money was being retained and that it will take a while because of some changes in the cabinet".³⁴⁸

Sex workers denounce a 'rescue industry' behind the police anti-slavery operations
They publicly complain that in the proceedings they are listed as rescued victims but after the brothel closure they are left with no income. AMMAR argued that:

"in many occasions they talk about 'freed' victims, 'vulnerability' but nobody cares about those women once the police operation appeared in the media".³⁴⁹

In August 2012, under the motto 'search for the real victims' – 'sex work is not crime' sex workers demonstrated against the anti-slavery minor offence enforcement. They requested a meeting with the Anti-slavery office director to expose sex workers' current problems and to ask for a clear definition on the conditions in which sex work can be performed in Córdoba. They stressed that those 'rescued victims' were the same women who were now demonstrating and no real victim of slavery has been rescued in these last two months since the law was enforced.³⁵⁰

³⁴⁶2012.07.23_[CBA] Pasajes para que las prostitutas se vayan | La Voz del Interior.

³⁴⁷2014.04.16_[CBA] Ayuda social frenada en Secretaría de Trata | La Voz del Interior.

³⁴⁸2014.04.16_[CBA] Ayuda social frenada en Secretaría de Trata | La Voz del Interior.

³⁴⁹2012.05.28_[CBA] "La prostitución en nuestra Constitución no es delito" | La Voz del Interior.

³⁵⁰2012.08.02_[CBA] "Busquen a las verdaderas víctimas de trata" | La Voz del Interior.

In 2013, the claim continued. A sex worker told her story in the media, in which the borders between victims and perpetrators showed to be highly problematic in the regulation enforcement. Moreover, her story shows the expansion of the activity's criminalization in various scenarios.

“I used to work in a brothel. They closed it. I went to the streets and they took me away. They never listen to us when they did this law. With a comrade we searched for an apartment and we rented it, by ourselves. They entered with a search warrant and they put me as pimp and her as victim. Less than a year ago, when they closed the apartments where we were, both of us were listed as victims. Yesterday we went to the Anti-Slavery Office, we said it was us and they had no register of us anywhere”.³⁵¹

This account shows that in a brothel, in the streets or in a private apartment the exchange of sex for monetary return was criminalized. In the case of co-operation, the borders between victims or perpetrators could be as serendipitous as who opens the door when the operation arrives. In this sense, AMMAR argued:

“The Minor Offences’ art 46b’s enforcement is unconstitutional, its aim is to held sex workers responsible only for opening the door of a work place. It shows how superficial is the approach to this issue, they criminalize women, do not give them support or help and they keep pimps and slavers protected and away of the Judiciary scope”.³⁵²

The other sex worker in that case said she did not open the door and was registered in the list of victim, but did not receive the help they promise her.

“A pimp doesn’t lie to you and say is going to help you out. You get your 50% and that’s it. The government does lie, because they tell you they will

2012.08.02_[CBA] AMMAR pide que busquen a las verdaderas víctimas de trata | Día a Día.

³⁵¹2013.06.17_[CBA] Mujeres acusan a la Policía/ Ahora están mucho peor | La Voz del Interior.

³⁵²2013.08.20_[CBA] Para AMMAR, la ley contra la trata sólo persigue a trabajadoras independientes | La Voz del Interior.

help you and they don't".³⁵³

For the Anti-slavery office this case was exceptional and could not be generalized as a governmental policy.

"there no point at generalizing from one particular case; objectively, the legal provisions do not say prostitutes must be prosecuted, on the contrary they say the opposite, they are of help for prostitutes, something that AMMAR omits (...) If women do not agree with the imputation, they should fill formal complaint".³⁵⁴

The black letter law of these regulation collides with the actual enforcement. Even though the regulation explicitly reads prostitutes should never be prosecuted and support shall be granted, the actual practice through which the regulation is enforced cannot be disregarded. In this case the long lasting history of abuses, discrimination and prejudices against prostitutes makes it more likely to expect those situations may emerge. In particular, AMMAR argued the policy seems to be against sex work and sex workers and not against pimps or slavery:

"Since the new law, the police are even worst, it is going 15 years backwards. Women in the streets are requested to pay \$100 or to have sex with them not to take them away. They say prostitution is forbidden and they take you away, when it is not truth. One of the women was put in jail in the n°2 police station and to let her go she was obliged to clean the police offices (...) It seems they have decree all type of sex work is forbidden, independent or not, because they don't leave us alone".³⁵⁵

In 2014, a new Anti-slavery Office director was designated. AMMAR publicly expressed to have better dialogue and communication with the new director, which they found paramount to make their voices heard.

³⁵³2013.06.17_[CBA] Mujeres acusan a la Policía/ Ahora están mucho peor | La Voz del Interior.

³⁵⁴2013.08.20_[CBA] Para AMMAR, la ley contra la trata sólo persigue a trabajadoras independientes | La Voz del Interior.

³⁵⁵2013.06.17_[CBA] Mujeres acusan a la Policía/ Ahora están mucho peor | La Voz del Interior.

“This woman has a different political will, and that is important for us so we can deal with things that were unspoken before (...) we could solve many cases of women who were exploited or were being threaten. Even, the case of a foreign women who was beaten and wanted to go back to her country”.³⁵⁶

Nonetheless, in June 2015, AMMAR argued police prosecution and mistreatment continues to be a problem for sex workers:

“The violence we suffer is not reduced to be murdered, and beaten up. There is also state violence when the police detain us using the art. 45 of the Minor Offence Code or for scandal, or when the Judiciary disregard our complaints for abuses, when labour rights are not recognized to gain access to a better quality life. It is [also] violence when they speak on our behalf”.³⁵⁷

Córdoba was one of the first provinces in enacting such regulation. Soon it showed itself as an example in the war on sexual trafficking and slavery. In the following months, other jurisdictions promoted and enacted similar norms; such as Río Negro,³⁵⁸ Tucuman,³⁵⁹ Rosario,³⁶⁰ Neuquen,³⁶¹ San Luis,³⁶² Entre Ríos,³⁶³ Bahía Blanca,³⁶⁴ among

³⁵⁶2014.08.18_[CBA] Trabajadoras sexuales sienten "que quieren limpiar el Centro" | Día a Día.

³⁵⁷2015.06.21_[NAC] Aseguran que el cierre de prostíbulos sólo empujó a la clandestinidad - Noticias de Villa Maria - El Diario del Centro del País.

³⁵⁸ this regulation requires a public annual report on the enforcement. Supporters argued that "sex workers -those women and men who perform prostitution without a pimps' preassure and exploitation- should have their own discussion on the excercise of rights, but we -on the side of the state- have to be on the side of the victim" 2012.07.13_[NAC] Río Negro también prohíbe las whiskerías en toda la provincia | La Voz del Interior.

³⁵⁹ This jurisdiction is particularly relevant for it is where the famous case 'Marita Veron' occurred. The governor argued the aim of this norm was to give better quality life to sex workers. 2012.08.15_[NAC] Tucumán también aprobó una ley para cerrar whiskerías y cabarés | La Voz del Interior.

2012.08.09_[NAC] Tucumán también quiere prohibir whiskerías y cabarés | La Voz del Interior.

2012.07.17_[NAC] Presentan proyecto para erradicar prostíbulos en Tucumán | La Voz del Interior.

2012.08.16_[NAC] Tucumán imitó a Córdoba y le pone la faja a los prostíbulos | Día a Día.

³⁶⁰2012.08.15_[NAC] Rosario analiza prohibir locales que funcionan como prostíbulos | La Voz del Interior.

³⁶¹2012.09.22_[NAC] Neuquén también quiere prohibir los prostíbulos | La Voz del Interior.

³⁶²2012.12.18_[NAC] San Luis/ por decreto, ordenan el cierre de prostíbulos | La Voz del Interior.

2012.12.22_[NAC] San Luis convirtió en ley el cierre de los prostíbulos | La Voz del Interior.

³⁶³2012.12.20_[NAC] Entre Ríos, tras los pasos de Córdoba, busca cerrar prostíbulos | La Voz del Interior.

³⁶⁴2015.08.20 [NAC] Página/12 // Sociedad // Sin comercio sexual.

other.

Thus, sex workers have been denouncing that the set of anti-slavery policies and their enforcement have had noxious effects that expand sex workers' position further into the realm of criminality. It seems, they claim, as if the real policy is to forbid prostitution in all its forms and 'clean Córdoba' from the visibility of sex work. In their position, organized as well as non-organized sex workers insist on the need to fight against slavery. However, they are questioning the homogenizing effects the abolitionist conflation between sex work and sex slavery discourses have had upon a very complex reality.

This chapter has examined the way in which sex workers have self-organized to make their voices heard. Organized and non-organized sex workers have confronted the conflicting discourses towards the activity, particularly those coming from the group referred as the abolitionists. At the core of these disputes is the anti-slavery policy. In this sense, circulating discourses in the public realm showed the qualifying and disqualifying mechanisms that are used to promote social actors' own positions and to deny the validity of others, and the use of law to try to push the activity closer to legality or closer to illegality. Sex workers are living in the legal limbo and their socio-legal position brings about a set of dynamics of power and resistance to deal with the edges of work and criminality. The following - 'Afterword' - section aims at summarizing the main discussions in this and the previous chapters, which forms Part Two of this thesis.

AFTERWORD

The second part of the thesis has explored the socio-legal dynamics of power and resistance that occurred in the legal limbo during the period under study (2010-2015). As suggested in the first part of the thesis, the legal limbo is dynamic; it is constantly being updated. The legal limbo is (re)shaped by the practices and discourses of legal and non-legal actors and institutions. Different actors challenge the moving borders that are continuously being both fixed and unsettled. These are temporary fixities, which can be long lasting if no other actor or perspective challenges it. Once it is challenged, the success of the new paradigm will depend on the capacity that actors have to deploy their capitals and successfully push their intelligibility matrix forwards.

The empirical data showed different actors interplayed in the legal limbo trying to define the legal status of sex workers and waste pickers closer to either legality or illegality, according to their own intelligibility matrix. Actors deploy their capitals (degrees, lobbying capacity, position in spaces of power, bourgeois empathy, and colonial cultural capital), as well as a number of qualifying and disqualifying mechanisms to try to push forward their own understandings of the income generating activity. Moreover, both cases demonstrate the expansion of homogenizing discourses that foreclose the inclusion of heterogeneous experiences within and between sex workers and waste pickers.

Moreover, actors' social, economic and political capitals may change throughout time, changing - in turn - the correlation of forces shaping the legal limbo in which the participants reside. This emphasizes the argument that the schemas of hierarchies in the legal limbo rest upon a fluid dynamism, which is tied to and contingent on the factors that shape and reshape its structure. The structure of the legal limbo then entails a sustained tension between agents, resources (capitals) and regulations; every successful strategy can be overturned by shifts within the same structure.

A closer look to the dynamics of the legal limbo also show that, both in the case of sex workers and waste pickers, the analytic division between criminality and work should not overstressed. In the legal limbo, the tensions between labour recognition/criminalization are never completely surpassed. However, at times, actors

succeed in pushing the activity closer to legality and labour recognition, or, alternatively, closer to illegality and criminality.

State law was in this struggle an intelligibility matrix that different actors tried to appropriate. It is not just another intelligibility matrix: it has the power of naming and normalizing (Bourdieu 1986); it has the possibility of deploying the legitimate use of force and has an effect into people's everyday life. The following and last part of this thesis (Part III- Grassroots Legislation) will explore the legal responses that a group of sex workers and a group of waste pickers have offered as most appropriate for regulating their field of labour. In this sense, it considers at experiential knowledge as a source of contextual legal responses.

PART THREE:
EXITING THE LEGAL LIMBO

PART THREE: EXITING THE LEGAL LIMBO

FOREWORD

The previous chapter was an attempt to describe the dynamics that occur within the legal limbo in the case of sex work and waste picking in Córdoba-Argentina. Drawing upon this empirical account, I have argued that in the legal limbo there are conflicting understandings over how the legal system should consider the activity. I have referred to these understandings as intelligibility matrixes. The empirical data showed that actors interplayed in the legal limbo trying to define the legal status of these groups closer to legality or closer to illegality, according to their own intelligibility matrix. In this struggle, state law was the intelligibility matrix that different actors tried to appropriate. As such, it is not just another intelligibility matrix. It has the power of naming and normalizing (Bourdieu 1986); it has the possibility to deploy the legitimate use of force to be enforced and to have an effect into people's everyday life. Actors deploy a series of capitals (degrees, lobby capacity, position in spaces of power, bourgeois empathy, and colonial symbolic capital) in trying to succeed to push the activity closer to legality or closer to illegality. Moreover, in the case of sex work and waste pickers in Córdoba, we saw that these activities have been in a legal limbo for a long time, and that these actors have developed chronically and systematically certain particularities, negotiations, emotional confrontation, settled perceptions of each other, representations of the horizon of possibilities to transform the situation, and so on. Notwithstanding, actors' social, economic and political capitals may change throughout time changing in this way the correlation of forces in the legal limbo. This shows that the schemas of hierarchies in the legal limbo rest upon a fluid dynamism, which is tight to the factors that shape and reshape its structure. The structure of the legal limbo then entails a sustained tension between agents, resources (capitals) and regulations; every successful strategy can be overturned by shifts within the same structure. From this set of arguments new questions emerged: how can we analytically conceive the knowledges that are being disregarded in these schemas of hierarchies? And how would a regulation that challenges that schema of hierarchies look like? Those are the questions to which this last chapter now turns.

CHAPTER FIVE: GRASSROOTS LEGISLATION

Those whose activities are neither recognized as work neither conceived as crime have been challenging their position in law and in society in various ways. Workers in the legal limbo may or may not struggle for labour recognition and legal rights, and those who do so may find various strategies to challenge their position in law and in society. Particularly workers in the Global South, have been deploying a variety of organizing mechanisms to surpass the barriers of structural and subjective exclusion. In fact, there have been concrete processes of struggle defeating and using law and traditional institutions for labour struggles in new manners. Some of these struggles have succeeded in gaining labour recognition for those workers, who then acquire political dialogical status in institutionalized bargaining processes. Strategies to reassess labour inequalities include the new use of traditional venues, such as Trade Unions, to include workers that were set aside from the traditional understanding of the role of a Union. In the Latin American context stands the experience of 'Força Sindical' union in Brazil and 'Rerum Novarum' Confederation in Costa Rica which have made concrete actions to include excluded workers into the union's structure. In Argentina, the labour union CTA has carried a leading action in incorporating these workers into the structure of the Union. For more than a decade this union has incorporated sex workers, cardboard pickers, and street-parking attendants, among other groups. This incorporation has increased political and rights discussions among these workers, and has opened up a whole network for political action. By doing so CTA-union has been undertaking relevant social and political functions and mainstreaming excluded workers' voices into the overall political discourse (Supriya Routh and Fassi 2016). This relationship can be found in other parts of the world. For instance, focusing on Africa, Lindell emphasizes the rapid expansion of informal economy due to neoliberal policies implemented has sidelined good part of sub-Saharan Africa from the growth sectors of the global economy (2008, 218). In this context, the author points at the close relationship between informal work and trade unions as a beneficial experience in which the relationship increases the leverage of the unions and informal workers' associations acquire bargaining and leadership skills. There are other organizations working at the global level to link experiences, ideas and strategies and information. In

this line we can find International Street Vendors Organization (StreetNet)³⁶⁵ is an alliance of street vendors that promotes the exchange of information and organizing and advocacy strategies for street vendors; they've organized a number of events in different parts of the world promoting the discussion of critical issues transversal to street vending. Also in this line of work we can find the Women in Informal Employment Globalizing and Organizing (WIEGO)³⁶⁶ is a global network that aims at promoting informal workers wellbeing, in particular of women. This network brings together informal workers organizations for informal workers, researchers and professionals. They provide online database and statistical information, as well as capacity-building support and connections, and pursue the development of research and policy making. In Argentina, by 2003 there were at least 147 informal workers' organizations that correspond to a variety of activities: small self-employed workers (excluding professionals and technicians) housekeeping, street vendors, arts crafts workers, cardboard pickers (Busso 2004). Some have an area of influence so restricted that is limited to informal workers in a specific neighbourhood, other operate at a regional or national level. They are organized as unions, associations, cooperatives, federations, etc. The nomination is not random but rather depends on the requisites the government sets to accept the organization as a valid speaker. Some organizations may even decide to constitute both a union and an association to be able to respond strategically to political and social demands. Informal workers, as well as those who are in a legal limbo, may deploy a number of various political and legal strategies to surpass the barriers of structural and subjective exclusion, as well as to challenge their position in law and in society.

Notwithstanding, those who are in the legal limbo may or may not want to exit this betwixt status. Claims for labour recognition and legal rights may be one among many other strategies actors promote trying to gain better conditions of labouring. In the process of this research, the pilot study showed other groups -such as street vendors, art craftsmen and street parking attendants- were not struggling for labour recognition and legal rights in the city (see Methodology Annex). Data gathered in the pilot study is not conclusive or in-depth enough to provide solid analytic grounds to comprehend

³⁶⁵ <http://www.streetnet.org.za/>

³⁶⁶ <http://wiego.org/>

each of those income generating activities. Each group has its own particularities and complexities abound. However, it allows to delineate general takes on the existence of other groups who are in a legal limbo but do not claim for labour recognition, showing that it was not the case 'all you need are rights'.

Thus, those who are in the legal limbo may not want to exit that betwixt status or may find various political and legal mechanisms to claim for legal rights and labour recognition. Part III of this thesis fosters one among many possible legal strategies for those who have already been claiming for labour recognition, which is particularly relevant in cases in which there is an empirical assesment of an unequal distribution in the right to speak, participate, promote, and control law making processes. The question this part tries to address is: how would a legal response look like if it is based on the experiential knowledge of those who are living in the legal limbo? The term *grassroots legislation* is used here to refer to a legal response that derives from the active involvement of those who embody the legal limbo, thus, incorporates the experiential knowledge and claims of that particular social grouping the law will regulate (Marisa N. Fassi 2015a, 75). Groups living in the legal limbo, who are claiming for labour recognition and legal rights, have a specific contextual knwoledge given by their own experience in the activity's everyday life. This knowledge provides fuitful grounds to expand socio-legal imagination and promote contextual legal responses. The experience of running grassroots legislation workshops has been the way adopted in this thesis to empirically and theoretically explore the possible substantial content of a sex work or waste picking contextual legal response. The grassroots legislation proposal bears in mind this unequal distribution in accessing law making settings. Yet, since these workers actively participate in, and contribute to, the labour and economic market, legal responses should acknowledge these groups' claims, needs and experiential knowledge in the search for contextual, participative and democratic policies. Workers who embody the legal limbo are in a socio-legal position that makes their labour experiences a fruitful ground for innovative and contextual social imagination.

EXPIENTIAL KNOWLEDGE AS LEGAL SOURCE

Sex workers and waste pickers are dealing with the edges of work and criminality. Both groups have been claiming for labour recognition. As described in previous chapter,

they have been developing multiple resistance strategies. Data gathered for this research showed the advance of opposing discourses have implied a change in the strategies of resistance from proactive proposals to mainly defensive strategies to stop criminalization. A set of disqualifying mechanisms have tended to disregard the voices of sex workers and waste pickers as valid spoken persons in law making processes. The proposal to build grassroots legislation aims at exploring the legal responses those who embody the legal limbo may propose from their own experiential knowledge. Valuing experiential knowledge as a source to build contextual legal responses helps challenging schemas of hierarchy in which some sort of knowledge have been giving superiority above and beyond the claims, experiences, knowledge and needs of the groups, in this case of waste pickers and sex workers, as meaningful sources for law making.

The foucaultian notion of subjugated knowledges is useful to address the question on how to analytically conceive hierarchies in knowledge in their intertwined relation with power. In his lectures at the Collège de France on January 7, 1976, Foucault explains the two meanings of the notion of subjugated knowledges. In his words: "On the one hand, I am referring to historical contents that have been buried or masked in functional coherences or formal systemizations (...) Second, when I say 'subjugated knowledges' I am also referring to a whole series of knowledges that have been disqualified as non conceptual knowledges, as insufficiently elaborated knowledges: naive knowledges, hierarchically inferior knowledges, knowledges that are below the required level of erudition or scientificity (...) (and this is by no means the same thing as common knowledge or common sense but, on the contrary, a particular knowledge, a knowledge that is local, regional, or differential...)"(2003, 7-8). The second meaning is of interest for analytically grasping the set of knowledges that have been disregarded in the dynamics of the legal limbo analysed in this research. That is, knowledges that have been disqualified as non-conceptual, insufficient, inferior knowledges.

Sex workers and waste pickers experiential knowledge has been disqualified as sources for state law, and is rendered subjugated in relation to expert knowledge. In preceding chapters' account (see Chapter Three and Four) sex workers and waste pickers voices have been disqualified by a number of mechanisms which rest upon binaries such as victims/perpetrators, civilized/uncivilized, or them/us. Sex workers and waste pickers

in Córdoba were framed as either being deviants that needed to be reformed or victims that needed protection, or as both at the same time. In either case, one of the main effects of these disqualifying mechanisms is the erosion of their political subjectivity as active agents in law making processes. This political agency is either suppressed or replaced by a centenary of receipts to 'save them' from their conditions. The assumption behind is that they need to be saved and 'we' (the necessary opposite construction of the 'otherness') have a duty to help them (by providing them with pre-made solutions). Furthermore, in the case of sex workers and waste pickers it was common to see actors appealing the politics of compassion through a charitable –at times almost heroic– discourse. It became usual to find the rhetorical use of phrases such as 'it is on their behalf', 'we are looking after them', 'and they don't really know what they are doing.' Discourses of pity and compassion preclude actors' claims, experiences of labouring and labour subjectivities. Their knowledge is being disqualified in the public realm and, thus, subjugated. Notwithstanding the previous argument, the outcome of circulating discourses in the public realm does not preclude the possibility of a number of negotiation between the state and those groups.

The fact that sex workers and waste pickers experiential knowledge is being subjugated reveals the knowledge-power relations and the disqualifying mechanisms within the socio-legal public realm; yet it says nothing about the substantial content of that subjugated knowledge. In other words, the fact that the knowledge is considered as 'non-conceptual', 'naive' or 'inferior' does not necessarily preclude its potential to foster substantial legal responses. This is why it is possible to imagine a restructuring of the schemas of hierarchies in knowledge in a way in which subjugated knowledges are reconsidered beyond the set of qualifying and disqualifying mechanisms. In this sense, experiential knowledge is re-valued without being reified as the only possible valuable knowledge. The contrary would imply a reversion of the position each knowledge has in the schemas of hierarchies, without challenging the hierarchy as such. Nevertheless, in the case of subalter workers, the historical patterns of exclusions would imply some sort of privileged consideration of those subjugated knowledges in law making processes as an equalizing starting point. Boaventura de Sousa Santos has pointed at the need to challenge epistemological grounded assumptions on the hierarchies in knowledge. In search of cognitive justice, Santos fosters the idea of an ecology of

knowledges “based on the recognition of the plurality of heterogeneous knowledges (one of them being modern science) and on the sustained and dynamic interconnections between them without compromising their autonomy” (2007, 66). In his view, an ecology of knowledges favours context-dependent hierarchies which gives preference to forms of knowledge that “guarantees the greatest level of participation to the social groups involved in its design, execution, and control, and in the benefits of the intervention” (B. D. S. Santos 2007, 73).

Substantially, the question on ‘how would a regulation that challenges that schema of hierarchies look like?’ is, necessarily, an empirical and contextual one. The grassroots legislation workshops tried to address that empirical question in an attempt to address a subaltern account of those local conditions and experiences from those who embody the activity in their everyday life and whose knowledges have been disregarded as ‘inferior’ in law making processes. Procedimentally, the building of grassroots legislation is facilitated by the active involvement of those most affected by the law. In this sense, this proposal draws upon the epistemological insights of the ‘Pedagogy of Liberation’ approach, also known as ‘Critical Pedagogy’ or ‘Pedagogy of the Oppressed’. This approach can be traced back to 1955 on, and particularly during the 60ies and 70ies; it emerges as a redefinition of the notion of Popular Education and was rooted in the Theology of Liberation, Cuban Revolution, Dependency Theory and liberation movements in Latin America and elsewhere (Pineau 1994, 273). The work of Paulo Freire (2004; 2005; 1993; 1997) is seminal here. His ideas inaugurated an on-going debate and praxis around knowledge (re)production. The main focus of this approach has been the educational institution; however, this perspective provides key epistemological insights for the purpose of challenging schemas of hierarchy in knowledge. This approach standpoint is that knowledge is diverse, open and questionable; it is a constant outcome of dialogic communication. Therefore, the hierarchical distinction between expert and experiential knowledge is challenged. All forms of knowledge are valuable and each form of knowledge is different. Those knowledges should be put into dialogue with the consciousness that we are all incomplete selves; it is this same incompleteness what broadens the horizon for social imagination; it is a practice of freedom. This thinking entails a re-appropriation of hope and curiosity in a collective practice for liberation. A radicalization of these ideas,

known as 'anthropological pedagogy' considered that intellectuals have to incorporate 'popular knowledge' because that is the unique and undisputable source of truth (Pineau 1994, 274). This radicalized approach reverts the schema of hierarchy in universal and absolute terms by setting popular knowledge in the top of the hierarchy, regardless of its content. By doing so, it fails to challenge and subvert the hierarchy in itself. As stated before, the notion of grassroots legislation fosters a privileged -but not absolute and universally hierarchical- position in law making processes to those who embody the legal limbo.

The meetings to build grassroots legislation were a new instance to discuss their claims, having in mind the proposal of a bill of rights that would incorporate their experiential knowledge and reflections over the activity they perform in their everyday life. I would like to stress that the claims for labour recognition in both groups were already part of the groups demands long before running the workshops. In this sense, it is applicable here the critique to the idea that 'all you need are rights' developed in the previous subsection. It is also important to note that grassroots legislation is not the same as consultation. The process of consultation starts with an already defined proposal and stakeholders are invited to give their opinions. The process of building grassroots legislation, on the contrary, operates as a platform for legal and political debate that has no pre-made proposal. The workshops are not an instance to agree or disagree upon a particular policy. They are a platform for political engagement to challenge previous understandings and to propose new ideas that could only emerge from collective dialogue. Moreover, the result of grassroots legislation workshops might be a bill of rights or simply a rejection of the legal system as a site of struggling. Thus, the outcome of those workshops might or might not be a bill of rights. The main goal of organizing grassroots legislation debates is to provide a platform for political and legal engagement.

Thus, grassroots legislation method aims at redefining in a specific time and space the schemas of hierarchies in a way that participants find their subjectivity respected and their knowledge valued. It does that in a way that participants can appropriate the horizon of possibilities in the transformation of the norms they confront in their everyday life. Most importantly, this method does not aim to have universal validity

neither can the outcomes be transplanted to any socio-political context. This process involves active debates where a bill of law is mobilized and dynamically challenged by the group itself at all times. The following description shows the process, debates and outcomes of sex workers and waste pickers grassroots legislation workshops.

Describing the Workshops

The idea of running grassroots legislation workshops emerged in this research at an advanced stage in the fieldwork. Interviews, participant observations and informal conversations with sex workers led to discussions on the role of law in changing their current situation. A number of bill proposals, would be criticized or rejected for they would not reflect their voices and experiences. AMMAR-Córdoba decided to envisage a proactive proposal to contest those proposals. Among other actions, at the end of 2012 organized sex workers gathered in assemblies to discuss what they want from the law.³⁶⁷ My participation in that process involved proposing some of the topics for debate, sharing information on legal matters and drafting the outcome in the form of a bill proposal. Organised sex workers in Córdoba had been claiming labour rights before the grassroots legislation debate took place. The claim for legal recognition was already at play in this grassroots movement. Hence, this experience was part of a wider political and social struggle. While preparing for that meeting I started reflecting on the role of experiential knowledge in shaping law making processes. This first meeting was very enriching to grasp the potentials and limits such an approach may have. The experience with sex workers provided learning tools to design the workshop with waste pickers. For instance, I have used comparative law as a source to design the workshops in both cases; however, the workshops with waste pickers included also an important number of face to face interviews with waste pickers about the topics and possible solutions that they had in mind before organizing the workshops.

At the time, waste pickers shared similar anxieties with respect to the capacity their claims, desires and proposals have to influence legal arrangements. Thus, in both scenarios the proposal to build grassroots legislation came to channel ongoing debates. In this sense, the workshops were designed to facilitate horizontal debates that could

³⁶⁷ The experience of building sex workers' grassroots legislation is further developed in the journal article 'Sex work and the claim for grassroots legislation' (Marisa N. Fassi 2015a)

build upon experiential knowledge, and to allow new ideas and proposals to emerge. The workshops aim to provide a dialogue structure that can distribute participation as equally as possible and uses some topics as a trigger for further ideas to emerge.

The experience with sex workers and with waste pickers had many similarities but also many differences. Some differences had to do with the fact that each group has its own specificities. In this sense, privacy is a much more sensitive issue in relation to sex workers. As mentioned at different stages in this thesis, stigma has significantly shaped sex workers' resistance strategies. Therefore, the meeting with sex workers was neither recorded nor registered in pictures while there are audio and visual records of the waste pickers' workshops.

Both in the case of sex workers and waste pickers, it was paramount to build a bond of trust and confidence to make the best out of the debate. I have been involved with the sex workers' organization since 2009; however, I did not have such relationship with the waste pickers' cooperative. Thus, the relation with the waste pickers' cooperative was developed through active involvement and constant participation in their interactions before organizing the workshops (see Methodology Annex). My participation during the debates was active but secondary; my role was mainly to organize and propose debate topics. To do so, comparative law was used to talk about different policies in relation to each activity and discuss if, in their experience, those policies would make sense in Córdoba and which are the contextual issues to consider in this city. Thus, comparative law was used as a reflexive starting point to propose contextual responses to existing regulations. Different sex work and waste picking regulations around the world were reviewed. Regulations corresponded to national, provincial or municipal jurisdictions, depending on the specific distribution of jurisdiction of each country on this subject matter. Those regulations would work as possible ways to approach the various issues involved in each activity. Therefore, it was not relevant whether the regulations were currently valid or have not been enacted yet. It was relevant, however, to provide a range of different possible solutions given in different settings to various issues related to each activity. Hence, the legal dispositions were deemed relevant for their substantial content more than for their formal validity. Moreover, the selected regulations were not inclusive of all the various regulations in

the world; indeed, each regulation can be analysed separately and many inconsistencies can be found. What were much more relevant about these regulations were the questions they helped participants reflect upon (Marisa N. Fassi 2015a, 79–81). Thus, those regulations were used as sources to propose a guideline of questions that would help foster contextual debates. For example, in the debate around sex work some of the questions that emerged from comparative law were:

- ‘Do you think health controls should be part of the sex workers’ law? If so, how do you think the controls should be done?’
- A sex work law in Córdoba should impose compulsory medical control every six months (as the Colombian Bill states)? Should it call for monthly HIV testing (as Nevada Law does)? Should free medical examinations be provided (as Veracruz mandates)?
- In your experience, do you think any of this would work or be convenient or desirable in Córdoba?’

In the debate around waste picking some of the questions were:

- ‘Do you think waste pickers should be registered? Should horses and carts be allowed to circulate?’
- A waste picking law in Córdoba/Argentina should promote door-to-door collection of the recycling material (as in Peru)? Should waste pickers have fixed collecting routes (as in Quito)? Should it differentiate dry and wet material in the general collection (as in Buenos Aires)?
- In your experience, do you think any of this would work or be convenient or desirable in Córdoba?’

The debate was in no way limited to the set of guiding questions. Participants brought into the debate a number of other contextual issues that are relevant to the specific situation of sex work or of waste picking in Córdoba. Once we had discussed the substantial concerns, we had to give some time to think about what the group wanted to do with those outcomes. By adding legislative techniques, the substantial outcome of

each debate was then transformed into a bill of rights to be mobilized (or not) by the group.

Sex Workers' Grassroots Legislation

In the city of Cordoba-Argentina, organized sex workers found their struggle was defeated by the neo-abolitionist wave (see Chapter Four). AMMAR-Córdoba decided to envisage a proactive proposal to contest those transformations. Sex workers gathered in assemblies to discuss strategies to struggle against the detrimental advance of anti-prostitution policies. At the end of 2012, they discussed what they want from the law. My participation in that process involved proposing some of the topics for debate, sharing information on legal matters and drafting the outcome in the form of a bill proposal. Moreover, I have been involved with AMMAR since the year 2009, which meant that by that time we have built a bond of trust that allowed a fluid exchange. As mentioned before, the meeting to discuss the bill proposal was not recorded. Privacy is a particularly sensitive issues for sex workers and any form of visual or audio record would represent an obstacle more than a facilitator. Therefore, the following description lacks of textual quotes and rely on fieldwork diary notes. This makes it harder to reflex the debate among sex workers as I do below with respect to waste pickers' workshop. However, the description aims at showing the experience's main structure, content and outcomes.

The Backstage

Before the meeting took place, I have gathered information that will allow me to propose topics for debate. I used different *sources*, relying mainly in secondary sources such as: bill proposals, newspaper articles, local law, jurisprudence and legislation that regulate the activity in different jurisdictions. The main regulations considered to draft a guideline of questions were from:

- a) The Netherlands, where sex work was legal from 1810 to 1911, then banned until the year 2000 since when it has been regulated;
- b) New Zealand, where the transgender legislator Georgina Beyer – herself an ex-sex worker – promoted and gained the enactment of sex work regulation in June 2003;

c) Uruguay, where the state law 17.515 recognising sex work as labour was enacted in June 2002;

d) Nevada-USA, which legalised sex work in 1971 and enacted its regulation in 1985;

e) Veracruz-México, where a law on prostitution and 'social prophylaxis'³⁶⁸ was enacted in January 1943;

f) Callao Municipality-Peru, where it was regulated by a municipal decree (nº000008) in May 2001; and

g) Colombia, where the National Parliament has discussed draft legislation nº 69/12 in August 2012.

The main and most recurrent topics within those sources were extracted in the form of questions. Those questions were proposed in a sort of *guideline of questions* to start and fuelled the contextual debate. Some of the questions used to guide discussions were as follows:

1) *How is sex work defined?* Definitions are paramount to establish whether a person will be subject to a specific law; definitions form a gateway for legal enforcement. Sex workers can be defined by the activity they perform or their age; which is the case Uruguay where a sex worker is a person above the legal age of 18 years old who regularly performs sex for monetary compensation.

2) *Does a sex worker need to be registered?* This question opens up discussion regarding what information is registered, for what purpose, which organisation will do the registration, how, and who can access that information. In Uruguay, sex work is only authorised for those who are registered on a national database and have their sanitary card up to date. In Colombia, the new Bill proposes a contract between sex workers and brothel owners that must be signed when sex work is provided in commercial premises. These places must carry a chronological database of sexual services provided (including the name or nickname of the sex worker, the place and description of the service, the fee

³⁶⁸ The use of this term to describe disease prevention reflects the 'sanitary' logic behind this regulation.

charged, and the proportion of this kept by the brothel). In Veracruz, the Ministry of Health is responsible for the sex workers' database and the Municipality maintains a personal file on each worker including a picture of the registered sex worker, and whether they have children or they are literate. With respect to these last two regulations it is forbidden to make this information public without sex workers' authorization.

3) *Are there provisions governing police action?* A major claim by sex workers involves oppressive and violent police practices. In Uruguay, regulations forbid the detention of sex workers based only on their activity. In Veracruz, sex work premises can only be searched at the explicit request of a sex worker or with a judicial order. Conversely, the police can be a source of protection; for instance, in the Netherlands, sex workers have a security button in their room that is directly connected to the police in case a client becomes abusive. Uruguay is the only case analyzed that includes anti-trafficking provisions in the sex work law. It clearly delineates the difference between the two; it states that the Ministry of the Interior is in charge of trafficking while the Ministry of Health is in charge of health issues regarding sex work. Representatives of both of these ministries can enter brothels accompanied by police officers, but all proceedings must be accompanied by an affidavit.

4) *Which specific rights does the law grant to sex workers?* In New Zealand, sex workers have the right to reject clients even when they work in brothels. In Veracruz, they have the right to temporarily or permanently withdraw their labour at any time, and the state has to promote new jobs for sex workers in order to 'dispel them from the life they have succumbed to'. This regulation assumes that sex workers would be better off in another form of employment. From a different perspective, Callao offers the means to facilitate access to other jobs without any further reference or judgment against the activity. The Colombian bill provides access to social security systems; Callao also extends this right to sex workers' children. In relation to privacy protection, the Colombian bill bans the disclosure of a sex worker's labour activity without the specific authorisation of the individual, and New Zealand bans the registration of sex workers' names in police records. In Callao, registration is confidential to public and private actors.

The Meeting

The debate's *substantial outcome* revolved around some of the issues included in the guideline of questions but also around the contextual issues that sex workers brought up during the conversation. In relation to the debates around the *guideline of questions*, they proposed the following answers:

How should sex work defined? Nomination has been a traditional debate among sex workers' movements. For this group, to be call 'sex workers' is in itself part of the political struggle (see Introduction, page XXX). The question on who should be included under this nomination did foster discussion, particularly to make it clear it would exclude children prostitution and would not distinguish between soliciting spaces every time it is done voluntarily. Thus, the definition that came out of the discussion was to define sex work as the voluntary exchange of sexual services from an adult person in exchange for money for his or her own benefit.

Should sex workers need to be registered? The outcome of debate in Córdoba was to consider that sex workers' registration should be free, anonymous, confidential and non-transferrable. It should be administered and controlled by the Ministry of Labour and Social Security.

Which specific rights should the law grant to sex workers? Sex workers stated that the law should explicitly mandate that 'personal data should be private and confidential. Sex workers in the assembly emphasized that their privacy must be protected and they should be entitled to offer services on the street or in private houses.

Should a sex work law provide special provisions regarding the police? This was one of the most debated topics. Their experience as sex workers showed them how important it is to acknowledge police practices in any sex work policy; in particular, to eradicate and prevent police corruption and abuse. They stated that police officers should only be allowed to search sex workers premises under exceptional circumstances and only then with a judicially approved search warrant. Furthermore, at all times the police should treat sex workers in a humane and dignified manner and sex workers should not be detained in the normal course of their work. There were discussions on the need to educate police officers and this discussion was enriched with provisions regarding who

would be in charge of controlling the activity. It was suggested that it should be the Ministry of Labour (together with representatives of sex workers) and not the police themselves who would be in charge of monitoring the enforcement of the law.

Beyond the above, *other contextual issues* were discussed. Sex workers found paramount to include the need to have non-discriminatory policies and to promote radical changes in the way police agents refer to and treats them. One of these issues was related to maternity rights. Police officers, ex-partners, relatives or others threaten to take their children away from them for being a sex worker. That fear is a source of manipulation. Therefore, they stated that one of the provisions of the grassroots legislation should explicitly state is that sex workers should have the legal right not to have their type of work held against them in family tribunals. Furthermore, that they should have dignified working conditions, to social security, freedom of organisation and equal rights with other Córdoba workers. Sex workers proposed that the grassroots legislation should create a special Government Office in charge of protecting and promoting sex workers' quality of life; that office should be have representatives of sex workers and members of Ministry of Labour.

Mobilization

These decisions were then translated into a formal draft Bill. Organised sex workers had in mind a bill of rights to propose to the parliament. They decided to send the proposal to other sex work organisations in Argentina as a model that could be discussed and enriched by their experiences. They have also sent the proposal to members of the Provincial Parliament for formal consideration in law making processes; and have met with politicians who might sponsor their proposal in Parliament. In this point, only the National Parliament is entitled to enact labour law for the Argentinean territory. Provincial Parliaments may, for instance, enact recognition declarations, in which an activity is declared as work for that jurisdiction.

However, the rapid advance of abolitionist proposals has shaped the context of their struggle. In a number of Argentinean provinces, sex worker organisations have been focusing their attention on preventing the enactment or enforcement of criminalisation policies. Notwithstanding this, the promotion of a labour approach to sex work is still

part of the agenda in fighting efforts to conflate sex work with trafficking, and these debates have fuelled grassroots proposals for further change.

All things considered, this first experience of grassroots legislation debates with sex workers revealed the value of experiential knowledge in law making processes. The debates as well as the outcomes foster a much more complete, comprehensive and contextual answer to long lasting problems sex workers face in their everyday life. Many sex work regulations have failed to address or even consider issues such as maternity rights or an active participation in anti-discriminatory policies or even to set the relationship with the police as one of the major concerns for sex workers. Issues such as the need to give opportunities to those who want to quit this activity were also considered as part of a sex workers' law. All those debates and outcomes show the potential experiential knowledge to build contextual legal responses.

Waste Pickers' Grassroots Legislation

The first grassroots legislation experience with sex workers fostered a particular concern with the potential value experiential knowledge has to provide legal responses to those who want to exit the legal limbo. Data gathered was showing an unequal distribution in the capacity different actors had to push their own intelligibility matrix forwards and both sex workers and waste pickers were showing to be shifting their organizing concerns more towards challenging criminalization than pro-actively promoting labour rights. Thus, a grassroots legislation workshop with waste pickers was an opportunity to reveal the notions, proposals, desires and needs a group of waste pickers have in the city and expand on the value experiential knowledge may have in providing an exit gate to those who claim labour recognition. The workshops took place with the Carreros Cooperative of Villa Urquiza. As described in previous chapters, Villa Urquiza Cooperative is one of the oldest waste pickers organizations in the city. For the grassroots legislation workshop this meant that participants knew each other well; they do not just share labour relationships but many of them are also related as neighbours and/or family. By way of example, the day before the first workshop there was an important flood of the river that draws the border between Villa Urquiza neighbourhood (one of poorest neighbourhoods in the city) and Urca neighbourhood (one of the wealthiest ones). The flood was caused by a gate opening in the closest dam.

The government authorities were negligent in warning the Villa Urquiza neighbours about this flood on time. The short notice gave them no time to the families who were closer to the river (who are also the poorest ones) but to find shelter in the upper parts of the neighbourhood. Many of them went to the cooperative. When we were discussing about rights in the workshops, the right to a dignified shelter was a collective problem discussed in the cooperative with the mattresses lying in the back. That close relationship among participants also helped to make jokes and distend comments, as well as to organize the debate trying to listen to each other.

I did not organize the workshops just by myself. As mentioned in the methodology annex, I got in touch with this cooperative through a group of activists who were working with them in a specific project. I knew some of them from before and we have all been involved in processes that drew upon Pedagogy of Liberation approach in the past. I am grateful to their generosity; the final design reflects their enriching inputs.³⁶⁹

The Backstage

The workshops preparation and planning included a series of previous steps. The first step was to gather the sources that informed the workshop design. These sources were: 1) in-depth face-to-face interviews, 2) comparative law, and 3) circulating proposals. In depth face-to-face interviews were important to gather plural needs, claims, solutions and desires. As in any social grouping, it is likely to expect some participants to be more or less strong in pushing their ideas before others. Face to face interactions allowed those who would not otherwise speak to include their experiential knowledge in the workshop. In the interviews, I have asked participant about their experiences and invited them to imagine how an ideal legislation for waste picking would look like. As mentioned before, comparative law was a key reference point to organize and foster the debate. The main regulations considered to draft a guideline of questions were from:

- a) Buenos Aires City-Argentina, which provided waste pickers with a legal frame that incorporates them into the public urban hygiene system (Act 992 enacted in 2002 and Act 1854 enacted in 2006);

³⁶⁹I am grateful to Alejandra Pérez Scalsi, Cecilia Cortés, Vanina Perrone, and to Ana Paula Gaviglio who were very much involved in the design and development of these workshops.

- b) Peru, which enacted a labour law regulation to formalize urban recyclers activity with special protection to vulnerable populations (Act 29.419 enacted in 2009);
- c) Bogota-Colombia, which entitled private organizations to participate in the public hygiene system (Act 142 enacted in 1994). In 2002, waste pickers won a judicial dispute in which they claimed they should not be obliged to demonstrate strong financial grounds as other companies did;
- d) Londrinhas-Brazil, where the Federal Decree 5.940/06, enacted in 2006, established the recycling material collecting and separation service was entitled to waste pickers organizations;
- e) México, where the general waste prevention and management system enacted in 2003 was complemented in January 2014 with a tax registration system for waste pickers.

Finally, we had to consider circulating proposals in the city; in particular, we considered the proposal presented by the organization 'Sin Estribos,' and the experiences that aimed to change the horses for motorbikes.

Once those sources were gathered, the content was transformed into debate topics. All the substantive ideas that came out from the sources of information were transformed into questions and those questions were divided in segments of the workshop, so each topic will have a section during the workshop with its own assigned time for debate. Four sections emerged: 1) definitions: How should the activity be named? Who will be protected under the law provisions –and therefore who will be excluded-? Should registration be compulsory? 2) Material collecting tools: Should waste pickers be free to choose any form of collection? Should horses and carts be regulated? 3) Childhood, health and safety: should the situation of children in the activity be addressed in the law? Which safety provisions would be necessary? Which are state obligations? Which are obligations of waste pickers themselves? Should there be specific provisions regarding the police? 4) Garbage management system: Which is the best system to separate recycling material in Córdoba? Should there be specific routes?

Each section was organized around a dynamic to incentivise debate. From a Pedagogy of Liberation approach group dynamics rely deeply on ludic methods, enjoyment,

participation, distribution of time and opportunities to speak. Examples of this dynamics are role-playing; brainstorming, the use of music and instruments, and the use of colour cards to express agree/disagree opinions that would then be opened to larger debate. The debate was conducted through roundtable discussions, each participant introduced his or herself, and sheets with the structure of the workshop were delivered so everyone can follow the workshop progress. At the end of the workshop each participant would provide feedback on the experience and say how does he or she finds it better to mobilize the outcomes of the workshop.

The Meetings

In February 2014, eighteen waste pickers participated on the first workshop and sixteen in the second one. My participation in that process involved proposing some topics for the debate, sharing information on legal matters and drafting the outcome in the form of a bill proposal. Other facilitators were in charge of keeping track of time and play a music instrument when we were taking too long in one group dynamic.

a) The First Workshop

The first workshop was divided into three moments: presentation, debates around legal responses, and closure. The workshop started by a group dynamic to introduce each other; we wrote down the names in a poster around the name of the cooperative, which was in the middle of the poster. We gave some time to discuss expectations, desires, and if they thought it was important to discuss what do they want from law and why. Then, we introduced the workshop. We had a poster that described the moments of the workshop and we explained the dynamics so everyone would know them beforehand. We also gave everyone a supporting material that had a short description of the two workshops. We opened the debate to new ideas or expectations. One participant reflected the majority opinion and noted:

“P: I think it is important...so many things are being said about us...they also talk about the animal...but they don’t see what we want as persons” (WP 19/02/2014)³⁷⁰

Other participant’s opinion revealed a possible misunderstanding and expectations on the scope the workshops may have in influencing actual regulations:

“P: it is important.... we are going to have a law to defend ourselves in the future” (WP 19/02/2014)

This intervention was important to discuss the potentials and limits of the workshops outcomes. It was important every participant knew the grassroots bill proposal was a starting point which needed further legal mobilization and that depended on the group’s will and strategies.

The second moment was the debate around legal responses. It was divided in two main topics: one about definitions and the other about the way to perform the activity (with a special emphasis in the use of horses). To talk about definitions, we discussed around two questions: 1) How to name the activity? 2) What does characterize the activity? The first question was addressed by writing down in a poster all the names given to the activity throughout time. Then, participants had in their hands red and green cards. We went through the names and put up the green card if the name was identified as a possible way of naming it or a red card if they were against that way of calling them. Debates started to revolve around the discriminatory use of certain words to refer to them. Some would suggest that there are no discriminatory words, but what is discriminatory is the way of using it. Others would maintain that it is important to find a new word that does not bring the discriminatory content that it has been having so far. Their responses note the symbolic relevance nomination has in challenging or reinforcing discrimination:

³⁷⁰ The workshops were recorded and transcribed. Since the number of participants was high it was not possible most times to distinguish who was talking. So I refer to participants with a ‘P’ and facilitators with an ‘F.’

“-P1: I don't like the name 'carters'. It discriminates us. /-P2: no it doesn't! That is what we do. What do we work with? With the cart! /-P3: If you go to downtown and a lady wants to discriminate you, she doesn't call you 'carter'... she calls you 'f carter...that's when we know they are discriminating us” (WP 19/02/2014)

In a moment, one of the participants came out with the notion of 'environmentalist carters.' This proposal was well received by the others because it has a direct reference to the fact that their recycling activity is good for the environment, and because the word 'carters' allowed them to include all the forms of collecting recycling material (at least in Spanish, the word allows you to include different vehicles with wheels that they use to do the work). The following quote reflected a majority opinion that their activity should be defined in positive terms, using the word environment to emphasize the recycling benefits the activity provides to the city:

“-P: the word environmentalists have to there/-P2: because we recycle/ -P3: we avoid waste burying so we help with protect the environment” (WP 19/02/2014)

Then the second question was: what characterizes the activity? In that sense, the idea was to discuss how a restrictive definition of the activity might finally exclude some situations or groups they do want to include. Who should be considered an environmentalist carter: those who just claim to be one or those who are registered? Should only those who do the activity in everyday bases be included or also those who do it occasionally? Those who do it independently or also those who work for others? Which activities are included (collection, separation, and commercialization)? Participants opinion reflect their own experiences of exclusion. The majority prompted an inclusive legislation that avoids the need of legal or other professionals:

“P1: this is a law to protect us /P2: yes, it has to be for everyone and not just for those who are registered/ P3: I think that [registration] will be a problem, because then a lawyer comes and takes money from us to register...that is what they do...they take our money and then it is a lye that did the registration” (WPW 19/02/2014)

The second topic for the debate around legal responses was about the way to perform the activity. As we saw in the previous chapter, this has been the core of the conflicting intelligibility matrixes around the activity. There are different positions in relation to this: there are waste pickers who do not want to stop using the horse and cart, there are waste pickers who want other means for collecting the material, organizations against the use of horses, organizations who promote the use of an electric cart.

The group dynamic we used to start the debate around this topic was role-playing. This is an interesting way to try to develop and consolidate (counter)arguments. The group was divided in four and each group had a moment to discuss which arguments they could use to defend their role. Then, we started the debate as if we were in a TV show. The TV show started and a representative of each group was invited to show their arguments. Some took the performance very seriously; for example, the woman who was playing the role of the NGO against the use of horses and carts took my bag, a book she found on the table, and entered the scene with the chin up and looking down on people. The one representing the organization promoting the use of an electric cart took a seat and lying back just said from time to time that all she wanted was to do business. Their bodies showed the representations they had in mind about those other actors. At times the debate was messy and at times it was hectic. Everyone was talking at the same time and arguments could be reduced to saying 'you are not right,' without any further arguments. When the debate got stuck other members of the same group helped adding arguments to the debate. Once we had many arguments circulating, we discussed the pros and cons of using horse and carts, of using a motorbike and of using the electric cart. There was a common understanding that those who wanted to use horse and carts should be allowed to do it. However, the absolute majority pronounced against animals' mistreatment and had some ideas on what could be done to protect the animal. We wrote down in a poster the ideas that came out during the interviews; such as: a health control card for the animal, basic care training workshops, access to veterinaries 24/7. Once again we used the red and green cards to show agreement or disagreement and started the debate around these issues. New proposals were added, such as access to social price in animal food, first aid care training for the animal, and the need to raise consciousness against animals' mistreatment. Participants opinions promote an

approach to animals' mistreatment that does not rely on criminalizing policies but rather on preventing and educational solutions:

"P1: the 'Sin Estribos' is right that you have to take the horse away from those who mistreat it. /P2: no, I think you have to teach that person how to treat the animal and not to take the animal away and leave the person without anything. /P3: but it is wrong that we all pay for a few that mistreat the animal /P4: that's what I always say, the carter that mistreats the animal has no soul, the carter is skinny too... waiting for social justice to arrive. We need a law to make justice" (WP 19/02/2014)

"P: you should go get a sanitary card and then if the animal is not good they have to teach the carter how to make it good." (WP 19/02/2014)

"P: they cannot be tight with wire because that hurts the animal" (WP 19/02/2014)

"P: there should be social prices for all we need to have the animal good" (WP 19/02/2014)

This first workshop ended with a moment of closure in which we wrapped up the outcomes, we talk about what we will talk about in the next workshop and give a moment for last reflections around how did everyone felt during this workshops. Participants emphasized the positive aspects of valuing their own experiences and building proposals among each other:

"P: I like it because we had fun talking about serious stuff" (WPW 19/02/2014)

"P: to me it was good because everyone could say their opinion and what they wanted to say" (WPW 19/02/2014)

"P: the bad thing is that everyone was shouting together" (WPW 19/02/2014)

"P: we are practicing dialogue" (WPW 19/02/2014)

“P: this is the first time I feel like there is something...I mean...we had a lot of meetings. But what we have here is incredible. It is something really good. I always have the hope we are going to get back in our feet. But I think this time we found a way. And it is coming from us. That’s different to all the ways we have been doing all these years / P2: it is different because others always decide for us, then they come and ask ‘do you think this is fine’. Done. But this is a different way. / P3: yes. We, the carters, find a solution to our problems” (WPW 19/02/2014)

“P: I think it would be good to talk to the ‘Sin Estribos’ lady and show her what we propose, what is better for us. Because they think they know what is better for us; but they do not.” (WPW 19/02/2014)

b) The Second Workshop

This second workshop was divided into three moments: 1- presentation and refresh, 2- debates around legal responses, and 3- closure. The first few minutes were used to do a round of introductions for those who were not part of the previous workshop. We also used a few minutes to refresh the debates and outcomes of that previous encounter, as well as to present the structure we will follow in this second workshop. We discussed one more time if this debate was important or not, and why.

The second workshop revolved around the substantial debates of legal responses. The discussion was organized around two main topics: one was childhood, health and safety, and the other topic was garbage management. The debate around childhood, health and safety was divided into two questions: 1) what could be proposed in terms of child protection? 2) How should health and safety rights be protected? As we saw in the previous chapter, a number of circulating proposals wanted to forbid children in the horse and carts. Interviewees kept bringing up this topic as problematic as well. To go in depth into these issues we proposed to make a chart to see the pros and cons to allow children in carts and the proposals in relation to this issue. The problematic was divided according to children’s age; the tiers were: children from 0-4 years old, 4-8 years old, 8-12 years old, 12-16 years old. We had pieces of paper of four different colours that corresponded to one of the tiers; each participant got one piece of paper and had to say

the pros and cons of that tiers. Any participant could give their opinions at any time, but this kind of group dynamics help distributing the power to speak and promote horizontal debates. Participants pointed out they would take their children in the carts, as their parents took them, to teach them how to be carter. Children would not make heavy lifting but would help them look after the cart while they go get the material. In this point, participants emphasized the unequal conditions that affect children involvement in waste picking. One of the main recurrent concerns that came out of the interviews and participant observation was the exponential growths in drug dealing and drug related problems the Villa Urquiza neighbours have been experiencing, as well as the early age in which children may be approached by others to get involved in criminal activities. Thus, taking their kids with them in the carts did not only respond to a will to get help in their own work but rather to preventing the risks of leaving their kids in the neighbourhoods while they go waste picking. In a context signed by poverty, exclusion and lack of opportunities, waste pickers have a much wider holistic view of the risks and problems they try to prevent when taking their kids in the carts with them. Participants emphasized that in this context waste picking is the dignify alternative for their children to learn:

“P: when your kid goes with you in the cart you are teaching him to bring home the daily bread with dignity. / P2: it helps a lot to go with the kids. They don't have to do any heavy lift. They are just there watching how to do things, they look at your stuff for you if you have to go get something” (WP 21/02/2014)

“P: yes, I grew my kids in the cart and now they are all carters...not thefts. The cart is a working tool, not a weapon. Even if some don't like it” (WP 21/02/2014)

“P: who says we cannot take the kids with us is because they don't know what it is to be in need; they have to send them to school and give them everything. But a poor cannot tell another poor not to take the kids. We all take them, because we need to. And we need to teach them to work. What do they want? That we give them a gun?” (WP 21/02/2014)

While acknowledging circulating discourses on the problematic aspects of taking children in carts, participants noted a social hypocritical standing toward children and waste picking:

“P: the society is like this...if they see a kid they give them cardboard and stuff...but to you...they give nothing. They don't see you as mum or dad that goes get cardboard; they give you for the kid. But then they say it is wrong to take the kids” (WP 21/02/2014)

In the debate, participants pointed out various differences according to children's age. However, setting a particular age to be able to go in carts seemed arbitrary. Some participants emphasized it depended on body built, the knowledge they may have with carts and also depended if they go with others. Moreover, some waste pickers pointed out the need to consider the persons' family situation and not just their age. For instance, they pointed out examples in which a fourteen years' old may be a parent or, for different situations, has to support their family. Those situations kept coming up in the discussion and revealed the complex contextual situations around setting a certain age as a regulatory parameter. In this sense, I have realized the guiding question I was proposing was very much tight to my own legal education in which a certain age could (or should) be an objective parameter to regulate social behaviours.

The second question was about how should health and safety rights be protected? The goal was to reflect upon the notion of security and the health and safety methods that they found necessary and possible. This group dynamic was divided in three steps. First, we wrote down in a poster the risks they usually confront performing the activity in their everyday life, such as: the risk of cutting oneself, of finding bugs in the trash, or car accidents or police stop and search. Participants noted what would they need to make the activity safer, such as: gloves and proper shoes, uniforms, raise neighbours counsness on the importance of sorting the trash for recycling. We also added notions of quality of life in order to challenge the restricted notion of security that associates security with crime prevention. We wrote those ideas down in a triple entry chart that had an empty third column.

“F: what do you think about when you think about security? / P: to be protected / P2: to be able to be in peace and quiet when we are at home / P3: that nothing will happen in the streets, like you won’t be robbed or the police won’t detain you / P4: or a car crash you, or the horse won’t be taken away from you / F: what else? / P5: or that they won’t mistreat you because of your last name / P6: yes...that they won’t discriminate you! / P7: to me security is also to have all the vaccines” (WP 21/02/2014)

These reflections on the notion of security took more time to come out, participation was rather slow. However, with the notion of quality of life ideas came out faster and participation was vivid. Participants noted a series of issues that could be associated with an increase in quality life, such as: to have enough to eat, and work, to assure waste pickers’ health and education, to have a pension. Third, the triple entry chart was then used to think about the rights that are associated to those notions of security or quality of life. Participants emphasized rights such as: the right to health, the right to work, the right of a kid to be with the mum and dad, the right to decide, the right to get a pension. As described before the week the workshops were run, many neighbours were affected by the river flowed. This fact also influenced our discussions

“P: and the right to have a shelter / P2: a dignify shelter! /P3: it’s like what happened here with them [pointing at the group affected by the flowed] Even if the river does not flow, it is not ok how they live. /P4: they have to have a proper house, made out of bricks. / P5: it is like to think in a democracy that is for everyone and not just for some /P6 [a very young carter] that happens because there is economic inequality, some people have more than other. We are a rich country but there is poverty everywhere. /P7: who is rich? we are not rich / P8: we are...we are all Argentineans and this is our country. We are rich but the powerful get all of it...they don’t distribute!” (WP 21/02/2014)

Data gathered in the interviews revealed opposing notions on the role of the state and the role of waste pickers in relation to health and safety measures. Therefore, we added to the lists of health and safety rights a number of measures that might secure those rights. We gave each person an orange and a blue card. We went through the rights and

measures and then ask the question: do you think this is something we have to ask the state to provide (then put up the blue card), or do you think this is something waste pickers can promote and provide (then put up the orange card), or do you think it is responsibility of both state and waste pickers to provide (then put up both cards). The discussion pointed at a main responsibility of the state as well as their possibilities in promoting consciousness raising among neighbours to sort the trash for recycling, to prevent discrimination and violence from other citizens or from the police.

The second main topic of this workshop was garbage management. The debate was organized around two main questions: 1) what is the best way to organize the recycling in the city? 2) what model of recycling does the cooperative propose? The aim of that first question was to bring into the discussion previous experiences they had with models of recycling as well as to consider the regulations in different parts of the world in contexts with significant number of waste pickers. To do so, we draw a chart with three different models:

a) A model in which a company collects the material and the waste pickers are in charge of separating the material. There was a short period previous to the privatization of the garbage management company when the company would take trucks of rubbish to the cooperative and waste pickers were in charge of separating the material. Participants noted that while it was important to have the material to separate the agreement with the state to get the material was precarious, it would not have a stable continuity, and the material would come mixed with non-recycling material.

b) A model in which the material is both collected and divided by waste pickers. This is the current model, in which waste pickers go out and pick the recycling material, separate it and sell it. Participants point out this model assures the material would arrive separated, others emphasized waste pickers cooperatives have always economic problems to pay the waste picker who sell the collected material, others noted informality brings them problems with neighbours who would not let them take the rubbish.

c) A model in which the company and waste pickers share the material collection and waste pickers are in charge of the separation. That is the model followed by the 'Green Points' (see Chapter Two and Three), in which two cooperatives take part.

We also considered experiences in other parts of the world. In particular, we discussed the case of the 500.000 inhabitants' city of Londrinas- Brazil where waste pickers proposed a recycling model for the city. According to this project, carters who have been historically working in a particular neighbourhood would propose the way how the material was going to be recycled in each zone according to its own particularities. This was a successful project in the sense that the municipality agreed to incorporate carters experiences as a valuable source for garbage management planning. We talked about the case in Bogotá-Colombia where the mayor started a project together with carters. We considered the case of Lima-Perú in which carters go in certain areas with green bags, they give the green bag to the neighbour and then come back and collect the material door to door. We wrote down the characteristics that came out of the previous moment and made a list. Then, we used green and red cards to agree or disagree with those characteristics. We added new ideas that they thought could make the ideal model. The outcome was a system in which carters are entitled to go in the streets and bring the material and at the same time they could get trucks of clean recycling material to separate. They stressed the need to raise awareness on the need to separate recycling from non-recycling material in each home. They emphasized the need of a legal frame that protects them, a formal contract instead of the informal promises they have been having so far when dealing with the state.

This second workshop ended with a few minutes to wrap up the ideas that came out in this and the previous meeting. We also gave time to give feedback, suggestions and to share further ideas. They decided to make a pamphlet with their grassroots legislation proposal to disseminate their ideas in spaces in which they feel their voices are rendered unheard:

“P: it should say ‘we carters propose these things and we want our work to be respected because it is dignified labour’ /F: and who should receive a copy? / P2: the municipality /P3: and legislators, and the province /P4: we have to send it to the ‘Sin Estribos’ lady” (WP 21/02/2014)

“P: we have to make the government understand that we do what we do because it is what we can do. What they want to propose is useless” (WP 21/02/2014)

“P: as they show all those ugly pictures of mistreated animals, all skinny, we also want to show them our horses...because if they show that of course people are going to feel sorry and are going to sign against. But that is not the truth.” (WP 21/02/2014)

“P: filming would be better /F: we can tell the students of the School of Journalism to make a video” (WP 21/02/2014)

The last remarks participants did on the workshop experience pointed out positive aspects as well as the need to give a couple of weeks between one workshop and the other:

“F: how do you think was this workshop? Any feedback? / P: it was good, I liked it /P2: they shouldn't be so close in time...it is a bit too much /P3: I like to be able to give my opinion /P4: we used our heads to say what one wants to achieve, we are thinking how to express and how to say the things one wants to do” (WP 21/02/2014)

Mobilization

Among the main *substantial outcomes*, we can mention: they want to be called as environmentalist carters so the definition would help preventing discrimination. Registration should not be compulsory for many waste pickers are illiterate or would find it difficult to access the bureaucratic state labyrinths. There should be freedom of choice of working tools; however, they stated that those who choose to use horses and carts should have a sanitary card for the horse updated every 6 months. They should be able to access horse medicine and food at fare prices and first aid and basic care workshops. Health and safety regulations should entitle them to uniforms, gloves, shoes and back brace. There should be social awareness campaigns on the importance of separating recycling from non-recycling material; however, they stated that this responsibility should be of state and of waste pickers. Retirement age was settled at 50

years old for women and 60 years old for men. Among these outcomes, stands the emphatic claim for anti-discrimination policies.

Waste pickers included *other contextual issues* in the discussions, such as the need to consider in the legal responses the recent spread of drug dealing related problems in vulnerable neighbourhoods in the city. The specific issue of children's rights, it can only be addressed together with the drugs problem. For instance, they pointed out the importance to consider the risks that waste pickers face in leaving their children or young sons and daughters at home in order to discuss the prohibition or not to take underage kids in the horse and carts. Waste pickers wanted to take those outcomes and disseminate them in the community to spread their opinions on the topic; they thought of making flyers, a video and to ask adhesions to the proposal. Hence, waste pickers experiential knowledge provided contextual legal responses that consider each aspect of the activity with respect to the conditions of labouring and living in their everyday life.

AFTERWORD

The proposal of building grassroots legislation has worked as a platform for political engagement in law making processes for the group of sex workers and waste pickers who took part of this experience. The term grassroots legislation refers to a legal response that derives from the active involvement of grassroots movements and, thus, incorporates the experiential knowledge and claims of that particular social grouping. The experience in Córdoba-Argentina describes a method of participatory debate that aims to reverse patterns of power/knowledge in the domains of law. It advocates for an overturn of the schemas of hierarchies in power to decide and influence the law.

The grassroots legislation workshops outcomes show how a regulation that challenges the schemas of hierarchies would look like. Such a proposal does have some risks and pitfalls. There is a risk to distort the meaning in the process translation of the outcomes into a bill proposal. The legal language and legislative technique represents a possible change of meaning in the words being chosen or the commas or dots introduced in the sentences. A way of reducing this risk could be double-checking the final bill proposal with those who were not part of the workshops to think of the possible interpretations the text might have. There is also a risk of political co-optation; the results and methods could be used in ways that do not facilitate political engagement but uses the results to claim that it is the voice of the group as a monolithic understanding. This may foreclose new socio-legal imaginaries to emerge and may also be used to encapsulate the groups' will. An opposing critique is that the outcomes cannot be claimed to be representative of all waste pickers or of all sex workers. However, the aim of the workshops was not to expose 'the voice of (sex workers or waste pickers)' as if they were a monolithic group, but rather to provide a platform to embrace conflicting understandings and redefine them in the collective discussion and dialogue. Grassroots legislations cannot claim to represent the will of every member of the groups (waste pickers and sex workers), but it does acknowledge local experiences and claims that often tend to be disregarded.

Another possible risk this proposal has is that it may be misread as promoting legal rights for those who are in the legal limbo. Organized waste pickers and sex workers in Córdoba have been claiming for labour rights before the grassroots legislation debate

took place. The claim for legal recognition was already at play in this grassroots movement. Hence, this experience was part of a larger political and social struggle. The method aimed to facilitate and enrich on-going debates. As stated before, not all social actors need, want or claim legal rights or labour recognition before the state. Those who embody the legal limbo may or may not benefit from this particular socio-legal position. It is to expect that resourceful actors will have better chances to benefit from the legal limbo because certain social dynamics enable those benefits. For instance, resourceful actors have better chances to hire specialist lawyers, to take advantage of judicial time dilation in the resolution of a conflict, to strategically use the privileges social class and micro-structures of power provide to these actors who, at the end of the day, allow them to find better treatment from legal institutions, and so on. Likewise, one might expect not-so-resourceful actors might be in clear disadvantage in cases of legal limbo and might even assume that the solution is to foster legal rights. If that would be the case, they would all be claiming for labour rights. However, contrary to common understanding, this research has shown not-so-resourceful actors may also benefit from the ambivalent position in the legal limbo and may even prefer to remain in that betwixt status. As explained in the methodology annex, I have approached the plural labour scenario of the city guided by one broad inquiry: which are the groups whose activities are at the edge of labour and at the edge of criminality? However, in this research I was not merely interested on the socio-legal position of these groups but, more specifically, on the socio-legal dynamics of power and resistance that occur *because* these activities are at the edge of work and crime. So, to better understand these dynamics I have focused on those activities in which the public debate and the strategies of resistance were more proliferous. This focus scooped out the relevant groups to: street vendors, art craftsmen, street parking attendants, sex workers, and waste pickers. However, not all these groups claimed for labour recognition. Only sex workers and waste pickers were claiming for labour rights and that is the reason why they ended up being the main focus of this research. The other groups -street vendors, art craftsmen, and street parking attendants- were not pursuing such struggle. Each group has its own particularities and complexities abound. Data gathered in the pilot study is not conclusive or in-depth enough to provide solid analytic grounds. However, it allows to delineate general takes on the existence of other groups who are in a legal limbo but do

not claim for labour recognition, showing that it was not the case 'all you need are rights'.

These experiences of building grassroots legislation were conceived as a way to set into dialogue ideas, experiences and proposals that were latent but silenced in the socio-legal realm. It facilitates a platform for political dialogue that facilitates the expansion of socio-legal imagination and opens the horizon of possibilities in relation to legal claims. Moreover, it aims at providing concrete bases for legal mobilization that otherwise tend to be reduced to 'defensive strategies' to oppose oppressive legal transformations. This process involves active debates where a bill of law is mobilized and dynamically challenged by the group at all times. Albeit grassroots legislations cannot claim to represent the will of every sex worker, it does acknowledge local experiences and claims that often tend to be disregarded. This is particularly significant with groups whose voices have been systematically silenced by actors whose social, political and economic capital entitles them to speak and act *for*, or even *against* their own claims, on the basis they are powerless victims or deviant perpetrators. In both scenarios, their political subjectivity is erased. The democratic process is then foreclosed to those who do not have access to social, economic and cultural capital, and are denied status as political subjects. Questions that revolve around the activities of sex workers and waste pickers (definitions, health, registration, rights and duties, police, discrimination and so on) have contextual answers and need complex and complete policies. Sex workers and waste pickers' labour experiences are a fruitful ground for innovative and contextual social imagination. Thus, the process of building grassroots legislation is a significant socio-legal site of struggle; the contrary, means to continuously reproduce schemas of hierarchy that unequally distributes the power to speak, to decide, to act and to propose.

CONCLUSION

The thesis at hand consists of an effort to examine the legal/illegal dividing line as a betwixt area in which dynamics of power and resistance emerge. Modern state law, but more emphatically perhaps positivist continental state law, rests upon the commanding principle of legality, which posits that an activity, situation or orientation cannot be at the same time 'neither legal nor illegal'. This principle gives a mystified holistic vision of law as an all-encompassing system in which every situation, activity or orientation is either legal or illegal. This myth of closure forecloses the possibility of spaces in-between. Instead of entering an endless loop of dogmatic debates over the legality or illegality of a specific activity, situation or orientation, I propose to recast the binary legal/illegal in a way in which the dividing line is conceived as a betwixt area. Empirically, the socio-legal dynamics of power and resistance around sex work and waste picking in the city of Córdoba-Argentina in the period 2010-2015 have been relevant to explore the notion of legal limbo. This empirical inquiry has suggested different socio-legal insights in relation to law, work and criminality. However, these last remarks will firstly focus on the outcomes that have led to enrich the analytical approach to the legal limbo's: 1- definition, 2- dynamics, and 3- possible lingering effects. Then, I will concentrate on the specific insights that arouse from looking at income-generating activities in the legal limbo. A closer look to the socio-legal dynamics of power and resistance around sex work and waste pickers in the city of Córdoba provided the empirical elements to sketch a view of the legal limbo from within.

First, this research allowed to elaborate on the *definition* of the limbo as the socio-legal position of an activity, situation or orientation neither legal nor illegal. The nuances this notion has with other socio-legal concepts -such as: the gap between the law in books and law in action, the grey areas of law, a-legality- raised the possibility of the legal limbo as analytically explanatory.

From within, the legal limbo is not a vacuum socio-legal space. Groups in the legal limbo may confront a number of regulations, judicial decisions as well as legal practices and discourses that constantly (re)shape the moving borders of this betwixt space in law. In this sense it is made clear that the notion of legal limbo is not the same as a-legality.

Legal provisions, practices and discourses converge to construct the legal limbo from within. In order to reveal this set of norms, I have proposed recasting the understanding of law as ‘a system of rules and guidelines, permanent and compulsory, which are enforced by the state to govern behaviour’, to understanding law from the perspective of the legal-self. That is, as the specific, identifiable and limited set of norms that a specific social actor may confront in their everyday life.³⁷¹ The shift from the legal system to the legal-self aims at bringing into focus the norms, judicial decisions, legal practices and discourses sex workers and waste pickers may more likely confront in the city of Córdoba-Argentina.

The description around waste pickers socio-legal position showed that the regulations this group is more likely to confront can be found in different areas of law, such as environmental law, administrative law, public health regulations, municipal or provincial minor offences. All those legal provisions coexist towards the activity, none of which allow to position them in either the binary poles of the legal/illegal divide. Likewise, the description around sex workers socio-legal position revealed that the regulations this group is more likely to confront can be contradictory, overlapping or may have different approaches to sex work/prostitution and coexist in sex workers’ everyday life; i.e.: brothel banning may coexist with brothel regulations and sex workers’ sanitary cards, and reglamentarist policies may overlap with abolitionist policies. Sexuality, hygiene, moral, religious and gender policies, practices and discourses have interplayed throughout the history of the modern state in a non-linear, and sometimes contradictory, manner. These tendencies and contradictions can be found in black letter law, in the institutional practices and on the discourses found in parliamentary debates.

³⁷¹ Expressed differently, every regulation in the legal system may affect those tight to that specific jurisdiction in more direct or indirect ways. The example given in Chapter One is the Trust Deed Act, which is universal and enforceable to all subjects under the jurisdiction where the Act belongs; however, it is most likely that only investors will come across that norm in their everyday life. The same occurs with anti-vagrancy and loitering bylaws that will most likely be confronted by homeless people. The invitation is, then, to focus on the specific and limited number of regulations an actor (group or individual) may more likely confront in their everyday life. Once we identify the set of regulations that a specific social actor *confronts* we can determine that his or her socio-legal position is neither legal nor illegal.

The Judiciary also shown to have role in defining the groups' legal position. Judicial statements on waste pickers' recognition as workers or on their criminalization have been oblique. The paradigmatic and most recent judicial case on waste picking shows that judicial decisions upon the activity do not necessarily make a statement over the activity's socio-legal position in relation to work and crime. Conversely, the Judiciary has pronounced both against and in favour of sex work as lawfulness. Three different judicial decisions were set as an example of the different approaches given to the activity. Therefore, the Judiciary is not necessarily a stage to surpass the 'neither/nor' position providing the ultimate solution to exit the in-between status. Moreover, judicial decisions do have a role in shaping the contours of the limbo.

Hence, the description of the legal limbo from within shows the position in this betwixt socio-legal position emerges out of the set of provisions, judicial decisions, legal practices and discourses that shape the legal-self. Those provisions may regulate the activity directly or obliquely. Nevertheless, none of those regulations sets the activity of waste picking or sex work in itself as labour neither as crime. These income generating activities remain in a legal limbo. The set of regulations made clear that, according to the current legal system, the activity of picking rubbish to resell or exchanging sexual services for monetary return, is not a crime but it is not protected as labour either.

Second, the *dynamics* in the legal limbo demonstrated that this betwixt space shapes, and is shaped by, an unsettled tension between actors, resources and regulations. That snapshot on waste pickers and sex workers legal-self was set into motion in Part II of the thesis. As such, the legal limbo is a terrain of struggle. In order to look at the dynamics of the legal limbo, the empirical account has been focused on sex workers and waste pickers' subjective experiences, arguments, claims and understandings that circulate in the public realm. Those-who-are-in-between have been the organizing vectors for the inquiries on the legal limbo. In essence, this account showed that waste pickers and sex workers: have self-organized and built networks and alliances to raise their voices, have confronted conflicting discourses that oppose their understandings on their income-generating activity, have been dealing with the distinction between work and non-work, and have been dealing with the expansion of criminality.

Among the insights developed in Part II of the thesis, I would like to stress here two main outcomes that help sketching the dynamics of the legal limbo. One is the use of (dis)qualifying mechanisms in the confrontation between different understandings of the activity social actors try to push forwards. In current dynamics, each of these groups confront statements and policies prompted by social actors known as the protectionists -in the case of waste picking- and the abolitionist -in the case of sex work-. Is prostitution sex work or is it sexual exploitation? Is waste picking in horse and carts work or is it animal's mistreatment? The reconstruction of those conflicting discourses revealed the use actors make of mechanisms that disqualify the voices of those who embody the limbo, as well as mechanisms to qualify their own statements on the activity. In itself, this is not an original finding. It is to expect that actors use (dis)qualifying mechanisms as means of persuasion. However, it is relevant to point out the homogenizing effects these mechanisms purport. The body of research showed protectionists and abolitionists actors used in the public realm different (dis)qualifying mechanisms that rested upon hierarchical binaries, such as civil/uncivil, progress/anachronism, us/them, true/lie. As pointed out throughout this thesis, a pervasive hierarchization through binaries remains central to modern western thinking and colonial experiences. The identified binaries have totalizing effects upon each pole, which presents a homogenous characterization of the activity erasing the vast complexities those groups present. In the case of sex workers, the homogenization of experiences together with the reference to 'the psychic damage all prostitutes have' operates as a disqualifying mechanism towards those who self-identify as workers. Moreover, other salient (dis)qualifying mechanisms is the use of scientific or expert knowledge. In these cases, stand the use of colonial symbolic capital to reinforce the argumentative statement. Expert foreign knowledge is one of the symbolic capitals these actors used in pushing their intelligibility matrix forwards. However, not every foreign expert knowledge is valuable, but those which benefit from (neo)colonial patterns of knowledge/power relations. Experts from USA or Europe clearly have more influence in the public arena than an expert coming from Paraguay, Bolivia or other countries from the Global South, which is directly related to a Eurocentric perspective that has been criticized and challenged in different moments in history but that is still enduring.

The other research outcome in relation to the dynamics of the limbo I would like to stress here is the role of juristic forms in enabling as well as constraining sex workers and waste pickers social action and participation in the public realm. Juristic forms significantly shape the possibilities of accessing and participating in the public realm. The state sets specific regulations to being able to access benefits, negotiations, or even to being considered as representatives of a sector. In adopting this juristic form, groups signed by socio-economic vulnerabilities are forced into a set of regulations, conditions, a particular language, identification processes, paperwork, which makes them dependent of professionals and/or facilitators -such as lawyers and accountants- to get them through the tedious bureaucratic procedures to become legal persons. Data gathered on waste pickers self-organizing showed lawyers were, in the bargaining process, a necessary nexus between the government and the waste pickers. The role of this kind of nexus becomes extremely important since the legal language is in itself an exclusionary mechanism that widens the gap between governmental bureaucratic arrangements and the most vulnerable populations. A change in one word, or sometimes a comma, may make the difference in the contractual conditions. Likewise, the case of organized sex workers shows the role juristic forms play in shaping the access and participation in the public realm. The Administrative branch of the state denied the status of legal personhood to the sex workers organization AMMAR-Córdoba alleging this organization does not promote common good. This denial affected the organization's capacity to get funding, sign contracts, access benefits, and to participate in debate forums or committees in which it was required to have legal personhood.

In the light of these two insights -the use of (dis)qualifying mechanisms and the role juristic forms play for socio-vulnerable groups-, it is possible to address the silencing process groups in the legal limbo may have to deal in their everyday life when struggling for labour recognition. This leads to the third part of the thesis: Exiting the limbo. Processes of silencing may render the voices of those who embody the limbo as subjugated knowledge. Part III addressed waste pickers and sex workers claims for labour recognition and fostered the value experiential knowledge has to build contextual legal responses for those who embody the limbo. Grassroots legislations cannot claim to represent the will of every sex worker and every waste picker; however, it does acknowledge local experiences and claims that often tend to be disregarded. This

is particularly significant with groups whose voices have been systematically silenced by actors whose social, political and economic capital entitles them to speak and act *for*, or even *against* their own claims, on the basis they are powerless victims or deviant perpetrators. In both scenarios, their political subjectivity is erased. The democratic process is then foreclosed to those who do not have access to social, economic and cultural capital, and are denied status as political subjects. Questions that revolve around the activities of sex workers and waste pickers (definitions, health, registration, rights and duties, police, discrimination and so on) have contextual answers and need complex and complete policies. Sex workers and waste pickers' labour experiences are a fruitful ground for innovative and contextual socio-legal imagination. Thus, the process of building grassroots legislation implies to foster a socio-legal site of struggle from below; the contrary, means to continuously reproduce schemas of hierarchy that unequally distributes the power to speak, to decide, to act and to propose. The proposal of building grassroots legislation is one among many strategies for groups who claim labour recognition or/and legal rights to facilitate contextual legal debates. However, important to stress in this concluding remarks is that not every group in the legal limbo wants to exit the betwixt position in law. As developed in the body of research, not all one needs are rights.

Third, the data gathered leads to hypostatize on the *lingering effects* of the legal limbo at the level of governing powers as well as at the level of resistance. However, further research is needed upon to fully comprehend these aspects. Drawing upon Agamben's inquiries on sovereign power (1998), I have suggested that as the sovereign declares itself all-encompassing through the boundary setting power of law by having the power of placing himself outside the law, likewise the myth of closure within the legal system reinforces that holistic image of the sovereign. The sovereign patrol its borders and exercise power within betwixt spaces. The dynamics of the legal limbo suggest a reading of those in-between status in law as sites where the sovereign power expands to avert social conflict without renouncing to surveillance and control. Those in the legal limbo can be pushed closer to legality or closer to illegality without necessarily changing their betwixt position. Moreover, a further line of inquiry in this sense might look at the territorial materialization of the legal limbo. The empirical study done for this thesis hinted at the possibility of mapping the dynamics of the legal limbo. Part II in this thesis

described zoning policies that have targeted sex workers and waste pickers in the city. I made explicit reference to the zoning policies that were part of a specific regulation, and mentioned as well the existence of *de facto* zonifications. Those *de facto* boundary setting in the city determine the time and space in which waste pickers or sex workers are allowed in the public space. This research could be enriched by mapping the legal limbo in the urban social space. This would imply to analyse the limbo is not only a terrain of struggle but as constantly materialized in geographical terrains by specific uses of time and space for governing those-who-are-in-between. At the level of resistance, the empirical inquiry on waste pickers and sex workers claims for labour recognition showed that living in the legal limbo does not mean to forfeit agency. The legal limbo is not only a site for controlling governing powers, it is a site of contestation, struggle and resistance as well as a site from where to curb state law, instead of claiming for rights.

Lastly, the focus on income generating activities in this thesis have also provoked some reflections on the interlaced relation between the edges of work and criminality. In particular, I want to stress here the *role of the state and state law* in constructing the exclusions produced by the dividing line between work/non work, and crime/non crime. Among the various activities, situations or orientations that can be in a legal limbo, this research has focused on income-generating activities. In doing so, it assumed the centrality work and crime has as social sites for expulsion or incorporation. Both categories of work and crime have not been essentialized in this thesis, on the contrary the first chapter tried to unwrap the moving borders between work/non-work and crime/non-crime. This is why I have mainly used the broader notion of income generating activities, which makes no further references to the legal status of the activity, neither is it constrained by social or moral limitations on what can be considered work in a given context. As stressed before, the notion of legal limbo is highly contextual and depends on the socio-legal arrangements at a particular time and space. However, some examples of groups in this socio-legal position could be: street parking attendants, sex workers, cardboard pickers, independent craftsmen, jugglers, windscreen cleaners, beggars, and street vendors, among others. These are not just informal activities; they do not have the possibility of becoming formal just by fulfilling certain legal requisites because the activity is not regulated as labour power by state

labour law. The triad wage-contractual-mercantile work confronts these everyday practices of labouring rendering them as 'deviant', 'transitory' or even 'marginal'. In this sense, the ensuing 'work/non-work' binary has led to further oversimplification of plural experiences, spaces, times and values related to activities that human beings perform as income generating activities.

The Law is the quintessential site for the reproduction of this hegemonic Eurocentric notion of work. Across the world, labour regulations set the legitimate institutional understanding and definitions of work which, in turn, legal institutions are meant to protect. Particularly for the global South, that hegemonic notion of dependent-mercantile-waged activities might not even represent the wide majority of income generating activities.

As with the reproduction of the work/non-work divide, the Law is also the quintessential site for the reproduction of the shifts in relation to criminality. In the legal limbo, the edges of work meet together with the edges of criminality, which are being reshaped by security transformations. Zero tolerance approach brought about the expansion of repressive mechanisms, particularly for vulnerable populations. More and more civil and administrative law are being used to criminalize and target populations, which challenges the crime/non-crime divide and expands significantly the edges of criminality including a number of situations that are not caught by the criminal system but are forbidden and punished. The edges of criminality do target certain income generating activities and the groups that perform them.

The state and state law have an active role in (re)shaping the moving borders of the legal limbo. In the case of sex workers and waste pickers, they actively relate with the state when dealing with the edges of work. In both scenarios groups have claimed against and negotiated with state governing powers to foster changes in their current labouring conditions. The state has exercised those governing powers in various ways throughout time; it has limited the activities in certain areas, it has forbidden certain ways of performing the activity, it has provided support and subsidies for those who perform it, etc. Sex workers claims for labour recognition in the public realm confront and deal with precarious conditions denoted by health and safety risks. They demanded public policies that can address the violence, discrimination and exclusion sex workers

are encountering in their everyday life. They have struggled before the state to gain support, opportunities for those who want to quit the activity and safety for those who want to remain in the activity. Waste Pickers has demanded, rejected or questioned in the public realm state governing powers around three main issues: zoning, subsidies and, blood traction vehicle exchange. These dynamics have shown that state governmental powers do shape the edges of work without necessarily recognizing the income-generating activity as labour neither as crime. The state has shown to deploy its governing powers in various ways at different times shaping the area in-between work and non-work.

Furthermore, the relationship the state has with waste pickers provides relevant insights on the complex role the state and state law may play in constructing the exclusions produced by the dividing line between work/non work. Waste pickers activity provide an essential service in the state function of providing urban hygiene to the city. This responsibility sets the state in a particular position when it deals with waste pickers. Waste pickers are in charge of cleaning and maintaining the hygiene of urban areas, and of collecting and separating recycling material. The activity's policies, however, appear more as a social inclusion benefit than as work, and by doing so the state elude labour standards. Payments are framed as scholarships, the amount of money does not reach the minimum wage, contracts -when signed- are signed with the cooperatives not with the waste picker, and the relationship may continue without contract renewal. In Córdoba, the juristic forms developed around this pseudo-employment bonds reveal constant tension and an enormous effort not to frame it as a labour relationship, which significantly affect waste pickers conditions of labouring. This scenario, show the way in which juristic forms can be used to maintain precarious conditions of labouring. This pseudo-employment relationship has also been relevant to reveal the links between the edges of work and criminality in the legal limbo. As developed below, the government systematically failed to pay on time the scholarships and waste pickers demonstrated claiming this payment. This dynamic turned into a 'demonstration-versus-payment system,' in which the Municipality responded to its obligations after the protest. This demonstration-vs-payment system then confronts the expanding edges of criminality in relation to protest criminalization.

The description in Part II showed the way in which both sex workers and waste pickers have been dealing with the expanding edges of criminality. Both scenarios showed the state actively constructs the edges of criminality in various ways. These groups claim that, even though the activity in itself is not illicit, prohibiting policies around the activity produce a de facto criminalization. In this sense, it stands the oblique criminalization produced by clients' criminalization. The prohibition to hire waste pickers or sex workers' services have been publicly justified as a way of curbing the criminalizing effects from these groups by targeting those who consume the service. However, in both cases these groups denounce the policy has implied their own criminalization and has had noxious effects in their everyday life. Moreover, even if those prohibitions have not been enacted, the mere announce to enact it has had produced those effects. These data provide hints to suggest that the state constructs the moving borders of the legal limbo not only when it directly target the specific group but also in more obliquous and indirect ways.

Given these concluding points, it is possible to argue that a socio-legal approach to the dividing line between legal/illegal binary from the perspective of those who embody the limbo has provided analytical and empirical elements to assess the politics of betwixt positions in law. The notion of legal limbo challenges the myth of closure reinforcing the view of law as a human product, artificial, plural, experienced, reproduced and contested, and shaped by contexts, power relations and historical patterns of power. Sex work and waste picking in Córdoba, as many other groups, remain in the legal limbo. They remain in a contested position between work/non work, crime/non-crime. As the Aymara notion of *chhixi* suggests, the power of that which is undifferentiated -which is and is not at the same time- combines its opposites.

ANNEX : EPISTEMOLOGY, METHODS AND ETHICAL CONSIDERATIONS

Epistemology, methods and ethical consideration are interrelated throughout the research process. As Guba and Lincoln emphasize, methodological concerns are secondary to the definition of the paradigm, which is the basic system of beliefs that guides the researcher (Guba and Lincoln 1994). Our understandings and assumptions about social relations and knowledge production are going to shape the research question and, all together, are going to determine the methods by which the research question is going to be addressed. Ethical considerations connect those epistemological assumptions and the way in which data is gathered, analysed and disseminated. This annex develops the epistemological, methodological and ethical statements that give ground to the thesis.

This PhD research is a continuation of my master's thesis. Since then, the set of assumptions, questions, arguments, and research tools have been following a fluid and dynamic process of inquiring in an always (r)evolving process. The following description aims at transmitting the swing and sway in the research process. I have challenged, questioned, changed and reassess my epistemological approach. I have reshaped the methodology when the data collected was inviting me to shift the research focus; some of which opened new questions for further research. I have tried new strategies in the search for comprehensive analysis, some of which showed to be unavailing. These almost four years of PhD research, plus the time spent in the masters' thesis, have been everything but lineal. However, in trying to present this process to the reader in an organized manner it might give the impression that it was.

Epistemological Perspective

Reflexions on my epistemological approach started as a constitutive part of my master's project design. At the time, I had an overview of the main epistemological debates in social sciences and adopted a constructivist approach as the starting point for my reflexions. I relied on authors such as Bourdieu and Giddens as main referents in this perspective. Their theories emphasize that social relations are created through a

dialectical process between agency and structure.³⁷² This means that the binary agency/structure is considered a false dilemma;³⁷³ agents are at the same time produced and producers of society. Taking this approach to socio-legal studies, I explored scholars who have developed this perspective in relation to law, many of which are part of legal consciousness studies (LCS), such as Mezey (1998), Ewick and Silbey (1992), Engel and Yngvesson (1984), and Sarat (1990). Their agenda revolved around the need to “theoretically and methodologically bridge the micro worlds of individuals and macro theories of ideology, hegemony and the rule of law” (Silbey 2005, 351). Drawing upon these and other constructivist scholars insights, I have stated in the masters’ thesis that law was going to be understood in my work as constructed and therefore to see it as plural, experienced, contested, and shaped by social context and relations of power. Moreover, it means to look at sedimented practices in law, as well as to spaces of action available and performed (Marisa N. Fassi 2011). At the time I came across two powerful critiques. On the one hand, the critique that García-Villegas does to the Legal Consciousness scholars. Villegas points out these scholars leave aside the explanatory power of the structure when the data is analysed; the author claims that they end up obscuring the symbolic violence in a hierarchical society (2003, 391–2). I wanted to take that critique seriously for the PhD research by trying to explore further the unbalanced attention given to agency in the studies of law in everyday life. My own master’s thesis showed this unbalanced attention by setting the focus on perceptions and actions of resistance.

The other powerful critique was done to me during my master’s thesis defence; I was asked to explain how was I using those studies -born and developed in the USA- to analyse a socio-legal phenomenon in a different context, such as Argentina. How to comprehend those perceptions and actions as determining and determined by the structure in Argentina? I focused then on the understanding of *law as shaped by social context and relations of power*. I realized I needed to develop further the set of assumptions that provide me the bases for an epistemological control throughout the

³⁷² In this sense, Giddens talks about structural properties as “*rules and resources* which the agent utilizes in the production and reproduction of social life, and thereby also of the structure.” (Kaspersen, 2000:42)

³⁷³ “Giddens tries to transcend the subjective-objective divide via the duality-of-structure concept, Bourdieu attempts something similar with his concept of habitus” (Mouzelis, 2008:119)

data analysis and writing stage. In this sense, I found in decolonial studies a solid ground to reshape my epistemological assumptions at the level of the structure. Therefore, the study of dialectical relations between agency and structure will be crossed by decolonialist elements when analysing perceptions, actions and interactions as well as the construction and reproduction of structures. Decolonialism is an epistemological perspective which assumes modernity and coloniality cannot be thought apart (Escobar 2003). Both modernity/coloniality constitute the current pattern of power and therefore shape social relations, subjectivities, knowledge, perceptions, and institutions and so on. Colonialism is not the same as coloniality. The former is a juridical, economic and political relation and the latter the pattern of power which transcends it (Maldonado-Torres 2007).

During the last five centuries, discourses and mechanisms behind this pattern of power have changed. Nevertheless, it has always been organized through hierarchical and Eurocentric relations. Coloniality of power is, then, the pattern of modern power that links race, control of labour, State and knowledge production (Quijano 1999). Before becoming a theoretical approach the concept of 'coloniality of power' has been developed during the 50s and 60s by struggles and debates of social movements, i.e.: racial feminism, civil rights' struggles in the USA, and struggles against the apartheid in Africa and Asia, among others (Curiel 2007). Decolonialist studies aim to give central attention to non-Eurocentric subaltern knowledge. However, it does not intend to mystify its content but rather to look at it as a source for new imaginaries (Escobar 2003; Grosfoguel 2006). Therefore, decolonialism should not be essentialized because that would mean to understand it as universal and, thus, to hide the plurality of points of view within the perspective and variety of social relations. Decolonialism applied to socio-legal analysis, means to evaluate if the situation under study presents or reproduce main attributes of coloniality/modernity. Eurocentric elements to consider are: dichotomist reasoning, hierarchy, analytical thinking, objectification, abstraction, extreme rationality, desacralisation. Law organizes societies in ways that makes it easy for eurocentric culture to assure domination (Nunn 1997). However, the law is not assumed here as always being an 'Eurocentric enterprise'. Law as a human and artificial phenomenon is highly contextual; therefore, eurocentrism is an element to evaluate and not an *apriori* assumption. Elements to consider for this analysis are: a) the origin of

regulations (i.e. the influence of certain actors or the use of colonial symbolic capitals in the enactment of a certain regulation), b) the exclusion of affected individuals in the process, c) an over-trust on experts. Language is the hinge of coloniality (Mignolo 2003).

Law is conceived as a human product, artificial, plural, experienced, reproduced and contested, and shaped by contexts, power relations and historical patterns of power.

Methodology

The research question and epistemological perspective led me to do qualitative methodology in order to explore the socio-legal dynamics of power and resistance in the legal limbo. A qualitative research design has to have the capacity to deal with the inputs that the data provide throughout the research process, and therefore it has to have a degree of flexibility to deal with such inputs. The time-space delimitation of this research is quite flexible as well depending on the data itself. The inquiry is located in the city of Córdoba-Argentina, but data has been pointing to transnational actors and discourses as relevant elements for understanding the configuration of the legal limbo in Córdoba. Other geographical locations could be included as examples to elaborate certain arguments. The inquiry focuses on current configurations of the legal limbo. Therefore, the timeframe considered to gather data in general terms a period of ten years back. However, shorter or longer periods were considered depending on the specific topic of analysis in order to comprehend the configuration of certain aspects of the struggles. In particular, considering the need to understand the current situation as a product of historical patterns of power.

The analysis on this research sticks to local causality, which means that it does not expect to generalize and universalize the outcomes, but rather to explain why and how certain social relations are shaped in a particular way in the context under study (Vasilachis de Gialdino 2007). Notwithstanding, this local causality also works as a hint to build expectations on other groups under relatively similar contexts, or to follow similar lines of research that will contest these outcomes, and to refine the studies. Moreover, the outcomes are helpful to test of other approaches and also to question other analysis that tries to generalize the actor's situations or practices.

This research was developed at three main fieldwork stages. Each stage has had slightly different qualitative method tools that corresponded to the specific aim I wanted to reach at that point. Access and sampling methods are linked to my positionality, described below. I have contacted sex workers through my support/campaign work and these encounters facilitated snowball sampling methods. I have contacted waste pickers through friends and colleagues doing activism with waste pickers or in neighbourhoods where the interviewed waste pickers live. These contact points paved the way to build bonds of trust. Thus, with waste pickers I have used opportunity sampling as well as snowballing methods.

As stated before, this research aims at further exploring the analytic notion that emerged from my master's thesis. This notion pointed at situations that were neither legal nor illegal. At the time, I referred to that notion as 'the margins of law' (Marisa N. Fassi 2011). However, during the course of this PhD inquiry, the notion of the 'legal limbo' showed to better reflect my theoretical concerns. Those first inquiries on betwixt socio-legal positions led me to start this research exploring various possible socio-legal positions. Therefore, the first stage in this PhD research is a pilot study. From the various situations, orientations or activities that may be in the legal limbo, the pilot study focused only on income-generating activities in the legal limbo. Therefore, it included groups such as street vendors, street parking attendants, sex workers, waste pickers, and art craftsmen. The pilot study outcome led me to focus on sex workers and waste pickers as relevant groups for my study. These provisional outcomes led me to expand my theoretical and contextual analysis of what it may imply for an activity to be neither recognized as work nor considered as crime, as well as further literature review on betwixt spaces in law. These theoretical inquiries re-shaped my empirical concerns towards the socio-legal dynamics of power and resistance in the legal limbo. Therefrom, the second empirical stage implied an in-depth analysis of circulating discourses in the public realm in relation to sex workers and waste pickers in the period 2010-2015. The outcome of that second stage showed different actors trying to push their own understandings of the activity in law making processes as well as on the public debates. In this sense, the following question was: how would a legal response that values sex workers or waste pickers experiential knowledge look like? That led me to participate what is referred in this thesis as grassroots legislation workshops.

That is the third and last stage in this thesis. The following description expands on each of those stages.

1st Stage: Pilot Study

In approaching the plural labour scenario of the city I was guided by one broad inquiry: which are the groups whose activities are neither considered to be labour nor considered to be a crime? This being a socio-legal question I had to study the black letter of the law together with the social practices associated to these activities, particularly the practices of legal actors and the understandings of groups themselves. The first filter then was that the activities were not formalized as 'labour'. Therefore, I had to exclude from the list all the informal activities that were formally considered as labour but its regulations were not being enforced, like workers who were paid under the table. The second filter was that the activities could not be considered to be a crime. In all these activities law was in one way or the other revolving around some aspects of the activity. That was probably the first hint to problematize the fact that being in a legal limbo does not mean the absence of law, as I hope to have shown throughout this thesis. Applying those two filters I could have studied either these groups: art craftsmen, street vendors, street parking attendants, waste pickers, sex workers, etc. I had four information units that were guiding the selection:

1. Legal status: the legal limbo is a contextual notion conformed by regulations and practices of legal institutions; therefore I have gathered regulations that refer to the groups under study (misdemeanours code, permits, bylaws, and so on). I have also collected newspaper articles and ask to key informants about the practices of legal institutions.
2. Contextual transformations: labour, urban and security transformations have affected those groups in the city of Córdoba. I have used secondary sources to gather data on these changes. For labour transformations I rely on official reports and statistics on the labour market, contextual literature on informal and street work. For urban transformations I collected parliamentary debates, legal reforms, international loan agreements, tourism regulations, tourist maps, contextual literature. For security transformations I focused on parliamentary debates and legal reforms on misdemeanours, public and private security,

agreements with international institutions, official and unofficial reports, quantitative data on misdemeanours enforcement, contextual literature.

3. Strategies of resistance: I have reconstructed the different strategies of resistance of these groups by interviewing key informants like lawyers, governmental officers, researchers who worked close to these groups. I have contacted them using the snow-ball strategy and they also sent me further documents (such as agreements, draft bills, intention letters, information release requests, and so on) that were part of their strategies.
4. Legal perceptions: agents' understandings of law are essential to comprehend why they do or do not use it and how, and mainly to inquiry which are the groups who have been claiming for labour recognition and legal rights. The main sources to gather this information are through participant observation and through open-ended, face-to-face in depth interviews to members of the groups under study.

Nº	GROU P	NAME	DATE	PLACE	TIME	NOTES
1	S.V	Ricard o	14-10-12	tribunales	00'47''05	
2	K.I (S.P.A)	María José Becerr a		Bar UNC- derecho	Pte 1: 00'60' Pte 2: 00'21''	
3	K.I (W.P)	Claudi o Guiñaz ú	16-03-13	Bar Cafeto	00'41''08	W.P lawyer.
4	A.C	Gonzal				No record

		o and Javier				consent. Field Diary Notes.
5	A.C	Mónica , Guadal upe, Jimena				No record consent. Field Diary Notes.
6	S.P.A	Enriqu e	16-04-13	Paseo de las artes	00'37"10	

S.V: street vendor

S.P.A: Street parking attendants

A.C: Art Craftsmen

K.I: Key Informant

Each of these groups could be seen as relevant to explore different aspects of the legal limbo and, thus, may inspire further research inquiries. However, a third filter was applied upon these groups. In this research I was not just interested on the socio-legal position of these groups, but more specifically on the socio-legal dynamics of power and resistance that occur *because* the activities are neither legal nor illegal. So, to better understand these dynamics I have focused on those activities in which the public debate and the strategies of resistance were more proliferous, but more specifically in those groups who are claiming for labour recognition and legal rights before the state. The following description briefly explores the main outcomes of that pilot study to emphasize not every group in the legal limbo claims for state labour recognition and labour rights.

Street Vendors

In Córdoba street vendors have been eking a living for decades in various forms: door to door, in downtown pedestrian walkways, in the public buses, in squares or other busy areas of the city. Street vendors follow informal rules in relation to the areas where they

work, the hours, the type of products, the forms of selling, and so on. Rodolfo, a street vendor in his forties, explains the street vendors organizing codes.

“Among street vendors we have a code. If I have a spot in Rivadavia street and 25 de mayo, I put my things there and nobody could go there to sell. Even if I didn’t go, nobody else could sell there. Because it is a code that exists among us” (Ricardo. Itw 1. SV)

State policies towards street vendors have been changing in time depending on different factors such as the political orientation of the government in power, the pressure of shop owners in the areas where they sell, or also the economic situation at the time. Street-level bureaucrats (Lipsky 1993) were key actors in the capacities to negotiate the site, time and forms of street vending. Municipal inspectors may take the merchandise away, or fill a fine, or just warn they should not be there and let them go away. Street vendors also have solidarity networks to warn one another the inspectors are coming.

“we know [inspectors are coming] because they would all whistle when the inspectors are arriving to the San Martin street. They know the time when they come and everything (...) Then they let the others [street vendors] know. The inspectors come but there is nobody left. The inspectors leave and everybody comes back.” (Ricardo. Itw 1. SV)

Thus, street vendors have been developing ways of negotiating with the municipality, the street level bureaucrats and other vendors to occupy the public space. At times the Municipality had a harder approach on street vending, which made it harder to keep those negotiations. By the end of 2011, the municipality increased surveillance and exclusion, particularly from the downtown pedestrian walkway.³⁷⁴

At times the idea of collective self-organization appeared, but it did not succeed. The aim has been mainly to get a work permit to prevent expulsions. One of the latest initiatives Rodolfo remembers was prompted by a street vendor from Buenos Aires who claimed they have been having benefits from self-organizing in that city and

³⁷⁴ 2011.12.28_La venta ambulante sigue en la peatonal

wanted to replicate the experience. However, local street vendors were sceptical about the project and did not agreed on paying the fee to start the cooperative.³⁷⁵

“they wanted to start a street vendors’ cooperative. But the older ones did not want to do it because they could deal with the police. (...) I mean, out of 100 only 10 wanted to organize, to start the cooperative, no more than that. It was to [have a permit] to sell in the street. (Ricardo. Itw 1. SV)

Beyond resistance strategies such as flee, hide or whistle to warn the others the inspections are coming, street vendors have not been pursuing other strategies such as claiming for labour recognition or labour rights in the city. However, this does not mean they do not perceive their income generating activity as work or even prefer it from other forms of ‘standard work’.

“this is work. If you go everyday to sell, then it is work. It is like any other [job]. It is like working under the table in a building site or washing dishes. You may not have a workspace, but it is work.” (Ricardo. Itw 1. SV)

It is to expect that resistance strategies may vary among the different groups of street vendors in the city. The capacities of negotiation groups have had differ according to their own circumstances or conditions. For instance, in the period under study the street vendors who made use of legal venues against the state belonged to the senegalese community. They have denounced violence, abuse and racism from inspectors and police; they claim to get their merchandaise back and have a selling permit.³⁷⁶ As part of the pilot study, I have interviewed a local specialist on african migration³⁷⁷ to try to further understand this difference in the use of law as a strategy of resistance. The transformations in south-south migration processes (determined by the hardening controls in Europe and USA), the transnational networks (which count with legal assistance), as well as the senegalise community’s background (many of which are educated men) and their own legal system (based on the french system) may be a solid ground to comprehend these differences in the use of law (Becerra 2012).

³⁷⁵ As part of the pilot study I had informal conversations with street vendors to double check the existence or not of formal self-organization and their attitudes towards it.

³⁷⁶ 2009.12.04_Senegaleses denuncian discriminacion policial

³⁷⁷ I am grateful to Maria José Becerra for her enriching insights on this issue.

Hence, even though the data gathered in the pilot study is not conclusive to understand street vending in the city, it gives grounds to prevent from considering the only and universal aim of those who embody the legal limbo is to gain legal rights and labour recognition.

Art Craftsmen

In Córdoba there is a specific area dedicated to permanent craft fair, this space is allowed and promoted by the municipality and works on weekends. But in other parts of the city art craftment simply exhibit and sell their products in desk stands or over a cloth in the floor. Art craftsmen sell their products on the street, but actively separate themselves from street vending for they make their own products.

“The lack of recognition and respect for our identity -as culture-makers, with our own philosophies of life, with moral and sentimental values that have nothing to do with street vendors, or businessmen- have pushed many ‘popular artist’ into other working opportunities, making them unable to choose this activity as a way of living, affecting the development of what we consider as culture.” (AIMC 2012)

This identity connects them with specific areas of the state dedicated to cultural matters. As with street vendors, art craftsmen are at times excluded or tolerated in the city. Those permits have been given orally. In 2012, they were target of stricter surveillance just as were street vendors. By the beginning of 2013, four people dressed like any citizen said they were municipal inspectors and that they had to take immediately all their merchandise and leave the place, otherwise they would end up in jail.

Since then, they have been resisting, claiming a public space where to sell their crafts. They started self-organizing and struggling to remain in the same spots they have been occupying for years. One of their resistance strategies was to do some artistic intervention or demonstration every Thursday, which was known as ‘resistance Thursdays’. Their identity as culture-makers implied their claims were directed to the Culture Division in the Municipality. The conflict scaled up in 2012 when the municipality privatized all cultural matters. They made use of legal venues to formally

denounce the arbitrary and informal evictions, and to claim for a selling permit. They did presentations before the Culture Division, as well as before the Human Rights Secretary.³⁷⁸ Even though there has not been any formal response, street level control deminished and they have remained working in the same area all these years. As in the case of street vendors, their claims were tight to their capacity to negotiate.

Street Parking Attendants

Walter is on his late thirties, he has been a street parking attendant since he was ten years old. He used to play football in a yard nearby a municipal dependency. The municipal workers asked him and his friend if they wanted to make some money by looking after their cars while they work.

“As in the nineties new car brands appear, they knew the alarm was not going to protect their cars. Then they had no choice but to find a person to watch the car all the time.” (Enrique. Itw 6. S.P.A)

The nineties were signed by the neoliberal model. Brand new imported cars circulated in a city that was, at the same time, living a rise in insecurity unknown before. Street parking attendants have always had a particular relationship with the state. Walter had to pick up from the Municipality a ticket book. Once the ticket book was finished, he was held accountable for the profits he made before the Municipality. He remebers a time, about ten years ago, when the Municipality would assure health controls to street parking attendants in their working space.

The activity grew in number with the economic crisis in 2001. The number of street parking attendants grew significantly, as did the areas in the city in which they work. Families would hold to the paking spots (maybe one or two blocks) and take turns to look after the cars parked there. At the beggining the payment was at the car owner discretion, and then the attendant would set a price. This brought about a constant (still persistent) conflict with car owners and with the police. The Municipality regulated the activity by fixing prices and giving them identity cards and orange vests. This sort of

³⁷⁸ I have done the pilot study while this struggle was at play. I was consulted and took part as a lawyer in the presentation.

formalization did not implied a recognition as workers. For instance, street parking attendants have claimed before the state in cases in which they would loose their income when a street was blocked, ie: in cases of building constructions or road reparation, and this claim was unattended. Thus, street parking attendants may be read in line with the reflections on pseudo-employment described in this thesis for the case of waste pickers (see Chapter Three). They have been negotiating with the state and gained some sort of formalization. However, their struggle was not oriented towards self-organizing for labour recognition or gaining legal rights as in the case of sex workers or waste pickers.

All things considered and bearing theoretical, practical and contextual issues in mind, I had drafted a comparative chart and brief description of each group in order to decide the groups I was finally going to work with for this thesis. Theoretical issues consider if each group is in the legal limbo, if it is target of urban policing, if they have deployed strategies of resistance, if the group is stable and if their marginal situation is stable. Practical issues consider if I can gain access to the group, the size of the group, the level of organization within the group, and if I can gain their confidence in a relatively short time. Contextual issues consider the impact caused upon these groups by labour, urban and security transformations.

	Sex workers	Cardboard pickers	Parking attendants	Craftsmen	Street vendors
Legal Limbo	Yes	Yes	Yes	Yes	Yes
Policing	High after 2011	High up to 2011	No	Selective	Selective
Strategies of resistance	Labour law, union, habeas corpus,	Cooperative, agreement with the municipality, agreement	Cooperative, agreement with the municipality	Formaliziati on request	Short lived

	public information request, parliament	with the police, parliament			
Group Stability	High	High (fragmentation)	High (family based)	Relative	Relative (fragmentation)
Stability of the legal status	High	High	Relatively new (neoliberalism)	Relatively new	High
Access	High	+/-	+/-	High	+/-
Group size	50	30	40	15	Indef.
Organization	High	High (fragmentation)	High (family)	Relative	None
Confidence/time	Excellent	Hard	Hard	Excellent	Good
Impact caused by labour transformations	Qualitative and quantitative	Quantitative	Radical	Qualitative and quantitative	Quantitative
Impact caused by urban transformations	Qualitative (not so relevant)	Relevant just for downtown	Relevant in favour	Relevant in favour	Relevant just for downtown

Impact caused by security transformations	Strong	Relative	Relevant in favour	Not so relevant	Qualitatively relevant (changed labour spaces)
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This comparison allowed me to see that to acknowledge the dynamics of power and resistance in the legal limbo I could inquire about: art craftsmen, sex workers and waste pickers. However, art craftsmen were at the time a rather new claim and the chances of it vanishing right after gaining access to sell their products in certain parts of the city was too high as to rest a four-year research upon it. Therefore, the two groups that were left after these three filters were: sex workers and waste pickers. Thus, the pilot study helped reshaping the research question towards: *which are the socio-legal dynamics of power and resistance in relation to sex work and waste picking in the city of Córdoba-Argentina in the period 2010-2015?* Therefore, this specific research question is the outcome of a process of delimitation of the specific form of the legal limbo (different situations, orientations or activities can be neither legal nor illegal, I have focused here on income generating activities), of the timeframe considered for gathering data (current or historical data that would help understand the present), of the space under study (the city of Córdoba in Argentina), and of the groups upon which the research was going to be focused (sex workers and waste pickers).

2nd Stage: Fieldwork with Sex Workers and Waste Pickers

The pilot study showed that sex workers and waste pickers were the most relevant groups to reveal the dynamics of power and resistance in the legal limbo. Moreover, it showed –even if in the surface- the pull and push of a number of actors that interplayed in the legal limbo in the struggle to define the activity as legal or as illegal. Therefore, it became relevant to explore the groups organizing strategies but also the circulating discourses in the public realm. To do so, I have collected press releases and newspaper articles from the three main newspapers in Córdoba: La Voz del Interior, La Mañana de Córdoba and Dia a Dia. I collected a total of 163 news in relation to sex work/prostitution and 75 news in relation to waste picking in the period 2010-2015. I

then did a qualitative thematic analysis of a selection of newspaper articles bearing in mind three categories: conflicting discourses, the edges of work, and the edges of criminality.

Those circulating discourses were complemented with in-depth face to face interviews. The set of interviews done with sex workers for my master's thesis as well as my participant observation and activist involvement with the sex workers organization have given me grounds to comprehend the context and main problematics the group has been facing. In this thesis I have used fragments of previous interviews done for the Master's thesis (reference code: Itw 'M') with sex workers and their biographical accounts to frame their recall of the historical shifts in sex work policies in the city (see Chapter Two). I have followed and respected the anonymity choices these participants have made.

I had not have such interaction with waste pickers previous to this research. Therefore, I did extra interviews with waste pickers from different parts of the city to acquire contextual understanding of the activity. I also did interviews with key informants, such as state actors and lawyers. Particularly for those who have been performing either of these income-generating activities for decades now, their biographical accounts were important to grasp the transformations lived in the city with respect to their activity.

Some of the names in this chart have been changed in order to respect participants' anonymity concerns. The recorded time only reflex the time in which the recorder was on. However, many of those interviews continued after the recorder was turned off. Moreover, in my experience most of the most relevant information appeared once and because the conversation was being recorded. Thus, these interviews have been complemented with field diary notes.

Nº	GROUP	NAME	DATE	PLACE	TIME	NOTES
7	K.I (W.P)	Claudio Guiñazú	16-03- 13	Bar Cafeto	00'41''08	W.P lawyer.
8	K.I (W.P)	Elsa	07-10- 13	Bar Alfonsina	00'47''19	Activist. NGO member.

9	K.I (W.P)	Marcelo Iturbe	27-03- 13	At his office	01'25''49	Director of the Urban Recyclers' Protection Area. Sub-secretary of the Provincial Human Rights' Office.
10	W.P	Sergio	9-11-13	Campos de la Rivera	1st Part: 00'60''00 2nd Part: 00'36''03	
11	W.P	Roberto, Elias, Ester, José	13-11- 13	Plaza Velez Sarsfield	00'59''20	Coop. La Esperanza
12	K.I (W.P)	Celeste	19-11- 13	Villa Urquiza	00'31''19	Activist. NGO member.
13	W.P	Lucrecia	19-11- 13	Villa Urquiza	02'06''17	Coop. Carreros
14	W.P	Cristian	20-11- 13	Villa Urquiza	Pte 1: 00'49''19 Pte 2: 00'10''57	Coop. Carreros

15	W.P	Pedro	26-11-13	Bar Centro	01'32"13	Centro Verde
16	W.P	Norma y Mariana	30-11-13	Villa Urquiza Favela	00'16"46	Coop. Carreros
17	W.P	Marta	30-11-13	Villa Urquiza Favela	00'22"59	Coop. Carreros
18	W.P	Mariano	30-11-13	Villa Urquiza Favela	00'28"28	Independent
19	W.P	Rodrigo	10-12-13	Villa Urquiza	00'18"18	Independiente
20	W.P	Daniel	10-12-13	Villa Siburu	00'12'00	Independiente
21	W.P	Esteban	10-12-13	Villa Siburu	00'28"44	Independent
22	W.P	Gringo	10-12-13	Villa Urquiza	00'16"11	Coop La Esperanza
23	W.P	Chichi	11-12-13	Villa Urquiza	00'17"25	Coop. Carreros
24	K.I (W.P)	Andrea Olazabal	17-12-13	Centro	00'50'21	ONG Sin Estribos- Lawyer

25	W.P	Chinina	19-12-13	Villa Urquiza	1'30"40	Coop. Carreros
26	W.P	Dante y Gustavo	20-12-13	Villa La Lonja	0'58"42	Coop La Esperanza
27	W.P	El tano	23-12-13	Villa Urquiza	0'34"00	Independent
28	K.I (W.P)	Ana Villarrolla	17-02-14	Abasto Centro Verde	01'24"41	Green Point Supervisor. Crese.
29	K.I (W.P)	Union X			Pte 1: 00'11"21	No record consent for most of the interview. Notes in field diary.
30	W.P	First Workshop	19-02-14	Villa Urquiza	01'55"32	Coop. Carreros
31	W.P	Second Workshop	21-02-14	Villa Urquiza	01'53"14	Coop. Carrero

W.P: Waste Pickers

K.I.: Key Informant

The data gathered was complemented with secondary sources such as literature review, judicial decisions, regulations, bill proposals and internet websites. Throughout the fieldwork, a question became relevant to push forwards the analytical implications of the legal limbo, especially for those who were claiming for labour rights and wanted to exit the limbo. This question was: how would a legal respond that values sex workers and waste pickers experiential knowledge look like? This inquiry led to the third and last empirical stage in this research.

3rd Stage: Grassroots Workshops

This stage relies heavily on Popular Education approach, which is deeply rooted in the pedagogic proposals of Paulo Freire (2004; 2005; 1993; 1997). This approach's standpoint is that knowledge is diverse, open and questionable, and that it is built through a constant dialogic communication among different forms of knowledge. Therefore, the hierarchical distinction between expert and experiential knowledge is challenged. All forms of knowledge are valuable; each form of knowledge is different. This thinking entails a re-appropriation of hope and curiosity. We, as human beings, are incomplete selves and the consciousness of that incompleteness broadens the horizon for social imagination; it is a practice of freedom. Methodologically, this stage involved two moments. First, one preparatory moment gathering qualitative data to design, organize and draw the content of the workshop. And then, a participatory moment in which I relied on tools from popular education approach and from focus groups' method. The preliminary work to design the workshops' structure and content entailed the gathering of sources of information, these sources were: 1) in-depth face-to-face interviews, 2) comparative law, 3) circulating bill proposals. In depth face-to-face interviews were important to gather plural needs, claims, solutions and desires. As in any social grouping, it is likely to expect some participants to be more or less dominant when ideas are debated in front of others. Face to face interactions allowed those who would not otherwise speak to include their experiential knowledge in the workshop. In the interviews, I have asked participant about their experiences and invited them to imagine how would an ideal legislation for waste picking or sex work would look like.

Other source was comparative law, which was used as reflexive starting points to propose contextual responses to existing regulations. In the case of waste picking, six

different waste picking regulations around the world were reviewed; these were from: Buenos Aires, Peru, Quito-Ecuador, Bogota-Colombia, Londrinas-Brazil, and México. In the case of sex work, the legal approaches considered were from: The Netherlands, New Zealand, Uruguay, Nevada-USA, Veracruz-México, Callao Municipality-Peru, and Colombia. Regulations corresponded to national, provincial or municipal jurisdictions, depending on the specific distribution of jurisdiction of each country on this subject matter.

I do acknowledge that there is an important risk to compare regulations only because they refer to the same activity or group without considering if the problems behind those regulations and proposals are comparable.³⁷⁹ In this sense, it is interesting to point out that participants themselves kept contextualizing the limits and possibilities of certain legal solutions for their own situation. Nonetheless, I find that in future grassroots legislation workshops it should be important to bring the context of those regulations into the debate to enrich it. In-depth interviews and comparative law were complemented with circulating bill proposals. Once those sources were gathered, the content was transformed into debate topics. All the substantive ideas that came out from these sources of information were transformed into questions. The sex workers' workshop was the first one to be run. In that case the questions were proposed and the debate followed with new set of questions or ideas that the participants proposed. That was enriching and active because the participants are used to dialogues and debates among themselves. However, in the case of waste pickers there was not so much interaction among themselves at the time of the workshop. So we organized the workshop in a way that would facilitate the debate and prompt for active dialogue. Therefore, once the substantive ideas were extracted from all the sources of information, we structured the workshop in four sections that would cover those substantive ideas. The sections that emerged were: 1) Definitions: How should the activity be named? Who will be protected under the law provisions –and therefore who will be excluded-? Should registration be compulsory? 2) Material collecting tools: Should waste pickers be free to choose any form of collection? Should horses and carts

³⁷⁹I am grateful to William Twining who generously discussed this use of comparative law with me and pointed out the need to see, not only if solutions are comparable, but also if problems are comparable (Personal Communication, October 2014).

be regulated? 3) Childhood, health and safety: should the situation of children in the activity be addressed in the law? Which safety provisions would be necessary? Which are state obligations? Which are obligations of waste pickers themselves? Should there be specific provisions regarding the police? 4) Garbage management system: Which is the best system to separate recycling material in Córdoba? Should there be specific routes? For the participatory moment of the workshop, each section was organized around a dynamic to incentivise debate. From a Popular Education approach dynamics rely deeply on ludic methods, enjoyment, participation, distribution of time and opportunities to speak. Examples of this dynamics are role-playing, brainstorming, music, and the use of colour cards to express agree/disagree opinions that would then be opened to full debate, etc. The debate was conducted through roundtable discussions, each participant introduced his or herself, and sheets with the structure of the workshop were delivered so everyone can follow the development of the workshop, and at the end of the workshop each participant would provide feedback on the experience and say how does he or she finds it better to mobilize the outcomes of the workshop.

Ethical Considerations

The epistemological and methodological approach adopted in this thesis has shed light on the ethical considerations this sub-section aims at making explicit. Those ethical considerations involve: acknowledging my positionality, gaining participant's consent, assuring anonymity and controlling data dissemination.

The long-lasting debate subjectivity vs. objectivity or neutrality vs. bias in social sciences has produced renewed and nuanced ways of approaching research. Feminist scholars have been salient in providing methodological strategies to surpass the myth of neutrality while providing systematic and reliable knowledge. A critical approach to this epistemological dilemma emphasize the social construction of knowledge making as moves of power rather than moves of truth; therefore, knowledge is always situated and embodied knowledge (Haraway 2004, 86–88). Gender, class, race, emotional and cognitive experiences locates every researcher in particular stand point. These critical epistemologies posit responsible acknowledgement of that stand point, and some also

suggest certain stand points -such as that of the oppressed- are more privileged than others to produce knowledge on oppression (Harding 2004).

In this research the organizing vector for the analysis are the claims and struggles of those who embody the legal limbo. The inquiry on these workers' voices is linked to my own emotional and cognitive previous experiences. My master's thesis on sex workers legal perceptions and actions of resistance have influenced the way in which I think about sex work. During my first encounters with sex workers I came to realize the pre-conceptions that guided my approach to this topic. Unwrapping and revisiting those pre-conceptions has transformed my approach to the research topic. In particular, I have de-mystified a hyper-victimizing take on sex workers' voices. I was confronted to plural and complex life experiences, as well as with unequal opportunities to raise their voices in political and legal settings. This experience motivated further collaborations with the organization Ammar and my involvement with the Network for the Recognition of Sex Work in the city of Córdoba. This position has also determined my access to the field as well as the higher level of confidence reached with participants. My positionality has also influenced mainly two methodological choices. On the one hand, I decided use circulating discourses in the public realm to unwrap the dynamics of the limbo. In that way, I could rely on public information (such as news and press releases) to elaborate on what gets to be said and how in those settings. On the other hand, I have valued experiential knowledge as a source of contextual legal responses and decided to include them as an important part of the research inquiry. This methodological choice can also be read in line with critical epistemology concerns on the voices of the oppressed. Luckács legacy on the 'proletarian consciousness' gives priority to the conditions of possibility of new thinking which is inherent to the class position (Jameson 2004, 145). In this sense, Weeks (2004) emphasized the relevance labouring practices -and the subjectivities that emerge from them- have to construct standpoints.

Other ethical issues involve consent, anonymity and control over the information. I gained informed *consent* in each interview by orally informing the participants about: the way confidentiality will be protected, the right to withdraw participation without any reason, the potential harms and the ways this research is planning to be disseminated. All this and their answer were recorded before starting the interview,

mainly considering the possibility of illiterate participants. I have decided to gain consent this way with all of them to preserve them from having to say they do not know how to read and write, just in case that would make them feel uncomfortable in any way.

Anonymity is a choice of the person in the ongoing process. Therefore, I re-checked their option before making the report public. For all those who decided to keep their anonymity, I have erased the signs that may make them identifiable. In addition, the information was stored under safe files with access security passwords. In order to give the participants *access* to the data I translate the analysis into Spanish and gave a report back to them so they could check the way I've framed them. Translation is not just a matter of access to data, but it is also an ethical consideration for being a sensitive point or the use of participant's voices.

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On Sex Work

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