

The Dream of Formality: Racialization Otherwise and International Economic Law

Donatella Alessandrini^{*}, Johanna del Pilar Cortes-Nieto^{**},
Luis Eslava[✉] and Anil Yilmaz Vastardis^{***,****}

ABSTRACT

This article explores the central role of formalization in the history and functioning of international economic law. International economic law, in constituting and managing a ‘modern’ world economy, has relied on what we call ‘the dream of formality’. This dream gives a sense of internal coherence and future totality to international economic law. It enables international economic law to claim awareness and progressive inclusion of socio-economic and legal relations outside the ‘formal’ modern economy while enabling a regime of differentiation of the so-called ‘surplus’—often racialized—population. In a world where ‘informality’ is the norm and ‘formality’ is the exception, formalization’s colonial origins have evolved into a fully-fledged regime of social management and value extraction. This regime has embedded itself in international labour law and human rights, as well as in areas of international economic law such as Aid for Trade and Global Value Chains. Building on contemporary debates on racial and post-colonial capitalism, we focus on Colombia’s informal economy to illustrate the elusiveness of the dream of formality, and how current exercises of othering underpin today’s practices of ‘racialization otherwise’. Our question, then, is: what would international economic law look like if it did not follow the dream of formality but instead embraced the challenge of sustaining life?

Racial capitalism might be a name for the extraction of additional value from subordinated groups or it may be a name for the racialised expropriation of resources from populations deemed disposable

^{*} Kent Law School, University of Kent, UK

^{**} Facultad de Jurisprudencia, Universidad del Rosario, Colombia

^{***} School of Law, University of Essex, UK

^{****} The empirical data underpinning our analysis in this article comes from the *Informality in Times of Covid-19* project (2020–2021). Conducted under *The IEL Collective’s* initiative, *Ruptures21: Towards New Economies, Societies and Legalities*, the project explored the impact of the SARS-CoV-2 (Covid-19) pandemic on informal workers and their families, using Colombia as our main case study. Highlighting the large yet often forgotten contribution of informal workers to countries’ general economies, as well as the dangers they face in moments of public health crises, the project’s outcomes made an urgent call for a new set of social, economic, and health policies in Colombia and similar countries. The project produced the first comprehensive database of information available on the informal economy in Colombia, three policy briefs, five life histories, a documentary, and a series of additional media reports, outreach events, and audiovisual interventions in collaboration with local filmmakers and community groups. This research received funding support from the University of Kent GCRF Emergency Response Fund (2020), the University of Warwick Institute for Advance Study (IAS) GCRF Fellowship (2020), the University of Essex GCRF @ Essex Engagement Fund (2020) and in-kind support from Universidad del Rosario, Colombia. More information can be found at www.ruptures21.com. We thank George Hill for his editorial support in the production of this article.

or it may point to processes of expulsion – and it might, most likely, be a name for the world that emerges from these combined processes.

Bhattacharyya, 2018: 166

I. INTRODUCTION

This article explores the central role of the ‘dream of formality’ in the history and functioning of international economic law (IEL) and international economic institutions (IEIs), including the World Bank, the International Monetary Fund (IMF), and the World Trade Organisation (WTO).¹ The fact that informality is the context within which the vast majority of the world population labours every day to survive has recently become apparent through data released by the International Labour Organization (ILO). These data place informality at 85.8% in the African continent, 71.4% in Asia and the Pacific, 68.6% in the Arab States, and 53.8% in the Americas. In Europe, the USA, and other ‘developed’ countries, too, previously formal relations are becoming increasingly deformed.² Against this reality, formalization has been confirmed again as a *conditio sine qua non* for achieving ‘development in the age of global value chains’. This requires states to adopt policies enabling local companies to link up with leading firms, creating more ‘formal’ jobs, securing higher income, and providing better conditions for all citizens.³

We contend that this ‘dream of formality’ is not a recent phenomenon but one that goes back to colonial times. Our claim is three-fold. First, we claim that informality has been and remains the norm, not the exception, in the world economy, and that formal jobs represented a glitch in the histories and geographies of global capitalism. Second, we assert that the promise of formality is part of the very DNA of IEL and IEIs and that it can be traced back to the joint colonial promise of exploiting and integrating Indigenous communities in the world (capitalist) economy. Third, we suggest that it may neither be feasible nor desirable to universally ‘formalize’ labour relations, as this process has not led to better living and working conditions for many. This is because formal wage labour is both a ‘modern’ and a ‘capitalist’ construct that renders surplus value extraction—on which capital has relied for its existence and reproduction—invisible, while it still ‘systematically occur[s] at the margin of the wage relation.’⁴ Recentring our attention on these margins, on informal workers, and on informal workers’ continuous production of value outside formal economic relations is the task ahead.

Borrowing from feminist theory and political economy, we understand capitalism as a mode of production based on a strategic separation of the ‘productive’ or ‘formal’ from the ‘informal’ or the social-reproductive sphere where we re/produce the very conditions of life, including those that generate economic activity. Importantly for us, the persistence of these social divisions is based on racial as well as gendered, sexual, class, disability and migration status lines that are

¹ We use ‘formalization’ instead of formality to emphasize the active process and associated techniques (including narratives deployed by IEIs) that are mobilized to bring ‘informal’ workers into the orbit of formality, and ‘informalization’ to point to the process of rendering previously formal relations informal. We also acknowledge the difference between the kind of formalization promoted by IEIs, which has increasingly combined flexibilization of the labour force with the enforceability of contracts at the expense of collective bargaining, and that promoted by the ILO, which has a fraught history of supporting workers’ collective struggles whilst accommodating capital accumulation. In this article, we focus in particular on the discursive power of the ‘dream of formality’ emanating from IEIs but do not disregard the potential inherent in collective action, including through formalization. We return to this point in section IV of the article.

² ILO, *Women and Men in the Informal Economy: A Statistical Picture* (Geneva: ILO, 2018), https://www.ilo.org/global/publications/books/WCMS_626831/lang-en/index.htm (visited 14 January 2022). As Ashiagbor has argued, informality takes place across the global North and the global South, despite prevalent narratives placing it in the latter. See Diamond Ashiagbor, ‘Introduction: Narratives of Informality and Development’, in Diamond Ashiagbor (ed.) *Re-Imagining Labour Law for Development: Informal Work in the Global North and South* (Oxford: Hart, 2019), 1–18.

³ World Bank, ‘World Bank Report 2020: Trading for Development in the Age of Global Value Chains’ (Washington, DC: World Bank, 2020), <https://www.worldbank.org/en/publication/wdr2020> (visited 19 April 2022); World Trade Organisation, ‘Global Value Chain Development Report: Measuring and analysing the impact of GVCs on Economic Development’ (Geneva: WTO, 2019), https://www.wto.org/english/res_e/publications_e/gvcd_report_17_e.htm (visited 19 April 2022).

⁴ Alessandra Mezzadri, ‘A Value Theory of Inclusion: Informal Labour, The Homeworker and the Social Reproduction of Value’, 53 *Antipode* 1186 (2021).

constantly shifting but are invariably used to devalue particular kinds of essential labour.⁵ We see informality, in this sense, as a structuring feature of the world (capitalist) economy, and racialization processes—i.e. processes of categorization and marginalization grounded on ascribed racial and other grounds—as intrinsic to labour devaluation and value extraction. Building on Bhattacharyya's analysis of racial capitalism(s) and Sanyal's insights into the 'wasteland' of post-colonial capitalism,⁶ we focus on the elusiveness of the dream of formality in Colombia's informal economy. In particular, we address how current exercises of othering—previously anchored on explicitly racial logics—continue to underpin broader practices of 'racialization otherwise'. We understand racial capitalism as a set of processes that hinge on the devaluing of particular groups' lives and labour according to assumed racial and other categories. Along these dividing lines, we see uneven access to economic activities and means of survival, unevenly dispersing and re-arranging life chances.

By focusing on the struggle of one Colombian waste picker, we aim to show how the attempts made by public authorities and unions to formalize her working status have not translated into better working and living conditions for her and her family, nor have they enhanced social and labour protections. We argue that the promise of formalization generates a series of unfulfilled expectations, on the part of governments and in individuals, while extraction of value from informal workers continues to take place. These expectations work because of processes of 'othering' that operate on the back of racialization logics as well as other categories (gender, migration status, sexuality, etc.) that continue to produce disorderly, unproductive, and criminal subjects that need to be brought back into the respectable orbit of the formal productive economy by becoming formalized labourers.⁷

We aim to contribute to the literature of those IEs that continue to pursue the 'dream of formality' through their reports, regulations, and policy recommendations.⁸ Bringing the pedigree of 'formalization' to full light, the question for IEs becomes the following: what would interventions that do not follow the dream of formalization, but instead embrace the challenge of supporting projects that sustain life look like? At the same time, we aim to contribute to studies of value extraction in the global economy by combining the insights of racial capitalism(s), social reproduction and post-colonial capitalist critique. We want to make sense here of the simultaneous existence of capitalist value extraction alongside the maintenance of so-called redundant or surplus populations, those populations seemingly existing outside the sphere of capitalist accumulation.⁹ 'Value', as has been widely discussed by critical authors, is a particular social relation under capitalism, which results from organizing economic activities and labour

⁵ Silvia Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation* (Williamsburg: Autonomedia, 2004); Leopoldina Fortunati, *The Arcane of Reproduction*, Hilary Creek (tr.), Jim Fleming (ed.) (Williamsburg: Autonomedia, 1995); Antonella Picchio, *Social Reproduction: the Political Economy of the Labour Market* (Cambridge: CUP, 1992); Alessandra Mezzadri, 'On the value of social reproduction' 2(4) *Radical Philosophy* (2019), <https://www.radicalphilosophy.com/article/on-the-value-of-social-reproduction> (visited 13 January 2022); Donatella Alessandrini, *Value-Making in International Economic Law and Regulation: Alternative Possibilities* (Abingdon: Routledge, 2016); Verónica Gago, *La potencia Feminista* (Buenos Aires: Tinta Limón, 2019); Cristina Vega, 'Rutas de la reproducción y el cuidado por América Latina: Apropiación, valorización colectiva y política' in Raquel Gutiérrez (ed.) *Comunalidad, tramas comunitarias y producción de lo común* (Oaxaca: Pez en el Árbol, 2018), 109–60.

⁶ Kaylan Sanyal, *Rethinking Capitalist Development: Primitive Accumulation, Governmentality and Post-Colonial Capitalism* (Abingdon: Routledge, 2007); Gargi Bhattacharyya, *Rethinking Racial Capitalism: Questions of Reproduction and Survival* (Maryland: Rowman and Littlefield, 2018).

⁷ The very image of the formal worker, as the informal worker, is racially, gendered and geographically coded.

⁸ See also ILO and WTO, 'Globalization and informal jobs in developing countries' (Geneva: ILO and WTO, 2009), https://www.wto.org/english/res_e/booksp_e/jobs_devel_countries_e.pdf (visited 19 April 2022). We do not claim a direct causal relationship between these reports and specific domestic policies. Rather, we see the knowledge produced by these institutions as circulating the dream of formality, the *a priori* belief that formality can and should become the norm in the global economy, thereby contributing to its normative infrastructure. This infrastructure provides a coherent narrative for the legislative, judicial and policy efforts such as those we engage with in section III. See Peter Haas 'Introduction: Epistemic Communities and International Policy Coordination', 46(1) *International Organization* 1 (1992).

⁹ Anne Orford, 'Food Security, Free Trade and the Battle for the State', 11(2) *Journal of International Law and International Relations* 1 (2015).

processes around the world when there is no central coordinating mechanism like in the case of planned economies.¹⁰ But outside this relation, there is an enormous sphere of human activity (the ‘need economy’ in Sanyal’s terms), which can be at times irrelevant to the extraction of value and capital accumulation, although it often makes a crucial contribution to the general economy and is permanently subject to the violence generated by capitalism. Regarding ‘informality’, we aim to show that both the normative architecture that today accompanies the dream of formality and the expectations it generates engender neither integration nor full exclusion. Instead, they create avenues for expanded value generation and capture through the securing of cheap and precarious labour in the ‘need economy’ and the enactment of logics of social and spatial disciplining.

The first section introduces the *longue durée* of the ‘dream of formality’ in the history of IEL and IELs up to the current stage of ‘value chain capitalism.’¹¹ The second section offers a theorization of the relationship between value extraction and shifting exclusions in today’s racial capitalisms and their relationship to social reproduction. In the third and fourth sections, we follow Ana Rosario, a recyclable waste picker who receives neither a decent income nor adequate social and labour protections despite her contribution to the wealth and well-being of her community and attempts at formalization. In the concluding section, we reflect on the significance of these formalization attempts for the future of IEL and IELs.

II. EXCLUSION, REPRODUCTION, AND (IN)FORMALITY

Studies of the informal sector have underpinned the development agenda of international institutions since the 1950s.¹² Informing this agenda has been a belief that the ‘marginal and the excluded’ inhabiting the ‘dual economies’ of undeveloped societies could and should be brought into the fold of the waged (developed) economy.¹³

Although they cannot be conceived in contemporary formalization terms, attempts to integrate native populations into the global economic order, accompanied by powerful racial assumptions, go back to colonial times.¹⁴ In the early phase of the Spanish colonial project, for example, new urban enclaves in the Americas were established near Indigenous communities willing to trade, with the implication that they would be integrated into the disciplines of the colonial economy and its culture.¹⁵

The push to integrate Indigenous communities into the early colonial economy, and the larger Christian world, continued to underpin the expansion of European empires across the Americas and later in Africa, Asia, and the Pacific. Urban enclaves, as well as the system of *encomiendas*,

¹⁰ This social relation is one when labour can be devalued or intensified so that capital can accumulate. See Diane Elson, ‘The Value Theory of Labour’ in Diane Elson (ed.) *Value: The Representation of Labour in Capitalism* (London: CSE Books, 1979), 115–80. See also Sandro Mezzadra and Brett Nielsen, *The Politics of Operations: Excavating Contemporary Capitalism* (Durham, NC: Duke University Press, 2019).

¹¹ Dan Danielsen, ‘Trade, Distribution and Development under Supply Chain Capitalism’ in Alvaro Santos, Chantal Thomas, David Trubek (eds) *Globalization Reimagined: A Progressive Agenda for World Trade and Investment* (London: Anthem Press, 2019).

¹² Development economists have highlighted the importance of the transition from backwards to advanced societies, with the ‘formalization’ of work becoming a civilizational test. The broader imperative to ‘catch up’ can be seen in Rostow’s linear stages of growth and Lewis’ dual economy models, published in the 1950s and 1960s and emphasized, in different ways, the need for structural changes, such as formalization, that would lead to rapid capital accumulation. See Walt Whitman Rostow. *The Stages of Growth: A Non-communist Manifesto* (Cambridge: CUP, 1960); W. Arthur Lewis, ‘Economic Development with Unlimited Supplies of Labour’, 22 (2) *The Manchester School* 139 (1954).

¹³ See Paul E. Bangasser, *The ILO and the Informal Sector: An Institutional History*: Employment Paper 2000/9 (ILO, 2000), https://www.ilo.org/employment/Whatwedo/Publications/WCMS_142295/lang-en/index.htm (27 April 2022). Bromley has also explained that the transformation of the informal sector into the modern economy has been a major line of multilateral and bilateral aid since the 1970s. See Ray Bromley, ‘A New Path to Development? The Significance and Impact of Hernando De Soto’s Ideas on Underdevelopment, Production and Reproduction’, 66 (4) *Economic Geography* 328 (1990), at 338.

¹⁴ Robert Knox ‘Valuing Race? Stretch Marxism and the Logic of Imperialism’, 4 (1) *London Review of International Law* 81 (2016).

¹⁵ Samuel Lyman, ‘Spanish Laws Concerning Discoveries, Pacifications and Settlements among the Indians’ (American West Center Occasional Paper number 17, 1980), Order 139, at 37, 39, and 41.

established to ensure the extraction of raw materials and tributes from Indigenous lands in the Americas, acquired a new level of sophistication during the heyday of the British Empire in the 19th and early 20th century. The integration and deployment of labour as a vehicle to advance the ‘civilizing mission’ became critical to the colonial project.

For colonial officers and intellectuals, these efforts at ‘stabilization’ sought to limit the dangers of unruly migration caused by the arrival of ‘modernity’ in Africa¹⁶ and to ensure the consolidation of colonial and later post-colonial tax systems while promoting European ‘family life’ values.¹⁷ According to Cooper, British labour officers and thinkers came to deploy ‘a sociology of work based on the idea of a working class distinguished from the backward population of the bush.’¹⁸ For these officers, natives in formal labour would decrease turnover in the workforce while benefitting from ‘training, union organization, and living with their families in towns, where a new generation would be born, well fed, and watched over by doctors and teachers, and where they would be better able to adapt to the conditions of urban capitalism.’¹⁹

Anchored in a bias against rural communities, economies, and knowledges, and on the belief that ‘modernity’ would serve as the platform for the global integration of native populations, these colonial interventions announced a commitment to a universal understanding of ‘development’. Development in this context, marked by the emergence of new international institutions during the post-WWII period, began to be understood as a technical enterprise detached ‘from a politics of assertion and transformation.’²⁰ Importantly, this took place at a time when inequality was rapidly becoming a globalized ‘static hierarchy.’²¹

Although the 1970s signalled the beginning of awareness amongst IELs that vast swathes of ‘third world populations’ remained unemployed despite massive rural–urban migrations, their development agenda began to focus more explicitly on the dream of transition into ‘formality’, which started to figure prominently in efforts to include the wageless in the waged economy.²² While the term ‘informal sector’, and later the ‘informal economy’, only explicitly entered the lexicon of IEL organizations at this point, the desire for formalization goes all the way back to their inception.²³ Formalization was embedded in their focus on increasing productivity, employment rates, and trade levels in ‘developing countries’. In the case of the IMF, the Fund’s Articles of Agreement explain its purpose in terms of growth of international trade, achievement of high levels of employment, and development of productive sources of its members.²⁴ The Preamble of the General Agreement on Tariffs and Trade also specifies full employment as one of the main objectives of post-war trade liberalization.²⁵

¹⁶ Frederick Cooper, ‘Development, Modernization, and the Social Sciences in the Era of Decolonization: The Examples of British and French Africa’, in Miguel Bendeira Jerónimo and António Costa Pinto (eds) *The Ends of European Colonial Empires* (London: Palgrave Macmillan, 2015), at 15–50.

¹⁷ See especially, Frederick Lugard, *The Dual Mandate in British Tropical Africa* (Edinburgh: William Blackwood and Sons, 1922), at 230–57. Formalization in order to tax labour remains an important policy issue for IELs and in many parts of the world. See Michael Rogan ‘Tax Justice and the Informal Economy: A Review of the Debates’ (WIEGO Working Paper 42, 2019).

¹⁸ See Cooper, above n 16, at 26.

¹⁹ *Ibid.*, at 26.

²⁰ *Ibid.*, at 42.

²¹ *Ibid.*

²² Bromley, above n 13, at 328–48.

²³ The term ‘informal’ employment was first used by the ILO in the 1960s to refer to growing numbers of people in the Third World who were economically active but not employed in ‘modern’ jobs as planned in development interventions. Against the conventional wisdom of the time, the ILO brought employment to the centre of development agendas in tandem with concern for informal labour. The ILO implemented comprehensive employment missions in the 1970s, in many cases funded by the World Bank and the Inter-American Development Bank. The term ‘informal sector’ was first seen in the report of the 1972 Kenya mission. See especially, Inter-Agency Team financed by the United Nations Development Programme and organized by the International Labour Office, ‘Employment, Incomes and Equality: A Strategy for Increasing Productive Employment in Kenya’ (ILO, 1972), https://www.ilo.org/public/libdoc/ilo/1972/72B09_608_engl.pdf (visited 13 January 2022). See also Bangasser, above n 13; Bromley, above n 13; David Morawetz, ‘Twenty-five Years of Economic Development 1950 to 1975’ (World Bank Report 10,098, 1977), at 32.

²⁴ IMF, ‘Articles of Agreement’, at Art.1. See also, World Bank, ‘Articles of Agreement’, at Art.1.

²⁵ General Agreement on Tariffs and Trade, Marrakesh, 15 April 1994, 1867 UNTS 14, preamble.

In the eyes of IEs, productive and full employment was possible only through the formalized 'modern' economy; and the references to growth, employment and productivity all assumed a transition to formal labour relations.²⁶ In this sense, the categories 'formal' and 'informal' echoed Lewis's dualistic model of 'modern' and 'traditional' sectors in underdeveloped countries.²⁷ In the early days of modern IEs, 'informal' or 'traditional' means of labour were categorized as a result as 'underemployment', 'unemployment', or 'unskilled work', and thus a barrier to capitalist productivity, full employment, and development. For example, in its second annual report, the World Bank links productivity with the need to eliminate the 'drain of labour towards the black market'.²⁸ Formalization was considered a crucial element of efficiently functioning economies. Early World Bank reports also often view the traditional and informal economy as a problem of 'unskilled labour' within the Third World that needed to be trained and integrated into the productive economy.²⁹

Today, IEs continue to view labour informality as a problem that prevents developing countries from 'fully benefitting from the dynamics of globalization'.³⁰ The ILO and World Bank view formal jobs and firms as the only way for a country to fully benefit from global trade.³¹ As their report puts it: '[r]educing the size of the informal economy is ... a key policy objective from a developmental perspective'.³² Similarly, the IMF views informality as a 'key constraint' on development.³³

More recently, the significance and scale of informal labour in the global economy have become apparent. Most of the world population, including a growing sector in the global North, engages in informal labour.³⁴ Yet the 'dream of formality' and its associated techniques of formalization persist in discourses of IEL related to the integration of informal workers in the global economy through, for instance, participation in Global Value Chains (GVCs). Both the WTO (2019) and World Bank (2020) have argued that integration and technological upgrades facilitate transitions from informal to formal employment and therefore higher productivity and income and better working conditions.³⁵ This is the case, they maintain, provided that (developing) countries adopt appropriate domestic and international policies. These include the avoidance of rigid labour regulations on the one hand; and the (further) liberalization of goods, services, and capital, the protection of intellectual property regimes, and contractual obligations on the other. The latter is important for reassuring the foreign capital prepared to outsource production by protecting its intangible assets and the myriads of contractual relations that link (sub)contractors and lead firms in GVCs.³⁶

Regardless of these efforts to tackle informality, it remains the rule in the global economy; indeed, the Fordist ideal of formal, stable employment represents a digression from the global trend in the history and geographies of capitalism. In parallel to the push for formalization by

²⁶ See IMF still describing the informal economy as having low productivity and countries with large informal economies struggling to achieve economic growth—IMF, 'What is the Informal Economy?', Finance & Development, December 2020, <https://www.imf.org/external/pubs/ft/fandd/2020/12/what-is-the-informal-economy-basics.htm> (visited 13 January 2022).

²⁷ Bromley, above n 13.

²⁸ International Bank for Reconstruction and Development (IBRD), 'Second Annual Report' (Washington, 1947), at 11.

²⁹ Early World Bank reports seem to conflate informal work/traditional economy with unskilled labour and proposes to modernize and offer training opportunities and increase the productivity of labour. See e.g. IBRD, 'Population and Manpower in the Economic Development of Peru' (Washington, DC: World Bank, 1948), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/95538146807927808/population-and-manpower-in-the-economic-development-of-peru> (visited 24 April 2022) at 12.

³⁰ ILO and WTO, 'Globalization and informal jobs in developing countries' at 9.

³¹ *Ibid.*, at 127.

³² *Ibid.*, at 9–10.

³³ Statement of Ceyla Pazarbasioglu, Director of the IMF Strategy, Policy and Review Department, quoted in World Bank, in Franziska Ohnsorge and Shu Yu (eds) *The Long Shadow of Informality* (Washington, DC: World Bank, 2021).

³⁴ ILO, *Women and Men in the Informal Economy*.

³⁵ See above n 3.

³⁶ IEs such as WTO, IMF, and World Bank tend to differ again from the ILO in their approach to formalization. The former group is more concerned with the productive efficiency of labour and taxation of income and the latter is more concerned with the protection of workers and collectivization of the labour force.

IEIs, dominant GVC actors (such as multinational enterprises) continue to extract surplus value from informal and precarious labour through multi-tiered value chains. Despite this, informal workers' working and living conditions do not necessarily improve as is assumed in the official literature.³⁷ This is an important dynamic of today's racial capitalisms. As Mezzadri argues, capitalism is not defined by wage labour but by the extraction of labour-surplus through multiple forms of exploitation.³⁸

III. VALUE EXTRACTION, SHIFTING EXCLUSIONS, AND SOCIAL REPRODUCTION

To make sense of the persistence of informal labour in our global economy, it is useful to turn our attention to Sanyal's reflections on post-colonial capitalism and Bhattacharyya's analysis of racial capitalism(s). Arguing against the historicist assumption that transition from the informal to the formal sector in post-colonial economies is both inevitable and desirable, Sanyal shows how there has always been a 'need economy' outside capitalist production where people labour for their survival. This space exists outside the direct circuits of capital value extraction but remains part of capitalism as a system of social relations. Indeed, it is the ongoing capitalist processes of primitive accumulation, expropriation, and dispossession that reproduce this sphere—in what Sanyal identifies as the 'wasteland'—where informal labourers struggle for their survival. Crucially, these labourers may still (re-)enter and participate, almost on an ongoing basis, in the sphere of capitalist production as a source of surplus value. This latter process impacts in a particularly poignant way informal workers implicated in GVCs such as the Colombian waste pickers examined in the following section.

However, Sanyal argues, many in the 'need economy' are 'informal producers who are not seen by capital as a potential source of surplus value... [and] do not find a place within the accumulation-economy because of the "involution" of the space of capital.'³⁹ This involution refers to capital's ability to reorganize its processes of expropriation and exploitation, as well as of expulsion of living beings at different times and places, and according to different techniques, statuses, and interests.⁴⁰ Capitalist production is grounded, in this sense, and as we have already mentioned, on ongoing processes of differentiation. Race, gender, migration status, sexuality, and other categories are mobilized to render individuals amenable to direct value extraction or momentary abandonment and to normalize this order of things. Here, the framework of racial capitalisms draws attention to how racialization processes, based on race and other socio-economic markers, are foundational to the modern economy.

While Robinson paid attention to how an explicit racial logic has underpinned and informed capitalism since its emergence, Bhattacharyya identifies racial capitalism as a particular yet ever-changing phenomenon within the larger motions of capital.⁴¹ For her, racial capitalism is 'a set of processes that divide particular populations from access to resources and establish differential access to economic activity, [...] a space apart from or alongside the spaces of capital.'⁴² These processes vary across time and space, generating many racial capitalism(s), each of them made by particular techniques that order, differentiate, exclude, and discipline bodies depending on

³⁷ See World Bank (2020), above n 3.

³⁸ See Mezzadri (2021), above n 4.

³⁹ See Sanyal, above n 6, at 255.

⁴⁰ Sanyal identifies developmental and welfarist governmentality as a means through which the world's 'poor' are managed by states and international institutions, which transfer some of the fruits of capitalist production to 'some' members of the need economy. See Sanyal, above n 6, at 261.

⁴¹ Cedric Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill: University of Minnesota Press, (1983) 2000) cited in Bhattacharyya, above n 6, at 120.

⁴² Bhattacharyya, above n 6, at 166.

the logics of capital in a given location.⁴³ The next section, on the social management and legal classification of informal waste pickers in Colombia, illustrates this point.

Our joint reading of Sanyal and Bhattacharyya leaves us, therefore, with the following. For Sanyal, the perspective of the ‘need economy’ provides common ground for both the ‘excluded’ and the ‘included’ in their battle against capital.⁴⁴ This ground comes close to Bhattacharyya’s ‘social reproduction’ and its relation to racial capitalism(s). According to Bhattacharyya, social reproduction is the terrain on which the conditions of life are made and re-made, sometimes providing direct and indirect subsidies to capital, but always providing the labour without which social life, on which capital depends, cannot exist.⁴⁵ Thinking about social reproduction goes back to the earlier works of feminist and post-colonial scholars who saw the separation of the sphere of formal production from that of social reproduction, and the constant redrawing of that boundary, as important features of capitalism.⁴⁶ By making the informal labour and social reproduction activities invisible or less productive of value, profits can be made and capital can continue to accumulate and grow. Such social reproduction activities include those associated with biological reproduction, including sexual, affective and emotional services, the unpaid production of goods and services in the home and community, and the reproduction of culture and ideology.⁴⁷

Feminist and post-colonial scholars have also emphasized the crucial role that social divisions and hierarchies play in processes of labour (de)valuation, on the one hand, and capital accumulation, on the other. In addition to race, gender, sexuality, and class, these scholars have shown how geography and migration status have been used to devalue certain types of labour in order to extract value, from the colonial era to today’s ‘value chain capitalism.’⁴⁸ Since the 1990s, case studies have shown how reproductive, informal, and migrant labour have supported production worldwide.⁴⁹ The question of racialization through race and other markers is therefore central to processes of social differentiation and to the construction and legitimization of the excluded as disposable and less worthy of attention.

More recently, Mezzadri has shown how this labour directly contributes to surplus value in processes of global production, pointing to industrial housing arrangements that extend the control and discipline over realms of daily social reproduction of the workforce; the externalization of reproductive costs through urban–rural movements according to which workers are cyclically sent home once production ends; and processes of formal subsumption of labour as exemplified by the number of homeworkers implicated in GVCs.⁵⁰ What Bhattacharyya and Sanyal as well as these other authors highlight is the equal importance of socially reproductive labour that, while not always contributing directly to surplus value extraction and capital accumulation, makes life

⁴³ Ibid.

⁴⁴ See Sanyal, above n 6, at 261.

⁴⁵ Bhattacharyya, above n 6, at 53–7.

⁴⁶ See above n 5. See also Claudia Jones, *An End to the Neglect of the Problems of the Negro Woman!* (New York: Jefferson School of Social Science, 1949); Chandra Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’, 30 (1) *Feminist Review* 65 (1988); Maria Mies, *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour* (London: Zed Books, 1986).

⁴⁷ See Shirin Rai, Catherine Hoskyns and Dania Thomas, ‘Depletion and Social Reproduction: CSGR Working Paper 274/11’ (Warwick: Centre for the Study of Globalization and Regionalization, University of Warwick, 2010), at 3.

⁴⁸ On value chain capitalism, see especially, Danielsen, above n 11. Federici traces links between the Portuguese ships coming back from Africa with the first ‘human cargos’ and the repressive reproductive laws adopted in Europe to create an industrial labour force through the establishment of the housewife as a category—Federici, above n 5. Morgan shows the simultaneous development of Western notions of value and race by drawing on the lived experiences of enslaved African women in the 16th and 17th centuries. Racial capitalism denied enslaved women affective ties and kinship whilst relying on them for reproducing slavery—Jennifer L. Morgan *Reckoning with Slavery: Gender, Kinship and Capitalism in the Early Black Atlantic* (Durham, NC: Duke University Press, 2021).

⁴⁹ See Naila Kabeer, ‘Globalization, Labour Standards, and Women’s Rights: Dilemmas of Collective (In) Action in an Interdependent World’, 10 *Feminist Economics* 3 (2004); Wilma A. Dunaway, *Gendered Commodity Chains: See Women’s Work and Households in Global Production* (Stanford: Stanford University Press, 2013).

⁵⁰ Mezzadri, above n 4 and 5.

(and future value extraction) possible. Their attention to racial capitalism(s), social reproduction, and the ‘need economy’ also highlights the limits of formalization policies that assume that capital is willing and able to integrate all informal workers and their vital contribution to the sustenance of life into the formal economy.

In the next section, we turn to our study of informal waste pickers in Colombia, the limits of formalization, and ‘the patterns of activity that go into the pursuit of maintaining life.’⁵¹ Our account attends to the fact that racial capitalisms impact populations differently, and that those differences ‘include the histories of social privilege and exclusion that run alongside the economy.’⁵² We start by introducing Ana Rosario’s daily struggle to perform informal and reproductive labour during the Covid-19 pandemic and her difficulties in accessing a decent income and social protection despite her contribution to her community. We then address attempts by legislators and the Constitutional Court in Colombia to bring informal workers within the orbit of formalized labour, and the impact of these legal interventions on the lives of workers like Ana Rosario.

IV. WASTE PICKERS, RECYCLING, AND INFORMAL WORK IN COLOMBIA

Ana Rosario Guzmán lives in the south-west of Bogotá, where she has worked for nearly 15 years as an informal waste picker, collecting recycling materials. Her husband, two sons, and daughter have also found jobs in recycling-related activities.

Ana Rosario is one of 24,310 recyclable waste pickers who walk the streets of Bogotá every day collecting and sorting recyclable materials across the city.⁵³ Thanks to them, nearly 1200 tons of recyclable waste are recovered daily.⁵⁴ Like Ana Rosario, most waste pickers live on the outskirts of the city in low income, densely populated neighbourhoods where, according to Colombia’s complex racial hierarchies, mostly non-white Colombians live.⁵⁵ Most of Ana Rosario’s work takes place at night and very early in the morning. Most recyclable materials are collected in upper-income areas which, given Bogotá’s socio-economic segregation, are located far away from where Ana Rosario, her co-workers and the main recycling warehouses are located.⁵⁶

Ana Rosario’s income depends on the number of recyclable materials she manages to carry to the warehouses. On average, a waste picking household like hers earns nearly half the minimum wage in Bogotá, but around 30% cannot even reach this amount. These figures decrease further in smaller cities.⁵⁷ As an informal worker, Ana Rosario does not have access to social security or labour protections, a situation which benefits the warehouses she sells to.⁵⁸ Ana Rosario, like many informal workers, relies on other sources of income to make ends meet. She supplements her earnings with sporadic paid domestic work in a neighbour’s house.

⁵¹ Bhattacharyya, above n 6, at 56.

⁵² *Ibid.*

⁵³ This is the number of recyclable waste pickers registered before municipal authorities—Unidad Administrativa Especial de Servicios Públicos de Bogotá, ‘Caracterización Población Recicladora 2020’ (Bogotá, 2021), <https://www.uaesp.gov.co/sites/default/files/documentos/Caracterizacion%20poblacion%20recicladora%202020%20publicar.pdf> (visited 20 April 2022). The number increases to 38,368 people at the national level—Superintendencia de Servicios Públicos Domiciliarios, ‘Informe Sectorial de la Actividad de Aprovechamiento 2019’ (Bogotá, 2020), https://www.superservicios.gov.co/sites/default/archivos/Publicaciones/Publicaciones/2020/Dic/informe_sectorial_aprovechamiento_2019_0.pdf (visited 13 January 2022).

⁵⁴ Federico Parra, ‘Reciclaje: ¡Sí, Pero Con Recicladores!’ Nota técnica de Wiego no. 9 (2015).

⁵⁵ Unidad Administrativa Especial de Servicios Públicos de Bogotá, above n 53. These localities or districts are among the poorest areas of the city, ‘Así Se Construyó El Mapa de Los 403 Barrios Más Pobres de Bogotá’ *Semana*, 6 May 2020, <https://www.semana.com/nacion/articulo/el-mapa-de-los-403-barrios-mas-pobres-de-bogota/669419/> (visited 13 January 2022).

⁵⁶ See Parra, above n 54.

⁵⁷ *Ibid.*

⁵⁸ Most recyclable waste pickers in Bogotá have access to the national health system through state subsidies. However, only 3% are covered by a pension scheme and only 1% have access to insurance against work-associated risks—Unidad Administrativa Especial de Servicios Públicos de Bogotá, above n 53.

Since the Covid-19 pandemic started, conditions worsened for Ana Rosario and her family. During the 2020 lockdowns, businesses closed their doors and available recyclable materials diminished, making her work almost impossible. Ana Rosario, like many of the 13,805,597 informal workers in Colombia (61.2% of the active workforce)⁵⁹ whose income depends on daily work on the streets, was forced to develop new strategies to make ends meet. Work on the streets exposed waste pickers not only to the virus but also to police violence. Her family opted for reselling retail-priced fruit and vegetables bought in *Corabastos*, the largest wholesale market in Bogotá, in an improvised shop near their home. As infections increased and access to *Corabastos* was restricted, her household experienced a critical situation. They decided to turn the space they had rented for the groceries shop into a collection warehouse, to directly sort and sell recyclable materials collected by other waste pickers. This allowed the family to briefly obtain some extra income before competition with medium-sized intermediaries demanded funds to buy and store the materials.

Ingreso Solidario, a cash transfer programme implemented by the national government to lessen the social cost of the economic and health crisis, is intended to benefit nearly 3,000,000 people living in extreme poverty. However, as Ana Rosario's household income had not fallen under the extreme poverty line (\$145 USD per household per month⁶⁰), they could not benefit from emergency social assistance. Ana Rosario's family is, in this way, part of a vulnerable population (referred to as the 'invisible poor' or 'sandwich population' in the development literature) that live precarious lives without being categorized as extremely poor and therefore rarely have access to state subsidies or welfare assistance.

During the most difficult months of the pandemic, the only permanent source of income for Ana Rosario and her family was a modest cash transfer from urban sanitation revenues which is paid to waste pickers after years of protests and litigation. In 2003, the Colombian Constitutional Court was called upon to protect the rights to equality and work of Bogotá's informal waste pickers by requiring the municipal government to adopt affirmative action enabling waste pickers to become formal waste collection providers at the city level.⁶¹ This ruling was part of a long list of laws and policies aimed at formalizing recyclable waste pickers in the country: these are efforts, which respond to, interact with and inform IIEs' dream of formality, and to which we now turn.

The concept of informal labour was introduced in Colombia in 1976 after the ILO's Regional Employment Program for Latin America created a conceptual framework for the study of informality in the region.⁶² This guided the first surveys on informality conducted by the National Department of Statistics.⁶³ In 1984, a government-commissioned expert assessment of the national labour market concluded that informality was a major problem and called for flexible labour legislation as a means to promote formalization.⁶⁴ Since the 1990s, policy and legal regulations on informality have also been informed by the standards set by the ILO International

⁵⁹ Ruptures 21, 'A New Social Policy. Informality as the Norm and Formality as the Exception (Report 1)' (2020), <https://repository.urosario.edu.co/bitstream/handle/10336/31450/Ruptures21%2C%20Informality%20in%20Times%20of%20Covid19%2C%20Report1%2C%20English%2C%20061120.pdf;sequence=1> (visited 20 April 2022).

⁶⁰ Departamento Nacional de Planeación, 'Pobreza monetaria en Colombia. Resultados 2020' (Bogotá: DNP, 29 April 2021), https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2020/Presentacion-pobreza-monetaria_2020.pdf (visited 13 January 2022).

⁶¹ Colombian Constitutional Court Judgment T-724/03, 20 August 2003.

⁶² Bogotá was one of the first cities where the ILO's World Employment Programme conducted research on urban informal labour in the 1970s—Bangasser, above n 13. As mentioned at n 8, we do not claim a direct causal relationship between IIE recommendations and Colombian policy. We are however interested in how the discursive power of the dream of formality reverberates in such initiatives.

⁶³ Andrés Felipe García, Juan Carlos Guataquí and Mauricio Rodríguez, 'El perfil de la informalidad laboral en Colombia,' 16 Perfil de Coyuntura Económica 91 (2010).

⁶⁴ The assumption is that strict labour and tax regulations disincentivize formal employment as they create financial and bureaucratic obstacles when hiring new workers—see Natalia Ramírez Bustamante, 'Cumplimiento de la regulación y conflictividad laboral en Colombia. Contribución a la misión de empleo 2021,' 1 Trabajo y Derecho 3 (2021).

Conference of Labour Statisticians.⁶⁵ The definition of labour relations adopted in 1961, which includes subordinated waged labour,⁶⁶ has been more recently complemented, at the same time, with the incorporation of the 2003 ILO decent labour standards.⁶⁷ Accordingly, Colombia's Law 1429 of 2010 defines formal labour today as waged labour that pays taxes and contributes to the social security system.⁶⁸

It was not until the 1990s that law and policy in Colombia turned to the formalization of recyclable waste picking, which in practice required membership in legally constituted associations, which have achieved technical and financial sufficiency as to be able to provide a 'good' service and compete against waste collection corporations. According to these criteria, formalization involves entrepreneurship, subjection to tax and administrative regulations, and profitability beyond subsistence.⁶⁹

The collection of recyclable waste for reuse and commercial purposes in Bogotá, however, started as early as the 1950s. This history reveals larger and deeper racialization processes that have informed the social and legal arrangements allocating waste pickers into different categories endowed with different 'value'. From the 1950s, internal civil conflict and industrialization policies brought thousands of migrants, often peasants and racialized individuals, to cities like Bogotá, who began waste picking in open-air dumps as a source of income. In the 1980s, as waste disposal policies shifted towards landfills, waste pickers faced evictions and job losses. This context brought about the first wave of waste pickers organizations in Bogotá, which would then engage in litigation before the Constitutional Court in the 1990s.⁷⁰ The collection of recycling materials continues to provide jobs to migrant populations until today, as the recent wave of Venezuelan migration to Colombia has shown. New migrants are subjected, however, to the worst labour conditions as they usually do not belong to waste picking organizations and, given their migration status, are more vulnerable to arbitrary treatment from police officers.⁷¹ This makes these workers victims of new hierarchies within the informal economy, which add to the processes of racialization already suffered by more established waste pickers.

Since the 1990s, the law has prioritized corporations with high financial and technical capabilities for waste collection services. The ideal waste picker, as recognized by legal regulations, is a person who has either a formal job within one of the sector's main providers or someone who runs an independent formal waste collection business.⁷² Against this backdrop, both the Constitutional Court and national and municipal authorities have assumed that grouping waste pickers and formalizing their associations are the best ways to protect their rights. They take for granted that waste collection should be subjected to market competition and that formalization combined with affirmative action is the best way of helping waste pickers to overcome their

⁶⁵ See García, Guataquí and Rodríguez, above n 63.

⁶⁶ Colombia adopted its first labour code in 1951, which defined labour relations as dependent, subordinated, and waged. These elements are still central to the definition of formal labour.

⁶⁷ Since 2010, national development plans have referred to ILO decent labour standards—Andrés Felipe Bogotá Roa and Juno Rojas Bohorquez, 'Informalidad y Trabajo Decente en Colombia' (Thesis on file at Universidad Libre, Law Faculty, Bogotá, 2019), <https://repository.unilibre.edu.co/bitstream/handle/10901/18717/informalidad%20y%20trabajo%20decente%20en%20colombia%20final.pdf?sequence=1> (visited 18 January 2022).

⁶⁸ Ibid.

⁶⁹ See Parra, above n 54.

⁷⁰ Ibid.

⁷¹ Redacción Bogotá, 'Migrantes ocultos en el mundo del reciclaje', *El Espectador*, 11 December 2021, <https://www.elespectador.com/bogota/migrantes-ocultos-en-el-mundo-del-reciclaje/> (visited 25 April 2022).

⁷² Bogotá's government referred to this idealized provider when replying to a waste pickers' 2003 lawsuit. According to the defendant, waste collectors should comply with a minimum threshold of technical, financial, and legal standards which recyclable waste pickers had not achieved. See Colombian Constitutional Court, above n 61. The national government has also criticized the lack of 'business development' in the waste collection service. See Consejo Nacional de Política Económica y Social (CONPES), 'Lineamientos y Estrategias para Fortalecer el Servicio Público de Aseo en el Marco de La Gestión Integral de Residuos Sólidos' (CONPES 3530, Bogotá: DNP, 2008) at 13.

marginalization.⁷³ What formalization entails is still open to contestation, yet there remains a consensus that it is the ideal status for all workers. Ana Rosario's case shows that, for organizations whose members are low-income workers, it is virtually impossible both to comply with the legal requirements of formalization and to compete with corporate providers.

As recycling became an activity of economic and environmental interest in the 1990s,⁷⁴ Law 142 of 1994 subjected waste collection and other utilities to market competition, and ordered municipal authorities to organize public tenders for private waste collection services according to value for money criteria. In 1999, Law 511 extended some social protections (housing subsidies and childcare support) to recyclable waste pickers recognizing the need to support (some of) their reproductive labour. Before Law 511, waste pickers were not recognized as workers. They were categorized as criminals, homeless, beggars or, at best, inconvenient workers, and subjected to open stigmatization and extreme forms of violence.⁷⁵ Hence, Law 511 transformed perceptions about recycling as a value generation activity, albeit while leaving waste pickers in limbo between formal and informal work. However, indirect forms of criminalization and stigmatization of waste collection persisted. Environmental and police regulations continue to subject 'inappropriate' waste collection to fines, while waste pickers have been also forced to replace animal-carried vehicles for rickshaws, which demand greater physical strength.⁷⁶

Bogotá organized the first public tender aimed at licensing waste collection services in 2000. This process triggered litigation that ended with a 2003 Constitutional Court decision that ordered affirmative action in favour of waste pickers.⁷⁷ Litigation challenged the incorporation of recycling into urban waste collection services as it would prevent waste pickers from bidding for recycling services. This, in turn, would exclude them from the waste collection altogether and the licensing of recycling services to private corporations. Waste pickers also criticized the tender's financial and technical requirements, as it was almost impossible for their organizations to fulfil them. When the Court decided the case, the municipal authorities had already licenced the service. However, the ruling ordered them to consider affirmative action in future tenders and to set standards according to waste pickers' capabilities.

It is important to highlight that waste pickers' organizations did not challenge the subjection of waste collection to market forces but rather demanded affirmative action to compensate for asymmetrical power relations that had impaired their capacity to compete. The Court focused, in response, on how to help recyclers to get in a position to participate in the market, regarding them as a sort of 'imperfect' potential competitors.

Because the 2003 ruling was not fulfilled, the Recyclable Waste Pickers Association of Bogotá filed new petitions in 2010 and 2011 demanding the suspension of a new public tender announced by the municipality. The controversy this time was about the type of affirmative

⁷³ See Colombian Constitutional Court, above n 61. See also Colombian Constitutional Court Judgment C-741/03, 28 August 2003.

⁷⁴ CONPES policy document 3530 of 2008 also took this approach, suggesting that recycling and waste recovery are highly profitable activities but as they are undertaken by unequipped informal workers, it encourages the reorganization of waste recovery activities according to market logics. See CONPES, above n 72.

⁷⁵ Waste pickers were targeted by 'social cleansing' practices in the 1980s and 1990s as they were accused of robbery, drug trafficking and drug consumption—see Parra, above n 54.

⁷⁶ See Parra, above n 54. Law 769 of 2002 prohibited the use of animal-powered vehicles in urban settings. In 2003, the Constitutional Court compelled municipalities to help recyclable waste pickers to replace their vehicles before enforcing the ban (Colombian Constitutional Court. Judgment C-355/03 (6 May 2003)). As a result, the national government ordered municipal authorities to implement substitution plans before 2012 (Decree 178 of 2012). Bogotá's government distributed small vans as part of its substitution plan, but these only reached 2900 recyclable waste pickers before the ban was enforced. Many were not able to benefit from the scheme because they lack driving licences or cannot afford gas and maintenance costs—María Camila Granados Beltrán, *Movilidades Marginales: Viajes y Experiencias de los Recicladores de Bogotá* (Thesis on file at Universidad Nacional de Colombia, Department of Sociology, Bogotá, 2018), https://www.humanas.unal.edu.co/2017/unidades-academicas/departamentos/sociologia/application/files/9615/3615/5585/Maria_Camila_Granados.pdf (visited 18 January 2022).

⁷⁷ See Colombian Constitutional Court, above n 61.

action that tenders should incorporate. The municipal authorities had required tenders to partner with formal recyclers associations and hire at least 20% of waste pickers in their workforce, combined with the allocation of higher scores to tenders with higher recyclers associations' shareholding. However, recyclers claimed that these requirements were insufficient to comply with the 2003 decision as they did not entail support for associative and formalization processes, real opportunities to participate in the tender, or protection to the associations that had triggered litigation. Furthermore, some organizations were concerned that the tender, by claiming to include recyclers, would legitimize the privatization of recyclable waste collection and, therefore, the exclusion and further endangerment of those not chosen in the tender.⁷⁸

The Court responded by compelling municipal authorities to support the formalization of waste pickers associations. According to the Court, they are an 'exploited' population because 'from the millions of dollars that the business produces, they only receive a small amount',⁷⁹ nearly 5% according to the World Bank as cited by the Court. They are also stigmatized and often subjected to extreme forms of violence, such as practices of 'social cleansing'.⁸⁰ Against this backdrop, however, the Court concluded that formalization was the best strategy to remedy recyclable waste pickers' vulnerability and marginalization. Formalization would enable them to participate in waste collection concessions and become proper entrepreneurs. This was deemed preferable to welfare subsidies as it fosters individual freedom, the development of capabilities, and a better distribution of 'wealth and the benefits of production'.⁸¹ In this way, the Court equated freedom with market freedom and entrepreneurialism, arriving at a formalization formula similar to that promoted by IELs.

The Court focused, in this most recent round of litigation, on three remedies. First, it ordered municipal authorities to introduce programmes and legal regulations aimed at fostering associative processes, with the objective of creating formal jobs and enabling waste pickers to become 'waste businesspeople'.⁸² Second, the Court favoured formalization programmes through non-profit associations and cooperatives, and demanded the inclusion of requirements related to recyclable waste pickers associations' shareholding in waste collection tenders. Finally, it compelled municipal authorities to design waste management schemes that enable waste pickers' real participation in the business. However, as seen above, the Court has never questioned whether formalization is the right approach to address the historical injustices faced by waste pickers, including the rejection or devaluation of their productive and reproductive labour. They have not considered, for instance, whether other forms of waste collection management, such as waste pickers' incorporation into the service as employees, would be possible and preferable.

V. FORMALIZATION'S PROMISES AND FAILURES

Ten years on, and emerging from a global pandemic, what has been the outcome of the Colombian Constitutional Court's approach to formalization? Following its rulings, recyclable waste pickers have been recognized as part of the recycling strategy of the Bogotá's waste collection service. This means that the city transfers a small percentage of sanitation revenues to waste pickers' formal associations, along with a price calculated on the basis of the number of recyclable

⁷⁸ There were also other demands: some organizations claimed that tenders (waste collection enterprises) were granting very low shareholding percentages to recyclable waste pickers associations, preventing them from benefiting the business. Others argued that some tenders were partnering with fictitious waste pickers associations. See Colombian Constitutional Court. Judgment 268/10 (30 July 2010), at section II-8. In the 2011 petition, waste pickers claimed that recyclable waste collection should be separated from other waste collection activities and licensed to recyclable waste pickers associations exclusively. They also demanded that the number of affiliates to the waste picking associations were taken into account as a selection criterion in the tender. Colombian Constitutional Court. Judgment 275/11 (19 December 2011), at section I.2.

⁷⁹ See Colombian Constitutional Court (2010), *Ibid.*, at section 2.1.6.

⁸⁰ *Ibid.*, at section 2.1.6.

⁸¹ Colombian Constitutional Court. Judgment 275/11 (19 December 2011), at section 37.

⁸² *Ibid.*, at section 57.

materials collected and delivered to local authorities.⁸³ This is the modest cash transfer that Ana Rosario received during the lockdowns. Formalization entails, under this arrangement, the registration of individual waste pickers and their associations before the municipal utilities' agency, together with the constitution of waste pickers' associations as legal persons. Once formalized, associations are required to sign co-responsibility agreements to provide recyclable waste collection services to specific entities (for example, public offices and private enterprises such as malls, residential buildings, and factories).⁸⁴ These agreements also entail commitments to minimal labour standards, environmental regulations, and maintaining organizational structure.⁸⁵

Executive regulations from 2013 and 2014 also compelled municipal authorities to offer opportunities to waste pickers' associations to participate in policy design regarding municipal waste management plans. In these plans, authorities were required to prioritize recycling and incorporate registered waste pickers' associations.⁸⁶ In 2015, following one of these executive regulations, formalized waste pickers were also recognized as providers at the national level.⁸⁷ The national government created incentives for waste management projects led by waste pickers' associations and offered technical assistance to support their formalization. Municipal governments were made, at the same time, responsible for implementing waste pickers registration schemes to identify beneficiaries of the affirmative action initiatives demanded by the Constitutional Court. Further regulations in 2016 defined a new set of criteria for waste pickers' progressive formalization and allowed them 5 years to become formalized and licenced in order to benefit from municipal sanitation revenues⁸⁸ and participate in future bids.⁸⁹

There have therefore been many national and local efforts to give effect to the formalization of waste pickers as mandated by the Colombian Constitutional Court. The question remains, however, if these efforts have translated into tangible improvements in the working and living conditions of waste pickers. Ana Rosario, for example, is the head of one of the waste pickers' organizations targeted by the Court. The formalization of her organization has been complicated, nevertheless, by financial and time costs that its members cannot afford. Many organizations like hers struggle to formalize before the 5-year period granted in 2016. Requirements such as computerized accounting management, georeferencing systems for collection control, and customer services are inaccessible to these low-income organizations. Furthermore, the scheme has encouraged 'façade' organizations, with rich investors behind, to take advantage of relaxed requirements and other benefits introduced as a means to help waste collectors get formalized.⁹⁰ As recyclable materials are still cheap, waste pickers' associations also struggle to cover operation costs and secure income for their members.⁹¹ Waste pickers fear that, once the 5-year transitional period is over, they will be unable to compete against for-profit providers.⁹²

⁸³ Unidad Administrativa Especial de Servicios Públicos (UAESP), 'Resolución 119 de 2013'. This 'recovery price' was of nearly US\$30 in 2021; Lionel Poussery, 'Colombia: de recicladores a empresarios de la basura en Bogotá'. *France 24*, 24 February 2021, <https://www.france24.com/es/am%C3%A9rica-latina/20210224-colombia-tarifa-aprovechamiento-recicladores-bogota-empresarios> (visited 13 January 2022).

⁸⁴ Mélanie Rateau and Luisa Tovar, 'Formalization of Wastepickers in Bogotá and Lima: Recognize, Regulate, and Then Integrate?' 47 *EchoGéo* 1 (2019).

⁸⁵ Unidad Administrativa Especial de Servicios Públicos (UAESP), Resolución 051 de 2014.

⁸⁶ See Parra, above n 54.

⁸⁷ Presidente de la República de Colombia, 'Decreto 1077 de 2015. Por medio del cual se expide el decreto único reglamentario del Sector Vivienda, Ciudad y Territorio', https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=77216 (visited 20 April 2022).

⁸⁸ As Rateau and Tovar explain, waste pickers 'are paid according to the number of recyclable materials collected, in addition to their transportation to authorised weighing centers. The remuneration amount is fixed according to the costs avoided by the non-management of recyclable waste by the collection-disposal service'. See Rateau and Tovar, above n 84, at 5.

⁸⁹ Presidente de la República de Colombia, 'Decreto 596 de 2016. Por el cual se modifica y adiciona el Decreto 1077 de 2015', <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20596%20DEL%2011%20DE%20ABRIL%20DE%202016.pdf> (visited 20 April 2022).

⁹⁰ Luisa Tovar, 'Formalización de las Organizaciones de Recicladores de Oficio en Bogotá: Reflexiones Desde La Economía Popular', 62 *Íconos* 39 (2018).

⁹¹ See Parra, above n 54.

⁹² See Rateau and Tovar, above n 84, at 5.

Highlighting these issues does not involve going against all formalization attempts, some of which may be motivated by a genuine desire to provide workers with progressive guarantees, as evidenced by many elements of the Colombian Constitutional Court cases that we have just discussed. Some formalization efforts may also provide tangible benefits, such as the extra income Ana Rosario received during the 2020 lockdowns. Similarly, as the fraught history of the ILO demonstrates, formalization attempts can at times strengthen the power of labour, for instance, by supporting formal collectivization of the labour force. Bringing to the surface, these critiques help us to appreciate the productive power of IEL's dream of formality, and what is often pushed out of sight by fixating on formalization as the only answer to workers' precarity. Ana Rosario's case illustrates, for example, how formal work (either waged labour or through formal enterprises) has come to function as an ideal type of labour against which other forms of labour are evaluated. Three categories of labour emerge organized in a hierarchical order, as a result: formal labour (performed by waste collection formal enterprises and their workers), informal labour (performed by the members of waste pickers' associations in the process of getting formalized), and a sort of non-labour (performed by non-organized waste pickers, many of whom are new migrants). This differential valuation of labour categories corresponds to shifting perceptions of what is considered most productive. At the same time, social stigmatization, classifications, and divisions continue to structure ideas of what deserves attention and protection.

VI. CONCLUSIONS

Despite concerted and painstaking efforts, formalization remains an elusive dream in Colombia, particularly when applied to activities like recycling that are performed, as the case of Ana Rosario clearly shows, by low-income families at the entry-level, alongside and under much more powerful actors. In spite of the Constitutional Court and executive and legislative authorities' best intentions, operational and financial costs combined with legal obstacles still make it almost impossible for waste picker associations to get formalized and ready to compete on a level playing field. The only solutions populating the legal imaginary appear, however, to be 'inclusive' formalization and market competition. This vision dominates public debate despite the fact that waste pickers continue to struggle to get formalized and compete with for-profit entities, all the while performing work which is vital for both the operationalization of the country's waste management system and the reproduction of the conditions of social life without which there would be no economic activity to start with. Nonetheless, formalization continues to be implemented in ways that end-up responsabilizing waste pickers for the failures in getting formalized.

Echoes of the vagabond, criminal, and homeless informal workers reverberate in perceptions of recalcitrant waste pickers, especially migrants, who fail to get formalized despite providing important resources for the communities in which they operate. Sometimes these resources are an indirect subsidy to capital, for example, when firms appropriate their crucial labour without providing a decent income and social and labour protections. At other times, they do not necessarily enter the circuits of capitalist value production, although they may get a share of the value produced elsewhere in the economy to support themselves and their families.⁹³

This leaves us with the following question: are there more feasible and desirable ways to support the (re)productive work of informal labour beyond those associated with the dream of formality? We believe there are, although how feasible and desirable different proposals and experiments are in different countries is an empirical question. They ranging from extending unconditional cash transfers and making them more meaningful as part of 'the politics of the

⁹³ See James Ferguson, *Give a Man a fish: Reflections on the New Politics of Distribution* (Durham, NC: Duke University Press, 2015).

rightful share,⁹⁴ to articulating the benefits of a universal basic income or services,⁹⁵ to demanding locally designed (but publicly funded) jobs in the green and care economies,⁹⁶ to requesting support for popular economies and territorial markets.⁹⁷ What these programmes and calls have in common is the impetus towards new, concrete means of supporting life-enabling activities. Waste pickers like Ana Rosario may benefit, for example, from a social infrastructure that supports her reproductive labour through the provision of universal basic services and a decent income.

Granted, these proposals would need to be ‘instituted’ and therefore ‘formalized’, but at stake is a different formalization mindset altogether. Indeed, some of these proposals can be already heard in the halls of IEs, which have started to recognize the need for states to compensate workers left out of ‘value chain capitalism.’⁹⁸ IEs continue, however, to overlook the possibility that their productivity and market-oriented formalization policies may have enabled a few firms to concentrate wealth and achieve dominant status in international markets by conferring upon them unprecedented legal entitlements without corresponding legal obligations, whilst encouraging states to adopt flexible labour market policies.⁹⁹ As a result, many states and communities have been depleted and left with little financial resources to enact the meaningful ‘compensatory mechanisms’ IEs recommend states put in place to ameliorate socio-economic inequalities,¹⁰⁰ let alone proposals for basic income, universal services, and decent jobs.

We need IEs to recognize the failures of the universal promise of formalization they have espoused for a long time and see informal labour as a structural element of the world economy. Ultimately, IEs need to question the mindset on which IEL, policies, and practice in this area have long been based. Work on social reproduction, in/formal labour, and racial capitalism(s) has exposed the reliance of the global capitalist economy on a violent separation between the productive and social-reproductive spheres for the purpose of extracting surplus value. Recognizing this dependence on socially reproductive activities, informal, and informalized labour as a central element of our world economy is the first step towards shifting this mindset.

But this is not only a matter of making reproductive and informal labour more visible.¹⁰¹ Even where IEs see and ‘value’ social-reproductive labour (by, for example, quantifying the contribution of unpaid work to the size of the national economy), Bhattacharyya explains that this mindset continues to conceive reproductive labour as serving waged work(ers) rather than serving life. As she puts it: ‘whatever the World Bank and others may say or think, for most of humanity the object is to stay alive.’¹⁰² Instead, she argues that waged work, whether formal or informal, should serve reproductive labour, and that the latter should be seen as the over-arching mode of all economic activity.

⁹⁴ Ibid.

⁹⁵ Juliana Uhuru Bidanure, ‘The Political Economy of Universal Basic Income’ 22(1) *Annual Review of Political Science* 481 (2019).

⁹⁶ See Rania Antonopoulos, ‘The Right to a Job, the Right Types of Projects: Employment Guarantee Policies from a Gender Perspective’ *Levy Economics Institute, Working Paper 51* (2007); Donatella Alessandrini, ‘A Social Provisioning Employer of Last Resort: Post-Keynesianism Meets Feminist Economics’ 4 (2) *World Review of Political Economy* 230 (2013).

⁹⁷ Sylvia Kay, ‘Connecting Smallholders to Markets’, http://www.fao.org/fileadmin/templates/cfs/Docs1516/cfs43/CSM_Connecting_Smallholder_to_Markets_EN.pdf (visited 13 January 2022).

⁹⁸ The 2020 World Bank Report, for example, laments the extreme wealth concentration seen in a few import–export firms, as well as the existence of socio-economic inequalities in many countries across the world—see World Bank (2020), above n 3, at 30.

⁹⁹ Ibid, at 5.

¹⁰⁰ See World Bank (2020), above n 3, at 30.

¹⁰¹ One transformative praxis in this respect has been the ‘wages for and against housework’ campaign, which demonstrated the vast amount of reproductive labour needed for capital to accumulate. This campaign mobilized reproductive workers who made specific demands on the state whilst rejecting the gendered and racialised assumptions about who should do this kind of work. See Silvia Federici, *Wages against Housework* (London: Power of Women Collective, 1975); Donatella Alessandrini, ‘Of Value, Measurement and Social Reproduction’ 27 (4) *Griffith Law Review* 393 (2018).

¹⁰² See Bhattacharyya, above n 6, at 52.

Social reproduction, seen this way, is not only the ground on which capital relies to extract value but also the terrain on which to struggle for alternative valorization processes *and* more-than-capitalist economies. This is where the sphere of social reproduction and the 'need economy', in Sanyal's sense, come together and show how social-reproductive, informal, and informalized labour, as well as formal labour, can bring together both the (raced and racialized otherwise) 'excluded' and the 'included' in the ground-up battle against accumulation, extraction and expulsion. Can IEL and IEs heed these calls?