

**“Viviendo del Rebusque:” A Study of How Law Affects Street Rebuscadores in Bogotá**

**By**

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**Thesis submitted to the Faculty of Graduate and Postdoctoral Studies in partial fulfillment  
of the requirements for the Doctorate of Philosophy degree in Law**

**Faculty of Law Graduate Studies**

**University of Ottawa**

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To my rock, my fan, my model.  
My loving mother,  
*A quien se lo debo todo.*

## Abstract

In the last decades, scholars from different disciplines, ranging from economy to law, have tried to better identify and target the working poor in order to provide them with legal protection. Some have referred to categories such as ‘non-standard or precarious forms of employment,’ ‘informal labor’ and ‘popular economy’ to refer to the working poor. My dissertation questions those categories and their ability to target the workers most in need, as well as their underlying assumptions that the activities of the working poor are not regulated by law, but rather fall into a legal vacuum. Using both qualitative and quantitative methodologies, I conducted research with one group of vulnerable workers (whom I refer to as street rebuscadores) in Bogotá (Colombia) to answer two main questions: 1) how can we better target and characterize the social grouping to whom the most vulnerable segment of the working poor in Bogotá belongs? 2) How do both State and non-State legal regimes, such as constitutional law, labour law and *derecho de policía*, interact to influence the productive strategies of the most vulnerable workers in Bogotá? Following Bourdieu’s theory of practice, I found that street rebuscadores constitute the most vulnerable segment of the working poor in a city deeply segregated by class, that they share a similar volume and composition of overall capital (or habitus) and that they share similar practices associated with that habitus. Following a legal pluralist approach, I also concluded that as a social group engaging in regulatory activities, street rebuscadores are situated in a semi-autonomous social field generating internal normative rules, but that is also vulnerable to rules from the larger social matrix in which it is situated. Within that semi-autonomous social field, the vulnerability of street rebuscadores is legally constructed and accentuated by the State, and existing regulatory frameworks are perpetuating and reproducing their condition, although not without resistance.

## Acknowledgements

This dissertation is not only an intellectual project. The reader will find pain and excitement in its pages, despair and hope, tears and laughter. Hopefully, he or she will also find some useful ideas. It is my way of giving a voice to street rebuscadores, to those ordinary brave men and women that we see every day without looking at them in the eyes. I shared almost two years with them before I wrote this dissertation. They taught me a great deal, they empowered me in every possible way, and they kept me company. It is only obvious that I want to start by expressing my deepest gratitude to all of those who shared their stories, their food, their shelter, their time with me. In particular, I want to thank Patricia, Martha, Isadio, Oswaldo, Ernesto and Rosa. Thank you, my friends, for leaving me without excuses to live my life. My humble, deepest, respect to all of you. As weird as it might sound I also want to thank the toughest of all teachers: the street. A violent tornado that devours you or makes you stronger, or both.

This project would have never been possible without the unbelievable generosity of those born in that beautiful country called Canada. They encouraged me, filled me up with new ideas, loved me, and even tried to teach me against all possible odds to walk on the ice. First and above all, I want to express my gratitude to my supervisor, Professor Marie-Eve Sylvestre: you are the most intelligent, creative, ethical, humane and generous academic I have ever met. You stretched my intellectual and academic capacities, you dealt with my crazy ideas, made them sound reasonable, encouraged me, and gave me tools to follow them. You exceeded your duty. I would also want to thank the two other members of my doctoral committee, Professor Katherine Lippel and Professor Karine Vanthuyne. My deepest respect, admiration and gratitude to both of you. Professor Lippel,

you were truly another supervisor. Thank you for your generosity, your always brilliant ideas, your encouragement, and for introducing me to that wonderful world of brilliant and progressive scholars that surrounds you.

When I arrived to Canada, Professor Lucie Lamarche and Sonya Nigam welcomed me in the loving home they used to call “Human Rights Center” and awarded me the Gordon F. Henderson Human Rights Scholarship. My deepest gratitude to both of them for making me feel at home. As for my closest friends during the Ph.D. program, Dominique Bernier, Benoit Frate, Évelyne Jean-Bouchard, Olabisi Akinkugbe and Julia Gitahy da Paixão, my admiration, love and respect. Thank you for every magniloquent party, every exceptional trip, and tons of generous good ideas. I would also like to thank the University of Ottawa and the Canadian government for their financial support. Without the tuition fee scholarship, and the incredible Vanier Graduate Scholarship this dissertation would not have ever been possible.

As for my Colombian people, thank you. I am particularly grateful to my soul mates, my support group, *mis compañeros de batalla*: Yenny Ramírez, Douglas Lorduy, Jorge Sarmiento, Carolina Vergel, Julio Gaitán, Andrés Rodríguez, Marcela Abadía, Esteban Restrepo, Lina Buchely, Andrés Hernández, Pablo Jaramillo and Juan Pablo Fernández. Thank you for literarily walking by my side, for sharing with me laughs and despair, for holding my hand while we live in this crazy city-country-world. I want each and every one of you to know that every senseless and irresponsible idea included in this dissertation is your fault, not mine. I am particularly grateful to Natalia Ramírez, to whom my life and academic future is tied. What I write is also the result of having María Paula Rueda, Martha Medina, Daniel Leguizamón, Marcos Sánchez, Catalina Riveros and

Daniel Gómez by my side, as well as the product of sharing ideas and time with extraordinary human beings and great scholars such as Cesar Giraldo, Isabel Cristina Jaramillo and Diego López. It is also possible because Yolanda Ospina exists. *Gracias Yolandita por ayudarme a cuidar a mis hijos y por cuidarme a mí.*

I am also deeply grateful to my students. It is the unmistakable law of life that those who you are trying to inspire, those who you are trying to teach, end up inspiring and teaching you. I hope some of my students read this dissertation and can find it useful. At least I hope, they can conclude that sometimes questions are more important than answers. I would also like to thank La Universidad del Rosario where I have been working for the past three years, for giving me the opportunity to do what I love. Particularly I would like to thank Lina Céspedes, for giving me the time to finish this dissertation, as well as my office mates, Lorenzo Acosta, Diana Valencia, Andrés Gómez and Karol Martínez for their continuous support, their smiles, and their good vibe.

As for my family, Carlos, Inés, Gloria and Lucila, and my cousins, Claudia, Mario, Gerry, David, Ana Cristina and Andrés, thank you for all the affection and care. Viviana Gamboa (mi linda Pepita), María Victoria Uribe and Aquiles Arrieta, *mi familia del alma*, thank you for every piece of advice, for your love and unconditional support. You three taught me in very different ways to be like the bamboo... flexible, yet firm; delicate, yet strong. Javier Soto, this dissertation is also the result of those long walks, absurd amounts of TV, plants and ducks in the middle of the snow, and the care of your loving family (most especially Claudia, Beatriz and Wojtek). Thank you *mi lindo totico*. Pablo Zuleta, you gave me strength. That being said, I must be crazy to include the name of my psychoanalyst in the paragraph that belongs to my family. Finally, my deepest

gratitude to Roberto Vidal for blowing my mind in a hundred pieces and confronting me to my own limits. I'm a different person, a stronger person thanks to you. I love you all.

To my extraordinary parents... I am unable to find an appropriate word. *Thank you* is not enough. Their endless generosity allowed me to choose from a set of possibilities that were never available to them. Both were exceptional, both were always out of my league. This dissertation is the result of my father's and my mother's many lessons, of their unconditional love, of the time they spent with me, of their good humor, and of their obsession to help in any possible yet humble way. My father died many years ago, but he loved to read, and I'm sure he will read this dissertation wherever he is. I hope you two can feel proud. You taught me to do what I wanted to do, and that's what I did.

Finally, Joaquín and Alicia, *los amores de mi vida*, given all the challenges of being born in a country like Colombia, my parents always insisted that I should give back what I could, whenever I could. What they didn't tell me is that there is no giving back without receiving. Listen to people, learn from people. Joaquín, Alicia and Antonio, *rebúsquense la felicidad*. I want to live long just to enjoy your smile. Don't ever forget that just when the caterpillar thought the world was over it became a butterfly.

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## 1. Introduction

Sierra Morena (Ciudad Bolívar-Bogotá), December 2012

It was getting dark. I was helping Leidy<sup>1</sup> and her sister cook dinner while her mother was selling vegetables and fruits in the street. Leidy was six years old and her sister eight at the time. I was worried and distracted because it was getting late and I did not want to leave Ciudad Bolívar at night, so I burned myself with the gas stove while trying to light it with a match:

- Laura: Fuck! Sorry girls... I am... I am... distracted.
- Leidy: Don't worry, I'll do it. Your mother never taught you how to cook?
- Laura: Well... not really. She doesn't like to cook so much.
- Leidy: My mother had to work so my grandmother taught me. She taught me how to cook and to chop *líchigo* (vegetables) fast to be able to go to sleep early.
- Laura: How early?
- Leidy: early... maybe like 10 or 11pm? My mom takes very good care of us... of me, so she prefers that I wake up early to finish packing the *líchigo* before I go to school. You know she doesn't want us (referring to her brother and sisters) to end up working in the street like her, so school has to come first.
- Laura: At what time do you usually wake up?
- Leidy: 3:00 or 3:30am. You know I study in the morning, so I have to help her pack and get to school on time.... plus she is trying to *rebuscársela* more these days (*se la está*

<sup>1</sup> Although I have written consent from her mother to use her original name, all the children's names have been changed.

*rebuscando más duro*) so that she can buy us presents for Christmas. I want a giant teddy bear. I'm helping her save 1000 or 2000 pesos (CAD 0.42-0.84) every day from our *diario* (a minimum daily family income needed to survive). Do you like teddy bears? I bet Javier (my husband at the time) buys you giant pink teddy bears.

- Laura: (laughing faintly)... no... he doesn't... maybe he should!.. well *mi linda*, I should get going. Everyone looks so busy... who do you think could walk me to the bus?
- Leidy: You should come to live close to us. Two hours wasted in buses to go back home is a long time. My mother told me you live in a beautiful place... she says it's surrounded by trees.
- Laura: It's nice. I'll take you there sometime. Do you think it's safe if I leave alone? Or should I ask your mother if I can stay here tonight?
- Leidy: Mmmm... no. It's better if you leave. It's Thursday... they will start drinking and some men might become a nuisance (*pueden empezar a buscar lo que no se les ha perdido*).
- Laura: you think that? They have all been so respectful to me...
- Leidy: Mmmm... you cannot trust anyone. You can never trust anyone enough. Remember what my mother says? The devil used to be an angel... (Audio 120817-001).

Soon after, Leidy's brother (César - 13 years) walked me to the first bus (*alimentador 6-3 Sierra Morena*). He was busy, but in his words, I did not "know how to deal with this neighbourhood when it [was getting] dark". We walked fast for around 20 minutes without looking at anyone. Once I was in the *alimentador*, it took me another 40 minutes to arrive to a large bus station (*portal del Tunal*) to get on my second bus (*transmilenio H-13*). As I was leaving one of the poorest localities of Bogotá I took a deep breath. It was going to take me approximately another hour and

a half to reach a point where I could take a taxi to get home. During that time, I observed my surroundings. Around half way through, they started to change considerably. The first thing I noticed was the change as the people I came with left the bus and others, dressed with less colors, better fabrics and sometimes perfume, boarded. The landscape also changed. Trees started to appear leaving behind a grayer, colder, more polluted city. My outsider class background was less noticeable. As that happened, I started to realize how it felt to cross the invisible line of the class apartheid<sup>2</sup> in Bogotá every day.

This dissertation is about Patricia (Leidy and César's mother), as well as many other street *re-buscadores* (street vendors, recyclers, street prostitutes, etc.,) who are looking for a way to make a living and survive. I am talking approximately about 82,000 people in Bogotá and 818,000 people in Colombia (National Department of Statistics of Colombia [DANE], 2015). Their workplace is the street. The majority of them are not wage earners but rather self-employed workers who use different productive strategies to gain a minimum daily income (*diario*). They usually come from poor families of dispersed origins, have low educational status, and live (not necessarily work) in stigmatized districts of the urban periphery. As they need to make a basic daily income in order to survive, most cannot afford the unemployment gaps between temporary or part-time jobs typical of the globalized era. They labour excessively and their social security rights are severely restricted because they do not have any real access to social pension, unemployment or disability benefits. Women bear a disproportionate amount of work as they are expected to do most of the care work for children and elderly relatives, in addition to providing a daily income.

<sup>2</sup> I borrow the term from Philippe Bourgois who has used it to describe the cultural and class logic of the US. See, for instance, *In Search of Respect: Selling Crack in El Barrio*. 2003. Other scholars have also used the term: see Bond, 2004 and Hart, 2008 (for South Africa), and Goldstein, 2013 (for Brazil).

In the literature, street rebuscadores are sometimes included in amorphous categories such as precarious workers (Vosko, 2010; Bernstein, Lippel, Tucker & Vosko, 2006), informal labour (Card & Krueger, 1995; Bernal & Cárdenas, 2003; Daza, 2008; Bernal, 2009; Benach & Muntaner, 2010; Mondragón-Vélez, Peña & Wills, 2010) or popular economy (Maya, 2002; Giraldo, 2007; Roig, 2008; Coraggio, 2012; Marañón-Pimentel, 2013). As I will later explain, these categories not only make them invisible, but they assume that their activities fall into a legal vacuum. In this dissertation, I aim to clearly identify and target these workers, increasing their visibility in the hope that the law can better respond to their legal and social needs. I will then look into the current level of penetration of different legal regimes and their impact on their productive strategies. In other words, I aim to target and characterize the social grouping to which the most vulnerable segments of the working poor in Bogotá belong, so that I can then describe and analyze how both State and non-State legal regimes interact to influence the productive strategies of that particular group of workers in Bogotá, in the hope that the law can better respond (or at least stops interfering) with their needs. As such, my dissertation is in conversation with and makes a contribution to five different debates in the socio-legal literature.

First, it contributes to the economic, sociological and legal debates around the categories of non-standard or precarious forms of employment, informal economy and popular economy. (Vosko 2010, Bernstein, Lippel, Tucker & Vosko, 2006; Bernal & Cárdenas, 2003; Bernal, 2009; Benach & Muntaner, 2010; Mondragón-Vélez, Peña & Wills, 2010; Giraldo, 2007; Roig, 2008; Coraggio, 2012). Most scholars are particularly concerned with the causes and the possible solutions to high and growing rates of indecent work across the world, but they rarely question the capacity of those categories to target the workers most in need particularly in developing

countries. I contribute to fill that gap. In the same vein, I also challenge from a critical point of view, the implicit assumption according to which the activities of millions of poor workers, such as those who are self-employed and dependent on multiple parties, are not regulated but rather fall into a legal vacuum.

My dissertation also enters in conversation with and contributes to practical applications of correspondence analysis, the statistical technique used by Pierre Bourdieu to construct a space of lifestyles by combining various types of capital (Bourdieu 1984a, 1984b, 1989, 1990, 2005b). This technique allows me to characterize people from socio-economic levels 1 and 2<sup>3</sup> and test the hypothesis that there are close affinities in lifestyles among those belonging to these two socio-economic groups. Following Bourdieu, many other scholars have used correspondence analysis to explore sociological hypotheses by quantifying the basic dimensions of social space (See: Sapiro, 1999; Rosenlund, 2000; Lebaron, 2001; Denord, 2003; Duval, 2004; Börjesson, 2005; Hjellbrekke et al., 2007; Hovden, 2008; Savage, Warde, Le Roux & Rouanet, 2008). However, that methodology has been rarely used in Latin America (Villarroel, 1996; Rodrigo et al., 2006; Perazzi & Merli, 2017), very rarely to map different cultural profiles depending on the social position occupied by the individuals (Gayo, Teitelboim & Méndez, 2009 and 2013), and without an emphasis on vulnerable populations. Pierre Bourdieu is regarded as one of the greatest public intellectuals and scholars of our time. As such, there is also a growing literature that applies Bourdieu's theory to describe and analyze the practice of poor individuals (Bourgois, 2001, 2003; Bayat, 1997; Sylvestre, 2007, 2010b; Bebbington, 2007; Shildrick & MacDonald, 2013 amongst

<sup>3</sup> As I will explain in part 3.3 of this dissertation, Colombia has a system of socio-economic stratification since the 1980s, ranking dwellings from 1 to 6 to compute the utility bills tariff. Different levels are allocated according to the exterior condition of the household and the general characteristics of its surroundings.

many others). I contribute to that literature by applying Bourdieu's theory of practice, and in particular the concepts of habitus and capital, to characterize the habitus as well as the specific practices associated with the habitus of street rebuscadores.

Thirdly, my dissertation contributes to the literature on legal pluralism (Fitzpatrick, 1984; Engle Merry, 1988; Griffiths, 1986; De Sousa Santos 1987, 2002, 2004, 2005, De Sousa Santos & Rodríguez, 2005; Teubner, 1997; Tamanaha, 2000 amongst others). I add my voice to those who challenge the idea that law should be reduced to official law produced by or recognized by the State. I then use the main contributions of legal pluralism scholarship to describe how three different State-based legal regimes interact with the internal rules of the semi-autonomous social field of street rebuscadores and have an impact on their productive strategies in Bogotá. While I speak of the conflict between state regimes and street rebuscadores' internal rules, I should make clear that I am not interested in promoting State recognition of these internal rules because I believe that most of them rigidify unequal exchanges and reproduce social exclusion. My interest lies in the mobilization of the concept of the semi-autonomous social field developed by Sally Falk Moore (Moore 1973, 2005). Moore describes the interactions between existing regulatory frameworks without any a priori reference-point in terms of which system receives its definite and distinctive structural position. One of my main conclusions is that the vulnerability of the workers most in need is legally constructed and accentuated by the State and that existing regulatory frameworks are not protecting them.

Fourthly, I offer a contribution to the very recent literature on rebusque (Portes, 1988; Menni, 2004; Ochoa & Ordóñez, 2004; Kenbel, 2010; Dakduk, 2008; González, 2008; Mendoza, 2011;

Avendaño & Paz, 2013; Muñoz & Andrade, 2014; Giraldo, 2016). There are few academic texts on the subject, none of them written by legal scholars. Economists, anthropologists, sociologists and journalists, amongst others, have written from different parts of Latin America about rebuscadores using different political approaches and methodologies. However, the scholarly literature written on rebuscadores so far does not describe the practice of rebusque in depth, nor does it present this practice within a given theoretical framework. I contribute to fill that gap and by describing and analyzing how law affects the productive strategies of street rebuscadores, which as far as I know has not been done before.

Finally, my dissertation contributes more generally to the broader literature of socio-legal studies. I am committed to a legal approach that enhances political progressivism and to empirical research that provides insights into the creation of effective legal policies (Pound, 1927). As such, I believe that the legal field needs to interact more with social sciences, because their combined action increases our understanding of social phenomena and provides elements on which to base solutions to social problems (García-Villegas, 2006). The closer law is to society, the weaker the autonomy of the legal doctrine is and the stronger the emphasis on law's dependency on social practice will be. As such, I aim to expand the social field that legal scholars keep under observation as well as the theoretical resources that they conventionally draw on (Cotterrell, 1992).

My dissertation will be divided in seven parts. After this introduction (part 1), I then turn to the literature review (part 2). I briefly describe the categories most frequently used in both developed and developing countries to refer to the working poor: non-standard or precarious employment (part 2.1), informal labour (part 2.2), and popular economy (part 2.3). The emphasis will be put on questioning their ability to target the workers most in need, and the underlying assumption that the

activities of the working poor are not regulated but rather fall into a legal vacuum. I then identify two main research questions (part 2.4), namely 1) how can we better target and characterize the social grouping to which the most vulnerable segment of the working poor in Bogotá belongs? 2) How do both State and non-State legal regimes interact to influence the productive strategies of street rebuscadores in Bogotá?

I used mixed methods to approach both research questions. Therefore, in the third part of this dissertation (3. methodology), I first describe in some detail the documentary analysis I conducted through an extensive literature review and legal analysis (part 3.1). Then, I describe the different techniques through which qualitative data was obtained, that is, in particular, eighteen months of participant observation, focus groups and semi-structured/unstructured interviews (part 3.2). In that part, I also discuss the main ethical and methodological challenges I underwent during fieldwork, as well as the main limitations of the dissertation. Such challenges include entering the field as a partial-insider, working in psychologically and physically overwhelming conditions, finding a legal audience for my work, amongst others (part 3.2.1). Finally, I describe the three main statistical techniques through which I analyzed quantitative data taken from a local random sample survey of the population in Bogota in 2015. These techniques include Simple Correspondence Analysis (SCA), Multiple Correspondence Analysis (MCA) and Principal Components Analysis (PCA). In using these techniques, I develop what Bourdieu calls a space of lifestyles (part 3.3).

In the fourth part, I answer my first research question. To be able to do that, I first introduce the term rebusque, particularly what it means to focus on street rebuscadores (part 4.1), and then

outline the theoretical tools guiding my research, namely Bourdieu's theory of practice, and in particular the concepts of habitus and capital (part 4.2). I then present the results of my analysis, which can be summarized in two main findings. First, the most vulnerable segment of the working poor in Bogotá (street rebuscadores) are very closely situated in the overall social space. In other words, they share a similar volume and composition of overall capital, or similar habitus. To prove my hypothesis, I use three statistical techniques to construct what Bourdieu calls a space of lifestyles from evidence collected in a local random sample survey of the population of Bogotá in 2015. This statistical exercise will prove that: a) people from socio-economic levels 1 and 2 of Bogota have close affinities in lifestyles; b) there is an abysm between the social space shared by the citizens who are labeled as members of socio-economic levels 1 and 2 and those who are labeled as levels 3, 4, 5 and 6; and c) that socio-economic status is the most important source of differentiation in Bogota (even more than age, sex, race and sexual orientation) (Part 4.3).

Second, in the case of street rebuscadores, sharing similar habitus means sharing similar practices associated with that habitus. The statistical exercise accomplished in part 4.3, does not provide information to describe the type of practices that street rebuscadores share, since they are a sub-group within socioeconomic levels 1 and 2 that is not studied in the survey. Therefore, in part 4.4., I use qualitative methods to describe the practices of street rebuscadores. These practices are all subordinated practices within the field of power, and more specifically within the economic field. Based on eighteen months of participant observation in two localities of Bogotá (Ciudad Bolívar and Suba), I find that street rebuscadores share at least eight common practices: they work in the street (part 4.4.1), they work by and for themselves (part 4.4.2), they live with a minimum uncertain daily family income (*el diario*) and they are constantly ready for change (part 4.4.3),

they have big families (part 4.4.4), they develop practical skills needed for their different productive strategies (cooking, heavy lifting, befriending clients, flirting, tolerating high and low temperatures, amongst others) (part 4.4.5), they act like second class citizens (part 4.4.6), they perform illegal yet legitimate actions supported by one main informal rule: survival at any cost (part 4.4.7), and they share common yet unarticulated feelings of discontent with the political and economic system (part 4.4.8). I conclude that the cultural and economic variables that situate socio-economic levels 1 and 2 in a particular place within the social space, inform the habitus and therefore structure the logic underneath the practice of the group of street rebuscadores that I am studying, as much as their daily practical actions contribute to structure that very same habitus.

In the fifth part, I turn to my second research question. In order to answer that question, I first introduce the theoretical tools guiding my research, namely the literature on legal pluralism, but most particularly, Sally Falk Moore's concept of the semi-autonomous social field (part 5.1). I argue that as a social group engaging in regulatory activities, street rebuscadores are situated in a semi-autonomous social field that generates internal normative rules, but that is also vulnerable to rules from the larger social matrix in which it is situated. I then present some specific hypotheses (based on research and participant observation) about the ways in which both State and non-State laws interact to influence their productive strategies. I consider State constitutional law, labour law and administrative law as regulatory fields with different levels and layers of interactions. I make three arguments, as follows: 1) State constitutional law exceptionally penetrates the social field of street rebuscadores at the invitation of some individuals who possess a superior amount of capital as compared to that of the social base. When it does, it interacts with internal rules (part 5.2); 2) State labour law is unable to penetrate the semi-autonomous social field of street rebuscadores

(part 5.3); and 3) The semi-autonomous social field of street rebuscadores is being invaded by *derecho de policía* although not without resistance (part 5.4).

Finally, I conclude by putting together and reading theoretically the main arguments of this dissertation and by making a series of conclusions and recommendations (part 6). First, given the characteristics of street rebuscadores it is unlikely and even undesirable that they enter a standard employment relationship. This being said, and it is my second point, giving up the idea that the best way to protect them is through a bilateral employment relationship does not mean losing some of the main benefits that have been associated so far with the existence of a bilateral employment relationship in Colombia. Thirdly, the social security system (health, retirement benefits, maternity leave and medical disabilities) should be completely separated from salaried labour. Fourthly, the idea of a universal basic income should be seriously considered. Fifthly, while constitutional law, and in particular, tutelas (injunctions that allow individuals to seek the immediate protection of their constitutionally guaranteed rights), should continue to protect street rebuscadores, we should expect them to become exceptional mechanisms. Finally, the police and other administrative authorities should definitely refrain from policing street rebuscadores as long as they are unable to guarantee that they will be able to survive through other means than working in the street.

## **2. Literature review: brief description of the dominant categories used to analyze the working poor and their main limitations**

The human drama around the lives and limited choices of the working poor has triggered multiple attempts from different disciplines to target those most in need and envision possible solutions. In developed countries, the category most frequently used to refer to the working poor is that of non-standard or precarious forms of employment (Vosko, 2010; Bernstein, Lippel, Tucker & Vosko, 2006), while in the developing world that of informal labour (Card & Krueger, 1995; Bernal & Cárdenas, 2003; Daza, 2008; Bernal, 2009; Benach & Muntaner, 2010; Mondragón-Vélez, 2010). In Latin America, popular economy is also a category that is increasingly gaining adherents (Maya, 2002; Giraldo, 2007; Roig, 2008; Coraggio, 2012; Marañón-Pimentel, 2013). In the following paragraphs, I will briefly synthesize their content, question their ability to target the workers most in need, and their assumption that the activities of the working poor are not regulated but fall into a legal vacuum.

### **2.1 Non-standard or precarious employment**

Legal scholars in developed countries mostly use the category non-standard or precarious employment. The concept has been associated with deviations from the standard employment relationship, which was established as the normative model of employment in most western societies after World War II (Vosko, 2010). The standard employment relationship is defined as a full-time continuous job, supported on three central pillars: standardized working time, continuous employment (permanency), and bilateral employment relationship (subordination). The attention is focused on wage earners, especially industrial workers, who possess neither capital nor

production means and earn their living by selling their labour. Those wage earners, also known as being part of the proletariat, were and are still commonly associated by most legal scholars with the poorest class of working people.

Deviations from the standard employment relationship include part-time and fixed-term jobs, temporary agency work and self-employment. Those types of employment are more likely to be precarious (characterized by low income, uncertainty, limited social benefits and statutory entitlements, if any) than the typical contractual agreement reached with the proletariat. To reduce deviations, Vosko argues that the main strategy followed by the international legal community has been to expand the regulation drafted to protect the parties involved in a standard employment relationship to other types of non-standard forms of employment. However, the adjustments made so far have been limited by the fact that only those workers in situations closely resembling the employment relationship were to receive labour protection, rather than all those falling outside the employment relationship in need of protection (Vosko, 2010, p. 89). For example, the International Labour Organization (ILO) Convention on part-time work (1994) limited its scope to *permanent* part-time wage-earners, excluding the self-employed as well as those hired on temporary or casual bases. As a result, it neglected “not only the most sizeable segment of part-time employees (casuals) but those that are worst off.”<sup>4</sup> (Vosko, 2010, p. 118).

<sup>4</sup> According to Vosko, something similar happened with the regulation of temporary employment. The EU Directive on Fixed-Term Work (1999) extended certain protections identified with the SER to fixed-term workers whose situations otherwise resembled the norm, but it excluded temporary agency work which tends to be more precarious than fixed-term work. Again, the workers who were most in need of minimum standards were the least likely to receive them. As for the regulation of the precarious self-employed, the ILO Recommendation on the Employment Relationship (2006) protected only *dependent workers* (those without a contract of employment but who depended mainly on a single client), excluding the majority who works for more than one client. Additionally, even for the groups of workers protected under the new regulation, the most innovative proposals involved extending only limited economic support mechanisms and rights. For a detailed explanation, see: Vosko, 2010.

Therefore, extending the standard regulatory framework to non-standard forms of employment doesn't solve the problem for the workers most in need, even in the unlikely hypothesis that it is fully enforced.<sup>5</sup> Some legal and economic scholars such as Alain Supiot and Guy Standing, are working on alternative approaches. They both start by stating that “gaps in employment, fluctuating levels of employment intensity, and jobs of varying duration” are not unusual (Vosko, 2010, p. 157). This is a key statement, since scholars frequently assume that the phenomenon is atypical. As both Supiot and Standing assume that precariousness is typical, they agree that a new social system is needed to offer citizens means through which discontinuities no longer involve precariousness.

Leah Vosko describes Supiot's vision as a “beyond employment” approach that is based on the “idea that an individual is a member of the labour force even if he or she does not currently have a job” (Vosko, 2010, p. 157). It therefore “pursues a vision of labour and social protection inclusive of all people, regardless of their labour force status, from birth to death, in periods of training, employment, self-employment, and work outside the labour force, including voluntary work and unpaid caregiving” (Vosko, 2010, p. 219). Depending on what is going on in the lifecycle of every worker, he/she should be able to reduce or increase paid working hours while retaining access to protections and income support. To realize this vision of working time adjustments, the “beyond employment approach” proposes to use “social drawing rights” (Supiot, 2001). For those rights to become effective, employment remains a central ingredient, which distinguishes it from the notion

<sup>5</sup> There are additional reasons why authors like Vosko estimate that there is no going back to the standard employment relationship. Those reasons include: 1) the disintegration of the male breadwinner/female caregiver contract upon which the standard employment relation was built 2) The constant transformation of citizenship boundaries in the globalization era, 3) the fact that many workers do not aspire to hold a full-time job, 4) the severe drop in union membership which has historically served to enforce the social contract signed with the proletariat, amongst others (Vosko, 2010).

of a universal basic income, which, in its purest form, is unconditional (Friedman, 1962; Parijs, 1992; Offe, 1997; Gorz, 1999; Standing, 2002; Barchiesi, 2007; Munger, 2015; Stern, 2016).

In contrast, Guy Standing defends the establishment of an unconditional basic income (Standing, 2011). He believes that we require a system of social security in which all citizens or residents of a country regularly receive an unconditional sum of money in addition to any income received from elsewhere. Basic income is intended to be only enough for a person to survive, so as to encourage people to engage in economic activity. His approach is intended to benefit those who he identifies as the growing precariat: a new class-in-the-making in the Marxian sense of the term, “which consists of people who have minimal trust relationships with capital or the State (...) and none of the social contract relationships of the proletariat” (Standing, 2011, p. 8). Those in the precariat deal with irregular patterns of income and have no assurance of stability which means that they have to frequently deal with welfare. Standing considers that at least a quarter of the adult population in many countries is in the precariat. He develops with particular care the thesis that part of the precariat is composed by *denizens*: people – like migrants – who for one reason or another have a more limited range of rights than citizens do, and are forced to work in non-standard forms of employment.

I do not plan to use the term precarious or non-standard forms of employment as a key category in my research. One of the reasons is that it is definitely typical for most of the Colombian working population to fit into the categories constructed as non-standard forms of employment (part-time and fixed-term jobs, temporary agency work and self-employment), which means these categories are useless to target the workers most in need. I do not have figures to show the percentage of workers within the Colombian workforce who hold part-time or fixed-term jobs, because the

National Administrative Department of Statistics (DANE) does not measure the Colombian labour market with those variables in mind. However, we know that only 2.41% of all Colombian workers receive all of the mandated employment benefits,<sup>6</sup> which means that 2.41% of them are part of a standard employment relationship, because mandated benefits are associated with full time continuous jobs. This percentage is scandalously low and has to be qualified. There are other workers who hold full time continuous jobs without receiving all but some mandated benefits. We do not know exactly how many there are, but we know for instance, that 25.81% of the Colombian workforce pays contributions to both pension and health (Bernal, 2009). However, not all of those workers hold full time continuous jobs. Public employees in Colombia who hold fixed-term jobs, for example, have to pay contributions to get paid. In any case, the point remains that even in the most unlikely and best possible scenario, more than half of the Colombian population holds non-standard forms of employment, which makes them typical instead of atypical, and renders the category useless to target those workers most in need.

But that is not the only or most important problem. If all I had to say was that it is typical for most of the Colombian working population to fit into the categories constructed as non-standard forms of employment, then I could take side with the literature consulted because their main discussion is actually whether in the globalization era precarious forms of employment are typical or still marginal. However, I do not believe the main point is only to argue that non-standard forms of employment are typical, but that the workers most in need are actually excluded from those very same categories. In Colombia, for instance, most poor workers are self-employed and dependent

<sup>6</sup> In Colombia, that means contributions to pension, health, and workplace accident insurance, right to severance pay, paid vacation, mid and end-of-year bonus and transportation subsidy for employees with salary less or equal than 2 minimum wages.

on multiple parties that theoretically situate them in the commercial sphere and not in any category construed as non-standard. But are they really part of the commercial sphere? To fit into the category of the stereotypical business entrepreneurs, one is supposed to possess at least some capital or production means. However, poor self-employed workers in Bogotá (such as street vendors) depend exclusively on the sale of their capacity to work, which is exactly what the word *worker* as opposed to *entrepreneur* is supposed to mean.<sup>7</sup>

In sum: the category non-standard or precarious forms of employment is not useful to target the workers most in need in a developing country such as Colombia. Even worse, it leads us to assume that the activities of millions of poor workers, such as those who are self-employed and dependent on multiple parties, are not regulated because they simply do not fit in the standard categories or even in the non-standard categories constructed specifically to broaden the scope of the first. Are their activities, then, supposed to fall into a legal vacuum? If they do not fit in the imaginary boundaries constructed should we simply assume that those workers do not legally exist? Or should we change those boundaries?

<sup>7</sup> The ILO decided that it was acceptable to create new categories of workers not traditionally viewed as employees who did not fit either in the category of the stereotypical business entrepreneur. However, it was decided that only workers without a contract of employment but who depended mainly on a single client (*dependent workers*) could enjoy *comparable* levels of social and labour protection with the rest of the workers situated inside the labour market. The rest of the self-employed workers who depend on multiple parties were to remain part of the commercial sphere.

## **2.2. Informal labour**

The category non-standard or precarious employment is not even used in Colombia, nor in many other developing countries. One of the reasons might be that so far economists (not lawyers) have dominated the discussion around vulnerable workers and have consequently imposed their own categories. In Colombia, as in most countries of Latin America, economists most frequently use the category of informal labour (Card & Krueger, 1995; Bernal & Cárdenas, 2003; Bernal, 2009; Mondragón-Vélez, Peña & Wills, 2010). There is no single approach to defining informality and the definitions used in theoretical and empirical research often lack consistency from one study to the next (Guha-Khasnobis, Kanbur, & Ostrom, 2006). They generally differ depending on whether they focus on the employment arrangement, the enterprise, or on the economic activity in question (International Development Research Centre [IDRC], 2012).

Colombia measures informality based on a combination of factors including the definition adopted by the International Labour Organization in the 15<sup>th</sup> international conference of labour statisticians - ILO, 1993- (DANE, 2009), and the report of the third meeting of the expert group on informal sector statistics -Delhi group 1999- (DANE, 2009). The definition is based on the characteristics of the units of production (enterprise approach), rather than the characteristics of the employment arrangement (labour approach). Therefore, it does not include any explicit standard related to labour regulations but is based exclusively on firm size, or more specifically, on the assumption that there is a high probability that the informal worker is situated in the range

of enterprises employing five or fewer workers (DANE, 2009).<sup>8</sup> Following that definition, approximately 51% of the Colombian workforce was informal in 2012 because they worked in enterprises comprised of 5 or less employees. If the measurement included other variables that incorporated characteristics of the employment arrangement, the percentage would be definitely higher. For instance, if formal workers were identified only as those who receive all mandated employment benefits, then 97,59% of the Colombian workforce would be informal!

Within the scholarly literature, the choice of how to characterize informality is not trivial and is greatly influenced by the political orientation of the analyst. For instance, left-wing interventionist scholars define informality as economic activities that are either not covered by the regulatory framework (they operate outside the formal reach of the law), or even if they are, they are not enforced in practice (Daza, 2008; Benach & Muntaner, 2010). Their emphasis is on the employment arrangement, since by regulatory framework they refer basically to employment law and social security regulations. Right-wing neoclassical scholars are less interested in the employment arrangement and the enforcement of employment law. They use narrower definitions usually correlated only to social security regulations. For instance, Bernal defines informal workers as those who do not pay contributions to both pension and health. By using that definition, 74.19% of the Colombian workforce is part of the informal sector in 2006 (Bernal, 2009). Mondragón-Vélez narrows the definition even more to those who do not make contributions to health. By that definition, 66.75% of the population is informal (Mondragón-Vélez, Peña & Wills, 2010). Both percentages are higher when compared to the traditional measure of informality based

<sup>8</sup> For a complete definition of informality, see (DANE, 2009, p. 10-11). Recently, the ILO changed its traditional definition of informality to a more comprehensive one that takes into consideration regulation criteria, as it looks into additional types of informal employment outside informal enterprises. However, most of the available data for many developing countries is still based on the 1993 definition.

upon firm size, but low if compared with measurements based on definitions where the key variable is the enforcement (or lack of enforcement) of employment law.

Therefore, within the scholarly literature, analysts usually consider regulatory variables, although that does not mean that they agree on definitions based on the employment arrangement. When right-wing neoclassical scholars, for instance, use definitions correlated to social security regulations, they disregard the centrality of the employment arrangement because in Colombia, citizens can contribute to both pension and health without necessarily being involved in a bilateral employment relationship. However, they do that precisely because they fear that a definition based on the employment arrangement will shed light on a huge informal sector. For instance, Bernal rejects as “implausibly large” and “unrealistic” measurements based on contributions to health and pension, workplace accident insurance, and right to paid vacation because that would imply an informal sector of 93.6% (Bernal, 2009). Thus, both neoclassical and interventionist scholars agree that informal economic activities are either not covered by employment law, or even if they are, employment law is not enforced in practice (Daza, 2008; Bernal, 2009; Benach & Muntaner, 2010). The difference is that interventionist scholars defend the centrality of the employment arrangement to measure informality, because part of their argument is that employment law is disappearing (they wish we had more of it) and high informality figures corroborate their hypothesis. Conversely, neoclassical scholars consider those figures “implausibly large” because high informality figures disprove their hypothesis. Their argument is that we have too much employment law and they wish we had less of it. In both cases however, this proves the category useless for my purposes.

The widespread belief that informal economic activities are either not covered by employment law, or even if they are, employment law is not enforced in practice, fuels the belief that informal economic activities are outside the reach of law in general. In fact, *in-formal* or *sin-forma* in Spanish means without a determined shape or character (the shape or character that the law is supposed to take). In Colombia, lawyers do not write about or hardly mention the informal sector, because they assume that we do not have much to say about an unregulated sector. In labour law, students learn how to legally address the problems of those involved in a standard employment relationship (less than 3% of the population) or in non-standard categories constructed specifically to broaden up to a certain point the scope of the first category. They do not address the economic activities of the working population regarded as informal, because the activities of the working poor are supposed to fall into a legal vacuum. Even worse, since labour lawyers are supposed to deal with the problems of the working population, if they do not study labour informality, no one else in the legal profession does. But are informal economic activities really outside the reach of law generally-speaking?

Kennedy for instance, talks about “legal background rules”, or in other words, legal rules that function more or less effectively as rules of the game, but that are habitually left out of casual hypothesis about hierarchy and alienation (Kennedy, 1997). Referring to formal standard employment relationships, Lucy Williams argues that labour lawyers, for instance, customarily fixate on increasing waged workers’ bargaining power, leaving out and unwittingly reinforcing the naturalization of family, contract, property, and tort law. Williams argues that background rules of private law play an important role in giving existing labour markets a highly inequalitarian shape, but are left out in the analyzes of most left labour academics (Williams, 2002). What about

naturalized background rules in the informal sector? Everyone knows they exist, but they are naturalized, taken for granted, not attributed causal significance in explaining the outcomes of the battles that occur within that framework. For instance, as I will argue in the fifth part of this dissertation, administrative State law plays a key role in defining the character of the productive strategies of some of the most vulnerable workers within the informal sector, although it is habitually left out of any hypothesis about hierarchy and alienation.

Informal labour, therefore, is a category that carries without much thought the implicit assumption that the activities of the working poor are not regulated but fall into a legal vacuum. The other big problem is that the category is actually unable to do what it promises: target the workers most in need. Regardless of the definition used, most of the working population is informal, and no proper effort has been made to subdivide that big category into differentiated segments of precarious workers in need of differentiated public policies to protect them. The problem is not that experts do not understand that disaggregation is important to provide better public analysis. From the World Bank to the global action-research-policy network Women in Informal Employment: Globalizing and Organizing (WIEGO), efforts have been made to develop holistic models of the composition of informality. The WIEGO, for instance, divides informality into different statuses of employment (employer, employee (regular and casual), self-employment, industrial outworker/homeworker, and unpaid family worker), and suggests a classification based on factors such as poverty risk, average earnings and segmentation by sex.<sup>9</sup> The World Bank (Perry, 2007) has its own model, and even local public authorities responsible for the collection

<sup>9</sup> The highest poverty risk is for unpaid family workers, most of them women, with low or inexistent earnings. The lowest poverty risk is for employers, most of them men, with high average earnings. For a graphic idea of the model by status of employment depicted by the WIEGO see <http://www.wiego.org/informal-economy/wiego-network-holistic-framework> (Accessed April 2017).

and processing of official statistics, such as Colombia's National Department of Statistics [DANE], produced differentiated figures of informality.<sup>10</sup> The problem is that disaggregation has not been identified as a key variable in the discussion around informality, probably because the idea is feared by many policy makers as politically incorrect. "It would be like choosing between AIDS and cancer," a local politician once told me. He considered as an unnecessary political mistake to cast a shadow of doubt upon the misery of any of the subgroups that compose the category, with a cost in terms of rewarding politically voters.

Not surprisingly, the key discussion around informality fueling the political confrontations between neoclassical and interventionist scholars, is: why is informality so high (and growing) across the developing world? According to neoclassical scholars, employment regulation is to a large extent responsible for aspects of poor labour market performance such as large informal employment and high unemployment, especially among vulnerable groups in developing countries (Card & Krueger, 1995; Bernal & Cárdenas, 2003; Echeverry & Santa María, 2004; Kugler & Kugler, 2009; Bernal, 2009; Mondragón-Vélez, Peña & Wills, 2011).<sup>11</sup> Interventionist scholars disagree. They insist that employers should be forced to respect minimum standards (Benach & Muntaner, 2010), and argue that flexibility and reductions in employment costs have not always

<sup>10</sup> DANE, for instance, divides informality by status of employment, educational background, kind of work performed, workplace, social security affiliation and sex. See: <http://www.dane.gov.co/index.php/estadisticas-por-tema/mercado-laboral/empleo-informal-y-seguridad-social> (Accessed April 2017).

<sup>11</sup> Their explanation is quite straightforward: increases in non-wage costs or in the minimum wage make labour relatively more expensive as compared to capital. Hence, employers can either shift the production away from labour, destroying formal working posts, or try to pass the additional cost to employees via lower wages. However, the rigidity imposed by a binding minimum wage implies that employers cannot pass the cost to workers via prices, so they fire the most vulnerable who end up either in the informal sector or unemployed (See: Mondragón-Vélez, Peña & Wills, 2010, p. 10). In the case of Colombia, according to Mondragón-Vélez and his colleagues, "an increase of 10 percentage points in non-wage costs is associated with an increase of 5 to 8 percentage points in the size of the informal sector." (Mondragón-Vélez, Peña & Wills, 2010, p. 4) The key part of the argument is that employment regulation is regressive as it protects high skilled workers and pushes low skilled to informality (and/or unemployment). Their findings are supported by an extensive body of literature, and are even shared to a certain extent by some opposing scholars (See, for example, Eyraud & Saget, 2008).

resulted in increases in gainful employment (Vega Ruíz, 2008). They blame neoliberalism for the increasing figures of informality, and argue that the State has to intervene to put an end to social stratification and unequal arrangements that have historically benefited dominant groups in society. Benach wrote: “the “invisible hand” of the market is covered with a glove that has been paid by the people” (Benach & Muntaner, 2010, p. 405).<sup>12</sup>

The discussion then is focused on how to decrease the number of informal workers in general, and not in identifying the profound differences that exist within differentiated segments of informal workers, many of whom do not even want to become formal workers. According to the national survey conducted by DANE, when informal workers in Colombia are asked whether they would accept a formal job even if they were paid the same amount of money they currently earn plus all mandated employment benefits (which is in fact highly unlikely), 50% said they would not accept the offer (Bernal, 2009). Self-employed women, for instance, have many incentives to remain informal: they can comply with caregiving responsibilities, obtain higher levels of income, benefit from the help of other members of the family, avoid humiliations, enjoy flexible hours, and apply for important subsidies, amongst others. Informality is such a broad category, that it does not make much sense to propose undifferentiated remedies for *all* informal workers when incentives vary so much from one segment to another. What do a male employer with four employees and the unpaid

<sup>12</sup> Additional arguments by interventionist scholars include: 1) employment regulation has not been generally imposed “from above” to meet the social demands of workers, but has been developed together with employers to reflect social norms, particularly norms of fairness (Berg & Kucera, 2008), 2) employment regulations indirectly protect vulnerable workers that are not covered by them. (E.g. an increase in the minimum wage pushes increases in informal wages (Eyraud & Saget, 2008), 3) regulation in books is different from regulation in practice. Reading directly from legal statutes to measure rigidities could be highly misleading according to Felipe & McCombie (2008), 4) at the same level of economic growth, there are some economies that can maintain more advanced working standards (Lee & McCann, 2008).

daughter of a female street vendor have in common? Maybe their only common feature is that they are both regarded as informal workers.

### **2.3 Popular economy**

There are other less influential analytical categories used around the discussion of vulnerable workers. For instance, in Latin America a group of left-wing intellectuals (again, mostly economists) were particularly concerned with the concept of informality, especially because they thought it idealized formality and degraded the different survival modes created by the “informal” working poor (Coraggio, 2012; Merlinsky & Rofman, 2004; Roig, 2008; Razeto Migliaro, 1993; Wanderley, 2002; Maya, 2002; Marañón-Pimentel, 2013; Giraldo, 2007). They believed it was necessary to create a new category with a new content. The new category was called *economía popular* (popular economy), and it differed from “formality” in that while formality is commonly associated with the model of capitalist accumulation, popular economy should be associated with experiences of resistance against that very model.

The group acknowledges that we know very little about the internal functioning of the working poor, and argues that the main reason for that is that we are used to capitalist structures of thoughts that prevent us from looking at the working poor from a different point of view. Consequently, the goal is to expose the arrangements of power underlying those structures of thoughts and to study thoroughly what they called “popular economy”. A growing number of authors is taking the task of doing so in Argentina, Chile, Bolivia, Ecuador, México and Colombia. The most renowned works come from Argentina and Chile, particularly from Coraggio (2012) and Razeto Migliaro

(1993), where popular economy initiatives were documented after periods of hyperinflation or after the dictatorship.

Their main conclusion is that there is an increasing number of poor workers in Latin America who have been forced to create new forms of self-employment due to critical periods of unemployment, whose relations of production are mainly based on kinship or neighborly relations but not on capitalist relations. They are not oriented mainly towards the reproduction of capital but to the reproduction of life. By establishing relations of solidarity, reciprocity and cooperation they build strategies of employment and survival with the main objective of improving their lifestyle and creating conditions necessary for human development (not of accumulating monetary earnings to be exchanged in the market). As a result they oppose capitalist thought. The main political goal of the movement is to strengthen those experiences and to give them political voice, so that they are able to fight successfully against capital hegemony and so that governments are pushed to acknowledge and adopt a fair and different economic model.

There are good and bad things to be said about the use of this relatively new analytical category. For instance, the approach is convincing for at least four reasons: first, I think they are right when they argue that underlying the category of formality, there is the unchallenged assumption that formal employment is good while informal employment is bad. It is really not so simple. Second, they change the question: it is not about how to convert as many informal workers into formal ones. It is about learning the internal functioning of the working poor before proclaiming they would be better off in a “formal” job. Third, they are right when they argue that the dream of formalization is also associated with the dream of expanding the model of capitalist accumulation

and that no mayor debate has been built around that. Lastly, I like their methodological approach and the fact they are trying to learn from the poor how to improve their own conditions. Due to the absence of bottom-up qualitative studies in the area, their approach needs to be celebrated.

However, while the formality proponents idealize formal employment, the popular economy proponents idealize the working poor. Their conclusions are based on very specific examples of groups of poor workers who joined efforts after moments of massive political or economic crises (hyperinflation, dictatorships), or on the experiences of minority groups with very specific cosmogonies (indigenous communities, highly ideologized workers), but – as they sometimes recognize indirectly– not on the experiences of the traditionally marginalized and atomized majority of the most vulnerable working poor. As a result, it is not surprising that in the examples they use, poor workers share the values and characteristics (solidarity, mutual help) that the movement hopes to see as they coincide with the dream of finding alternatives to capitalism. Idealizing the poor is not good for the poor (Bourgois, 2003; Sylvestre, 2007; Pine, 2008). Studies should avoid at any cost the voyeuristic celebration of the survival strategies of the poor, who are full of anxiety, unpredictability, and lack of trust, and sometimes anger.

I do not plan to use popular economy as a key category in my research, because it was not constructed to target only the workers most in need, and because so far they have not shown particular interest in studying the regulatory aspect of the productive activities of the working poor. First, the category has not been (and is likely not to be) disaggregated, mainly because it is in the interest of its adherents to add more people to their political cause. As said before, “popular economy” is a category constructed to be associated with experiences of resistance against the

model of capitalist accumulation. In that vein, it is in the interest of its adherents to include different groups of workers that they believe establish the relations of solidarity, reciprocity and cooperation they are looking for. Groups that are usually covered by standard employment relationships such as school teachers, public officials and even university professors are frequently included, as long as they show in some way that they distance themselves from the model of capitalist accumulation. Second, since the group is so large and heterogeneous, there is no real point in hypothesizing about the regulatory aspect of their productive activities because they can diverge immensely. Maybe that is one of the reasons why – unlike other categories - regulatory aspects are not taken into consideration to decide which group of workers are part of the “popular economy” and which are not.

## **2.4 Outline of research questions**

When it comes to targeting the workers most in need in a city like Bogotá, the categories most frequently used in both developed and developing countries are extremely limited and unsatisfactory. They are all top-down categories which assume without much analysis that the activities of the working poor are not regulated, but fall into a legal vacuum. I would like to address those limitations. My main research questions are: 1) how can we better target and characterize the social grouping to which the most vulnerable segment of the working poor in Bogotá belongs? 2) How do both State and non-State laws interact to influence the productive strategies of the most vulnerable workers (which I identify as street rebuscadores) in Bogotá?

### 3. Methodology

This chapter aims to describe the different methods used throughout the dissertation, as well as the main ethical and methodological challenges I confronted. In short, I used mixed methods: documentary analysis, including legal analysis (part 3.1); participant observation (part 3.2) and statistical analysis (part 3.3). Both qualitative and quantitative data were used to answer the research questions. In the first part of this chapter, I will describe the documentary analysis that was useful both for my literature review and theoretical framework. In the second part, I will give details about the process of participant observation as well as the type of qualitative data obtained. Within the context of participant observation, I also conducted unstructured interviewing, in-depth interviewing, and group interviewing. Qualitative data was key to describe the practices that street rebuscadores share, as well as to describe and analyze the different ways in which law affects their productive strategies. That second part is divided in two sub-sections. In the second sub-section (part 3.2.1) I will reflect upon six main ethical and methodological challenges I underwent during fieldwork. Finally, in the third part, I will describe the statistical analysis. I used descriptive multivariate statistics to quantify the data obtained in the 2015 survey on Cultures conducted by Secretariat of Culture, Recreation and Sports of Bogotá. The purpose was to construct what Bourdieu calls a space of lifestyles proving the existence of a structural homology between the space of tastes and the space of social positions in Bogotá, but most specifically, to target and characterize the social grouping to which the most vulnerable segments of the working poor in Bogotá belongs to.

The mix of ethnographic and statistical methods allowed me to suggest answers to both research questions. I did not want to characterize street rebuscadores only by using qualitative data to avoid what Bourdieu called the “biographical illusion.” In his words, “trying to understand a life as a unique and self-sufficient series of successive events (sufficient unto itself), and without ties other than the association to a ‘subject’ whose constancy is probably just that of a proper name, is nearly as absurd as trying to make sense out of a subway route without taking into account the network structure, that is the matrix of objective relations between the different stations (...) Who would think to recall a trip without having an idea of the landscape in which it took place?” (Bourdieu, 1987, p. 8). The statistical analysis allowed me to take a look at what Bourdieu called ‘the network structure,’ by characterizing in general terms the group that most street rebuscadores belong to (socio-economic levels 1 and 2). I then made sense of a specific “subway route’ using participant observation. In other words, ethnographic interviews provided the data required to describe the specific practices that the sub-group of street rebuscadores share, as the statistical exercise illuminated and validated many of the things that I learned during participant observation. As for the second research question, it was the combination of legal analysis and qualitative data that allowed me to describe how different types of law influence the productive strategies of street rebuscadores (For more on the importance of mixed methods, see Russell Bernard (2011, p. 222)). In short, I used primarily one method to answer each question, but the others were complementary.

### 3.1 Documentary analysis

Although I emphasized both participant observation and statistical analysis, this dissertation is not purely inductive but incorporates theory into research. As Wilson and Chaddha argue, “a strictly deductive approach could lead researchers to overlook important nuanced behavior not consistent with prior theoretical arguments, just as a strictly inductive approach could result in an inappropriate use of certain theoretical insights to interpret new findings” (Wilson & Chaddha, 2009, p. 560).<sup>13</sup> Using a doctor’s analogy, Duneier posits the concept of diagnostic ethnography, which is the one I decided to keep: he states: “The idea of diagnostic ethnography is not that ethnography extracts a theory out of clinical data. Rather the idea is that the ethnographer comes to a site with the sociological equivalent of the doctor’s medicine bag of diagnostic tools derived from already-existing sociological theory and uses these tools to generate a specific explanation of the ‘symptoms’ in the site” (Duneier, 2002, p. 1566). As I stated in the introduction to this dissertation, the study is in conversation with economic/sociological/legal debates around the categories of non-standard or precarious forms of employment, informal economy and popular economy; Bourdieu’s theory of practice (in particular the concepts of habitus and capital), and also the statistical techniques he used to test his main hypothesis; debates and empirical studies on legal pluralism; recent literature on rebusque; and empirical research in socio-legal studies. All those were the diagnostic tools that guided both my observations and additional empirical findings, and I conducted documentary analysis through classical methods to incorporate them into my research.

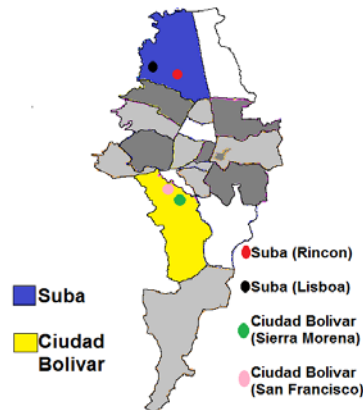
<sup>13</sup> Wacquant further argues that “an inappropriate disconnect between theory and observation can lead to different, but equally troubling, analytical weaknesses in ethnographic research: the researcher may lack critical distance from the subjects and merely report, without analyzing, their perspectives; the analyst may shape observations to fit preconceived notions and make claims that are not well supported by the data; or the research may be organized according to the terms of public discourse around certain social issues, instead of applying the analytical lens of social science” (Wacquant quoted in Wilson & Chaddha, 2009, p. 551-552).

I also conducted legal analysis of the different official normative systems influencing the arrangements between street rebuscadores. I consulted more than one hundred rulings from the Colombian Constitutional Court and of the Consejo de Estado (the supreme administrative authority) regarding urban spaces and street rebuscadores. Since the existence of both public actions and tutelas increased the tension between the individual right to work (protected by tutelas) and the collective right to maintain the integrity of public space and restrict its usage to common use (protected by popular actions), Colombian Courts have been active in dealing with the rights involved. I also consulted an array of laws, bylaws, and low-level regulations regarding self-employment and police activity in relation to public space, including Colombia's Police Code, Bogota's Police Code, and different decrees that have an impact on public space and over the productive strategies of street rebuscadores. All the legal documents were analyzed through classical legal methods. Finally, I collected the available statistics on the populations of street vendors in Bogotá from two local institutions IPES (Institute for the Public Economy) and DADEP (The Administrative Department for the Defense of the Public Space), as well as available aggregated data on informality rates, unemployment and underemployment from the National Department of Statistics (DANE). I also studied the aggregated data from Great Integrated Household Survey (GIHS) conducted by DANE in 2015 that was useful to this dissertation.

### **3.2 Qualitative methods: participant observation and interviews**

My main research method was participant observation. I conducted eighteen months of fieldwork with different groups of vulnerable workers in Bogotá from September 2012 to January

2014. I started with two non-representative samples of street vendors in two of the poorest areas of Bogotá (Ciudad Bolívar (in the neighbourhoods of San Francisco and Sierra Morena) and Suba (in the neighborhoods of Rincón and Lisboa)). Both are highly populated areas of approximately 1 million residents each.<sup>14</sup>



*Map 1.* Localities of Suba and Ciudad Bolívar in Bogotá.  
Map drawn by myself with the intention of giving an approximate idea of the location to the reader.

In each of those areas, I conducted research with groups of vendors ranging between 20 and 40 individuals. Overall, I talked to 200 street vendors or more. I was first introduced to the vendors by local political activists of a faction of the left called MOIR (Independent and Revolutionary Workers Movement). I proposed a simple deal to the vendors: if they allowed me to spend time with them, they would have free legal advice whenever they needed it. It didn't take long for me to understand how useful I was, and to quickly build rapport. After five months of fieldwork (in February 2013), I was able to conduct participant observation and unstructured interviews with other groups of rebuscadores (not only street rebuscadores) in those same neighborhoods. More

<sup>14</sup> See: <http://www.bogota.gov.co/localidades/ciudad-bolivar>, <http://www.bogota.gov.co/localidades/suba>

specifically, I conducted research with vendors who sold different items in hovels located in slums, sex-workers, recyclers, members of small family businesses (*fami-empresas*), and workers performing different activities, combining self-employment and employment.

I conducted participant observation long enough to get an intuitive understanding one needs to speak comfortably about the meaning of one's observations (Duneier, 1999). However, from time to time I also conducted unstructured interviews with precarious workers with whom I didn't get to spend a lot of time (for instance, employed family members of *rebuscadores* who had to follow working schedules and with whom I could only interact at night or eventually during the weekends). Unstructured interviewing is especially used when the researcher wants to know about the lived experience of fellow human beings. Russell Bernard gives the example of wanting to know "what it is like to survive hand-to-hand combat", or "how it feels to make it across the border into Texas from Mexico only to be deported 24 hours later" (Russell Bernard, 2006, p. 158). I found unstructured interviewing ideal for talking to informants who would not have tolerated more formal interviews. With street *rebuscadores*, highly structured interviewing or even semi-structured interviewing felt somehow unnatural. In order to unravel the way in which law affected their daily productive strategies, I had to situate them around the issue and let them teach me freely what I needed to know. As Russell Bernard suggests, the rule is: get people on to a topic and get out of the way. "Let the informant provide information that he or she thinks is important." (Russell Bernard, 2006, p. 160).<sup>15</sup>

<sup>15</sup> All of the above was done following the ethics protocol approved by my ethics committee (file: 04-12-06). I obtained both oral (recorded) and written consent of the individuals involved in my study.

I used chain referral methods (basically snowball sampling) to get to other rebuscadores, who were not street vendors. As a result, I worked with non-representative samples. Snowball is a network sampling method for studying hard to find or hard to study populations. Following the snowball technique, a small number of people in a population is located and asked to recommend others with whom to work. The researcher is handed from informant to informant and the sampling frame grows with each encounter (Russell Bernard, 2011). Snowball sampling does not produce a random, representative sample. For large populations, for instance, people who are well-known have a better chance of being named in snowball procedures than people who are less known. In my case, most of my informants recommended me to people they thought would be ‘friendly,’ ‘known,’ or ‘in need of legal help,’ as well as to precarious workers who would ‘most likely’ agree to spend time with me. Despite all these limitations, snowball sampling allowed me to get in touch with people who showed deep distrust of other human beings and could not find any good reason why they would spend time with someone like me. Conducting research, of course, was not considered a good enough reason.

As I used snowball sampling and worked with non-representative samples of street rebuscadores, my observations cannot be generalized or said to be representative of the areas in which I conducted the study, much less of Bogotá or Colombia. This is not to say however that the methodology cannot be trusted. First, most of the Colombian population is concentrated in big cities, most self-employed precarious workers live and work in urban peripheral neighbourhoods, and prolonged qualitative exercises of participant observation focused on that population in Bogotá are rare.<sup>16</sup> Second, I believe that my observations can provide important clues to understand the

<sup>16</sup> A book financed by Fescol and Escuela Nacional Sindical which includes 22 journalistic reports of precarious workers in Colombia, including some about rebuscadores, was published in 2014 under the title “La precariedad

dynamics of the new working class. Indeed, as Bourdieu once said, the only way to possibly understand the social world's logic is by immersing oneself in the specifics of a historically and contextually situated empirical reality, which can be presented as a single representation of the “possibles” found in a universe of other possible configurations (Bourdieu, 1998a).

In addition to conducting fieldwork, I worked from the 15<sup>th</sup> of January to the 15<sup>th</sup> of June of 2013 in a research group hired to suggest avenues to develop better public policy for street vendors in the locality of Suba in Bogotá. Cesar Giraldo, professor of economics of the National University of Colombia, led the group. The group produced a collective text entitled “Construcción participativa de política pública dirigida a vendedores ambulantes de la localidad de Suba.”<sup>17</sup> The office of the local mayor of Suba and the NGO Corporación Mujeres y Economía funded the project. Through this project, I had access to all the qualitative and quantitative data collected by the group. This includes six focus groups<sup>18</sup> with different key informants (street vendors, neighbours, public officials from different institutions, the police, other rebuscadores, and streets vendors' relatives), 42 unstructured and semi-structured interviews, and two surveys (one conducted with 144 street vendors of the neighbourhood Rincón, and a second one conducted with 56 street vendors of the neighbourhood Lisboa).

laboural en Colombia: crónicas y reportajes.” More recently, Professor Cesar Giraldo coordinated a book called “Economía popular desde abajo” which includes articles (one of them written by myself) presenting preliminary results of prolonged qualitative exercises with rebuscadores. The book will be published in 2017.

<sup>17</sup> The final document is uploaded following the webpage: <http://www.suba.gov.co>. (Last consulted October 2016).

<sup>18</sup> Data acquired from focus groups was particularly rich, since the advantage of a focus group is that the comments of one participant can generate comments from other participants, creating a productive group dynamic that provided us with a large quantity of information in a short amount of time and at a lesser cost.

My qualitative data consists mainly of approximately 1500 hours of audio recording capturing my daily routine with street rebuscadores as well as fieldnotes. Drawing from the methodology Duneier used when he wrote *Sidewalk* (Duneier, 1999), I had a recorder running all the time. Duneier considered that it was very important to have a faithful, detailed record of his fieldwork because “different meanings found among people of different social positions can be easily misunderstood and misinterpreted” (Duneier, 1999, p. 339). I believe he is right. Nowadays I interpret very differently the content of my conversations with street rebuscadores. Fieldnotes were also useful to trace the way my different ideas and thoughts developed over time. I wrote notes almost every night, recording general thoughts and impressions. They have allowed me to remember vital episodes. After fieldwork, I wrote my dissertation proposal stating general hypothesis that relied on my memory and fieldnotes. After the proposal was approved, I went through most of the audio during approximately three months and transcribed in Spanish only the bits and pieces that I wanted to quote. However, listening to the audio also made me recall vital episodes that made me qualify or modify some of the hypothesis (for example, I thought that the practice of licencing had a greater impact upon street rebuscadores than I latter found). I then translated all selected quotes to English, which turned out to be overwhelmingly difficult. While complaining about translation, a friend of mine told me something I will never forget. He told me it was not only a problem of translating Spanish to English or even street Spanish to English. It was a problem of translating Ciudad Bolívar and Suba to English. I am well aware of the challenge.

### **3.2.1 Main ethical and methodological challenges and limitations of this dissertation.**

#### ***3.2.1.1 Accessing the field.***

First, it is difficult to enter a new field. Participant observation is a powerful ethnographic technique that can be particularly useful to document the lives of the vulnerable in a society that is hostile to them. However, as the poor have every reason to be cautious, it is difficult to get in, establish long-term relationships based on trust, and get to ask difficult questions. Bourgois had to violate what he called the “racial and class-based apartheid in America,” and to do so he lived for five years in one of the poorest tenements of El Barrio (Bourgois, 2003). Pine traveled to Honduras for different periods of time during six years to conduct her multi-site ethnography (Pine, 2008). In both cases, choosing participant-observation allowed them to collect data in thousands of intrusive acts, such as intimate family reunions, conversations under the influence of drugs or alcohol, etc. This proximity also reduced the problem of reactivity. As much of the analytical tension in both books focuses on how individuals deal with the forces that oppress them, lower reactivity on part of the participants was a key factor to assess how honest they were about their thoughts and actions and ultimately how valid the collected data was. It also allowed them to speak comfortably about the meaning of their observations.

As I said before, I was first introduced to a group of street vendors by local political activists. While it could have been easier for me to be introduced by public officials who worked or interacted with street rebuscadores, I did not want to be associated with *the State*, with public officials, nor with anyone who could hold power over them. After being introduced, I was able to

establish long-term relationships and build rapport, by offering free legal advice to all of those who allowed me to spend time with them. While I was conducting fieldwork, I had the feeling that I had never worked so hard as a lawyer before in my life. And when I heard the many hours of recorded audio and read my field notes, I was stunned by the diversity and number of legal activities I actually performed. I helped regularize a neighbourhood that had been invaded by a group of settlers (most of them, street rebuscadores) 20 years ago, I helped them comply with the procedure required to request the installation of public utilities (such as gas and electricity) in their homes; I filed health-related tutelas as street rebuscadores were denied medicines and medical procedures; I gave legal advice regarding family issues (domestic violence, child support, alimony and divorce); I helped create a non-profit foundation to support sports activities for teenagers; I helped tenants who had been asked to return the space where they performed their productive activities without economic compensation and after having accumulated a significant number of customers; I helped women getting a place for their children in public schools, and I gave advice regarding criminal procedures whether street rebuscadores were victims of crime or perpetrators themselves and charged with theft, not providing child support and injuries. I wrote in my field notes that I had never studied and learned so much *law*. “Almost every person who approaches me has a legal question. It is now that I realize the importance of social capital. Without my social networks, without my friends and acquaintances, there is no way I could have given legal advice regarding so many different issues in a fairly reasonable way.”

Street rebuscadores have always been very kind, polite, and incredibly generous and warm with me. However, some, like Germán (street vendor – 54 years old) clearly expressed their distrust when I first met them.

Germán: “I once met a lady who told me that she was going to write a dissertation about people like us, so I gave her a lot of information. She told me that she was going to come for at least a couple of months but after a couple of days I never saw her again in my life. I guess it was not easy for her to smell poverty (*no le gustaría el olor de la pobreza*), but at least she didn’t get us excited by offering something in return. So, forgive me if I ask ... but, what kind of person... what kind of *lawyer* offers legal advice for free? What do you get in return?” (Audio 120814-002)

Although I tried to explain as carefully as I could the value that ‘information,’ ‘just information,’ ‘plane information’ about their productive strategies represented to me, many thought there had to be something more. At the end of my fieldwork Germán told me:

Germán: “Honest to God Laurita, it took me time to trust you... you know that. I thought you were a government spy or something like that... like in the movies. Ha, Ha, Ha! Then, when I learned you liked to party, I thought you were one of those rich girls who lost her path with drugs or alcohol or stuff and was expiating her sins by helping us Ha, Ha, Ha, Ha! (We both laughed). Then... since Oswaldo said so many times that it had to do with your political positions, I thought you were going to run for office or something. Nowadays I’m just grateful to God for your friendship and for all your help. You fell from the sky Laurita, you really did. I hope you quote me in that book. I hope you feel I was somehow useful for you.... Ok... let’s stop this little chat because we are getting all emotional and stuff” (Audio 121025-008).

This speaks to the issue of managing expectations and the responsibility of researchers conducting this type of work. Christina Clark-Kazak's worked with young Congolese refugees resident in Kampala and reflects upon the importance of managing research participants' expectations in urban areas with vulnerable populations who expect much more than the researcher can possibly provide in return (Clark-Kazak, 2013). Clark-Kazak's remind us that our primary responsibility is to uphold the ethical imperative of doing no harm, and, if we can, to do some good for men and women who share so much of themselves with us in our pursuit of academic knowledge. Furthermore, she argues that managing the expectations is something that requires more than our empathy, but cautions against monetary compensation and highlights the need to ensure that research relationships do not become extractive and exploitative. Goldstein also had a hard time managing the expectations of Bolivia's poorest and most vulnerable citizens who work as vendors in the Cancha mega-market in the city of Cochabamba. In the prologue to his book, he tells us the following story:

“I explain to Don Silvio that I want to write a book about the lives of the ambulantes (...) Don Silvio is no fool: he is a market vendor, a shrewd capitalist who understands the value of commodities, including information. (...) Don Silvio knows that he can grant me access to ambulantes, and he has something to ask of me in return: to build a market for the ambulantes. (...) The likelihood of the ambulantes getting a market is infinitesimal. The costs would be too high, the real estate too scarce, the political pressure against it too great for such thing ever to come to pass (...) “Bueno” don Silvio says to me, returning to the business at hand. “How can you help”? (Goldstein, 2016, p. x-xii).

As I argued before, I managed the expectations of my informants by offering free legal advice and not just empathy or economic compensation. Yet, they quickly found out that I had no political or economic means to improve their condition radically in any possible way. It took time, but I finally felt I was able to build a rapport with most of my leading informants. I have registered that moment in my field notes:

“I was deeply moved today. I traveled downtown with Martha, Patricia and Isadio (all street vendors) and we had lunch in San Victorino. Lunch was very cheap for my standards (3.500 pesos or CAD 1.5 of 2017). We had soup, rice, potatoes, plantain, salad, a piece of meat and juice. When I was going to pay, they said they wanted to invite me. I refused, but they told me that people from the block (the other street vendors in San Francisco – Ciudad Bolívar) had given them money to invite me to have lunch in a fancy place downtown. I was very grateful. I later realized that no one had asked me for money in a very long time.”

I accepted their invitation as a symbol of friendship, gratefulness and respect. It felt like they trusted me. Building rapport is vital to conducting participant-observation, because there is no other way in which the researcher can capture and theorize subtle processes hidden from the naked eye, or to get to ask difficult questions. For instance, it was only because Bourgois got to spend so much time with his characters, that he could explain why it was so difficult for his acquaintances in El Barrio to achieve working-class stability. It was not so much that they could not find a job (as difficult as that was), but that it was very difficult for them to keep it.<sup>19</sup> Time and trust have

<sup>19</sup> More specifically, according to Bourgois, his characters habitus collided with the upper-middle class white habitus of most office-work employers and employees in such a way, that it made it unbearable for them to share a working

also been vital for me to be able to answer a number of difficult questions such as: Why is the entrepreneurship discourse so successful with street rebuscadores? What kind of structural factors constrain their “choice” to work in the street? What is the relationship of street rebuscadores with time? Is there a different embodied experience of living life in very short time frames? Why do they have large families? What type of economic role do families play in their lives? What types of practical skills are needed to become a street rebuscador? Can anyone become one? Does feeling like second-class citizens have an impact upon their productive strategies? Amongst others.

### ***3.2.1.2 Being an outsider.***

The researcher is clearly an outsider when coming from a different country, social class and ethnicity. This was Bourgois case when for example he studied revolutionary peasants in El Salvador (Bourgois, 2001), or when Pine studied drunks and maquilas in Honduras (Pine, 2008). However, even when the ethnographer studies people who share her or his origin (as Bourgois did when he studied the crack dealers in El Barrio-New York), differences in class, education and race can be so profound, that one is never more than a partial-insider because differences in habitus can outweigh the cultural identity associated with being born in the same place (Bourgois, 2003). Jamil, for instance, was born in Pakistan and raised by upper-class Pakistani parents. However, she was schooled and lived her whole life in North America. Not surprisingly, the poorer Pakistanis with whom she worked in Montreal felt like foreigners to her. She concludes that her research

space. Obedience to the norms of office-culture (where jobs were more likely to be available), was in “direct contradiction to street culture’s definitions of personal dignity - especially for males who were not socialized to accept public subordination,” much less to accept orders from women (Bourgois, 2003, p. 115). At the same time, being an upper-middle class white himself, Bourgois was able to understand that his acquaintances looked in the office-work world as no more than incompetent, hostile, illiterate and disrespectful “urban jíbaros,” incapable of obeying “simple” rules, who simply lacked the “correct” enthusiastic and flexible attitude

evidenced the dislocation inherent to her status (Jamil, 2007, p. 218). Even in the case of a researcher whose nativity can be thought as twofold - as in Zaman's case, - he admits he does not know everything about his own society. Being Bangladeshi and having worked as a doctor in the Bangladeshi hospital where he later conducted fieldwork, Zaman acknowledges that his status reduced the cognitive and emotional effort required to understand a foreign culture. Still, however, he felt he was not a "complete member" of the community, not only because he had not been a doctor for many years, but because researching the daily life of "others" creates a distance. He therefore characterizes his work as one performed by both "an insider and an outsider in the hospital world." (Zaman, 2008, p. 145).

I was born in a working middle class family. My mother worked as a school teacher and my father as a University professor all their lives. Their income depended exclusively on their work, as well as the well-being of some of their closest relatives. However, they managed to save enough money to pay for the highest quality of education available in Colombia only to the wealthy. Being an only child, they were able to send me to one of the best private schools of the country and I later studied in a top private University, Universidad de los Andes. Therefore, the difference in cultural capital between street rebuscadores with whom I conducted fieldwork and myself was considerable. In cold numbers, most of them were part of the bottom 23.3% of the Colombian population who did not finish high school, while I was part of the upper 3.3% who completed a master's degree (DANE, 2015).<sup>20</sup> Differences in economic capital were also considerable, although not as considerable as differences regarding cultural capital. At first sight, I was part of

<sup>20</sup> In 2015, only 5 per million inhabitants in Colombia had completed a PhD. See: <http://noticias.universia.net.co/actualidad/noticia/2015/01/14/1118167/colombia-forma-solo-5-doctores-cada-millon-habitantes.html> (Last reviewed, May 2017).

the wealthiest 2.3% of the population living in Bogotá, while they were part of the poorest 9.1% (Secretaria Distrital de Planeación de Bogotá [SDP], 2011). However, I am an agent with perhaps one of the lowest income within my habitus, while some of them can make average or high incomes within their habitus. In fact, my starting salary as a University professor in Colombia, was around three to five times higher as compared to the monthly income of the average street rebuscador. Differences in economic capital were considerable. However, I still think it is interesting to highlight, that both street rebuscadores and I perceived our differences in cultural capital as deeper. At the end of my fieldwork, for instance, Isadio (street vendor, 53 years) stated:

“I’ve never met someone like you Laurita. Honest to God. You have studied all your life. All your life! And still, you work for nothing. If I had as much study as you have I would be living the great life. Fuck the rest of the world... the great life! As soon as you get tired, and start thinking about some real money, just call me. We could sell avocados and you could make at least twice what they are paying you right now. *La vida da muchas vueltas* (life takes many turns). Let’s wait and see what happens if you have children. If you do, and I hope you do, maybe you will feel real pressure and you will start using that brain and all that study to make some real money.” (Audio 121106-002)

Differences in economic and cultural capital suggest that street rebuscadores and I are situated in very different places within the social space. As Bourdieu argues, social space is constructed in such a way that agents or groups are distributed in it according to their position in statistical distributions, based on two principles of differentiation: economic capital and cultural capital (Bourdieu, 1998a). Differences in our total amounts and composition of capital can also explain

differences in the location of the physical space we occupy in Bogotá. As many cities in Latin America, spacial segregation in Bogotá is very high, and it is mostly associated with income status. By contrast, in the global north, spacial segregation is associated primarily with racial groups, ethnicity or religion (Greenstein, Sabatini & Smolka, 2000).<sup>21</sup> In Bogotá, there are at least two types of segregation within the city: segregation by choice of rich individuals in some areas, and forced segregation of poor individuals due to lack of opportunities in other parts of the city (Bogliacino, Jiménez & Reyes, 2015). Recent studies using the hedonic pricing method show that Bogotá has very high segregation levels (SDP & National University of Colombia [UNAL], 2013).

Not surprisingly, most street rebuscadores I befriended carried out their activities in parts of the city where I had never been before (although I have lived in Bogotá all my life) and vice-versa. We do not share acquaintances or social networks. Since, as Bourdieu argues, the space of social positions is retranslated into a space of position-takings through the mediation of the space of dispositions or *habitus* (Bourdieu, 1998a), I can safely conclude that street rebuscadores and I have very different habitus, or in other words that we are not united by a relationship of homology (diversity within homogeneity), which means that we are likely to have considerable differences in our interests and world views.

And indeed, there were many differences. Getting close to street rebuscadores, building rapport, *understanding* what they were saying, was in fact equivalent to the learning of a new language. As Bourdieu argues, someone cannot enter a new field by an instantaneous decision of the will, but

<sup>21</sup> That is not to say that there is no overlap between social status and other variables such as race or ethnicity in Colombia as elsewhere. In fact, there is a growing literature in the field of intersectionality studies applied to different areas (Lozano Lerma, 1993 and 2010; Vergara, 2013; Esguerra & Bello, 2014; Viveros, 2016).

either by previously knowing its language, or by engaging in a slow process of co-option and initiation which is equivalent to the learning of a new language (Bourdieu, 1990). Although I was born in Bogotá, I have spent most of my time in the city, and I look physically similar to street rebuscadores (I do not belong to a different racial or ethnical group and nothing in my physic looks foreign), it was obvious to everyone around that I was a stranger. The way I talked – my words and rhythm – the way I smelled (“like someone who doesn’t sweat,” Isadio once said,) as well as my clothes (less colors, better fabrics and usually clean) were clear differentiating factors. Of course, being born in Bogotá reduced the cognitive and emotional effort required to understand street rebuscadores. I ‘knew’ them in a way, maybe the way an urban citizen ‘knows’ the peasants of their own country. Plus, we spoke the ‘same’ Spanish. However, the fact that we were situated in very different places within the social space was enough to make us feel as foreigners who needed to get to know each other. For me, it meant that I had to learn to eat their food, drink their water, and learn when to talk, when to be silent, when to keep my distance. It was not easy. Small everyday ordinary details made it difficult. For instance, many demonstrated their generosity offering coffee. Their coffee, however, is usually made with a lot of sugar and with water, which sometimes (especially at the beginning) made me sick. Plus, I tried to avoid their bathrooms as much as I could because I found their smell disturbing and drinking coffee did not help. Therefore, I drank their coffee until I learned to find excuses that were allowed within their habitus, such as, ‘I’m trying to get pregnant and I heard that drinking coffee doesn’t help,’ when in fact I was not trying to get pregnant at the time and I was completely unaware of any kind of relationship between coffee and fertility.

### *3.2.1.3 Being a woman with no children (at the time), married (at the time), and other personal characteristics that influenced fieldwork.*

It has been noted that the researcher's personal characteristics such as gender, age, marital status, and other personal characteristics is a variable in data collection (Scheper-Hughes, 1983; Golde, 1986; Warren, 1988; Dewalt & Dewalt, 2002; Ladson-Billings, 2003; Russell Bernard, 2011; Li, 2008). Russell Bernard argues, for instance, that personal characteristics might limit access to certain information, and also influence how you perceive others. For instance, "in all cultures, you can't ask people certain questions because you're a [woman] [man]. You can't go into certain areas and situations because you're a [woman] [man]. You can't watch this or report on that because you're a [woman] [man]." (Russell Bernard, 2011, p. 281). That is not to deny that gender is a negotiated idea: "what you can and can't do if you are a man or a woman is more fixed in some cultures than in others, and in all cultures there is lots of individual variation in gender roles." (Russell Bernard, 2011, p. 281). The point, I believe, is that researchers confront not only their personal limitations but also the limitations imposed on them by the culture they study.

During an informal conversation at the end of my fieldwork, I had the opportunity of reflecting upon the issue of how my personal characteristics influenced the way the community saw me with Patricia and Isadio:

Laura: "So... what do you think helped me to get to know you?"

Isadio: “You never looked threatening, you were nice from the beginning... and you looked strong. Small, but strong (he laughs). I knew that you were a tiger and that you could help us...”

Laura: “But why didn’t I look threatening? Was it the way I looked? The way I approached you? The fact that I’m a woman?”

Patricia: “I think that being a woman helped. For me, at least, it made a difference. It was easy talking to you; I could get you inside my kitchen, with my children. I prefer talking to women... it’s like... like we understand each other.”

Laura: “And you Isadio... did it make a difference for you?”

Isadio: “What... that you are a woman?”

Laura: “Yeah”

Isadio: “No... not really. I guess I never saw you as a woman (he laughs). You are not someone who’s finding a way every minute of the day to screw our lives (he laughs again). You just look like a good person Laurita, and there are still good people in this world. There’s no more to it, so stop trying to split hairs in two (*no le trate de buscar 5 patas al gato*). I trusted my gut, and my gut told me I could trust you. I guess the street teaches you to trust your gut.” (Audio 121117-001)

As a female researcher participating in women’s daily activities, I can say that gender matters in this study. It did not only made a difference for Patricia but for many other women including little girls who felt they could talk to me about sensitive issues such as sexual violence. I had easy access and I was not perceived as threatening to them. This gender advantage in field research supports the idea that in order to understand women’s life situations and experiences, more studies

should be conducted by women and for women (Ettorre, 1989). Being a woman also made a difference with men. I understand Isadio's words 'I never saw you as a woman' as 'I never sexualized you.' However, I have no doubt that the way he approached me was mediated by the fact that I am a woman. If I had been a man, maybe he would have had the opportunity to talk about issues he found interesting, but felt would have been inappropriate to discuss with a woman.<sup>22</sup>

Finally, I was not only a woman, but a woman with 'lots of time' (according to their standards) because I had no children at the time, I was middle-aged, and married. Age matters because I was not perceived as too young to be immature, or too old to be unable to help them with their physically exhausting daily activities. Being married mattered because it was the perfect excuse to leave before it was dark. Being a parent would have also helped me to talk to people about certain areas of life and get more information. As Joan Cassell says, children are a 'guarantee of good intentions' (Cassell, 1987, p. 281), plus they are always good conversation openers. Throughout the research process, however, my role, position and identity changed. As Thomson, Ansoms and Murison argue, as a researcher we are a 'plurality of selves' combining aspects of gender, race, nationality, sexual orientation, marital status, age, cultural background and so on (2013). After fieldwork was over, my status changed. I got divorced and gave birth to two children. I was no

<sup>22</sup> Russell recalls an interesting experience related to the impact that differences in sex have when conducting fieldwork: "Sara Quandt, Beverly Morris, and Kathleen DeWalt spent months investigating the nutritional strategies of the elderly in two rural Kentucky counties (Quant et al., 1997). According to DeWalt, the three women researchers spent months, interviewing key informants, and never turned up a word about the use of alcohol. 'One day'... the research team traveled to Central County with Jorge Uquillas, an Ecuadorian sociologist who wanted to visit the Kentucky field sites. As soon as one of their informants saw him, he asked him 'are you a drinking man?' Over the next hour the informant gave all type of useful information that female researchers could not access before." (DeWalt et al. 1998, p. 280 quoted in Russell Bernard, 2011, p. 281). I tried from time to time to exhibit 'masculine *traits*' (such as bragging about drinking hard) with men to gain their 'trust?' However, I am well aware that a male researcher could have accessed different data and also could have interpreted it in a very different way.

longer collecting data, but I still visited my main informants from time to time (and they visited me). Being divorced and a mother made me closer to the women I befriended as never before. They felt (and I also did) that I could finally understand them.<sup>23</sup> Had I the chance to start all over again, I would write a different dissertation focusing mainly on the struggles and the experience of those women who taught me so much and who completely changed me.

#### ***3.2.1.4. Working under psychologically and physically overwhelming circumstances.***

Working under psychologically and physically overwhelming circumstances is a real challenge and can be dangerous. In *Working hard, drinking hard*, Adrienne Pine chose to study alcohol and not drugs because it was supposed to protect her, but still she had to overcome different overwhelming circumstances (such as the death of all the gang-members she interviewed), and to confront difficult events where physical violence was present. When Bourgois wrote *In search of respect, selling crack in El Barrio*, in New York, his life was not only constantly in danger, but the “whirlpool of suffering” around him sometimes just devastated him. Furthermore, the personal cost he paid was very high. In the preface to his book he apologizes to his ex-wife for imposing so much anxiety on her for so many years, and adds, “I hope that is not one of the reasons we are no longer together, because if it is, I regret it profoundly” (Bourgois, 2003, p. xv).

Before I started my PhD, I worked reconstructing facts and analyzing massacres related to the internal armed conflict in the Historic Memory Group of Colombia (*Grupo de Memoria Histórica*).

<sup>23</sup> The opposite happened to Nancie González in the 1980s. For her, being a divorced mother of two young sons in the Dominican Republic was very difficult. “Had I to do it again,” she says, “I would invent widowhood with appropriate rings and photographs” (González, 1986, p. 92).

I was used to work under difficult circumstances, but I was emotionally tired. Since the internal armed conflict took place mostly in rural areas, studying poverty in Bogotá seemed as a good way to get away, at least, from war-related violence. I was aware that studying poverty within the city meant in all probability that I was going to have to deal with both structural and symbolic violence. By structural violence, I am referring to “the political-economic organization of society that imposes conditions of physical and emotional distress, from high morbidity and mortality rates to poverty and abusive working conditions” on the poor (Bourgois, 2001, p. 7), and by ‘symbolic violence,’ I refer to the imposition of an ideology which legitimates and naturalizes the status quo on subordinated groups (Bourdieu & Wacquant, 1992). However, it was less clear for me whether war-related violence was present and in what way. After observing and participating in the daily activities of revolutionary peasants in rural El Salvador, Philippe Bourgois wrote “*The power of violence in war and peace.*” In his essay, Bourgois concludes that the ramifications of terror in a civil war are much more complex than he originally thought. Political violence meshes with structural and symbolic violence, reverberating in what he calls a dynamic of “everyday violence,” which is a violence of the same kind that he observed as a result of the fusing of structural and symbolic violence during peacetime in East Harlem (Bourgois, 2001). In other words, according to Bourgois, both in times of war and peace, the fusion of either political/structural/symbolic or structural/symbolic violence against the poor result in patterns of persistent everyday violence and daily human suffering.

Reading Bourgois made me think at the time that carrying out fieldwork in Bogotá would be interesting because the city can be situated in a sort of intermediate limbo, where both the violence of war and peace coexist. As soon as I started fieldwork, it became clear to me that I was

researching in a context where structural/symbolic and war-related violence resulted in different forms of everyday violence. For instance, not long after I arrived in Ciudad Bolívar the teenage daughter of a street vendor was raped by the owner of the storage room where she kept her vending cart and some of the products she sold. She told me that her daughter was raped because she was ill and could not afford to pay the fee of the storage room for quite some time. A combination of material misery meshed with and fueled by gender power relations produced and naturalized that kind of everyday violence against women. I later learned that the perpetrator was supposed to be part of a 'demobilized' paramilitary group, which explained why no one was taking the risk of initiating either legal or illegal actions against him. Thus, the shadow of war-related violence was present and continued to be present during my fieldwork.

The context in which I worked affected what I was able to document empirically. I was subjected to stressful situations and it was often impossible for me to have the peace of mind I needed to gather data for my dissertation. However, I had a recorder running all the time. After my fieldwork was over and I heard the audio recordings, I realized that there was a lot of information I had missed while being in a 'survival mode.' By 'survival mode' I mean, the conscious and unconscious psychological effects that witnessing different types of violence perpetuated against the poor caused in me. I was in 'survival mode' when women, especially small girls, shared stories of sexual violence, when I helped to take care of ill rebuscadores, when babies were left home alone because their mothers had to work to buy milk, when I shared a plate of food in a freezing 'house' full of leaks while being told that leaks were a blessing because through them you could see the stars at night. I was also in 'survival mode' when their and my personal integrity were at risk; when they fought against each other, during violent encounters with the police, when

we heard gun shots and it was not safe to leave. I often wrote in my field notes that I felt devastated, that I was tired. I remember arriving home, closing the door and literally sitting on my kitchen floor to finally eat something while I cried. Every day of fieldwork was a day knowing and exploring my own limitations, of learning how to keep going in the middle of circumstances that I could not control in any possible way.

In short, fieldwork was an experience that confronted me with my limits and stretched my capacities. Thomson, Ansoms and Murison argue that in violent contexts “research is a series of positive and negative emotions – delight, frustration, anxiety, joy, anger, relief, panic and sadness, to name but a few – that will be experienced daily.” (2013, p. 3). Larissa Begley -according to Thomson and his colleagues- writes about the emotional pitfalls of working in northern Rwanda and offers essential advice: “we must recognise that our experience of these extreme emotions is just the tip of the iceberg compared with what our research subjects feel every day” (Thomson, Ansoms & Murison, 2013, p. 6). I found some comfort in the fact that this work made sense and had an impact, even if minimal. Plus, I came to believe that for many of the people I interviewed, sharing their life story was some sort of additional service that I provided in the course of my research (Wood, 2006). At the end of my fieldwork, for instance, a female rebuscadora told me: “Thanks for listening to me *mamita*. It was nice talking to you. I honestly don’t want to read your book... you know that. And I’m grateful for all that legal advice, although I still think that we are alone and that the *law* is not on our side (*que estamos solos y que la Ley no está de nuestro lado*). But... you know? Thanks for listening to me. No one had listened to me before. That made a difference. That will stay with me.” (Audio 121003-001)

### ***3.2.1.5 Doing interdisciplinary work:***

I found it challenging to engage in interdisciplinary research, most particularly, in debates in which lawyers had not been particularly active. I found the research questions guiding this dissertation by first engaging in debates about non-standard or precarious forms of employment, informal labour, popular economy and rebusque. These debates have been developed mainly by economists and sociologists from different political perspectives and using different methodologies (Portes, 1988; Card & Krueger, 1995; Maya, 2002; Bernal & Cárdenas, 2003; Menni, 2004; Ochoa & Ordóñez, 2004; Kenbel, 2010; Bernstein, Lippel & Tucker, 2006; Giraldo, 2007; Roig, 2008; Daza, 2008; Dakduk, 2008; González, 2008; Bernal, 2009; Benach & Muntaner, 2010; Mendoza, 2011; Vosko, 2010; Mondragón-Vélez, Peña & Wills, 2010; Coraggio, 2012; Avendaño & Paz, 2013; Marañón-Pimentel, 2013; Muñoz & Andrade, 2014; Giraldo, 2016). Since legal scholarship and education in Latin America has been largely dogmatic, abstract and extremely formal, legal scholars have rarely engaged in those discussions, or when they do, they do it without the intention of approaching them from an interdisciplinary point of view or in depth.

Therefore, I had to find scholars from other disciplines (most particularly economists and sociologists) who were interested in teaching me and discussing the questions that gradually came to me during my fieldwork. Many lawyers approach other disciplines as a sort of ‘black box.’ Latour defines black boxing as “the way scientific and technical work is made invisible by its own success. When a machine runs efficiently, when a matter of fact is settled, one need focus only on its inputs and outputs and not on its internal complexity” (Latour, 1999, p. 304). Lawyers are not usually interested in taking the time to understand the internal workings of other successful

disciplines, their technicalities, and limit themselves to playing the ‘role of the lawyer’ when approaching a particular problem. The reverse is also true. For instance, Sylvestre, Damon, Blomley and Bellot argue that all critical scholars should care about the technicalities of legal knowledge “because it has political and ethical consequences” (Sylvestre, Damon, Blomley & Bellot, 2015, p. 1351). The call is to try to understand the internal workings of a given system by diving into overlooked rationalities attached to ‘technical’ practices and processes. Often, contested hypothesis turn into an accepted result and then translate into a ‘black-box.’ When that happens, the hypotheses is no longer open for debate because a determinate scientific community has accepted it.

I was interested in the technicalities as well as in the way politics influence the approach of scholars from other disciplines to different research questions. I wanted to take the risk of paying attention to overlooked rationalities, to question how things came to be, who and what contributed. For instance, when trying to understand one of the main debates related to informality – why is informality so high (and increasing) across the developing world? I was not only interested in the ‘lawyers part’ (the way regulation has an impact upon informality rates), but also in the technicalities of the debate (I learned about labour market performance, impact of wage and non-wage costs, rigidities, etc.,) and in the different answers scholars offered depending on their political views (for instance, differences in how neoclassical and interventionist scholars approach the technicalities of the debate to arrive to different conclusions). Yet, it was difficult to find scholars from other disciplines who were willing to help me open the ‘black box’ in order to be able to engage in interdisciplinary work.

It was also challenging to use both quantitative and qualitative methodologies that have not been traditionally used by lawyers. As I stated before, to answer my first research question and construct what Bourdieu calls a space of lifestyles, I employed different statistical techniques, mainly simple correspondence analysis and multiple correspondence analysis. Furthermore, to describe the practices that street rebuscadores share, as well as to answer the second research question, I conducted interviews and participant observation. As a lawyer I was never trained to apply quantitative or qualitative methodologies, which meant I had to open another sort of ‘black box.’ Actually, when I was going to start my fieldwork members of the legal academic community in Bogotá advised me not to do it because I was not properly trained. However, I had two strengths. Unlike most lawyers I like numbers (which helped with quantitative methodologies), maybe because my father was a nuclear physicist and I studied mathematics, as a hobby, for some time. Furthermore, when I worked at the Historic Memory Group of Colombia I observed and learned from some of the best social scientists in the country to conduct interviews and participant observation, which greatly helped with qualitative methodologies. Plus, I took a graduate course of methodology in the department of anthropology as my elective course in the PhD program. Therefore, I was willing to take the risk, ask the questions, learn, and make mistakes. While I enjoy being a lawyer (which is also rare within the tiny group of those who conduct interdisciplinary work and are interested in different methodologies), I am deeply convinced that a researcher should use all available tools to approach complex social problems, and I particularly believe that lawyers should take more risks and open more ‘black boxes’ especially within the framework of a doctoral dissertation.

### ***3.2.1.6 Finding a legal audience.***

This next challenge is related to the previous one. I found it challenging to find a legal audience for my work. Most lawyers in Colombia do not engage in interdisciplinary work, they do not work using quantitative and/or qualitative methodologies, and they are not interested in the specific topic of my dissertation. Since legal scholarship has been extremely formal and attached to traditional distinctions between different ‘areas’ of the law, I was frequently asked if I was writing a dissertation about constitutional law, or administrative law, or labour law. However, I was doing nothing of the kind. I was interested, as a lawyer, in approaching and analyzing a social problem (with the help of other disciplines and methodologies), and not in a more traditional analysis of rules, cases and/or legal theory, which could be framed within a specific area of the law. As it happens with medicine, the dominant approach is to break the whole down into parts with separate diagnostic labels, although current medical practice recognizes that there are connections between mental, emotional and physical conditions. I was interested in a socio-legal approach; in the way ‘*the law*’ (in general terms) affected a determinate community. Furthermore, among the small part of the local legal community who is less attached to traditional legal categories and analysis, and which is willing to address the study of complex social problems, the topic I chose does not arouse much interest. Due to the particularities of the Colombian context, progressive and socio-legal scholars work primarily with violence, gender issues, migration, mining, land, amongst other social problems, but not necessarily with poverty, subsistence and urban livelihoods. The lack of an immediate legal audience was challenging and it made me ask myself difficult questions such as: is someone ever going to read my work? Will someone care? Is there any chance that I can continue working in related issues after I finish my dissertation? Will there be any funding? Will

possible employers and law faculties in Bogotá be at all interested? Therefore, I decided to take an important risk while doing this dissertation.

### ***3.2.1.7 Dealing with the ethical issues related to vulnerable populations.***

Finally, there is an ethical problem when a researcher is dealing with self-destructing vulnerable individuals. It has to do with Laura Nader's old warning "don't study the poor and powerless because everything you say about them will be used against them" (Nader, 1972, p. 18). If one believes that structural forces affect the lives of the poor, then the effects of such forces should be described as they are. However, exposing commonplace self-destroying attitudes creates the risk that unfriendly readers (especially those who believe firmly in individual responsibility and failure) find evidence to confirm their negative stereotypes. Both Bourgois and Pine acknowledge the problem in their ethnographies with vulnerable individuals, and both refuse from an ethical as well as analytical perspective to sanitize the poor (Bourgois, 2003; Pine, 2008). Pine guards herself against a voyeuristic celebration of gangs and drunks, and from offering a sympathetic reading of the suffering she witnessed (Pine, 2008, p.31). Bourgois reflects at length on the matter and clearly states that sanitizing the poor would make him complicit of oppression. For instance, he believes he couldn't have avoided the description of how some of his characters participated in a gang rape, because failure to address sexual violence would have only reinforced the sexist status quo (Bourgois, 2003, p. 208). If human action reproduces to some extent the given social and cultural order, and if structural, symbolic and sometimes political violence is constantly inflicted in that order, then it is only logical that the product will not look pretty. In other words, they argue, if one

believes that structural forces affect poor individuals' lives, then the effects should be described as they are.

I share that conviction and I have tried to describe the lives of vulnerable individuals, as I perceived them. I had been confronted to this issue when I worked with the Historic Memory Group of Colombia. At the time, the majority of the group decided to exclude information that could affect the image of victims of the internal armed conflict. I was against those exclusions, because I thought they contributed to the false stereotype of portraying victims as 'pure' and perpetrators as 'evil' in a highly degraded conflict where the distinction is usually unclear. Later, when I started working with street rebuscadores and perceiving their lack of attachment to the community, their "negative individualism" (Mendoza, 2011, p. 123), their lack of solidarity, the violence of all sorts they inflict upon themselves but also upon the most vulnerable within the community, I was convinced that describing the lives of the vulnerable as I perceived them was the right way of doing things. To envision real solutions, we need full descriptions. For instance, some scholars who use the category of *popular economy* believe that there is an increasing number of poor workers in Latin America who oppose capitalist thought by creating forms of self-employment based on relations of solidarity, reciprocity and cooperation (Coraggio, 2012). To do that, they generalize marginal cases giving the false impression that there is massive resistance against traditional capitalist thought from below. Idealizing the poor is never good for the poor because in the best case scenario it only pushes us away from finding real solutions. As Wilkinson writes, "both as social scientists and as human beings, we have the responsibility to "tell I as it happened," rather than how we would have liked it to be" (Wilkinson, 2008, p. 60). Ultimately, as

Bourgois argued “the problem and the responsibility is also in the eyes of the beholder” (Bourgois, 2003, p. 18).

### **3.3 Quantitative methods: Biannual survey on Cultures (2015) and main statistical techniques used to analyze the microdata obtained in the survey**

The Secretariat of Culture, Recreation and Sports of Bogotá, designs and conducts a biannual survey on Culture. The 2015 survey was composed of 131 questions, including a great variety of topics ranging from perceptions on city experience, life conditions, cultural/artistic/sportive tastes and political opinions amongst many others. The complete questionnaire can be found online (Secretariat of Culture, Recreation and Sports of Bogotá [SCRD], 2016), but the microdata that was used to conduct the analysis is not uploaded in the webpage and was provided directly through a specific request made on January 2016.<sup>24</sup>

The Secretariat collected the data between July and August 2015. During that period, a total of 15.674 respondents were surveyed within the urban residential perimeter of Bogotá. The Secretariat conducted semi-structured interviews with respondents 12 years of age or older. They use a probabilistic stratified multistage sampling method. Colombia has a system of socio-economic stratification since the 1980s, ranking dwellings from 1 to 6 to compute the utility bills tariff. Different levels are allocated according to the exterior condition of the household and the

<sup>24</sup> One final remark before describing the different statistical techniques that were chosen to analyze the data. The National Administrative Department of Statistics (DANE), also designs and conducts a biannual survey on Cultural tastes and consumption. See: <http://www.dane.gov.co/index.php/estadisticas-por-tema/cultura/consumo-cultural> However, that survey does not account for differences regarding socio-economic levels. Since my whole purpose is to test the hypothesis that there are socially differentiated patterns of taste, it is indispensable to work with a survey that included socio-economic variables, so I decided to use the survey of the Secretariat of Culture, Recreation and Sports.

general characteristics of its surroundings. Socio-economic level (SL) 1 is ranked as low-low, SL 2 as low, SL 3 as intermediate-low, SL 4 as intermediate, SL 5 as intermediate-high, and SL 6 as high. Only SL 4 pays the exact value of the utility bill. Individuals from socio-economic levels 1, 2 and 3 receive subsidies while levels 5 and 6 are legally bound to pay cost overruns (DANE, 2015).

Many scholars criticized the rankings. Criticisms include: 1) the system is based on two suppositions that have been proven wrong: that socio-economic levels are homogeneous (Bonilla, López & Sepúlveda, 2014), and that there is a high correlation between the exterior appearance of a household and the socio-economic conditions of the residents (Acosta, Maluenda & Rivas 2014; Mina, 2004). 2) The whole purpose of the system is not being accomplished, because SLs 5 and 6 are not being able to subsidize the value of the utility bill of SLs 1, 2 and 3, since the population is increasingly concentrating in socio-economic levels 1, 2 and 3. 3) Colombia and Ecuador are the only countries in the world that still use such a system. Nowadays, there are much better strategies to implement nonlinear rates. (Bogliacino, Jiménez & Reyes, 2015). 4) Class prejudices, segregation and discrimination might be enhanced by the existence of socio-economic levels (Bogliacino, Jiménez & Reyes, 2015).

The last criticism is particularly disturbing, since it highlights the risk of legitimizing arbitrary decisions (such as dividing the population in socio-economic levels), or of making those decisions seem natural or associated with different stereotypes of human behavior (Bogliacino, Jiménez & Reyes, 2015). Although the purpose of introducing socio-economic levels was to differentiate the rates applied to utility bills, the truth is that they are now part of the collective imagination as a

way to differentiate not only material conditions but also social representations (Bonilla, López & Sepúlveda, 2014). Socio-economic levels could be read as a way of naturalizing artificial hierarchies that reflect a particular system of power relations. Consequently, the kind of analysis that I developed could be said to reinforce those arbitrary distinctions by associating them with particular forms of habitus. Even more disturbing, I could also be aiding different forms of statistical discrimination, through which stereotypes on different demographic groups are used to discriminate a group based on its average behavior.

It is precisely because I agree with most of the above reasons that I believe socio-economic levels should disappear as a way to differentiate the rates applied to utility bills in Colombia. Unfortunately, the tool at my disposal (the survey) used a much-criticized variable (socio-economic level) to reflect upon social position. But to reflect on social positions is important, since differentiations based on them are not likely to disappear at least within our lifetimes. I wanted to show that people who never meet each other are nevertheless objectively related and that their choices are strongly influenced by social class. In any case, the risk of “fixing” vulnerable populations in constructed categories exists, and I will reflect on it in part 3.2 of this dissertation.

That being said, the first stage of the probabilistic stratified multistage sampling was to make a random selection of blocks from the 2.819 block list of Bogotá. The Secretariat then classified blocks as belonging to different socio-economic levels. Once a block was selected, the Secretariat made a random selection of the households within the block. Finally, they list people in each of the selected households, and put those who were older than 12 years on a new list from which some were randomly selected people for an interview. The number of interviews made was representative of the percentage of the population of Bogotá that belongs to each socio-economic

level.<sup>25</sup> For instance, since around 9% of the population of Bogotá belongs to socio-economic level 1, the Secretariat made 1425 interviews of a total of 15674 as shown in **Table 1**:

**Table 1**  
*Interviews by socio-economic level*

Socio-economic level	# interviews	of %
1	1425	9,09
2	5488	35,01
3	5893	37,60
4	2488	15,87
5	333	2,12
6	47	0,30
Total	15674	100,00

I used descriptive multivariate statistics (the same techniques that Bourdieu used to quantify his data) to analyze the survey. More specifically I used Simple Correspondence Analysis (SCA) and Multiple Correspondence Analysis (MCA). In an essay entitled *How Bourdieu “Quantified” Bourdieu: The Geometric Modelling of Data*, Frédéric Lebaron explains Bourdieu’s choice for correspondence analysis as: “the logical consequence of a critical experience and reflection about the shortcomings of dominant quantitative approaches in social sciences, which led him to a conscious and systematic move toward a geometric frame-model more adapted to his conception of the social world” (Lebaron, 2009, p. 11).<sup>26</sup>

<sup>25</sup> Bogotá is further divided in 20 localities, and each locality shares different levels of internal segregation. As I said before, I conducted most of my fieldwork in Ciudad Bolívar and Suba, but mostly in Ciudad Bolívar. Suba is a wealthier locality, while Ciudad Bolívar is poorer as compared to the rest of Bogotá. Whereas 0,4% of the population of Suba lives in SL 1, 13,7% live in SL 2, 14,3% in SL 3, 21,6% in SL 4, 52,3% in SL 5 and 7,2% in SL 6, in Ciudad Bolívar, 52,6% of the population lives in SL 1, 8% in SL 2, 0,9% in SL 3, and 0%, in SLs 4, 5 and 6 (SDP, 2011).

<sup>26</sup> The software used to analyze the data was the open source code call R (<https://www.r-project.org/>) more specifically, two packages: FactoMineR (created by Françoise Husson) and FactoClass (created by Campo Elías Pardo). Data was

Simple Correspondence Analysis (SCA) is a descriptive/exploratory technique designed to analyze simple two-way tables containing some measure of correspondence between the rows and columns. For example, it can be used to analyze the associations between the categories of a contingency table that crosses two qualitative variables such as socio-economic level and sex (See **Table 2**).

**Table 2**  
*Contingency table with two qualitative variables*

		Sex	
		Male	Female
Socio-economic Level	1	604	821
	2	2583	2905
	3	2827	3066
	4	1235	1253
	5	183	150
	6	26	21

Multiple correspondence analysis (MCA) is the multivariate extension of simple correspondence analysis (SCA). It is designed to analyze tables containing more than two qualitative variables such as socio-economic level, sex and occupation (See **Table 3**).

processed with the help of Carlos Duarte who holds a degree in statistics. I am particularly grateful for Carlos's many lessons, good ideas and particularly good character after many hours of work. For further information, Carlos can be contacted at: [ceduarte@unal.edu.co](mailto:ceduarte@unal.edu.co).

**Table 3**  
*Contingency table containing more than two qualitative variables*

Socio- Economic Level	Sex	Occupation
1	Male	Study
2	Female	Study
2	Female	Work
3	Male	Study

The main characteristics of MCA are as follows: First, it constructs the space relationally on the basis of similarities and differences in responses to questions. People’s preferences are mapped along two axes and their clustering indicates affinities between tastes and practices across sub-fields. We can then superimpose supplementary variables, for example, socio-economic level, sex, educational qualifications, age, etc., to indicate tendencies for certain categories of persons to have shared tastes. Secondly, the process is inductive. It proceeds from a contingency table by transforming its values into co-ordinates on a figure, whose dimensions can then be interpreted. Thirdly, it is up to the viewer to see if he can discern the reasons why responses are differentially located. According to Gayo, Teitelboim and Méndez, when MCA is used, interpretation is open (because every figure allows for more than one interpretation), flexible (because there are grey areas susceptible to be re-interpreted), but also limited (because as much as it is open to interpretation, not anything can be said about the resulting figures) (Gayo, Teitelboim & Méndez, 2013). Fourthly, it is visually simple to understand, or in Greenacre’s words “it results in an elegant

but simple graphical display” (Greenacre, 2007), accessible to most audiences and does not demand statistical expertise to interpret.<sup>27</sup>

MCA is part of a family of methods called Factorial Analysis. Both axes (called dimensions or factors) represent the frequencies of the table of contingency conformed by two or more variables. Therefore, each axis is a graphical representation of the distribution of answers in each category of questions (Rencher, 2003). The dispersion or concentration (variability) of the categories in the plane composed by both dimensions/factors is called inertia (Lebart, Morineau, & Warwick, 1984). The percentage associated with each dimension/factor represents the inertia (variability) of each axis and their respective equivalent as a percentage of the total variability. The scale also varies depending on the variability. If the scale is very low, it is because there are no marked differences between the categories for any given question (ex. 25% answered A, 26% answered B, 24% answered C and 25% answered D). A larger scale shows more variability within the categories of questions. Finally, dotted lines guide the interpreter to identify the center of the plane. The center represents “average individual” or “average response” which varies in each graph. The most important thing to know is that the more individuals differ on a large number of questions, the more distant they are from each other in the resulting multidimensional image. For instance, Figure 1 shows that citizens associated with socioeconomic levels 1 and 2 are less likely to be members of environmental organizations, labour unions, artistic/cultural organizations, the church, sports clubs or political parties, while citizens said to belonging to SLs 3, 4, 5 and 6 are more likely to be part of them. Interestingly, for example, labour unions are associated with SLs 4, 5 and 6 and not

<sup>27</sup> For an example, see *Figure 35*, p. 129.

with SLs 1, 2. Therefore, Figure 1 strengthens the hypothesis that there is a new working class, mainly composed of self-employed individuals, unlinked to the traditional proletariat, and with no institutionalized means to voice their concerns.

With correspondence analysis, Bourdieu was able to combine various types of capital (economic, cultural, social and symbolic) and present a geometric model showing the basic dimensions of social space in *Distinction* and onwards. Consequently, it allowed him to explore one of the most important hypotheses of his theory, the existence of a structural homology between the space of tastes (lifestyles) and the space of social positions, by discovering a hidden relational reality that is not conscious, but nevertheless real. In Bourdieu's words: "I use Correspondence Analysis very much, because I think that it is essentially a relational procedure whose philosophy fully expresses what in my view constitutes social reality. It is a procedure that 'thinks' in relations" (Bourdieu cited by Lebaron, 2009, p.13). He later applied the statistical technique as a standard tool in *Homo Academicus* (1984b), *La noblesse d'Etat* (1989), *L'économie Domestique* (1990), *The Social Structures of the Economy* (2005b), amongst others. After Bourdieu, many other scholars have used correspondence analysis to explore sociological hypothesis by quantifying the basic dimensions of social space (See: Sapiro, 1999; Rosenlund, 2000; Lebaron, 2001; Denord, 2003; Duval, 2004; Börjesson, 2005; Harcourt, 2006; Hjellbrekke et al., 2007; Hovden, 2008; Savage, Warde; Le Roux & Rouanet, 2008; Gayo, Teitelboim & Méndez, 2013; amongst others.)

#### 4. How can we better target and characterize the social grouping that the most vulnerable segment of the working poor in Bogotá belongs to?

##### 4.1 Different meanings of rebusque, and my focus on street rebusque

Laura: So.... how can I explain what *rebuscarsela* means?

Patricia: To who? Is there someone in this world who doesn't understand the term?

Laura: Of course there is.

Patricia: Well... if there is, then fuck them. They don't care about us, we don't care about them.

As mentioned previously, in 2012, 49% of Colombia's workforce was in the formal sector, the majority of whom were wage earners (percentages fluctuate between 80.4 and 83.3%), followed by self-employed workers (percentages fluctuate between 16 and 18.9%)<sup>28</sup>. In contrast, fifty one percent of the workforce was part of the informal sector, where a very interesting phenomenon occurs: the proportion between wage earners and self-employed workers is inverted. The majority of informal workers in Colombia are not wage earners (percentages fluctuate between 25.4 and 28.3% during the last five years), but rather self-employed workers (percentages fluctuate between

<sup>28</sup> Colombia's National Department of Statistics (DANE), subdivides the figures obtained for *formal/informal employment* into different categories, one of which is "occupational position." For formal employment, occupational position is subdivided into 8 groups (public employees, private, domestic or farm employees working for firms, farms or households with more than 5 employees, professional self-employed workers, employers hiring more than 5 employees, family workers without compensation and workers without compensation in other households or firms that hire more than 5 employees). I grouped the figures obtained for farm labourers and private, public and domestic employees into *wage-earners*, as they are all dependent parties in a bilateral employment relationship. I also grouped self-employed workers and employers into *self-employed workers*, leaving apart both groups of workers without compensation who occupy only between 0.2 and 0.4% of the formal workforce.

65.9 and 67.5%).<sup>29</sup> This means that self-employed workers constitute the new emergent working class in Colombia<sup>30</sup>.

I started my fieldwork with two groups of street vendors in Bogotá, most of whom are self-employed workers. However, shortly thereafter, I also conducted participant observation with other groups of precarious workers such as vendors selling different items in hovels located in slums, recyclers, members of small family businesses (*fami-empresas*), cobblers, workers performing different activities combining self-employment with employment (street food cooks who are also temporary domestic employees or part-time waitresses etc.), and others who have fallen into the ranks of the perennially unemployed. Most of those workers are self-employed and therefore part of the new emergent working class in Colombia. But what else do they have in common? Most of them identify with a broadly comprehensive category: they call themselves *rebuscadores*. In Spanish, *buscar* means to look for something. *Re-buscador* is a made-up word, which suggests that someone is looking constantly for something, in particular, for a way to make a living and survive.

<sup>29</sup> For informal employment, Colombia's National Department of Statistics (DANE) subdivides occupational position into 7 groups (private, domestic or farm employees working for firms, households or farms with less than 5 employees, self-employed workers excluding professionals, employers hiring less than 5 employees, family workers without compensation and workers without compensation in other households or firms that hire less than 5 employees). I grouped the figures obtained for private, domestic and farm employees into *wage-earners*, and self-employed workers and employers into *self-employed workers*. I left apart both groups of workers without compensation who occupy between 4.6 and 5.9% of the informal workforce (a number still low but significantly superior if compared with the formal workforce).

<sup>30</sup> I argue that there is a "new emergent working class" to differentiate it from the traditional proletariat. That does not mean, however, that self-employed vulnerable workers only recently exist.

I will briefly reflect upon the literature that has been written on *rebuscadores* so far. There are very few academic texts on the subject, none of them written by legal scholars.<sup>31</sup> Economists, anthropologists, sociologists and journalists, amongst others, have written from different parts of Latin America about *rebuscadores* using different political approaches and methodologies (Portes, 1988; Menni, 2004; Ochoa & Ordóñez, 2004; Kenbel, 2010; Dakduk, 2008; González, 2008; Mendoza, 2011; Avendaño & Paz, 2013; Muñoz & Andrade, 2014; Giraldo, 2016). I do not think it is surprising that legal scholars have been silent so far, since legal scholarship and education in Latin America is largely dogmatic, abstract and extremely formal (García-Villegas, 2006). Questions about the “unregulated” working class are rarely asked, and if so, without the intention of approaching them from an interdisciplinary point of view or in depth.

From a socio-economic point of view, there is the work of Alejandro Portes, Cesar Giraldo, David Ochoa and Aura Ordoñez, who all touched upon the concept of *rebusque* in their work but without studying it in depth. Alejandro Portes understands *rebusque* as the way in which popular sectors in Central America named what social scientists call the economy of the urban informal sector (Portes, 1988, p. 3). His focus is on analyzing the informal sector rather than on understanding or characterizing more specifically what *rebusque* means. More specifically, he is interested in analyzing the economic and institutional embeddedness of informal activities with the rest of society (Portes, 1995). Cesar Giraldo from Colombia is more interested in using the concept of popular economy rather than the concept of informality, but he touches upon general characteristics of *rebusque* in his studies of Colombia’s popular economy. He argues that

<sup>31</sup> The category has had more exposure in Colombia’s public media. There’s a TV show which traces the lives of some *rebuscadores* working as vendors on public buses. The show can be watched following the link: <https://www.youtube.com/watch?v=3gzlv7CMukc> (Consulted May 2014). The video is useful to give the reader a better idea of whom I am taking about.

nowadays the predominant type of urban labour in Colombia is called rebusque, that most of those workers are self-employed, that they lack voice, representation and social security benefits, although most of them achieve higher incomes than minimum wage workers, claim to achieve more stability, avoid humiliations, enjoy flexible hours that allow many of them (especially women) to comply with caregiving responsibilities, and allow them to rely (if needed) on the help of broader family networks (Giraldo, 2016, p.71, 74, 78, 93). Finally there is the work of Ochoa and Ordoñez, who as young Colombian students in economics published a paper in which they merge the concepts of informality and rebusque, although without discussing why, with what purpose, or even if it is possible or convenient to do so (Ochoa & Ordoñez, 2004).

Among sociologists, we find the work of Pilar Mendoza, Ana María Menni and Olga González. They all wrote interesting papers in which they describe different general characteristics of rebusque based on qualitative information they collected through interviews, based on which they give their own definition of rebusque. However, they don't describe the practice of rebusque in depth, or situate their practice within a given theoretical framework. Pilar Mendoza, for example, who is a journalist and holds a Phd in sociology, describes what she calls "the art of rebuscar" and suggests interesting avenues to be explored (Mendoza, 2011). In her view, low income sectors in Bogotá have found a way of participating and interacting in the city through the practice of rebusque. More specifically, she defines rebusque as a counter-culture of marginal individuals with its own values, norms, esthetics and purpose. She believes that there is an economic as well as a cultural logic to the way rebuscadores individually reinterpret the city, although her goal is not to describe or interpret that logic (Mendoza, 2011, p. 126).

Ana María Menni, an Argentinian anthropologist who holds a Phd in sociology, writes an interesting paper in the midst of what she describes as a big economic crisis triggered by different neoliberal policies implemented in Argentina since the 1980s. In her paper, she describes rebusque as an informal type of work used in times of economic crisis, which – although supposed to be temporary - ends up modifying the urban landscape (Menni, 2004, p. 49). Based on interviews conducted in the region Alto Valle del Río Negro, she describes rebusque as a family-based, creative enterprise that is carried out mainly in urban public spaces by people who need to find a way to survive while they are looking for a permanent job (Menni, 2004, p. 52). Rebusque offers an opportunity (maybe the only opportunity) for poor individuals with no formal education to survive, although they have no social security benefits, their income is low and irregular, and their daily efforts are never acknowledged (Menni, 2004, p. 68).

Finally, sociologist Olga González defines rebusque as the social and economic mechanisms produced in the informal sphere. She writes about rebusque as a social integration strategy of Colombian migrants in France (González, 2008). She argues that there is a difference between the individual who claims he should benefit from a right to which he is entitled, and individuals who have such a weak or limited understanding of their rights and duties that it situates them outside the margins of law. According to her, rebuscadores employ other mechanisms to access what we understand as basic social rights. Contrary to what French or citizens from other countries of Latin America do, rebuscadores will use other resources and mechanisms (such as violence or other persuasion techniques) to access basic social rights, because according to González they do not conceive of law as a useful mechanism to solve conflicts (González, 2008, p. 261).

There are other academic texts on the subject written by scholars with different trajectories within the social sciences, who end up doing a very similar exercise: they provide us with their own definition of rebusque based on different characteristics they deduce from their fieldwork. For instance, after conducting fieldwork in Río Cuarto Argentina, the journalist Claudia Kenbel concludes that practices such as collecting recycling materials using animal-drawn vehicles to make a living, or any practice that is strongly influenced by the logic of the countryside although performed in the city, should be labeled as rebusque (Kenbel, 2010, p. 11). Rebusque, therefore, is a practice embedded in the logic of the countryside taking place in the city, changing the urban landscape, and leading to a rationality associated with the need to survive (Kenbel, 2010, p. 12, 21). On the other hand, Silvana Dakduk, a psychologist from Venezuela, understands rebusque as any secondary activity generating economic benefits through informal means by performing simple tasks that are rewarded immediately (Dakduk, 2008, p.70). Her Venezuelan informants do not associate rebusque with their main economic activity, but with an alternative activity to make some extra money (for instance, the manicurist who also resells handbags). She adds that when rebusque is the only way to earn a living and survive, it is considered in Venezuela as a despicable activity, “something that is only done by people who are ready for everything, regardless of anything” (My translation; Dakduk, 2008, p. 71).<sup>32</sup>

Finally, there is the work of scholars whose goal is not to define rebusque, but to study the practice of rebusque from different angles. For instance, Clarena Muñoz, who holds a Phd in linguistics, and Martha Andrade, who has a Master in literature, wrote a paper about the rhetorical formulas used by rebuscadores who sell different items in the public transportation system of

<sup>32</sup> Original quote: “(...) algo que hacen las personas dispuestas a todo, sin importar lo que sea.”

Bogotá (Muñoz & Andrade, 2014). William Avendaño who holds a Phd in Social and Human Science and Luisa Paz who holds a Phd in education, also wrote a paper connecting rebusque and begging in the city of Cúcuta, Colombia. Their emphasis is on showing how most of their informants, who were displaced by violence or economic reasons, manage to earn a living in the city either by begging or by performing different activities that allow them to earn an average income that most of the time is higher than the minimum wage (Avendaño & Paz, 2013, p. 177, 186).

In sum, the academic literature written on rebuscadores so far does not describe the practice of rebusque in depth, or use a specific theoretical framework to make sense of it. Economists only mention the concept within their more in depth studies of informality or popular economy. Sociologists and other scholars with different trajectories within the social sciences give their own definition of rebusque based on different characteristics taken from their fieldwork, showing that definitions and characteristics vary within different contexts and cultures. As I stated before, I started my fieldwork with two groups of street vendors in Bogotá. However, I also observed other groups of precarious workers such as recyclers, members of small family business (*fami-empresas*), cobblers, and sex workers, amongst others, all of whom identified themselves as rebuscadores. The truth is that there is no consensus around the definition of rebusque. Different types of workers identify themselves as rebuscadores within different Colombian cultural frameworks: from the woman who works in a *maquiladora* with different types of non-standard or precarious forms of employment, to the university professor who survives by giving multiple courses in different universities with no standard employment contract. Mendoza, expands the definition even further, because he understands rebusque as a technique: “middle class people, or

middle-high class people also use that type of technique (rebusque) during moments of economic crisis. Selling fruits in the trunk of a car during weekends, selling jewelry, clothes or different products as an alternative to their usual jobs, are also ways of rebusque common to the people of Bogotá” (My translation; Mendoza, 2011, p. 126-127).<sup>33</sup>

For practical reasons (I conducted most of my fieldwork in the streets) as well as analytical reasons (I am particularly interested in the most precarious forms of rebusque), I will focus my work on a specific group of rebuscadores that I identify as “*street rebuscadores*.” Specifically, I refer to street rebuscadores as a group of workers who share the following five common characteristics: 1) they identify themselves as self-employed or family workers, 2) they conduct their work mainly in the street or other public spaces, 3) they report that this work occupies most of their time, 4) they are affiliated to the subsidized health care system, and 5) their highest educational degree (if obtained) is high school. According to the figures obtained in the Great Integrated Household Survey (GIHS) conducted by DANE in 2015, approximately 82,000 people in Bogotá (5.5% of those who described themselves as self-employed workers) and 818,000 people in Colombia (7.98% of those who described themselves as self-employed workers), share those five characteristics mentioned above: they identify themselves as self-employed or family workers (section I, question 6430 D and F of the GIHS), they conduct their work mainly in the street or other public spaces (section I, question 6880 C and F of the GIHS), they report that work occupies most of their time (section H, question 6240 A of the GIHS), they are affiliated to the subsidized health care system (section F, question 6100 A and B, and section I, question 6915 B of the GIHS),

<sup>33</sup> Original quote: “gentes de clase media o media-alta, también utilizan esta técnica en momentos de crisis económica. Vender frutas en el baúl de sus autos los fines de semana, vender joyas, ropa o diferentes productos, de manera alternativa a sus trabajos establecidos, constituyen formas de rebusque comunes para la población de Bogotá.”

and their highest educational degree (if obtained) is high school (section G, question 6210 A, B, C and D of the GIHS).<sup>34</sup>

I decided to focus on *street rebuscadores*, basically for four reasons. First, most of my informants share the common characteristics mentioned above. Second, I have enough qualitative information to be able to speak confidently about their practices and the way law affects them. Thirdly and fourthly, I can provide the approximate official numbers of the universe of workers that I am talking about through data collected by the National Administrative Department of Statistics (DANE), and I am talking about a considerable portion of what I have described so far as the new working class. However, *street rebuscadores* is not a category used in the academic literature or in public policy debates. Therefore, I was forced to work with usual socio-economic categories to prove that the most vulnerable segment of the working poor in Bogotá (street rebuscadores) are very close in the overall social space (part 4.3), and that their tastes differ significantly from those associated with socio-economic levels 4, 5 and 6. Since approximately 84% of street rebuscadores are part of SLs 1 and 2 in Bogotá, and 100% are part of SLs 1, 2 and 3 (DANE, 2015), it is safe to conclude that street rebuscadores are a sub-group within lower socio-economic levels.<sup>35</sup> Their specific practices are further described using qualitative data in part 4.4. But before presenting the results of my empirical analysis, I will outline the theoretical tools guiding my research, namely Bourdieu's theory of practice, and in particular the concepts of habitus and capital.

<sup>34</sup> Those specific figures were obtained with the help of Geovanni Alexander Portilla (gaportillac@dane.gov.co), who coordinates the office of Labour Market in the area of Methodology and Statistics of DANE, following a specific request. They are not available online. However, for more general information about the Great Integrated Household Survey (GIHS) conducted by DANE in 2015, please follow the following link: [http://formularios.dane.gov.co/Anda\\_4\\_1/index.php/catalog/356](http://formularios.dane.gov.co/Anda_4_1/index.php/catalog/356) (last consulted, August 2016).

<sup>35</sup> Figure obtained with the help of Geovanni Alexander Portilla following a specific request on August 2017. It is not available online.

## 4.2 Theoretical framework - Bourdieu's theory of practice, and in particular the concepts of habitus and capital

Bourdieu argues that social space is constructed in such a way that agents or groups are distributed based on two basic principles of differentiation: economic and cultural capital (Bourdieu, 1998a, p. 6). Economic capital refers to the possession of greater or lesser title to means of production, while cultural capital refers to non-financial social assets that promote social mobility beyond economic means (education, style of speech, physical appearance, etc.) Other types of capital are also important. For instance, symbolic capital (resources available to an individual within a particular culture on the basis of authority, prestige, honour or debts of gratitude),<sup>36</sup> and social capital (or social networks),<sup>37</sup> are also “non-economic” forms of capital which can be converted into economic capital and thus added or quantified.

For Bourdieu, the position that each individual occupies in the multidimensional social space, is defined by every single kind of capital he or she can mobilize through social relations. For instance, the position of individuals who are relatively poor in economic capital but rich in cultural

<sup>36</sup> In the translators' introduction to Bourdieu's "The force of law: towards a sociology of the juridical field," Richard Terdiman elaborates a synthesis of a series of concepts developed earlier in Bourdieu's work, especially in his 1972 "*Outline of a Theory of Practice*." The concept of symbolic capital is masterly condensed as follows: "*symbolic capital*, for Bourdieu, designates the wealth (hence implicitly the productive capacity) which an individual or group has accumulated - not in the form of money or industrial machinery, but in symbolic form. Authority, knowledge, prestige, reputation, academic degrees, and debts of gratitude owed by those to whom we have given gifts or favors: all these are forms of symbolic capital. The exchange value of symbolic capital, while it cannot be stated to the penny, is continuously being estimated and appraised by every individual possessing or coming into contact with it." (Terdiman, translators' introduction to Bourdieu, 1987a, p.812).

<sup>37</sup> To be more precise, Bourdieu defines social capital as follows: "social capital is the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition" (Bourdieu & Wacquant, 1992, p. 119). His terms point to a world where the elite jobs go to high class men who went to exclusive schools. It's *whom* you know not *what* you know.

capital (e.g. artists, professionals, academics, etc.), is very different from the position of those poor in cultural capital but rich in economic capital (e.g. commercial employers). Their tastes in food, sports, music, politics etc., differ greatly. When Bourdieu conducted fieldwork in France in the 1960s, the first preferred chess, piano and mountains, while the second preferred hunting, horse riding and champagne (Bourdieu, 1998a). In his translator's introduction to Bourdieu's "The Force of Law: Towards a Sociology of the Juridical Field," Richard *Terdiman* defines the habitus as "the habitual, patterned ways of understanding, judging, and acting which arise from our particular position as members of one or several social "fields"<sup>38</sup> and from our particular trajectory in the social structure" (Bourdieu, 1987a, p. 811). Different combinations of capital give rise to different forms of habitus. Furthermore, individuals connect as they share common habitus. Actually, habitus is what gives different groups consistency beyond all the undoubted variations in the behaviour of individuals. In Terdiman's words, "it is what tends to cause the group's practices and

<sup>38</sup> Agents and social positions are located in what Bourdieu calls a *field*. Society is split into different spheres of action within which power relations play out. Bourdieu describes a field as: "a field of forces within which agents occupy positions that statistically determine the positions they take with respect to the field, these position-takings being aimed either at conserving or transforming the structure of relations of forces that is constitutive of the field" (Bourdieu, 2005a, p.30). He uses the metaphor of a football field to clarify the concept. The players on the field each have a position and a set of rules (termed 'doxa' by Bourdieu) to adhere to. Each position within the field is determined by the individual's habitus (their past performance, skills, education, social class etc.) When the habitus of an individual matches the social field everything runs smoothly and instinctually (Hawthorn, 2013). However, if the habitus does not match (imagine that a position is given to a hatha yoga professor), his responses will likely not be intuitive or instantaneous. He will feel and be perceived as a fish out of the water. Different fields, therefore, whether they are scientific, religious, academic, political, medical, judicial etc., "provide themselves with agents equipped with the habitus needed to make them work" (Bourdieu, 1990, p. 67). They look for those who have a "feel for the game," or who share a body of internal protocols, assumptions, behaviors and values, in an undisputed, pre-reflexive and naïve way. Thus, an outsider cannot enter a new field "by an instantaneous decision of the will, but only by birth or by a slow process of co-option and initiation, which is equivalent to a second birth," (Bourdieu, 1990, p. 68). Now, within the field, there is competition for control. It is a site of struggle with its own structure of internal power relations. The position of each particular agent in the field is a result of interaction between the specific rules of the field, agent's capital and agent's habitus (Bourdieu, 1984a). For instance, within the social field of academia, individuals hold different positions due to their habitus (credentials, prestige, past performance, social and cultural interests etc.). When money and jobs become threatened and the competition escalates, all different forms of capital are used as a tool to survive within the game (Hawthorn, 2013). For instance, social capital may be used to compete with cultural capital, and that might diversify the ever-changing structure of differential prestige and power within the field (Bourdieu, 1998). But competition is not only present within a determinate field. In the bigger picture, fields also interact with each other and there is also a hierarchy between them. Most, for instance, are subordinate to the larger field of power and class relations.

its sense of identity to remain stable over time (and therefore) it is a strong agent of the group's own self-recognition and self-reproduction.” (Bourdieu, 1987a, p. 812).

There are three key features of habitus that can help to explain the concept better (Sylvestre, 2007). First, habitus is fairly resistant to change. Bourdieu considers that primarily socialization “is more formative of internal dispositions than subsequent socialization experiences. There is an ongoing adaptation process as habitus encounters new situations, but this process tends to be slow, unconscious, and tends to elaborate rather than alter fundamentally the primary dispositions” (Swartz, 1997, p. 107). Second, “habitus is internally incorporated through postures, movements, feelings and gestures of the body” (Sylvestre, 2007, p. 367). It is “not a mental process”. An individual shares a particular habitus when he/she has what Bourdieu describes as a “feel for the game”. It is not a rational but an embodied experience. Third, there is a temporal aspect to habitus. “Before acting, agents are unaware of what their habitus dictates, of its principles and of its possibilities” because it is not a mental process (Sylvestre, 2007, p. 368). They do not know how they will react to a situation until they are practically confronted by it (Sylvestre, 2010b, p. 801-804).

The question then is about choice. How can we understand the relation between social positions (a relational concept), dispositions (habitus), and position-takings (choices made in practice)? (Bourdieu, 1998a, p. 6) Bourdieu concludes that most human actions have as a basis something different from intention. He acknowledges the existence of “structuring structures” or means for ordering and understanding the social world, which are humanly constructed, historical, and as such arbitrary in the sense that they do not reflect directly social realities, although they are not

arbitrary in their social consequences. People, however, do not just comply mechanically and act as instructed by external structures, which – it’s important to say - differentiate and legitimate inegalitarian and hierarchical arrangements and therefore serve as instruments of domination.<sup>39</sup> There is space for agency. Bourdieu’s sociology is “flexible enough to recognize the power of structures but also the possibilities of individuals” (Sylvestre, 2007, p. 372). He does that, by arguing that the effects of external structures are first mediated by habitus to produce action. In other words, the point to which people act in accordance with the meanings infused by structures depend on the specific chances that the actor possesses by virtue of his or her capital.

Philippe Bourgois and Adrienne Pine wrote two ethnographies in which they used Bourdieu’s theory to recognize the power of structures while also leaving space for agency. Since both of them worked with vulnerable individuals, they emphasize how individual choices are constrained by historical, legal, cultural, political and economic factors. In “*In search of respect: selling crack in El Barrio*,” for instance, Bourgois uses different examples to show how vulnerability (or less amounts of total capital) limits agency. For example, when analyzing the life decisions of Candy (a female employee in the drug-dealing network he studies), the author describes the key structural components of her life experience (dislocation in family structure, class exploitation, racial discrimination and sexist oppression), and argues that without taking all those elements into consideration, any account of her life would be “overly simplistic” or “reductionist” (Bourgois, 2003). Adrienne Pine does something very similar in “*Working hard, drinking hard: on violence*

<sup>39</sup> Since structures are very powerful in legitimizing inegalitarian and hierarchical arrangements, their arbitrary character needs to be justified. The process by which that is done is called *misrecognition* in Bourdieu’s theory. Arbitrary arrangements become separated from underlying economic and political interests, and hence go *misrecognized* by those subject to power (Swartz, 1997, p. 90). Without such a mechanism, the reproduction of the inegalitarian social order would be simply impossible.

*and survival in Honduras.*” She opposes the thought of those who consider that drunkenness is only the responsibility of the individual, by arguing that there are larger structural roots that can better explain it, such as “lack of jobs and health care, inadequate education, State violence and corruption, and foreign dependence” (Pine, 2008, p.109). However, both authors (although to different extents) refuse to portray their characters as passive or innocent victims. Bourgois, for instance, not only describes the self-destructive acts of resistance of Puerto Rican drug dealers, but adds that sometimes when being face to face with them “one feels that no amount of “historical apology” and “structural victimization” exempts them from the consequences of their often violent, self-destructive, and parasitical actions, and of the suffering they impose on their families, neighbours, and friends” (Bourgois, 2003, p.54).

Within the tradition of practice theory, there are other authors whose interest is to put the spot light on agency rather than on structural constraints. Ortner, for instance, is a feminist interested in the ways in which we can return agency to women, and in their role in breaking oppressive structures (such as patriarchy) through daily resistance. She believes that by emphasizing too much the role of practice in social reproduction, Bourdieu moved away from different bodies of feminist, subaltern, minority, and postcolonial theory, who were not so interested in reproduction, but in change. To get them back together, she argues in favor of what she calls “subaltern practice theory” which changes the emphasis in the analysis by suggesting a different angle of questioning: “one can do practice analysis as a loop, in which “structures” construct subjects and practices, but subjects and practices reproduce “structures.” Or one can do – what shall we call it? Subaltern practice theory? – and choose to avoid the loop, to look for the slippages in reproduction, the erosions of long-standing patterns, the moments of disorder and of outright resistance” (Ortner,

1996, p. 17). Ortner's characters, however, didn't exercise their agency in self-destructive ways as Pine and Bourgois characters did. Furthermore, her examples suggest characters with greater amounts of total capital and more room for choice. They are always "at least partially knowing, and thus able to act on and sometimes against the structures that made them" (Ortner, 1996, p. 17).

More recently, Angela Campbell explores the concept of choice in her book titled *Sister Wives, Surrogates and Sex Workers: Outlaws by Choice?* Using three case studies examining research on polygamy, surrogacy and sex work within three jurisdictions (Australia, United Kingdom and Canada). As a feminist, she explores the pitfalls of choice lexicon and ideology, but also of dismissing the possibility of choice altogether. An uncritical acceptance of choice, she believes, can lead to hold women liable for outcomes shaped by a range of forces outside their control; but dismissing the possibility of choice altogether "risks abandoning analyses of women's difficult situations to notions of duress and disempowerment" (Campbell, 2016, p. 47). Departing from the limits of what she calls that "dyadic reasoning," she recognizes the possibility for agency and constraint to exist simultaneously, each exerting a different amount of influence at different moments (Campbell, 2016, p. 48).

If individuals have room for choice, but only within a limited framework, then the rational actor model does not correspond to practice. It sounds simple, and even obvious, that the choices that the working poor can make are different and more limited than the choices of the bourgeois, that women – in general terms - have less room for choice than men, or that individuals with less amount of total capital have a more limited set of choices. However, the rational choice model is actually based on the belief that different individuals have the same possibility to choose if given

the same set of options. That statement - Bourdieu would argue - does not correspond to practice. In fact, in order for people to comply with the model, they would need to have the economic and cultural capital required to take hold of the opportunities that are thought to be universally available (Sylvestre, 2010(b), p. 803). It is different to say actors can choose and actively strategize within the limited range of options determined by their particular trajectory in the social structure. In fact, as they need to differentiate themselves from their competitors, they actively seek “personal” style, which means they improvise within constraint. In Bourdieu’s words, “the conditioned and conditional freedom it (habitus) provides is as remote from creation of unpredictable novelty as it is from simple mechanical reproduction of the original conditioning.” (Bourdieu, 1990, p. 55).

The choices of street rebuscadores are particularly limited by structural constraints, while still leaving some space for agency. It is not that the most vulnerable working poor lack agency. Rather, the point is that their choices and options must be imagined within the context of key structural constraints such as class discrimination and sexist oppression. Consider, for instance, the choice of working in the streets. It qualifies as a choice between doing nothing and letting themselves and their families starve, working a job (if able to get it) where they feel “humiliated,”<sup>40</sup> or doing “something else.” For many women, it is also the choice between staying home hoping for someone (their family or partner) to provide for them, or finding an option to survive while being able to still care for their children. Leaving very small children at home alone, for instance, is not

<sup>40</sup> As I stated in the methodology section, I conducted participant observation mainly in Ciudad Bolívar, where SLs 4, 5 and 6 do not exist, and most of the population belongs to SL 1. Not surprisingly, most of my informants preferred to work close to where they live, not only to avoid humiliations and being targeted by superiors as “poor,” “rude,” or “cheeky,” but also because they are constantly denied jobs for living in a stigmatized area of the city. According to one of my main informants, “one actually gets tired. When I was younger, I wanted to progress, to get out, to ask for any kind of job in a fancy place, work hard, and progress. But what happened? As soon as I said that I lived in Ciudad Bolívar, they dismissed me. For people like us, it is very difficult to get a job in other parts of the city” (Audio 121008-001).

really a choice because it could be life threatening. Leaving them with the father in a highly patriarchal society is rarely a choice. The bottom line is simple: poor people have fewer alternatives than rich people, women have fewer alternatives than men, and poor women have fewer alternatives than both rich (women or men), and poor men.

Now, since street rebuscadores have a similar volume and composition<sup>41</sup> of overall capital (especially economic and cultural) and therefore share a similar *habitus*, we could also say that they are so close in the overall social space that they are part of a same *social class* (Bourdieu, 1987b). Bourdieu built on Marx's analysis of social classes, and made key contributions to develop a more nuanced explanation of class difference. As Sylvestre put it, "in the Marxist tradition, social classes are shaped by their relation to the means of production in a specific form of economic organization" (Sylvestre, 2014, p. 219). For instance, "in industrial societies, social classes are shaped by the economic relationship between those who own the means of production (capitalists/bourgeoisie) and those who own their own labour power (workers/proletariat)" (Sylvestre, 2014, p. 219). By focusing only on the relationship to the means of production, Marx fails to consider other key variables that better explain how class can be the dominant principle of social division and is directly related to power and privilege. Unlike Marx, Bourdieu argues that "social classes are not only constituted by one's position within the relations of production, but also by cultural practices, symbolic power and personal characteristics such as gender, age, religion and ethnicity" (Sylvestre, 2014, p. 220). As such, classes are not "mobilized entities conscious of their commonalities and interests and fighting against another in the hopes of attaining some ultimate goal," but "a series of individuals predisposed to exist as a class if so

<sup>41</sup> By composition of overall capital, Bourdieu means the "relative weight in their overall capital of the various forms of capital, especially economic and cultural" (Bourdieu, 1987b, p. 5).

mobilized, because of their affinities and interests, but also because of their aversion, misrepresentations and misunderstanding of people from other classes.” (Sylvestre, 2014, p. 221).

Moreover, Bourdieu also believes that social classes are “theoretical constructions that do not exist objectively in reality but are, instead, subjected to the politics of group-making” (Sylvestre, 2014, p. 220). He argues that there is a political struggle involved in the making and un-making of the classifications currently in use (Bourdieu, 1987b). Social reality is neither completely indeterminate nor completely determinate. As it is difficult to find the boundaries of a cloud or a forest, Bourdieu argues, the boundaries of reality are also not completely determined. However, reality is neither completely undetermined: “in the same way that animals with feathers are more likely to have wings than animals with fur, people who have a perfect command of their language are more likely to be found in concert halls and museums than those who do not” (Bourdieu, 1987b, p. 11). The element of uncertainty in classifications provides ground for political struggles, whose ultimate aim in modern societies is to impose representations or to hold the power of naming. As with a constellation which begins to exist only when it is selected and designated as such, what is at stake in symbolic struggles is the political power to make visible something that only existed in an implicit State.

Bourdieu argues that “in the struggle to make a vision of the world universally known and recognized, the balance of power depends on the symbolic capital accumulated by those who aim at imposing the various visions in contention, and on the extent to which these visions are themselves grounded in reality” (Bourdieu, 1987b, p. 15). I argue that street rebuscadores is a constructed category that can contribute to make a particularly vulnerable segment of the working

poor visible, and therefore have some real social consequences. Street rebuscadores share a social space in Bourdieu's terms, although they lack the symbolic capital necessary to make their conditions of existence known to others. They have been subjected to similar conditions of existence, develop similar practices, interests, affinities, tastes, and therefore occupy similar positions in social space. Being subjected to similar conditions, they tend to resemble one another and to reinforce their points of resemblance. However, they also struggle to differentiate themselves from their competitors by improvising personal style within constraints and exercising agency. Bourdieu's concept of *habitus* embraces continuity and change, offering a more fluid and dynamic understanding of classed identities (Davey, 2009). Agents are distributed in the overall social space according to the global volume and composition of their capital, but also according to the evolution in time of the volume and composition of their capital.

I acknowledge the risk of "fixing" street rebuscadores in a constructed category that could paralyze their actions or political struggles. There is always the risk of portraying different social positions as unitary and static. I am well aware that we need to promote less essentialist views of social positions in general. In order to do so, we need to understand that social positions are not static. On the contrary, they are "constituted historically and over time, making them fluid and endlessly changing" (Gayo, 2013, p. 833). I understand constructed categories as incomplete, unfinished and dealing with uncertain processes. Not as fixed. There are very interesting debates regarding the tendency and the risks of essentializing or universalizing categories such as 'woman' (Spelman, 1988; Scott, 1990) or 'sex' and 'gender' (Butler, 1990). From those debates I have learned that constructed categories should not be approached as fixed structures but as contingent and located social processes with specific and real social consequences. Therefore, I hope I made

clear that the results I present in this dissertation are only useful to approach partially an incomplete and in process category (street rebuscadores) in a determinate time (2013-2015) and place (Bogotá), by suggesting some tendencies or propensities, not facts.

I also acknowledge that there are hidden assumptions about human behavior that underlie different methodological traditions in the human sciences and that have significant implications both for law and public policy (Harcourt, 2006). Harcourt gives a very good example: “If gun carrying is about power and search for respect (...) then perhaps it may make sense to use law or policy to try to change the symbolic meaning of guns. If gun carrying is related to the cost of apprehension, then it might make sense to increase the likelihood of detection or the amount of punishment. If gun carrying is all about social networks and making friends, then perhaps it might be better to offer these youths practice alternatives” (Harcourt, 2006, p. 106). The fact is that different methodological traditions make distinct assumptions about human behaviour that orient public policy in different ways. In that vein, I acknowledge that the choice of methodological orientation is not a scientific but an ethical choice. I chose to adopt Bourdieu’s theory of practice as well as the concepts of habitus and capital that have concrete implications in the kind of public policies I suggest at the end of this dissertation. If one believes that the choices of vulnerable individuals are constrained and that law is implicated in diminishing their agency, then specific public policy proposals will be oriented in a different way from others who adopt, for example, rational choice theory.

That being said, in the next part I will test the hypothesis that citizens labeled as belonging to socio-economic levels 1 and 2, have been subjected to similar conditions of existence and therefore

occupy a similar position in the overall social space, by constructing what Bourdieu calls a space of lifestyles from evidence collected in a local random sample survey of the population of Bogotá in 2015. The statistical exercise, however, will not provide specific information to characterize the sub-group of street rebuscadores. Therefore, based on my fieldwork I will then describe the type of similar practices that street rebuscadores share.

Habitus and practice are two concepts strictly correlated. First, practices depend on habitus as much as habitus depend on practices. Bourdieu is particularly eloquent when he argues: “only in imaginary experience (in the folk tale, for example), which neutralizes the sense of social realities, does the social world take the form of a universe of possible equally possible for any possible subject. Agents shape their aspirations according to concrete indices of the accessible and the inaccessible, of what is and is not “for us,”” or for “them” (Bourdieu, 1990, p. 64). Secondly, the homogeneity of habitus is what causes practices to be intelligible and foreseeable, transcending subjective intentions and conscious projects, whether individual or collective: “the objective homogenizing of group or class habitus that results from homogeneity of conditions of existence is what enables practices to be objectively harmonized without any calculation or conscious reference to a norm and mutually adjusted in the absence of any direct interaction or, *a fortiori*, explicit co-ordination” (Bourdieu, 1990, p. 59). Thirdly, habitus is a precondition for the co-ordination of practices although practices are never identical. It is impossible for members of the same habitus to share the same experiences, but “the corrections and adjustments the agents themselves consciously carry out presuppose mastery of a common code” (Bourdieu, 1990, p. 59). Fourthly, habitus guarantees the stability of practices as long as the conditions in which they were constituted remain constant: “the practices that are generated by the *habitus* and are governed by

the past conditions of production of their generative principle are adapted in advance to the objective conditions whenever the conditions in which the *habitus* functions have remained identical, or similar, to the conditions in which it was constituted” (Bourdieu, 1990, p. 62). Fifthly, habitus is what causes the most improbable practices to be excluded as unthinkable, “by a kind of immediate submission to order that inclines agents to make a virtue of necessity, that is, to refuse what is anyway denied and to will the inevitable” (Bourdieu, 1990, p.54).

There are two important restrictions that the researcher should bear in mind when trying to describe the practices associated with the habitus of a particular social group: First, according to Bourdieu, science has a time which is not that of practice. “For the analyst, time disappears: not only because, as has often been repeated since Max Weber pointed it out, arriving after the battle, the analyst cannot have any uncertainty as to what can happen, but also because he has the time to totalize, that is, to overcome the effects of time. Scientific practice is so detemporalized that it tends to exclude even the idea of what it excludes. Because science is only possible in a relation to time which is the opposite of that of practice, it tends to ignore time and so to detemporalize practice” (Bourdieu, 1990, p. 81). Second, in order to avoid asking of it more logic than it can give, the researcher has to understand that practice has a logic which is not that of the logician, and therefore abstain from either writing incoherences out of it, or imposing a forced coherence upon it (Bourdieu, 1990, p. 86). By considering those two restrictions, however, the researcher should not conclude that the practical logic of a particular social grouping cannot or should not be described. What it means is that the exercise presupposes a sacrifice of rigour for the sake of simplicity and generality (Bourdieu, 1990, p. 86). Actually, Bourdieu repeatedly invites researchers to engage in empirical work. In his words, “scientific theory as I construe it (...) is a

temporary construct which takes shape for and by empirical work. Consequently, it has more to gain by confronting new objects than by engaging in theoretical polemics that do little more than fuel a perpetual, self-sustaining, and too often vacuous metadiscourse around concepts treated as intellectual totems.” (Bourdieu & Wacquant, 1992, p. 161).

I will end this part by pointing out the main challenge of using Bourdieu’s theory, namely its implicit arrogance. By becoming the “socioanalyst of the social unconscious,” in Bourdieu’s terms, one assumes the duty of opening the eyes of the general public to some of the many unacknowledged structures that we all reproduce. Thus, there is the implicit bad smell of becoming “the voice of reason.” Moreover, there is a clear asymmetry of power with the common individual who disagrees. He or she is just a victim of symbolic violence. It is ethically problematic to treat people as no more than unconscious puppets. It is even worse when one works with vulnerable individuals, as they usually do not have the required capital and power to contest publicly whatever we say. However, limiting ourselves to observe and describe the way different people behave without analyzing the cultural meanings and structural arrangements that construct and constrain their agency, can not only leave the inaccurate impression that behaviours are self-generating, but most importantly it is ethically problematic as it is functional to those who benefit from oppression. It is also politically demobilizing as only by active resistance to structural constraints can we expect social change to begin. Denying structural forces is equivalent to denying the existence of unconscious thoughts, feelings and experiences. The forces that constrain our lives are difficult to recognize, but they are not completely invisible. If we do not try to capture them, our solutions to complex problems will just be naïve or hopelessly idealistic.

### **4.3 Quantitative analysis and results of first hypothesis – street rebuscadores share a similar volume and composition of overall capital, or similar habitus**

My hypothesis is that street rebuscadores have a similar volume and composition of overall capital and therefore share a similar habitus. As they are so close in the overall social space we could also say they are part of a same social class (Bourdieu, 1987b). In this chapter, I will construct what Bourdieu calls a space of lifestyles from evidence collected in a local random sample survey of the population of Bogotá in 2015. Since approximately 84% of street rebuscadores are part of SLs 1 and 2 in Bogotá, and 100% are part of SLs 1, 2 and 3 (DANE, 2015), it is safe to conclude that street rebuscadores are a sub-group within lower socio-economic levels. I will construct the space of lifestyles by employing three statistical techniques: Simple Correspondence Analysis (SCA), Multiple Correspondence Analysis (MCA) and Principal Components Analysis (PCA).<sup>42</sup>

This chapter will be divided in two parts. In the first part, I will present and describe the results that were obtained. The main result (apart from describing the habitus of socio-economic levels 1 and 2), is the striking way in which the exercise made visible the class apartheid that is lived in Bogotá. As I will argue, there is an abyss between the social space shared by the citizens (citizens?) understood to be part of socio-economic levels 1 and 2, and those said to belong to levels 4, 5 and 6. In the second part, I will comment on the results, and I will also argue that while age, sex, race and sexual orientation are factors that matter, socio-economic status is the most important source of differentiation, or in other words, the main variable that divides the space of

<sup>42</sup> For details about the statistical techniques used, see part 3.3 of the methodology.

lifestyles in Bogotá. I will do that by using a different statistical technique (decision trees), which I will explain in some detail.

#### **4.3.1 Class apartheid in Bogotá.**

By using descriptive multivariate statistics I will develop in this section two main hypotheses: that socioeconomic levels 1 and 2 share the same habitus, and that there is an abyss between the social space shared by the citizens who identified members of socio-economic levels 1 and 2, and those labeled as part of SLs 3, 4, 5 and 6.

The survey had 131 questions but we initially produced 280 figures (more than 1 figure per question), because we tested different possibilities by superimposing different supplementary variables (not only socio-economic level, but other variables such as sex, educational qualifications, age, etc.) upon people's preferences. At the end, I chose 80 figures and I grouped them in four different categories, which are not related to the way questions were originally grouped in the survey. Those categories are: A) principles of differentiation: A.1) economic/cultural capital, A.2) other types of cultural capital, A.3) social capital. B) Political opinions and perception of freedom to voice opinions. C) Prejudices and discrimination, and D) Experience of the city. My main findings are as follows: First, SLs 1 and 2 tend to share low levels of economic, cultural and social capital. They also tend to share conservative, right-wing oriented political opinions, but do not generally feel free to voice them. They tend to be highly prejudiced against Afro Colombians, Indigenous communities, women, LGBTQ rights etc. They are more likely to feel very dissatisfied with the city where they live, and they share a very different city

experience from the one lived by SLs 3, 4, 5 and 6. In the following pages, I will present detailed evidence of the above in each category.<sup>43</sup> Of course, there are a lot of nuances in the general trends that I am describing. However, by interpreting the figures I am highlighting the differences between socio-economic levels, which means that particularities are lost and nuances underestimated.

#### ***4.3.1.1 Principles of differentiation: economic/cultural capital, other types of cultural capital and social capital.***

##### *4.3.1.1.1 Economic/cultural capital.*

Figure 1 superimposes economic capital, measured as SLs, with cultural capital, measured as educational qualifications. (Dk.Na) is short for don't know/didn't answer the question. SLs are shown in black. The highest level of education respondents reached is shown in blue.

<sup>43</sup> Results are based on a random sample of all residents of Bogotá. I could have isolated the responses of the residents situated only in Ciudad Bolívar and Suba (although not of the specific neighborhoods I worked with), to match them with the qualitative data I obtained during fieldwork. While it might sound reasonable, I decided not to do it. Due to spatial segregation, if I only looked at Ciudad Bolívar (much poorer than the rest of Bogotá) or Suba (wealthier), I wouldn't be able to show the contrasts that appears when the city is seen as a whole. I also wanted to test the hypothesis that Bogotá lives in the middle of a class apartheid, so I needed to take a good look at the forest, not only the trees. Plus, while I formally conducted participant observation in Ciudad Bolívar and Suba, my perceptions about street rebuscadores and the general ideas of this dissertation are not only related to what I saw in those two localities. For instance, I work in downtown Bogotá, where I informally talk and relate to different types of street rebuscadores almost every day.

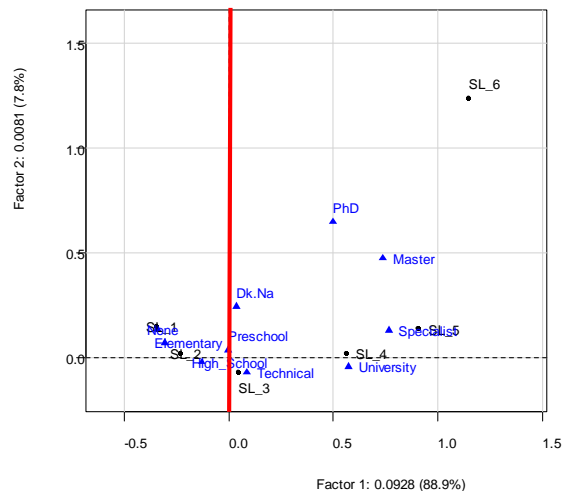


Figure 1. Economic Capital /Cultural Capital

The red line is something that the reader will see again and again. It divides SLs 1 and 2 from SLs 3, 4, 5 and 6. It will appear as a visual proof of the class apartheid that is lived throughout Bogotá. In this case, SLs 1 and 2 whose members have none, elementary or high school education at the most, are actually divided by the vertical axes from SLs 3, 4, 5 and 6, who usually hold technical or university degrees, or even post-graduate degrees. As I stated in part 3.1, I will focus on street rebuscadores who share 5 common characteristics, one of which is that their higher educational degree (if obtained) is high school.<sup>44</sup> In sum, as expected, SLs 1 and 2 share low levels of both economic and cultural capital, which unavoidably translates in differences in occupation (See: figure 2).

<sup>44</sup> Some street rebuscadores might have obtained a higher degree than high school. For instance, it is possible that citizens with mental health or drug problems perform different productive activities in the street to make a living and survive. However, I do believe that in Bogotá that is still exceptional. For instance, during my fieldwork with street rebuscadores, I only met two people who hold technical or professional degrees. One of them (a woman) had drug problems. The other one was Oswaldo, whose training was paid by the political party he belonged to. Oswaldo worked as a street vendor many years, but did not work anymore when I met him.

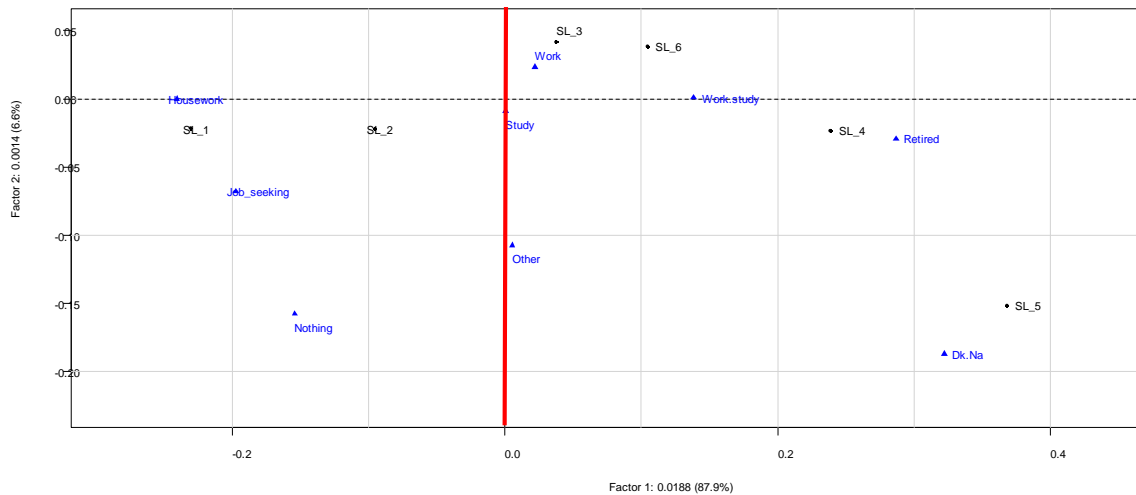


Figure 2. What do you do for a living?

Again, the vertical axes shown in red divide SLs 1 and 2 from SLs 3, 4, 5 and 6. Results show that respondents from the first group usually occupy their time in housework or job seeking activities, while respondents from the second group divide their time between work and study, or are retired. Notice that respondents could only choose between the options shown in blue. Accordingly, results should not be interpreted as meaning that SLs 1 and 2 do not work. On the contrary! My fieldwork showed that most rebuscadores do not differentiate between housework and work (especially women), and that many do not associate their many surviving strategies with “proper” work. Selling candies in the street, for example, is seen by many of them as an informal way to survive. When asked, they will still tell you that they are unemployed or looking for a job. Accordingly, Figure 2 actually corroborates the hypothesis that street rebuscadores should be studied as a large and important sub-group of SLs 1 and 2.

### 4.3.1.1.2 Other types of cultural capital.

#### 4.3.1.1.2.1 Languages and traveling abroad

The following thirty-one figures are related to other forms of cultural capital. Respondents were first asked if they spoke any other languages or if they had travelled to any other countries (Figures 3 and 4). The red line dividing SLs 1 and 2 from SLs 3, 4, 5 and 6, appears once again. As expected, most respondents who belong to SLs 1 and 2 do not speak any other languages nor have they traveled to any other countries. SL 3 is very close to the vertical axes, while SLs 4, 5 and 6 are clearly situated far to the right from SLs 1 and 2 (many of them have traveled and speak other languages). Remember that the most important thing about this kind of analysis, is that the more individuals differ on a large number of questions, the more they are distant from each other in the resulting multidimensional image. As expected, SLs 1 and 2 continue to have low levels of cultural capital, even when we measure variables different from educational qualifications.

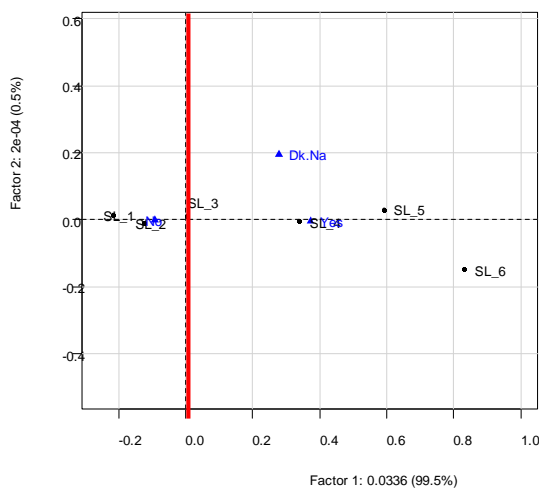


Figure 3. Do you speak any other languages?

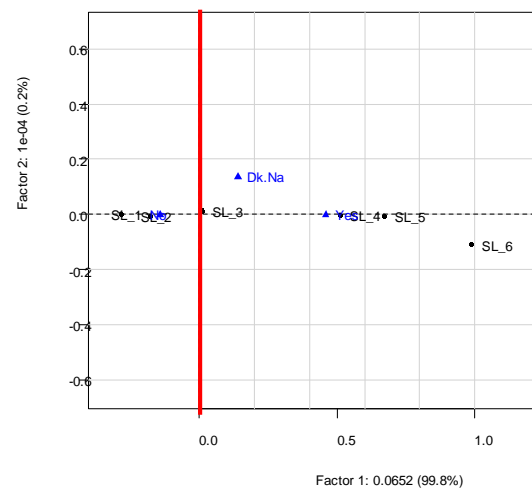


Figure 4. Have you travelled to any other country?

#### 4.3.1.1.2.2 Reading and writing skills

The following five figures are related to other types of cultural capital, more specifically respondents' reading and writing skills. Respondents were asked how often they read, what types of reading materials did they access and where, as well as if they wrote and how often did they write. Responses were as expected, but still no less shocking. Respondents from SLs 1 and 2 rarely read (Figure 5) any kind of reading material (figure 6), maybe because they have very restricted access through free newspapers or public or community libraries (figure 7). Similarly, they almost never write (figure 8 and 9). The red line appears again showing unmistakably class apartheid. SLs 3, 4, 5 and 6 read, they have easy access (internet, own library, school etc.) to different types of reading materials (literature, essays, comics etc.) The inequality gap is obvious.

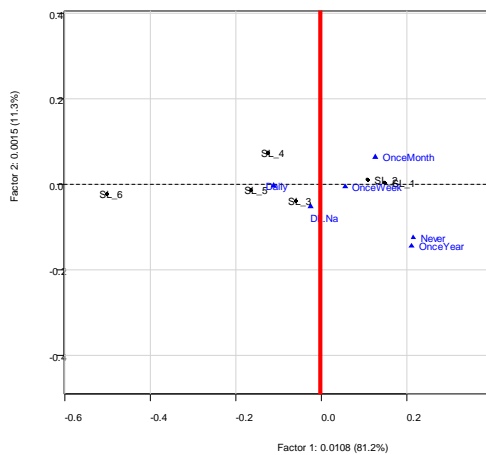


Figure 5. How often do you read?

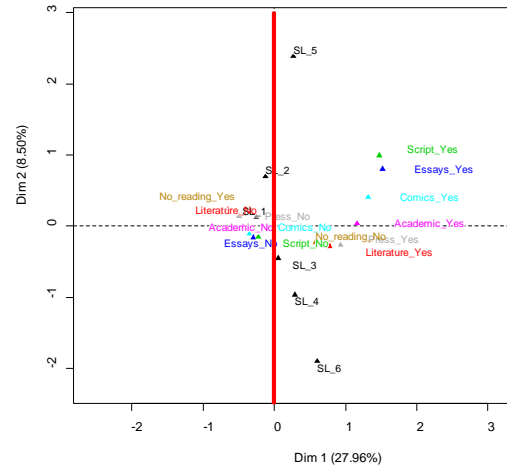


Figure 6. In the past year you read:

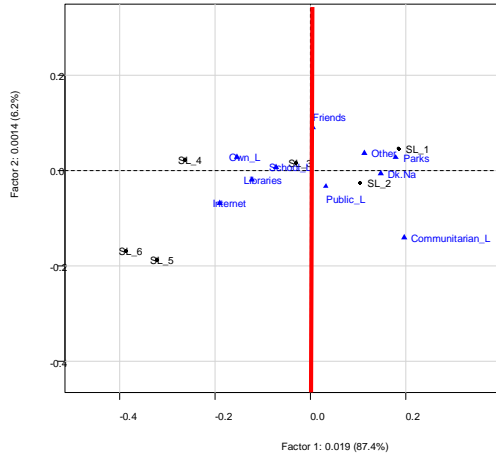


Figure 7. Where do you access reading materials?

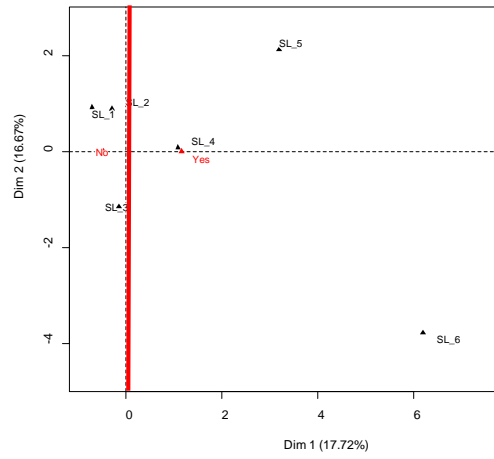


Figure 8. Do you write?

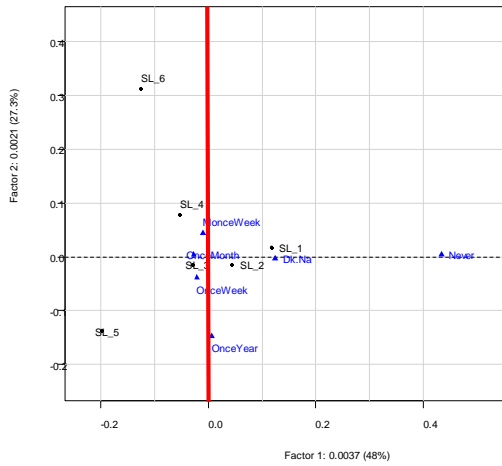


Figure 9. How often do you write?

### 4.3.1.1.2.3 Digital divide

The following six figures are also related to other forms of cultural capital, but this time I will focus on the digital divide. By digital divide, I mean economic and social inequality underlying the access and use of information and communication technologies. In this case, I will analyse the technological gap between socio-economic levels in Bogotá. Respondents were asked if they had internet access at home, at work, how they accessed the internet, and if they used it to debate a political cause, to be informed about cultural, sportive or political activities, or to find a date. As expected, most respondents from SLs 1 and 2 do not have internet access at home or at work, many of them do not own the technological devices needed to access the internet, and consequently, they do not use it to debate a political cause, to find information about cultural, sportive or political activities, or to find a date. The technological gap is obvious. Furthermore, the red line showing class apartheid appears again, with SL 3 sometimes closer to SLs 1 and 2 than to SLs 4, 5 and 6.

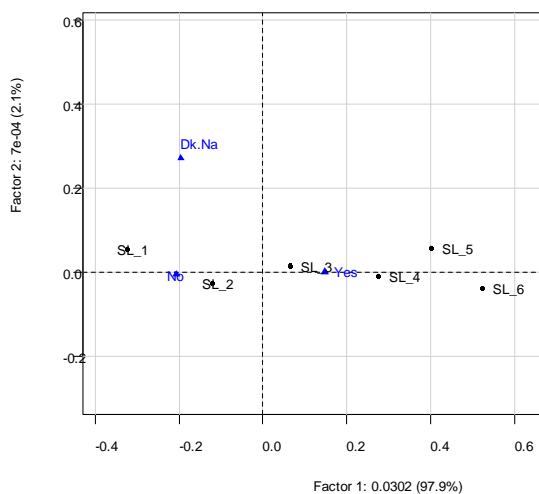


Figure 10. Do you have internet access at home?

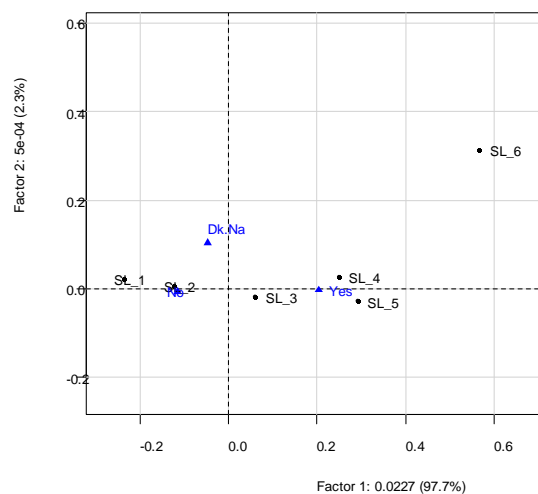


Figure 11. Do you have internet access at work?

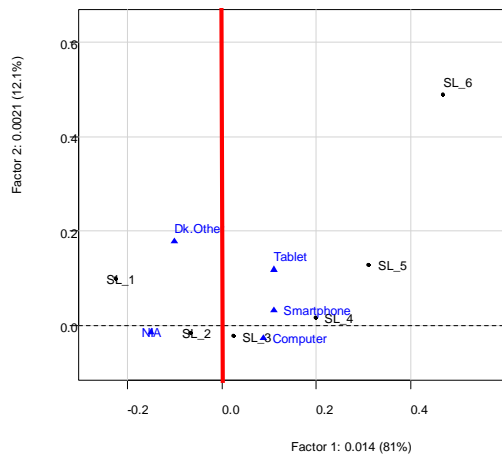


Figure 12. How do you access the internet?

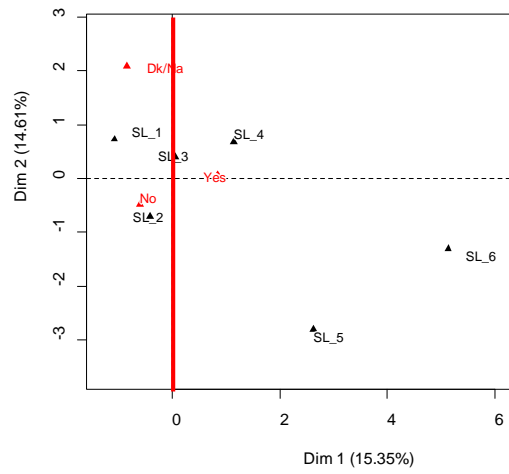


Figure 13. Do you use social media to debate a cause?

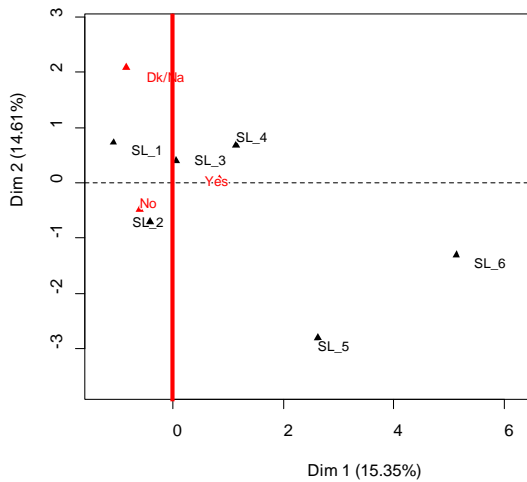


Figure 14. To find information about cultural, sportive or political activities?

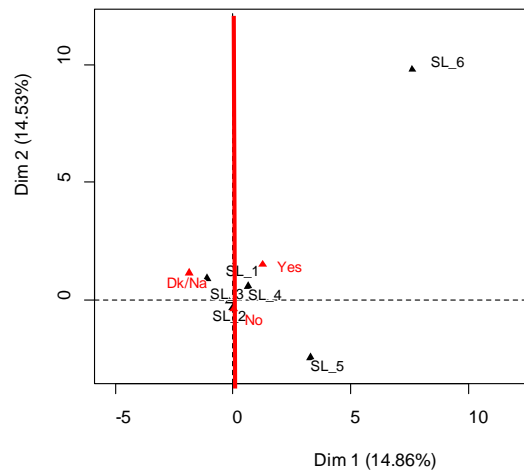


Figure 15. To find a date?

#### 4.3.1.1.2.4 Art

The following fourteen figures are also related to other forms of cultural capital, but this time I will focus on art. Respondents were asked whether they practiced any form of art, and if not, why. They were also asked if they had attended in the past year theatre plays, visual or plastic arts activities, dance performances, movies, live music, or if they had heard of the existence of six popular festivals. Most of the results were as expected, but some were truly surprising. Most of the citizens belonging to SLs 1 and 2 don't practice any form of art (Figure 16), because they say they don't have the money, are not interested, don't want to travel long distances to be able to attend, or have health or accessibility problems (Figure 17). Consequently, most of them have not attended theatre plays, visual or plastic arts activities, dance performances, movies or live music in the past year (Figures 18, 19, 20, 21 and 22).

Furthermore, and that was very surprising for me, most of them (especially from SL 1) had never heard of the existence of six popular festivals (Figures 23, 24, 25, 26, 27 and 28). I have attended at least once in my life some of those festivals, and I really thought that they were successful in reaching some of the poorest citizens of Bogotá. This is particularly the case of religious festivals such as the one made for *la Virgen del Carmen*, or *el Divino Niño*, as well as free hip-hop and salsa festivals that are supposed to be attended mainly by what many call "popular classes." Well, not by the very poor. Popular festivals are mainly known and attended by SL 3 who are ranked as intermediate-low. The red line appears again, strengthening the class apartheid. Most members of SLs 1 and 2 cannot even take advantage of the free cultural offer that is supposed to target them.

In opposition, SLs 4, 5 and 6 practice different forms of art, even if some of them complain not having enough time or information, and even if some consider that the cultural offer is very poor. Most of them go to the theatre, the movies, attend visual or plastic arts activities, dance performances and live music shows. SL 3 behaves as a true “middle class.” Sometimes it is closer to SLs 1 and 2, but sometimes it follows the logic of SLs 4, 5 and 6. There are strong differences, of course, within SLs 3, 4, 5 and 6, as there are differences between SLs 1 and 2. Furthermore, there are also differences within each socio-economic level. However, since my aim in this section is to prove that there is class apartheid, and to characterize SLs 1 and 2 by differentiating them from SLs 3, 4, 5 and 6, I am focusing on the differences between those two groups and not on the differences within groups.

Finally, it should come as no surprise, that when asked if they believed that art could enhance efforts of social cohesion, a red line was again drawn. Most of the people belonging to SLs 1 and 2 believed it could not, while most belonging to SLs 3, 4, 5 and 6 believed it could (Figure 29).

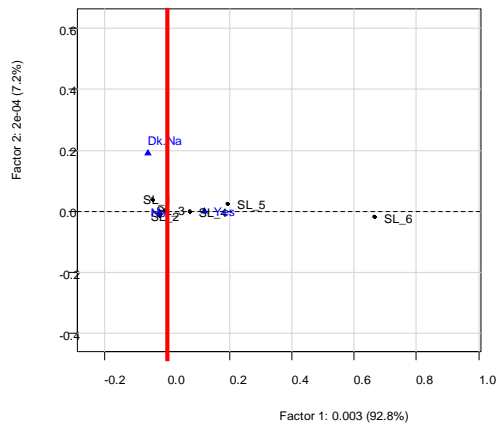


Figure 16. Do you practice any form of art?

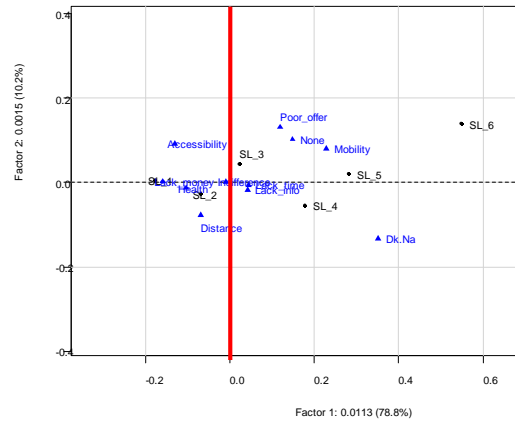


Figure 17. Why not?

In the past year have you attended:

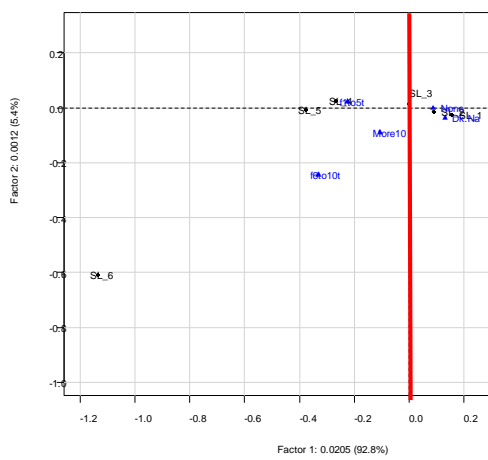


Figure 18. Theatre plays?

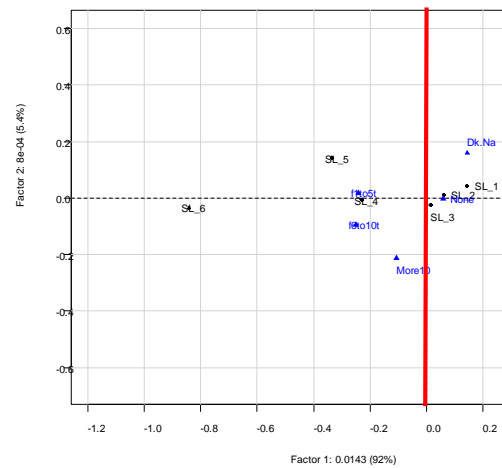


Figure 19. Visual or plastic arts activities?

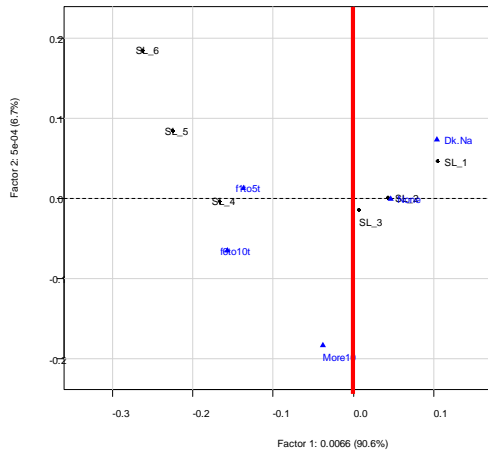


Figure 20. Dance performances?

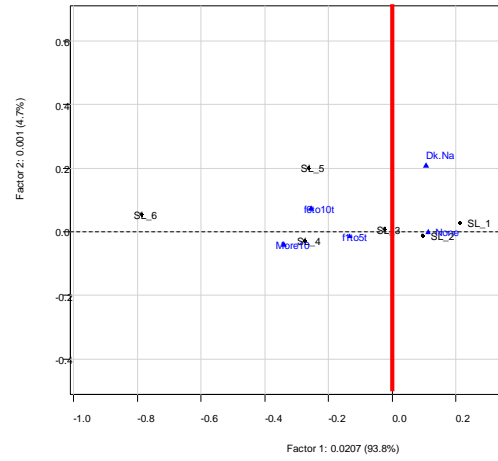


Figure 21. Movies?

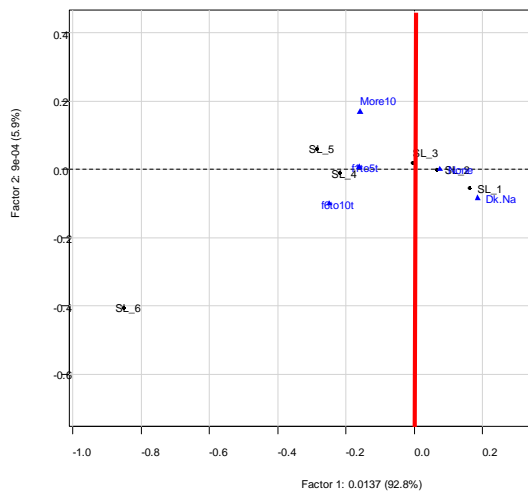


Figure 22. Live music shows?

Have you heard of any of the following popular festivities?

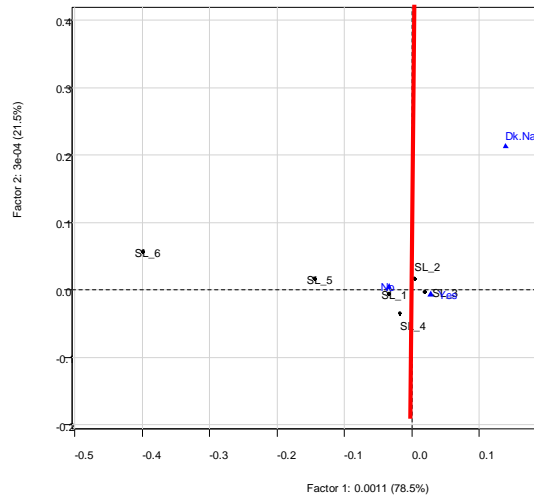


Figure 23. Chicha, Maíz, Vida y Dicha – La Perseverancia

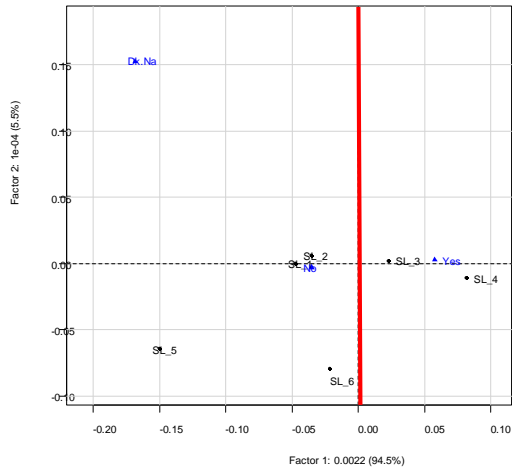


Figure 24. Sol y Luna – Bosa y Suba

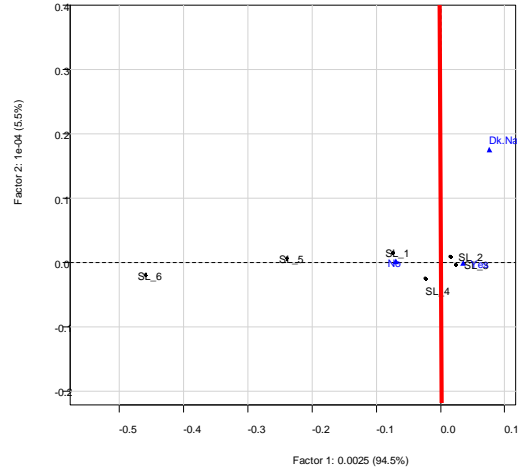


Figure 25. Reyes Magos y Epifanía - Egipto

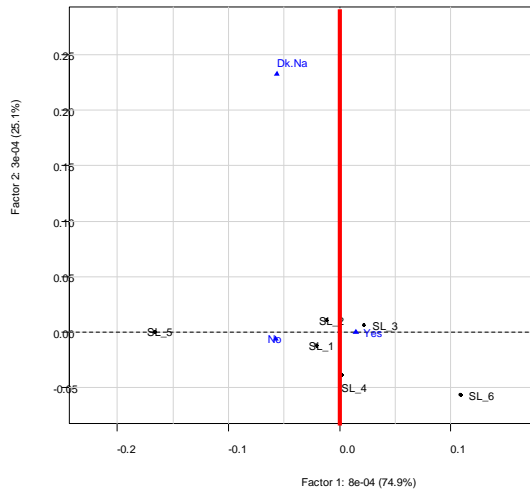


Figure 26. Virgen del Carmen

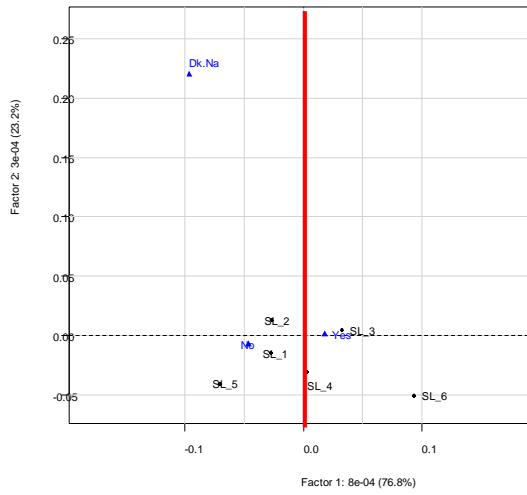


Figure 27. Divino Niño

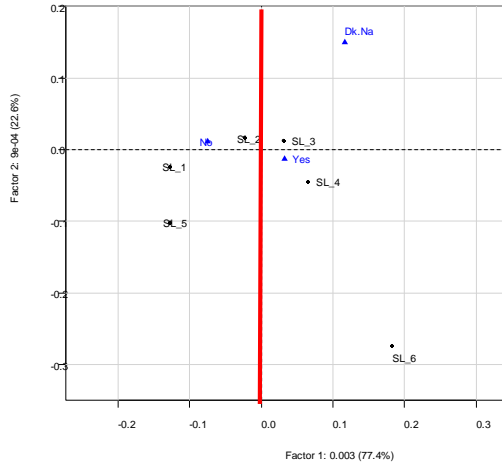


Figure 28. Park festivals (Rock, hip hop, Salsa, etc.)

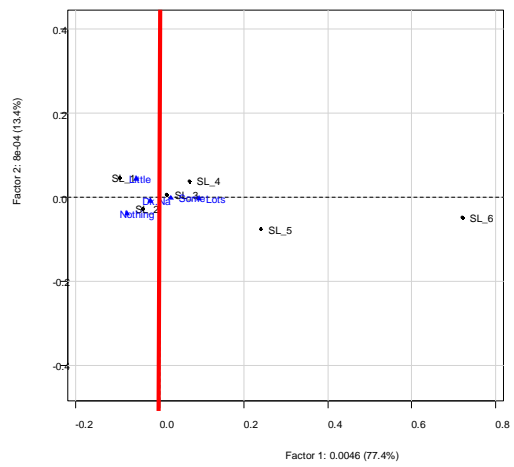


Figure 29. Can art enhance social coexistence efforts?

#### 4.3.1.1.2.5 Physical activity

Bourdieu interpreted body management and maintenance in terms of the accumulation and display of cultural capital (Gayo, Savage & Warde, 2006). It is yet another way for those who have accumulated greater amounts of capital to differentiate themselves from the rest. It should come as no surprise then, that physical activity is also a key indicator in terms of social inequality in health, since it has been proved that socially disadvantaged groups lack access not only to a healthy diet, but to physical activity (Roberts, Cavill, Hancock & Rutter, 2013).

Figure 30, for instance, shows profound differences between SLs 1, 2 and in this case 3, with SLs 4, 5 and 6. Most citizen's part of SLs 1, 2 and 3 have not performed any physical activity other than household activities and walking during the past week. On the other hand, SLs 4, 5 and 6 performed different types of physical activities (they dance, jog, bike, exercise using specialised equipment, amongst others). However, most of them don't walk or perform household activities. Those who do not perform any physical activity, give very different reasons for not doing so depending on the amount of capital that they have accumulated throughout their lives (Figure 31). SLs 1 and 2 argue they lack or have bad facilities, they don't have the money, or they just don't like sports or they feel lazy. Most of their reasons are related to lack of adequate access. It is more than that, however. Many of them are busy thinking about how to survive for the following week, and that doesn't really give them time to think about sports or a healthy diet. Maybe that is why they do not use good available public facilities, such as public temporary bike paths, that are available every Sunday and holiday to exercise, and that are commonly used by SLs 3, 4, 5 and 6 (Figure 32).

The reasons given by those belonging to SLs 3, 4, 5 and 6 to avoid physical activity are very different. If they don't exercise, it is because they are old, too tired, or have health related issues and their doctor advised them not to. Again, a red line appears. Consequently, it should come as no surprise, that when respondents were asked if they believed that sport could enhance social coexistence efforts, that most of the people belonging to SLs 1 and 2 believed it couldn't, while most belonging to SLs 3, 4, 5 and 6 believe that it could (Figure 29).

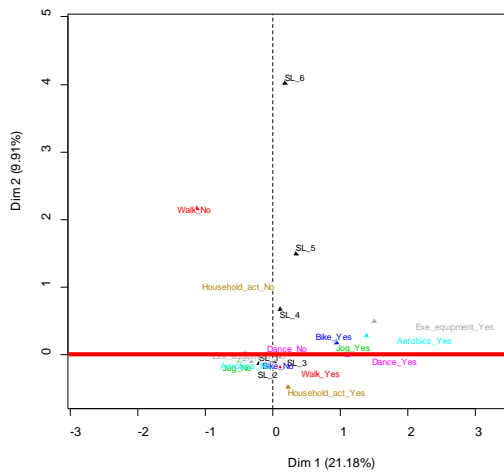


Figure 30. Have you practiced any of the following activities during the past week?

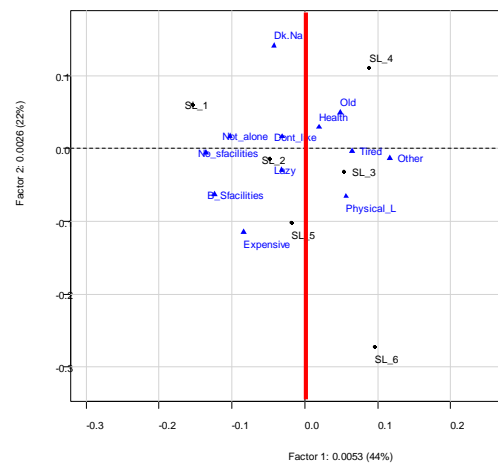


Figure 31. Why not?

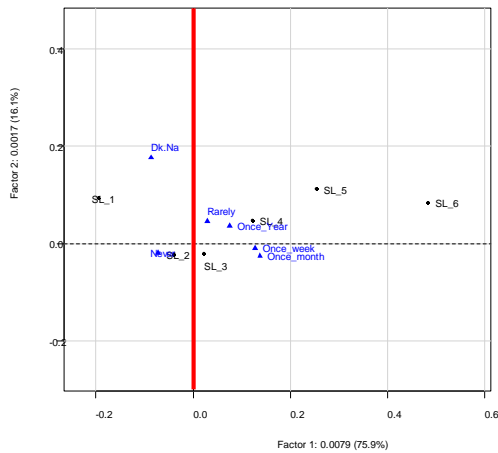


Figure 32. Do you use public temporary bike paths to exercise?

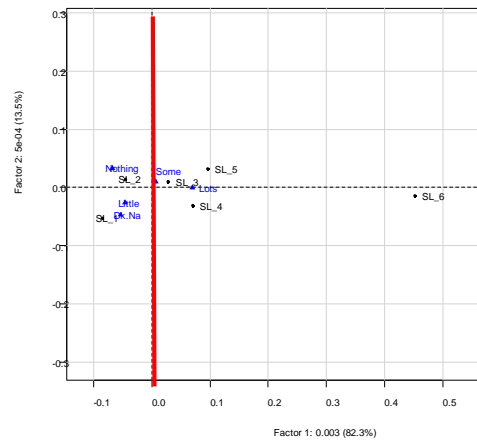


Figure 33. Can sport enhance social coexistence efforts?

#### 4.3.1.1.3 Social capital.

In terms of social capital, the following six figures show very disturbing outcomes. While SLs 4, 5 and 6 are generally willing to associate with others to work for environmental, social or political causes (with more or less variations), SLs 1, 2 and 3 are not (Figure 34). It is disturbing, because it shows that the main victims of environmental, social and political policies are not willing to associate with others against them. However, results are not surprising. As I will argue in the next section, my fieldwork showed that a strong characteristic of rebuscadores is their lack of trust. They distrust neighbors and even family members, and usually run away from offers of cooperation to build better strategies of employment and divide earnings. Their lack of trust also prevents them from associating for what most of them additionally consider to be a lost cause.

Results get even more interesting. As figure 35 shows, citizens who are labeled as being part of SLs 1, 2 are less likely to be members of environmental organizations, labour unions, artistic/cultural organizations, the church, sports clubs or political parties, while citizens labeled as SLs 3, 4, 5 and 6 have a bigger chance of being part of them. I will highlight two particularly interesting results. The first one has to do with the distance between SLs 1, 2 and the church. The church, which has been known to play a key role in most Latin American Countries, including Colombia, in terms of working with the very poor, is losing importance (at least in Bogotá). That should be disturbing at least for the church itself.

Even more interesting for this project, labour unions are associated with SLs 4, 5 and 6 and not with SLs 1, 2 (Figure 36). My fieldwork showed that street rebuscadores are not part of labour unions, basically because the very few that we still have (unionized people add up to less than 3% in Colombia) are associated with workers who have a bilateral relationship of employment, most of whom have a decent standard of living for Colombian standards (public servants, school teachers, members of the armed forces, amongst others). Furthermore, as my fieldwork showed, even unionized industrial workers associated with the proletariat are definitely not the poorest class of working people, and are usually not part of SLs 1, 2. Therefore, Figure 36 strengthens the hypothesis that there is a new working class, mainly self-employed, unlinked to the traditional proletariat, and with no institutionalized means to voice their concerns. Finally, in terms of social capital, figure 37 shows that SLs 1, 2 lack networks not only inside but outside Colombia. The poorest citizens don't have any business or friendship relationship with people from another country. As expected, SLs 3, 4, 5 and 6 have networks both inside and outside Colombia. It is actually clear, particularly for SLs 4, 5 and 6, that networks are needed to progress in Bogotá

(Figure 38). Unfortunately that is not clear for SLs 1, 2. The red line appears again in every figure as constant proof of class apartheid.

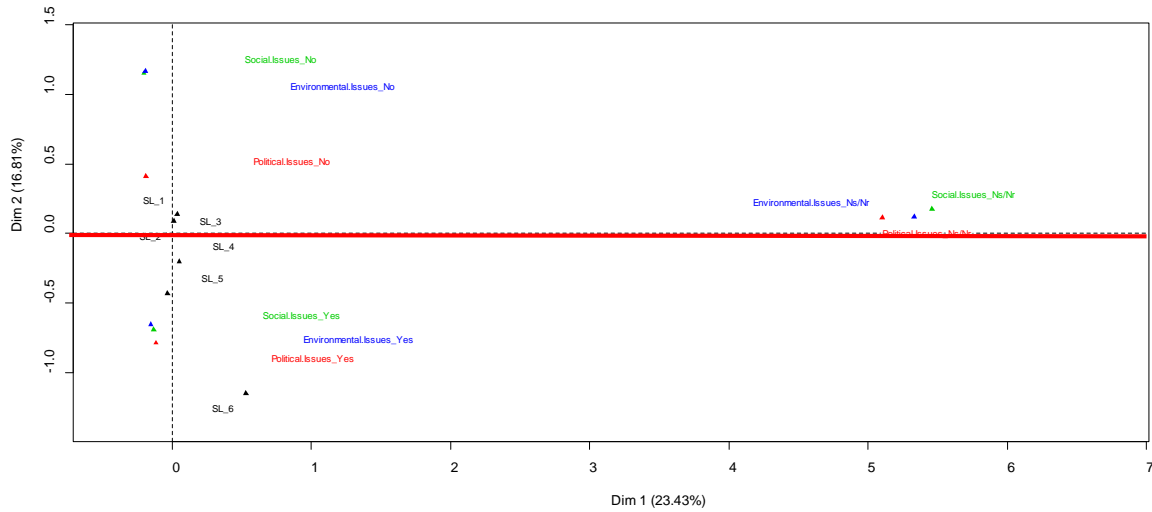


Figure 34. Willingness to associate to work for:

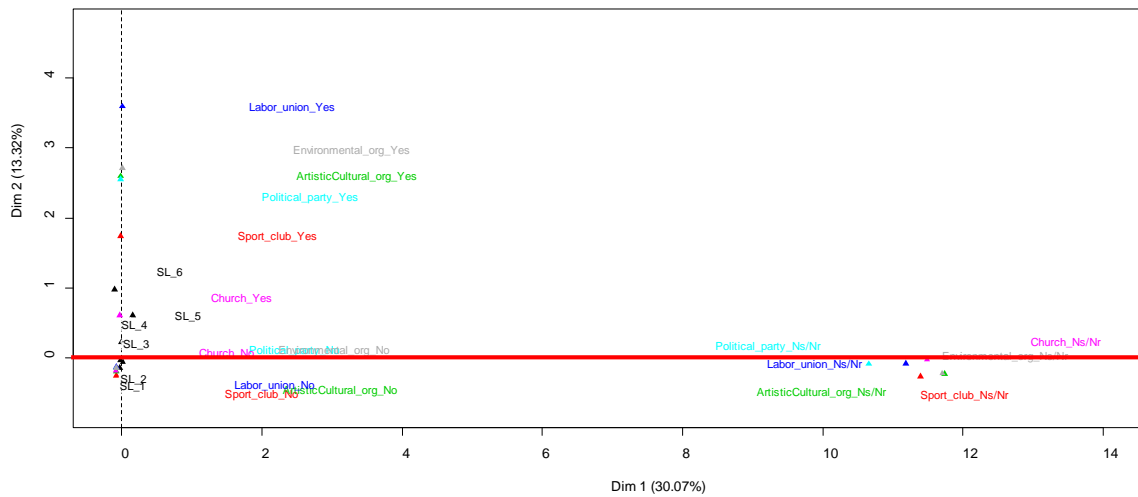


Figure 35. Are you a member of any of the following associations?

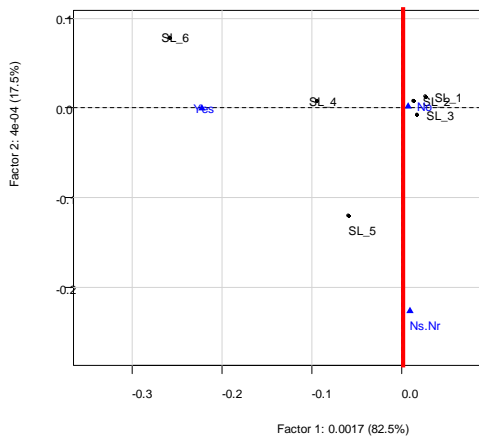


Figure 36. Are you a member of a labour union?

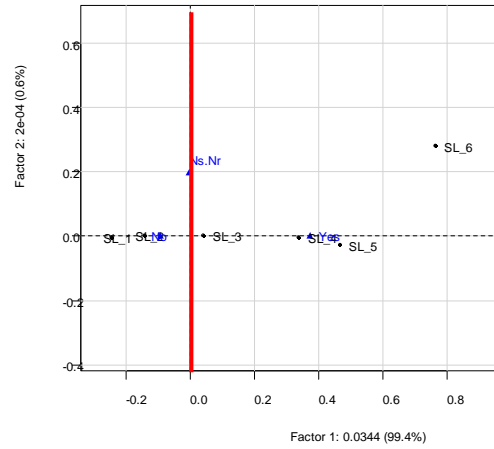


Figure 37. Do you have business or friendship relations with people from other countries?

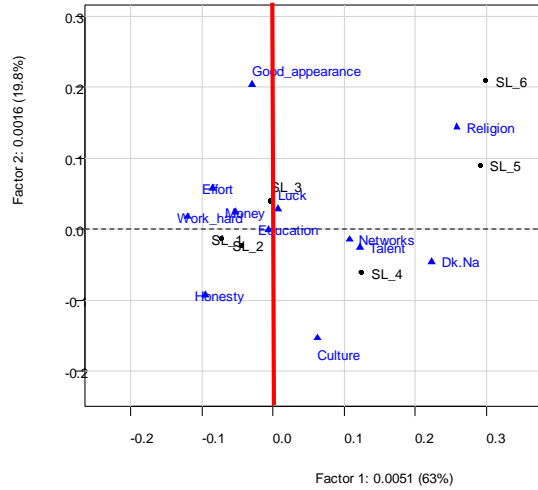


Figure 38. What do you think someone needs to make progress in Bogotá?

#### ***4.3.1.2 Opinions and perception of freedom to voice opinions.***

As the following ten figures show, SLs 1 and 2 generally share conservative, right wing oriented political opinions. For example, they believe that abortion should be prohibited (figure 39), prostitution abolished (figure 40) and LGBTQ rights limited (figure 41). SLs 3, 4 and 5 generally share more progressive views. They believe abortion should either be limited or decriminalized, prostitution allowed or regulated, and they are in favor of sex reassignment operations associated with LGBTQ rights. Interestingly, but not surprisingly, SL 6 shares the political opinions of SLs 1 and 2 in regard to prostitution and LGBTQ rights.

Unfortunately, SLs 1 and 2 are also deeply frustrated with some of the main ideals of modern democracies. For instance, they believe that the fight for social justice is foolish (figure 42), while SLs 3, 4, 5 and 6 believe it is important. Most of them also agree with the statement that fundamental rights should be suspended by the government when difficult problems need to be solved, although many of them preferred not to answer that question, or suggested that they didn't know (Dk/Na) (figure 43). Similarly, most citizens labeled as belonging to SLs 1 and 2 agree with the statement that the State should focus on demanding duties and not fulfilling rights, while SLs 3, 4, 5 and 6 are divided between those who are in total agreement and those who are in total disagreement with that statement (figure 44). As it happened before, the Dk/Na (don't know/No answer) option is used by many of the citizens labeled as SLs 1 and 2<sup>45</sup>. Generally speaking, they either don't want to give their opinion, don't have an opinion, don't care, or give opinions that clearly show their discontent and lack of confidence in modern ideals and institutions.

<sup>45</sup> It is possible that education levels are correlated with Dk or Na.

Finally, as expected, most citizens labeled as SLs 1 and 2 say they never vote while SLs 3, 4, 5 and 6 vote most of the time (figure 45). Ways of thinking translate into actual behaviors. While SLs 3, 4, 5 and 6 are divided as to whether they believe in democracy or in authoritarianism, SLs 1 and 2 believe that for people like them it makes no difference to live in a democratic or an authoritarian regime (figure 46). So why should they vote? SLs 1 and 2 are so frustrated, and disenchanted with modern ideals, that they don't even participate in public protests (figure 47). Most unfortunately, but still not surprisingly, they also believe that peace in Colombia (in terms of ending the internal armed conflict) is just impossible, while SLs 3, 4, 5 and 6 are divided between believing that peace could be both beneficial or harmful (figure 48). One final remark: the red line appears most of the time, with just a few exceptions. In regard to political opinions, socio-economic variables are a key source of differentiation.

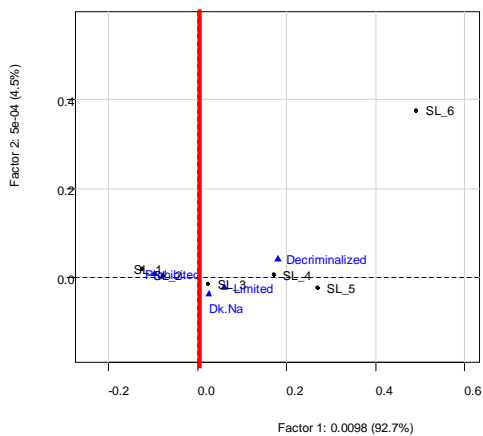


Figure 39. Abortion

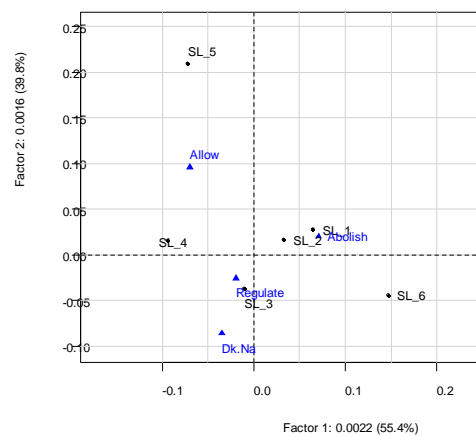


Figure 40. Prostitution

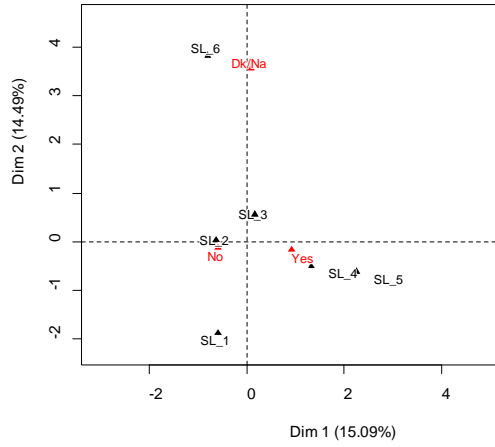


Figure 41. LGBTQ Rights  
(Sex reassignment)

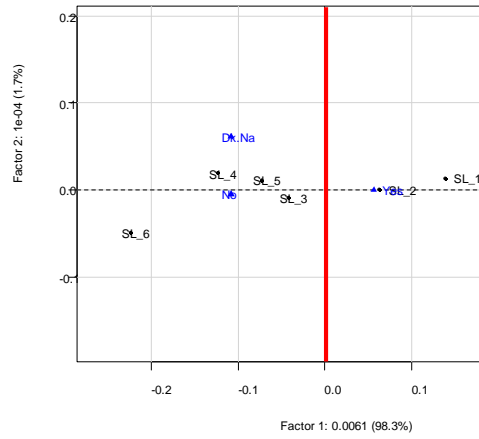


Figure 42. Is fight for social  
justice foolish?

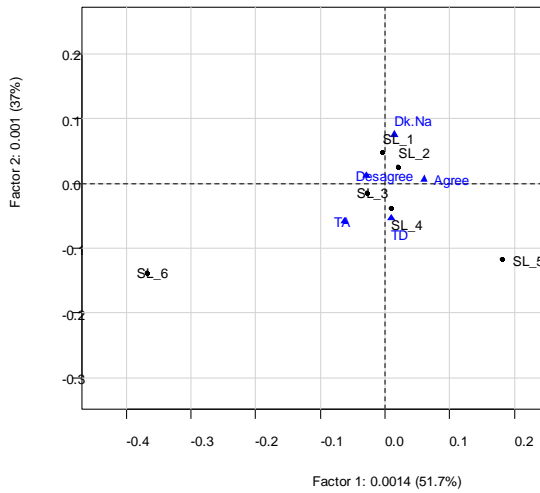


Figure 43. Should fundamental rights be  
suspended by the government to solve  
difficult problems?

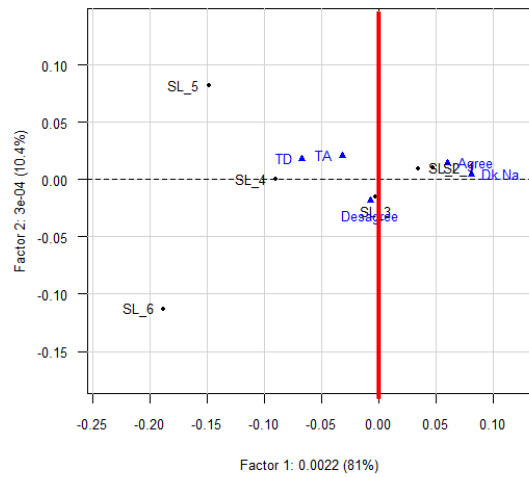


Figure 44. Should State  
demand responsibilities,  
not fulfil rights?

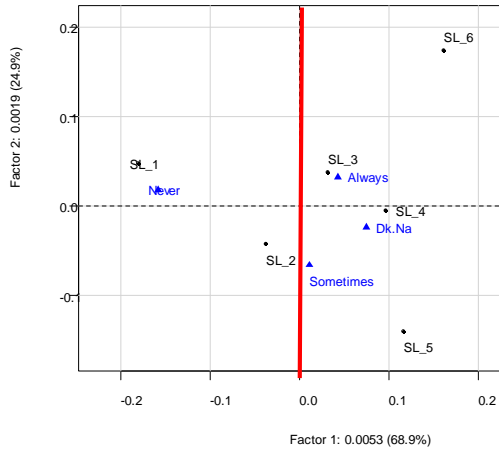


Figure 45. Do you vote?

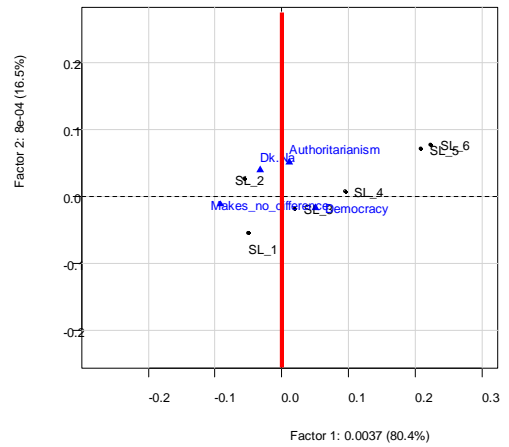


Figure 46. Democracy/ authoritarianism

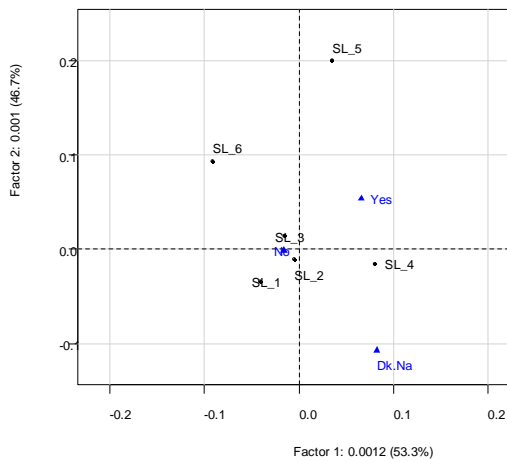


Figure 47. Public Protest

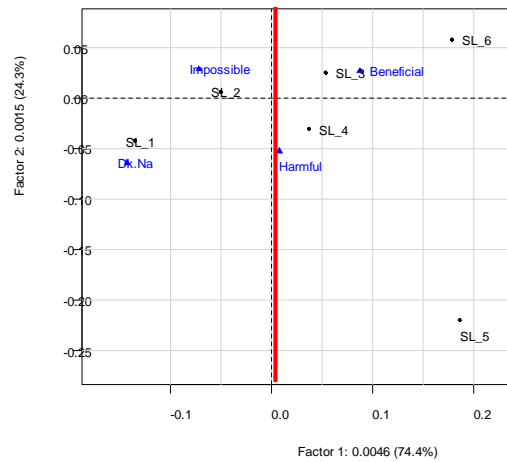


Figure 48. Peace is:

It is important to know the differences in terms of political opinions held by citizens labeled in different socio-economic levels, but it is also important to know whether they perceived that they are able to voice those and other opinions. Respondents were asked how they felt about voicing

their opinions at home, work, study place or in front of strangers. They could choose between the following options: very free (VF), free (F), not so free (NSF), or I rather prefer not to express them (RNE). The following eight figures show the results, which in general terms were as expected. SLs 3, 4, 5 and 6 feel very free to voice their opinions at home, while SLs 1 and 2 are divided between feeling free, not so free, or rather prefer not to express them (figure 49). If sex is added as an additional variable, then women feel less free to voice their opinions at home than men (figure 50). Something very similar happens at the workplace. SLs 3, 4, 5 and 6 feel very free to voice their opinions, while SLs 1 and 2 are more likely to feel not so free, or prefer rather not to express them (figure 51). Interestingly, the option don't know/no answer (Dk/Na), as well as the option doesn't apply (NA) are both very close to the position takings of both SLs 1 and 2. One possible hypothesis (that actually strengthens my general hypothesis) is that they prefer not to answer the question, or they believe the question does not apply, because many are self-employed and don't actually have a proper place that they identify with the word "workplace." Once again, as expected, if sex is added as an additional variable, women are more likely to feel less free and keep their opinions to themselves (figure 52).

Most of the citizens labeled as SLs 1 and 2 are closer to (NA) – doesn't apply option, when asked how they feel about voicing their opinions in their place of study, maybe because most of them don't study or study very little as compared to other SLs (see figure 1 and 53). When the sex variable is added, women feel slightly less free than men to voice their opinions, although their answers are really very similar (figure 54). Finally, as expected, SLs 3, 4, 5 and 6 feel very free to voice their opinions in front of strangers, while SLs 1 and 2 don't so much (figure 55). If sex is added, the same pattern appears. Unfortunately, in a deeply patriarchal society, it is expected that

women keep their opinions to themselves more than men (figure 56). However, while gender is definitely a factor that matters, socio-economic status is the most important source of differentiation as shown by the distance between responses in figures 49, 51, 53 and 55, compared to the distance between responses in figures 50, 52, 54 and 56.

How do you feel about voicing your opinions at:

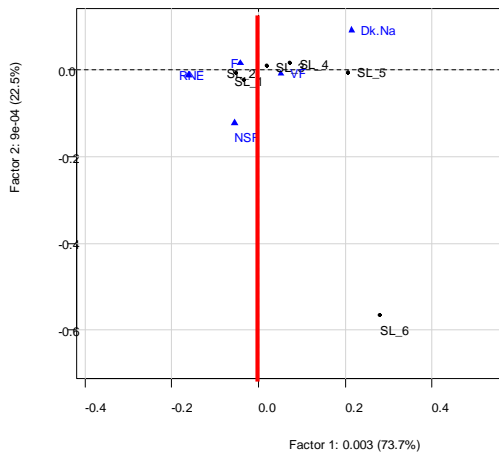


Figure 49. Home

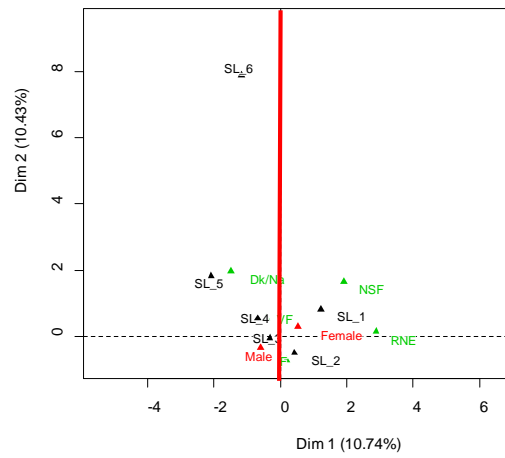


Figure 50. Home (sex)

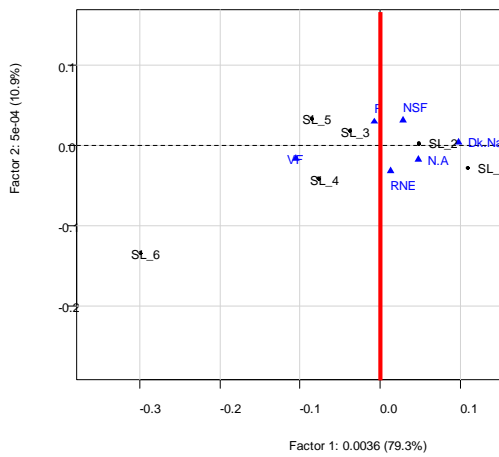


Figure 51. Workplace

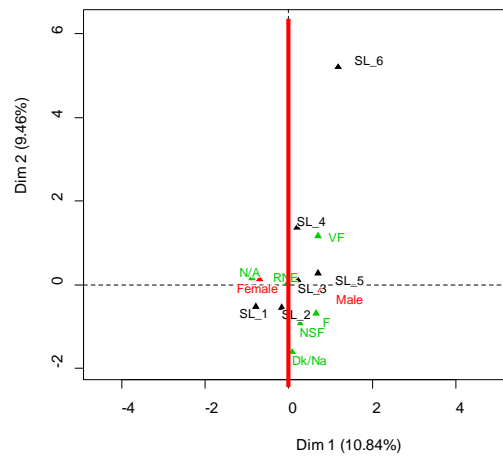


Figure 52. Workplace (sex)

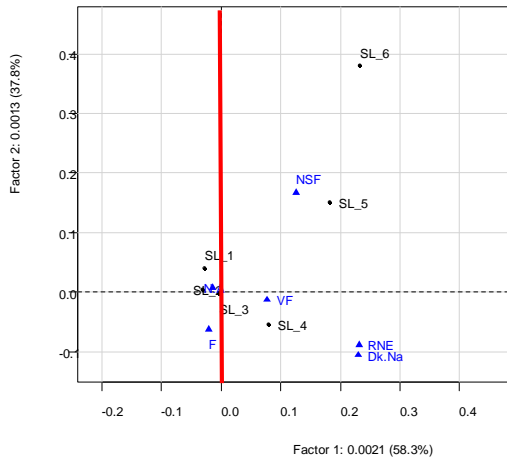


Figure 53. Place of Study

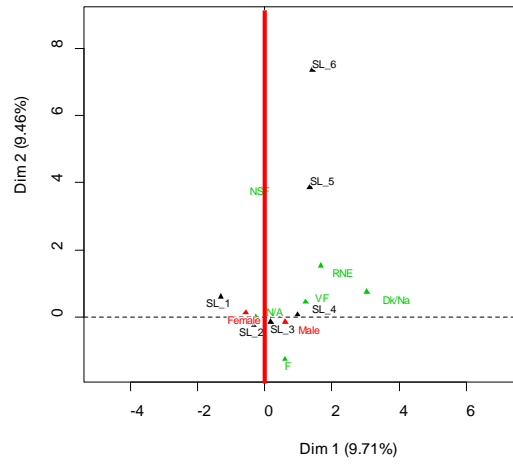


Figure 54. Place of Study (sex)

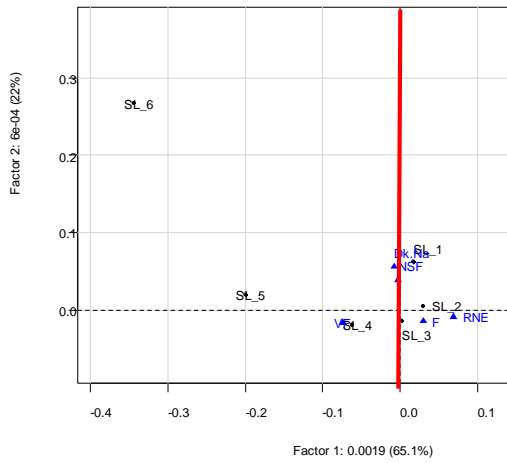


Figure 55. In front of Strangers

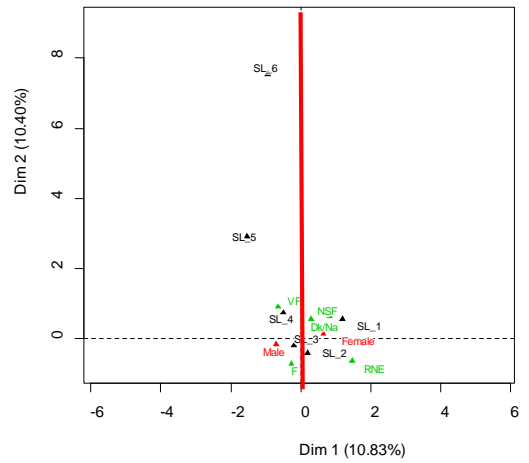


Figure 56. In front of Strangers (sex)

#### *4.3.1.3 Prejudices and discrimination.*

The following fifteen figures are all related to a very interesting theme: prejudices and discrimination. Class apartheid appears again, but not as strongly as in the other categories. Differences in total capital make a difference in terms of prejudices against others, but not a huge one. For instance, higher socio-economic levels that have accumulated more cultural capital, are only slightly less prejudiced towards others. A series of statements were read to respondents, who then had to say if they agreed, disagreed, totally agreed (TA) or totally disagreed (TD). In general terms, SLs 1 and 2 share prejudices against gay couples, people living with HIV, Indigenous communities, disabled workers, and women. More specifically, they believe that gay couples should not be allowed to be school teachers (figure 57), that people with HIV should be kept away (figure 60), that Indigenous communities will never progress (figure 61), that disabled workers are good, but not in leading positions (figure 62), that domestic violence is wrong when it is public (figure 65), and that sexy dressing provokes disrespect (figure 66). However, when it comes to Afro-Colombians and poor people, SLs 1 and 2 are divided, probably because many of them are poor and some of them are black themselves. Still, some of them totally agree with the statement that Afro-Colombians will always have limited capacities, but some also disagree (figure 58). Something very similar happens when they are asked if poor people are more likely to commit crimes – some agree, some disagree (figure 59). One possible hypothesis to explain the answer of those who agree, even when they are poor and black themselves, is that they do not trust people like themselves. Other possible hypothesis that I could corroborate during my fieldwork is that some (a minority) are subjected to symbolic violence. There are also other questions where there are significant differences between the answers given by SL 1 and SL 2. For instance, people in

SL 1 tend to believe that education for girls should focus on developing their roles as mothers and wives, while people in SL 2 tend to disagree (figure 63). However, people in SL 2 tend to believe that battered women like to be mistreated and that family values were lost since women began working, while SL 1 tends to disagree (figure 64 and 67).

In comparison, SLs 3, 4, 5 and 6 share less prejudices than SLs 1 and 2. More specifically, SLs 3, 5 and 6 share approximately half of the prejudices that SLs 1 and 2 share, but there are big differences within the answers given by each group. For instance, SLs 3 and 5 tend to share prejudices against gay couples and battered women while SL 6 disagree (figure 57 and 64). In another area, while SLs 5 and 6 believe that Indigenous communities will never progress, SL 3 tends to disagree (figure 61). By far, SL 4 tends to be the most progressive and less prejudiced of all groups. Most of the citizens, who are identified as such, actually reject prejudices (figures 57-67). One possible explanation is that SL 4 tends to accumulate more cultural than economic capital, while SLs 5 and 6 tend to accumulate more economic than cultural capital (see figure 1). As I said at the beginning, the red line appears but not as much as with other categories, which can lead us to suggest that prejudices unfortunately cut across almost all social classes, and therefore are not really useful as principles of differentiation.

Finally, there is a big difference between SL 1 and SL 2 in terms of perception of discrimination. While most members of SL 1 feel discriminated, most members of SL 2 do not (figure 69). There is really no simple explanation for that difference, especially because according to figure 70, educated individuals feel more discriminated than less educated individuals. Discrimination tends to be naturalized, and that could explain why the feeling of being discriminated increases as

individuals accumulate more cultural capital. However, that does not explain why members of SL 2, who are supposed to be slightly more educated than members of SL 1, feel less discriminated. One possible explanation is that internally displaced Afro-Colombian communities arrive to the poorest neighborhoods of the city ranked as SL 1. As figure 71 shows, citizens labeled as SL 1 feel particularly discriminated for race related issues. Furthermore, as figure 68 shows, most of those citizens say that they or their families are victims of the internal armed conflict. The phenomenon lived might be one of typical intersectionality, or in other words, of overlapping social identities of discrimination. Most interestingly, sex discrimination appears to be related mostly to SLs 4, 5 and 6. As my fieldwork shows, gender domination is deeply naturalized in SLs 1, 2 and 3. Therefore, it should come as no surprise that women within SLs 1, 2 and 3 say they feel more discriminated for class or race related issues, than from sex discrimination.

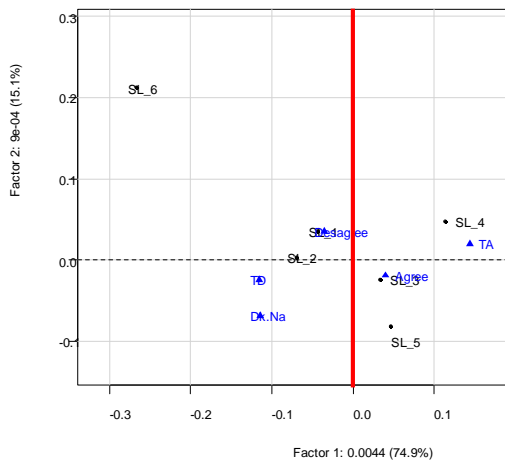


Figure 57. Gay couples should be allowed to be school teachers.

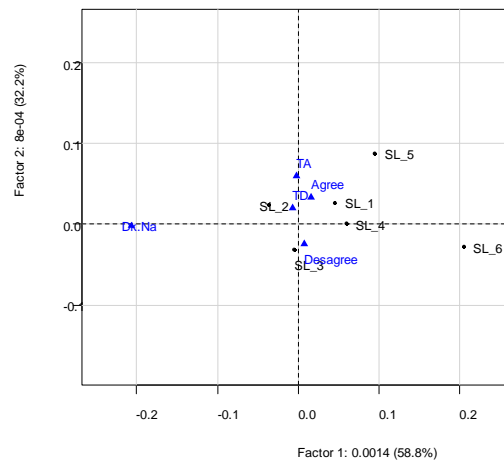


Figure 58. Afro-colombians will always have limited capacities

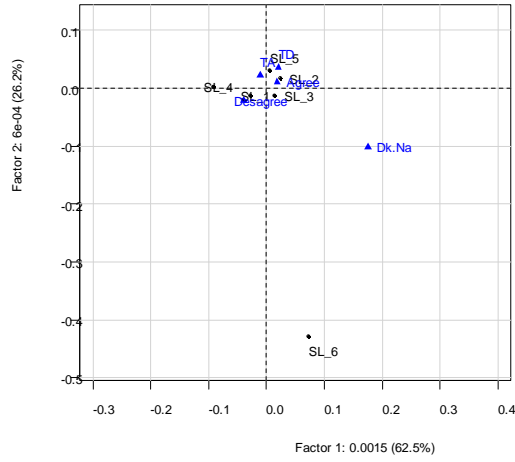


Figure 59. Poor people are more likely to commit crimes

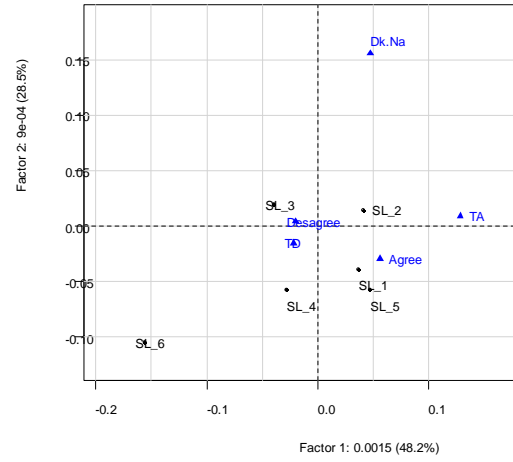


Figure 60. People with AIDS should be kept away

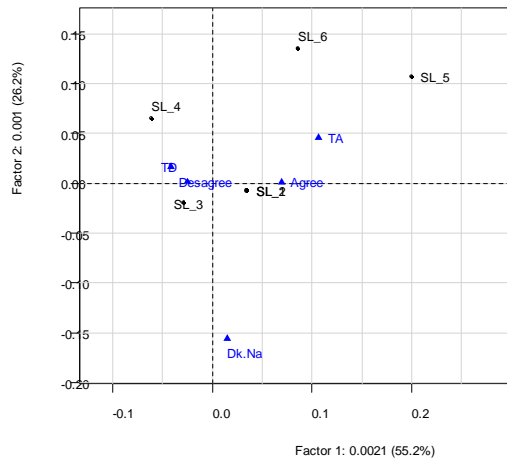


Figure 61. Indigenous communities will never progress

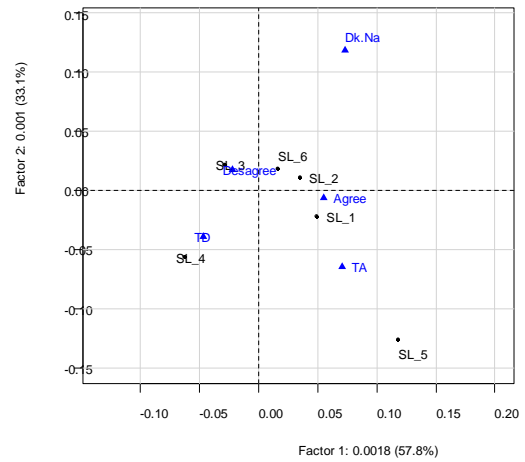


Figure 62. Disables workers are good, but not in leading positions

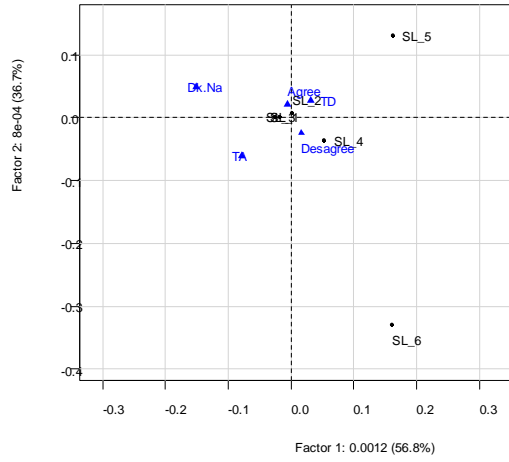


Figure 63. Education for girls should focus on developing their roles as mothers and wife

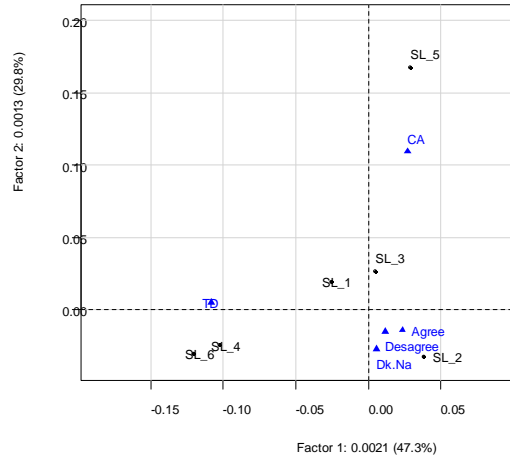


Figure 64. Battered women like to be mistreated

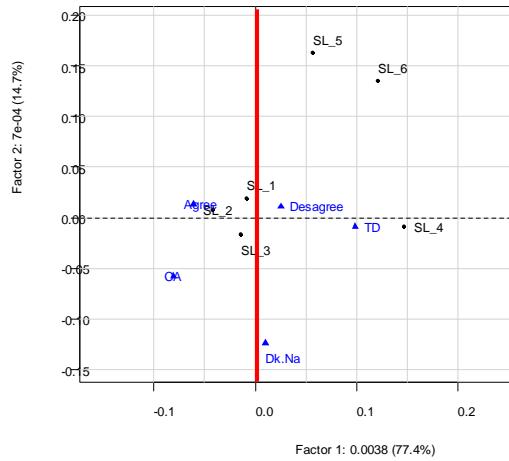


Figure 65. Domestic violence is wrong when it is public

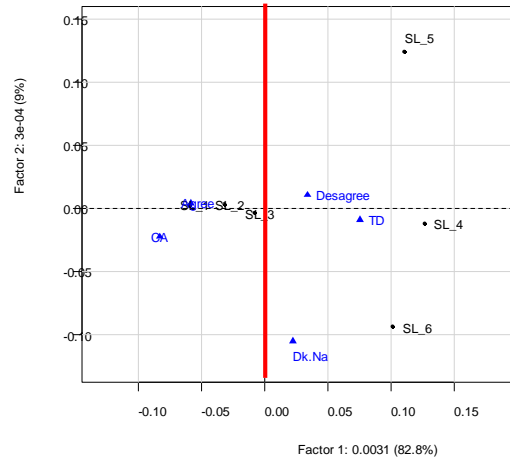


Figure 66. Sexy dressing provokes disrespect

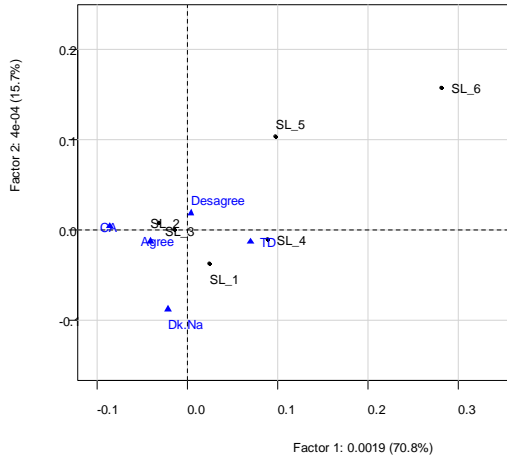


Figure 67. Family values were lost since women began working

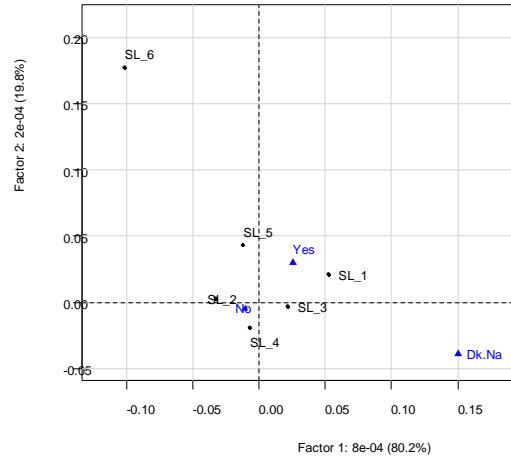


Figure 68. Have you or a member of your family been victims of the internal armed conflict?

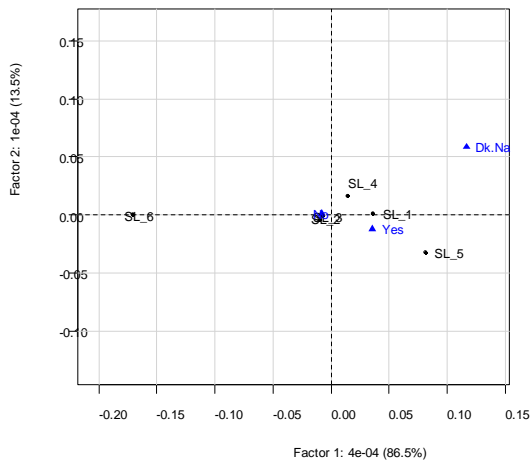


Figure 69. Do you feel discriminated? Socio-economic level

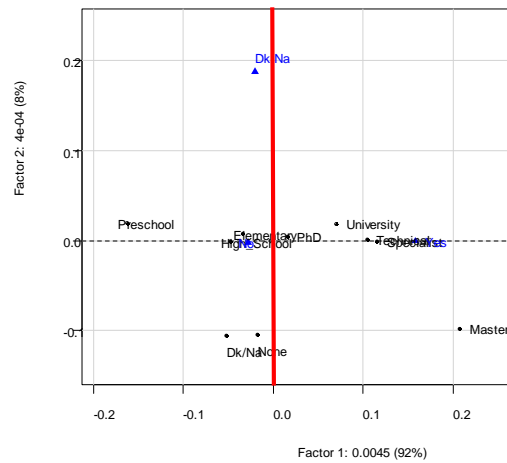


Figure 70. Do you feel discriminated? Educational qualifications

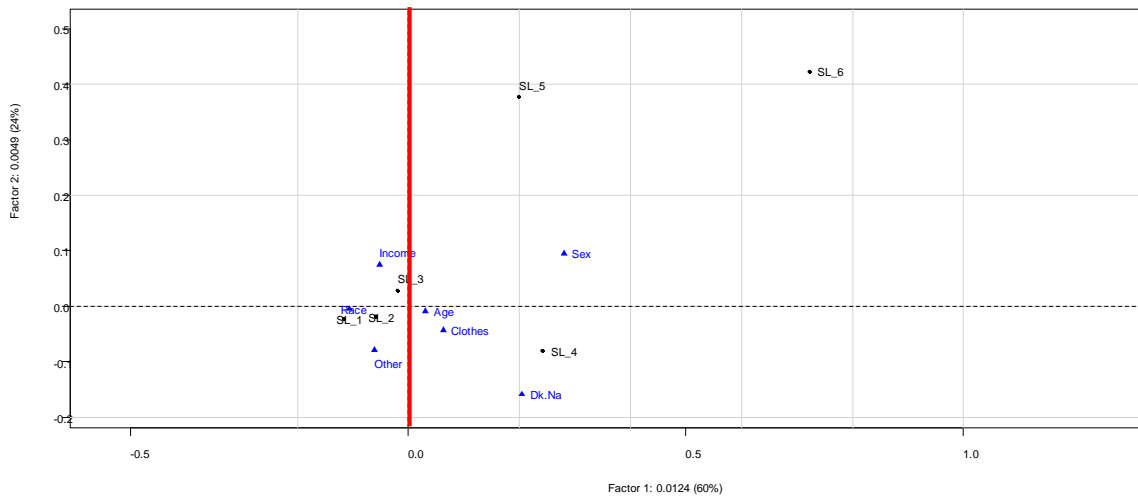


Figure 71. Why?

#### 4.3.1.4 Experience of the city.

The following eight figures relate to the way that those who live in Bogotá experience their city. In short, it is a highly segregated experience (the red line appears in all the figures), generally pleasant for those in SLs 4, 5 and 6, unpleasant for SLs 1 and 2, and both good and bad for SL 3. As expected, figure 72 shows that violent families, loud music, annoying pets and public space occupation are all common in SLs 1 and 2, but uncommon for SLs 4, 5 and 6. Furthermore, SLs 1 and 2 dislike their surroundings, as well as the noise and air quality, while SLs 3, 4, 5 and 6 are more inclined to like them (figure 73).

We reach similar results when we look at people's relationship to the streets. SLs 1 and 2 believe that the street is a place where danger and conflicts are present, but it is also a meeting

place for them, suitable for entertainment, sports and/or artistic expressions (figure 74). Most interestingly, SLs 1 and 2 also believe that the street is a place to work, while SLs 3, 4, 5 and 6 tend to disagree (figure 75). Again, these quantitative results are in line with my qualitative data and thus strengthen my hypothesis. If SLs 1 and 2 believe that the street is a place to work, it is because many of them survive while performing different productive strategies in the street. SLs 5 and 6 relate to the street in very different terms. They believe that it is not necessarily a dangerous or particularly violent place, but they don't relate to the street as a meeting place, suitable for entertainment, sports and/or artistic expressions (figure 74).

SLs 1 and 2 not only associate the street to a working place, but also actually identify some of the public working poor as workers. For instance, as figure 76 shows, SLs 1 and 2 identify recyclers as workers, while SLs 4, 5 and 6 lean towards identifying them with other categories such as: a homeless person, a cleaner, an environmentally friendly person and, - most unfortunately - a dangerous person. However, when it comes to the homeless (many of whom are part of the public working poor), SLs 1 and 2 identify them as offenders or sick individuals. It is possible that these results reflect the fact that there are frequent conflicts between homeless persons, street vendors and/or recyclers (Figure 77).

The transportation method used by Bogotá's residents is another clear indicator of differentiation. While SLs 1 and 2 lean towards walking, using buses or bike taxis, SL 3 uses motorcycles, bicycles and city buses (called Trasmilenio), and SLs 4, 5 and 6 use electrical bicycles, taxis (nowadays, most probably Uber) and cars (figure 78). Bogotá has serious mobility problems. It is the only mayor city of Latin America without a subway. For instance, using

Trasmilenio (which has an exclusive bus lane and is by far the most efficient method of transportation), it takes me approximately two hours to get from downtown Bogotá to any of the two localities where I conducted most of my fieldwork, and those two localities (Ciudad Bolívar and Suba) are situated almost four hours apart. Therefore, in terms of city experience, it is most unfortunate that SLs 1 and 2 don't use Trasmilenio as their main way of transportation, probably because it is more expensive than regular buses (which by the way are supposed to disappear). The difference in cost is around 300 pesos (CAD 0.13 of 2017)<sup>46</sup>, which makes a difference for most residents of SLs 1 and 2.

Finally, levels of satisfaction with the place where they live are also highly differentiated. By using Principal Components Analysis (PCA), figure 79 shows that most of the residents who feel satisfied with their house and neighborhood are also satisfied with Bogotá. The geometrical representation at the left (figure 79A), has to be read together with the following figure situated at the right (figure 79B). If both figures are superimposed, it is clear that SL 6 are the most satisfied with their house, neighborhood and Bogotá, while SL 1 are the least satisfied. Remember that highly correlated variables make small angles, while less correlated variables make angles close to 90°. Variables that are presented with opposite directions are negatively correlated. SLs 4 and 5 are the most satisfied with cultural/sportive activities and parks in Bogotá, while SL 2 are the least satisfied. SL 3 are close to the middle of figure 79B, their behavior does not outshine in relation to the rest. In sum, SLs 1 and 2 clearly show higher unconformity levels with the place where they live, as compared to SL 3, but especially to SLs 4, 5 and 6.

<sup>46</sup> With approximately 300 pesos in Bogotá, someone could buy, for instance, one cigarette or a bubble gum in the street.

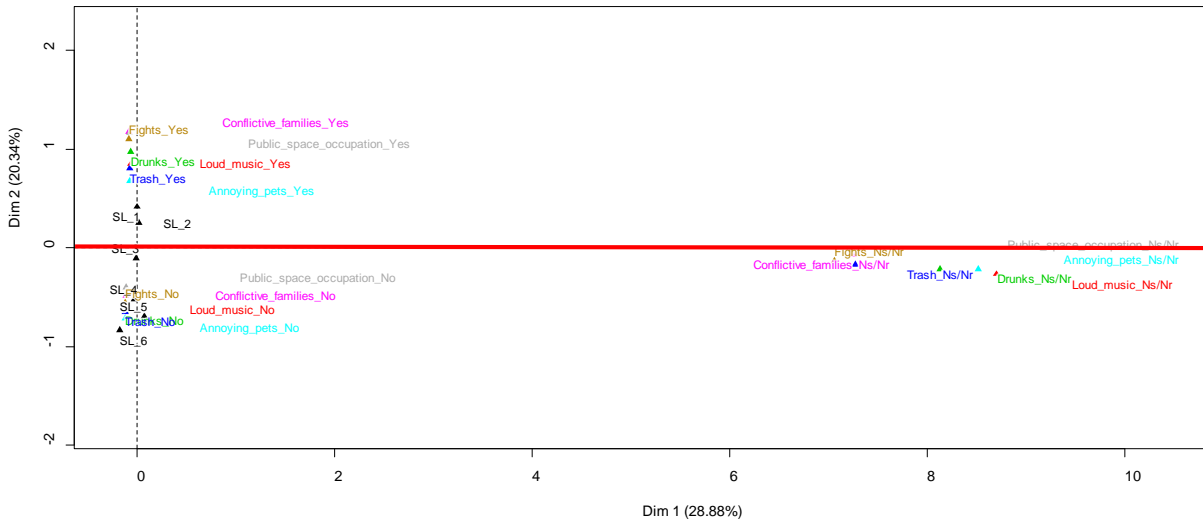


Figure 72. Are any of the following situations common in your neighborhood?

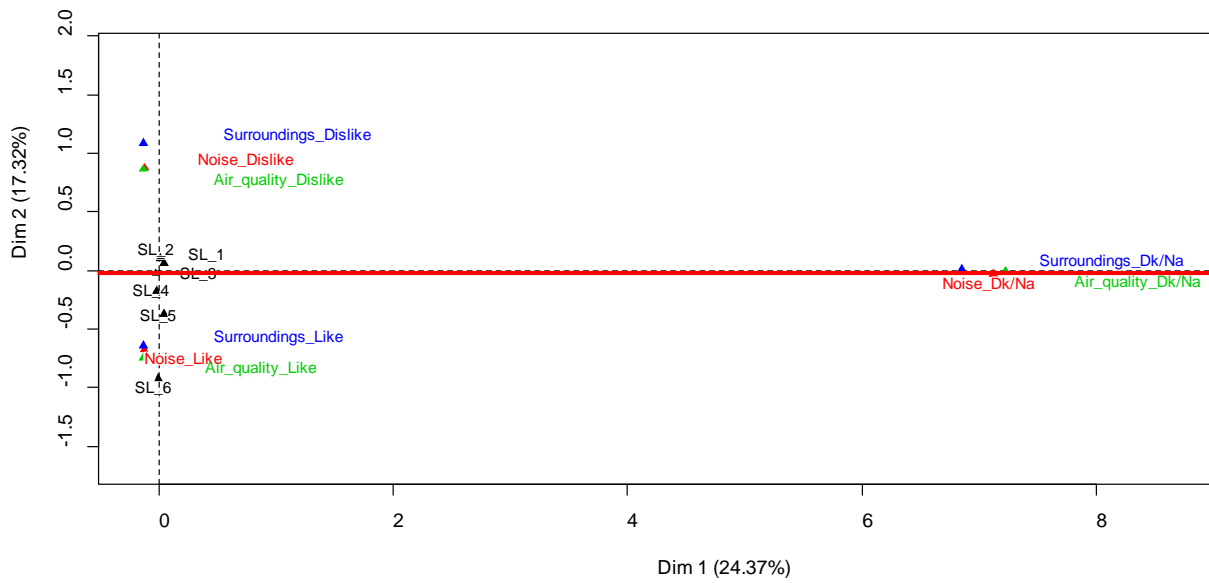


Figure 73. How do you perceive the following aspects of the city? (noise, dislike)

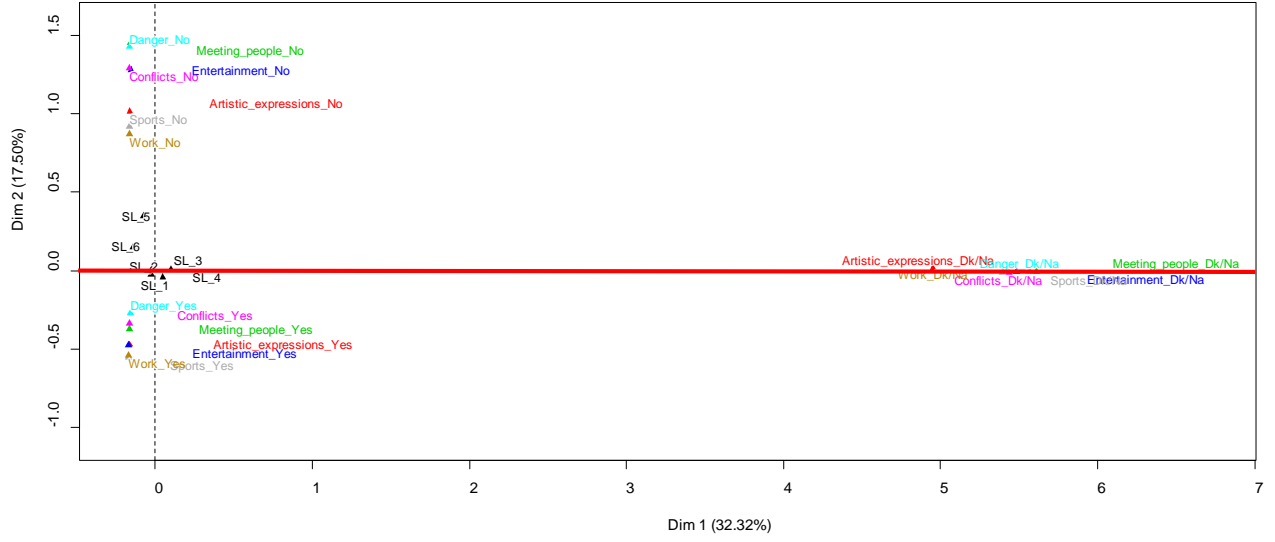


Figure 74. The street is a place you relate with:

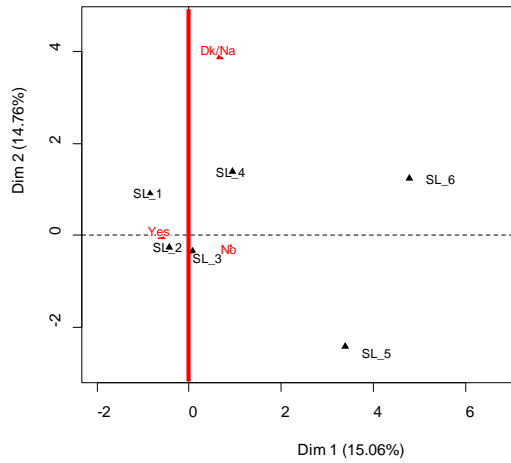


Figure 75. Is the street a space to work?

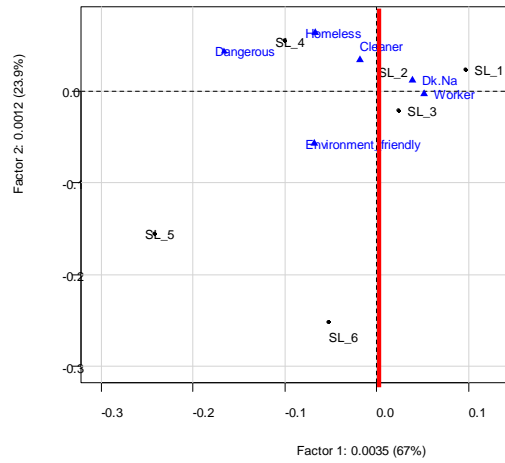


Figure 76. Social profiling (recyclers)

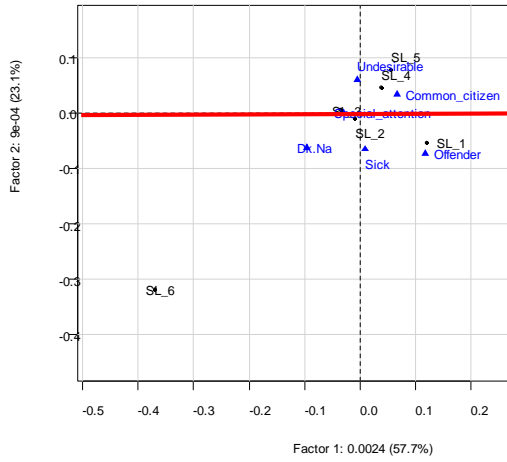


Figure 77. Social profiling (homeless person)

(A)

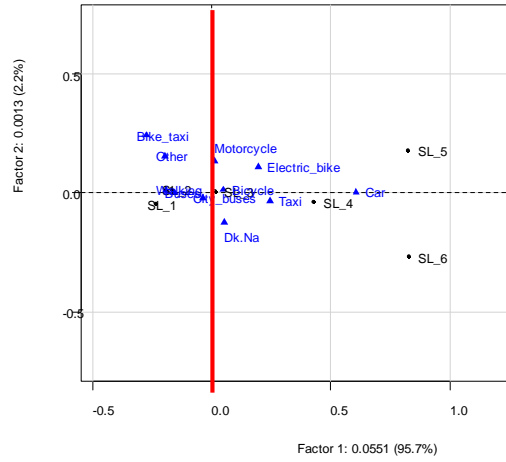


Figure 78. What is your main transportation method?

(B)

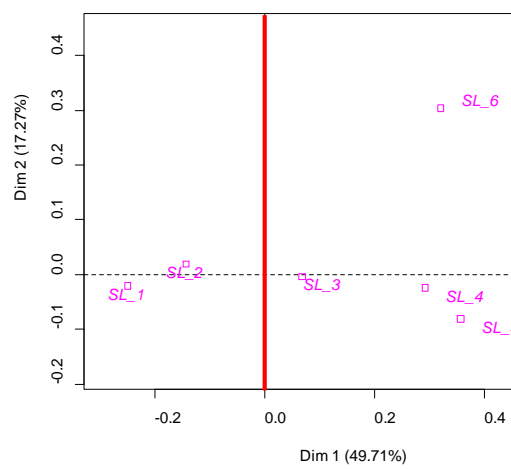
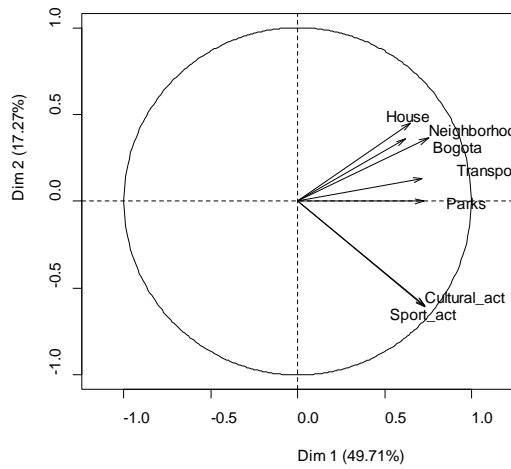


Figure 79. Level of satisfaction with the place where they live

This statistical exercise allows me to characterize the habitus of SLs 1 and 2 in general terms. Remember that the position that each individual occupies in the multidimensional social space, for

Bourdieu, is defined by every single kind of capital he or she can articulate through social relations. Different combinations of capital give rise to different forms of habitus (Bourdieu, 1987b). Results show – always in relative terms - that SLs 1 and 2 share very low levels of economic, cultural and social capital as well as similar combinations between those different types of capital. They also share conservative, right wing oriented political opinions, but do not feel free to voice them. They are highly prejudiced against historically discriminated groups, although they feel discriminated themselves. Finally, SLs 1 and 2 share a different and unsatisfying city experience when compared to SL 3, but most significantly when compared to SLs 4, 5 and 6.

Results also prove another central claim of Bourdieu: that there are “homologies” of taste across different fields or sub-fields (Bourdieu, 1984a). In other words, groups of individuals who share different types of habitus will usually occupy similar positions in different clusters of the social space. Taste is distributed unevenly, but there are affinities between tastes and practices of different kinds that are explained by different structural variables. In our case, for example, results show that those who feel uncomfortable with the place where they live, are also unlikely to be found in museums or music recitals. Rather than isolated patterns, we are looking at constellations of associated practices (Gayo, Teitelboim & Méndez, 2009).

Finally, it is safe to conclude that SLs 1 and 2 include the poorest and most disadvantaged residents of Bogotá. I agree with Gayo, Savage and Warde when they argue that the vocabulary of “social exclusion” does not offer a helpful characterization of the situation, mainly because the sub-group constituted by SLs 1 and 2 is far too large numerically (approximately 44% of the

population of 2015)<sup>47</sup> for them to be construed as marginal populations that are excluded from a majoritarian “mainstream” (Gayo, Savage & Warde, 2006). Gayo, Savage and Warde suggest that it would be better to differentiate between the “(multiply) engaged” and the “disengaged” (Gayo, Savage & Warde, 2006, 231). In any case, the most disadvantaged citizens of the city are likely to be labeled as SLs 1 and 2. No wonder why they feel more anxious than citizens labeled as belonging to SLs 3, 4, 5 and 6 (Figure 80).

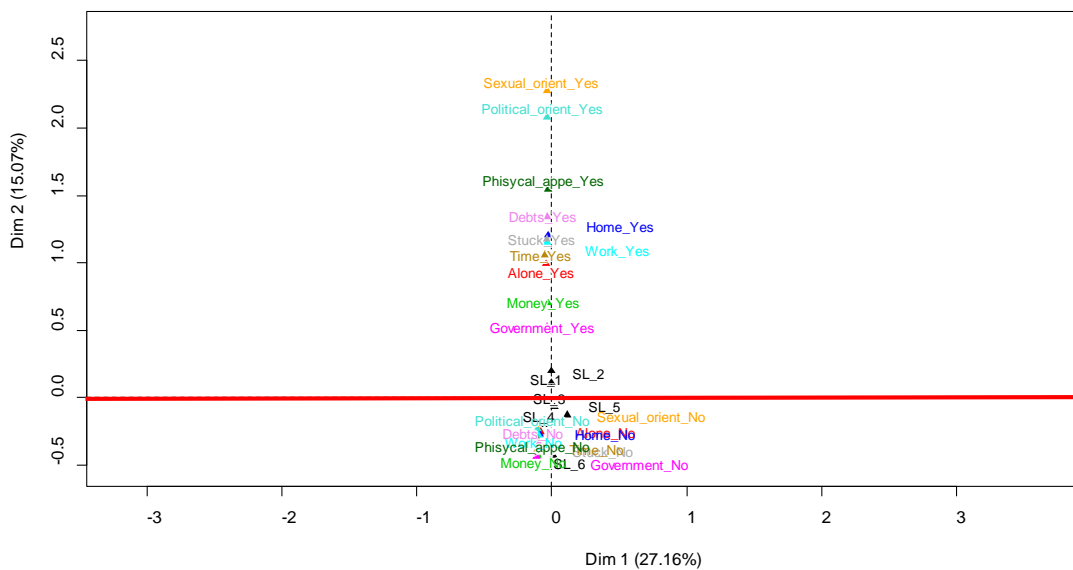


Figure 80. Do you feel anxious for any of the following reasons?

<sup>47</sup> See **Table 1** in the methodology section.

### **4.3.2 Socio-economic status is the most important source of differentiation in Bogotá.**

The statistical exercise shows the existence of class apartheid in Bogotá. I was able to draw a red line in most of the figures (with the interesting exception, for instance, of some figures related to prejudices), showing the distance between the social spaces shared by SLs 1 and 2, and SLs 3, 4, 5 and 6. Throughout the whole exercise, my intuition was that the main variable that divides the space of lifestyles in Bogotá, more than any other demographic variable such as gender, age, sexual orientation and/or ethnicity, is social position. To test that hypothesis, I used a different statistical method: a classification tree. A classification tree is a method that allows us to predict the categories of a variable (that the analyst identifies as a dependent variable), from the values of other given variables taken as independent (Loh & Shih, 1997). In this case, we took all the 356 variables included in the survey that were grouped in 131 questions, as dependent variables.<sup>48</sup> We also decided to work with five independent variables: gender, age, sexual orientation, socio-economic level and race, which the literature identified as the most important structural factors to predict patterns of taste (Gayo, Savage & Warde, 2006; Gayo, Teitelboim & Méndez, 2009; Gayo, Teitelboim & Méndez, 2013). The whole point was to use the method to identify which of the independent variables was the most significant in predicting each dependent variable of the survey.

The following procedure, which I show as an example, was repeated 356 times for each dependent variable included in the survey. Respondents were asked, for example, if they completely agreed, agreed, disagreed or completely disagreed with the following statement: ‘in a

<sup>48</sup> A question can include more than one variable. For instance, when respondents were asked about their level of satisfaction with the city’s a) transportation methods, b) parks, c) cultural offer, there are three variables in the same question. That is why we worked with 356 variables, although the survey included only 131 questions.

poor country, people who sell their vote should not be criticized.’ The statement in this case is the dependent variable. Our aim was to identify which of the independent variables chosen (sex, age, sexual orientation, socio-economic level or race) was the most significant in predicting the dependent variable. The data was analyzed using the statistical software SPSS Statistics, 19<sup>th</sup> version<sup>49</sup>, and the classification tree algorithm called QUEST - Quick, Unbiased, Efficient, Statistical Tree (Loh and Shih, 1997). The algorithm splits the data in two groups five times, each time by one of the five independent variables. It then chooses which of the independent variables made the most homogeneous sub-groups. In this case, for example, socio-economic level was the independent variable that was found to be most significant in predicting the answers given to the statement, because it created the most homogeneous sub-groups (see Figure 81).

<sup>49</sup> For complete information on the software, see: <http://www-01.ibm.com/software/co/analytics/spss/products/statistics/>. Last consulted, march 2016.

In a poor country, people that sell their vote should not be criticized

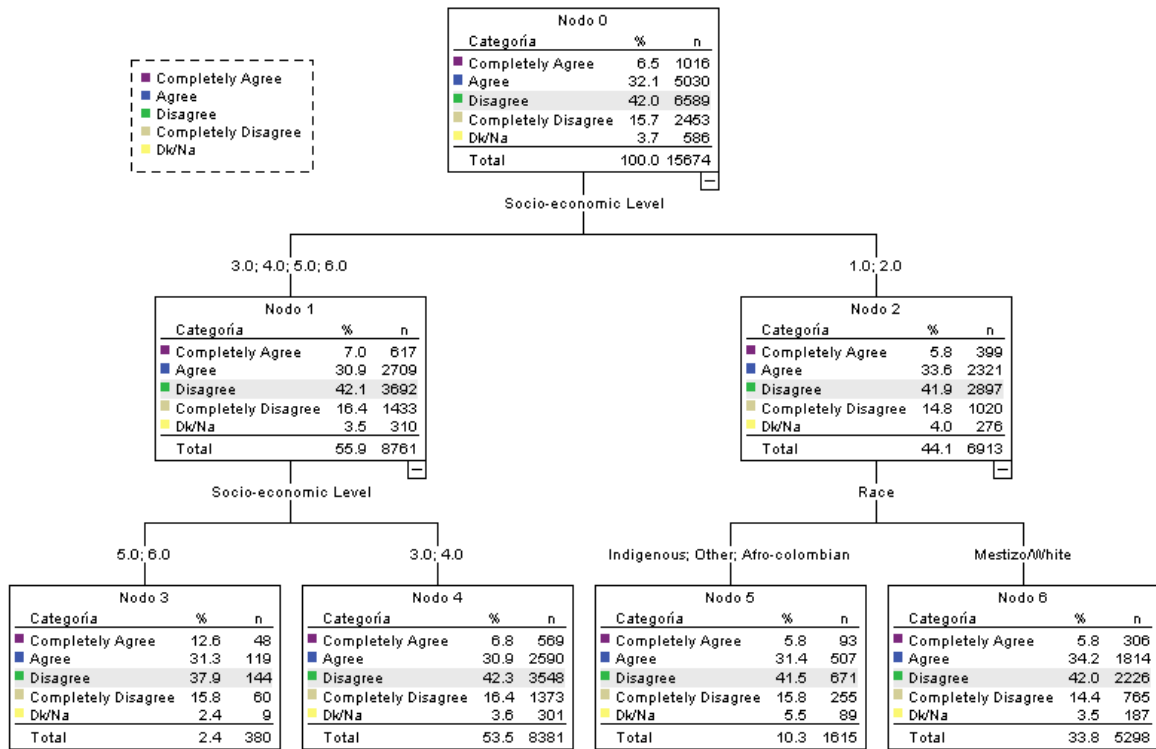


Figure 81. Example of classification tree

As I said before, the same exercise was repeated 356 times for each dependent variable included in the survey. The Results are summarized as follows:

**Table 4**  
*Effect of five variables in predicting the space of lifestyles in Bogotá*

<b>Independent variable</b>	<b>% Times</b>
Socio-economic level	37%
Age	36%
Sexual orientation	12%
Race	10%
Gender	6%
Total	100%

Results show that socio-economic status is indeed the most important source of differentiation, because 37% of the times it was the main variable that divided the space of lifestyles in Bogotá. However, it is very closely followed by age (36%). Gayo, Savage and Warde, obtained very similar results in 2006 for the United Kingdom. After conducting MCA from evidence collected in a national random sample survey of the British population in 2003, they concluded that the space of lifestyles in the UK “proves to be structured primarily by the total volume of capital (resources) held by respondents and by age. (...) An older, educated middle class shares ‘legitimate’ established cultural preferences. The repertoire of a younger middle class group contains more contemporary and ‘popular’ items. Less well-educated, working class groups are characterized often primarily by lack of cultural participation, but also, especially among the young, by an aversion to ‘legitimate’ culture.” (Gayo, Savage & Warde, 2006, p. 213). Gayo, Teitelboim, and Méndez also obtained very similar results for Chile in 2009. After conducting MCA from evidence

collected in a national random sample survey of cultural taste (*Encuesta de consumo cultural y uso del tiempo libre*), they also concluded that the space of lifestyles in Chile was structured primarily by social position and age (Gayo, Teitelboim & Méndez, 2009). These results are particularly interesting because the importance of age is not something that Bourdieu brings out in his work (Bourdieu, 1984a). Generational shifts are powerful and must not be underestimated as a very important source of differentiation.

While sexual orientation, race and gender were also important variables, they were not as important as social position and age in determining the space of lifestyles in Bogotá. Twelve (12%) of the times sexual orientation was the main source of differentiation, followed by race (10% of the times) and gender (6% of the times). Gender appears in the literature as a more influential variable when studying the differences in taste within the middle class of Chile (Gayo, Teitelboim & Méndez, 2013), when studying unwanted and unreciprocated sexual behavior as harassment in Chile (Casas, 2016), or when studying patterns of participation and taste in sports (Warde, 2006). When the social space that is being described is less specific, gender does not appear as one of the main variables.

The statistical exercise accomplished allowed me to describe – in general trends – the type of structural constraints that individuals belonging to SLs 1 and 2 share, but not the type of similar practices that the sub-group of street rebuscadores share. Therefore, in the next section, I will use qualitative methods to describe those practices. But before that, I will close with a long quote taken from Bourdieu's *Distinction*, which I believe captures the small frustrations, and additional limitations of trying to use qualitative data to characterize a space of lifestyles:

“Only a research diary could give an adequate idea of the countless choices, all equally humble and derisory, all equally difficult and decisive, and therefore the countless theoretical reflections, often minute and unworthy of the name of theory in the ordinary sense of the word, which had to be made, when I was faced with a questionnaire difficult to classify, an unexpected curve, a badly phrased question, a distribution that was incomprehensible at first sight, in order to produce a text whose success must be measured by the extent to which it allows the reader to forget the thousands of revisions, alterations, checks and corrections which made it possible, while manifesting at every point the high 'reality content' which distinguishes it from the 'not even wrong' sociological essay” (Bourdieu, 1984a, p. 509).

#### **4.4 Qualitative analysis and results of the second hypothesis - Description of eight different practices street rebuscadores share in Bogotá**

Sharing a similar habitus means sharing similar practices associated with that habitus. In the following pages, I will describe eight different practices that emerge from the qualitative data collected during my fieldwork. First, street rebuscadores work in the street (part 4.4.1). Secondly, they work by and for themselves (part 4.4.2). Thirdly, they live with a minimum uncertain daily family income and they are constantly ready for change (part 4.4.3). Fourthly, they have big families (part 4.4.4). Fifthly, they develop practical skills needed for their different productive strategies (cooking, heavy lifting, befriending clients, flirting, tolerating high and low temperatures, amongst others) (part 3.4.5). Sixthly, they act like second-class citizens (part 4.4.6).

Seventhly, they perform illegal yet legitimate actions supported by their main informal rule: survival at any cost (part 4.4.7). Eighthly, they share common feelings of discontent with the political and economic system, although they have not been able to articulate a common political discourse at least in the sense of sharing a common project of society with general emancipatory claims (part 4.4.8). There is a logic underneath those practical actions that I will try to unravel in each section.

#### **4.4.1. Working in the street.**

As I have shown, SLs 1 and 2 believe that the street is a place to work, while SLs 3, 4, 5 and 6 disagree (See: figure 75). In part 4.3, I showed how socio-economic differences shape the answers of different groups of individuals in terms of taste, but also their understanding of the meaning of words such as ‘street’ or ‘public space.’ As most individuals belonging to SLs 5 and 6, for instance, I was raised thinking that the words ‘public space’ referred to areas of free circulation that no one could or should occupy for their own self-benefit, because that kind of behavior undermined the common good. Consequently, I was taught to perceive public space occupation as an uncivilized act. Only with time I learned that there were contending discourses about the meaning of ‘public space.’ For instance, Don Mitchell describes two predominant ways of seeing public space in contemporary cities: one where public space is planned, orderly, safe and subject to usage by a properly behaved public; and a different one where public space is appropriated and remade by different political actors, and in doing so it tolerates the risks of disorder (Mitchell, 1995, p. 115).<sup>50</sup>

<sup>50</sup> In his words, “whatever the origins of any public space, its status as ‘public’ is created and maintained through the ongoing opposition of visions that have been held, on the one hand, by those who seek order and control and, on the other, by those who seek places for oppositional political activity and unmediated interaction.” (Mitchell, 1995, p. 115)

He also describes a third way of seeing public space, this time as a space for representation, where different social groups become public: “only in public spaces can the homeless, for example, represent themselves as a legitimate part of ‘the public.’” (Mitchell, 1995, p. 115). Critical urban studies often emphasize that the regulation of spaces and uses ends up governing the most vulnerable (Blomley, 1997; Mitchell, 2003; Narciso, 2014). For instance, Blomley urges us to give more recognition “to the intensely racialized and gendered uses” of public spaces (Blomley, 1997, p. 136), while Narciso notes that dominant discourses promote the interests of wealthier citizens to beautify the city and attract tourism while favoring social inequality through further socio-spatial fragmentation of the urban space (Narciso, 2014). They make the point that public space has not been inclusive with those (like the poor) who are regularly forced into it.

During the many meetings I attended with different types of street rebuscadores, their interpretation of the meaning of the words ‘street’ and ‘public space’ became clearer. For instance, during a meeting with an employee from the local mayor’s office, a leader of a group of street vendors told us: “by ‘public space’ we do not mean that everyone can walk the streets of Bogotá mimicking each other’s footsteps (...) what we mean is that the street must be available for those of us who are most vulnerable.” The employee from the mayor’s office literally laughed, and explained with arrogance what street and public space ‘really’ meant. The vendor listened carefully to his explanation and then told me in private:

“(...) what can we do if those who are named ‘experts’ do not understand what it means to work in the street? Those people don’t even understand what the word street means because they don’t walk, they drive cars!”

Martha,<sup>51</sup> a female vendor added:

“We just see things differently Laura. They see a death landscape: the landscape of the buildings, the fancy statues, the clean parks. But they want to abolish the human landscape, which is what we see. Why can a sculpture or a tree occupy public space without paying and we can't? Let me guess... trees and statues - which are not even everywhere - are definitely more important.” (Audio 121016-002)

There is a political struggle involved in the making and un-making of the meaning of words such as ‘street’ or ‘public space.’ Agents are unequally armed to impose their definition, and the balance of power depends on the symbolic capital accumulated by those who aim to impose the various visions in contention, and on the extent to which these visions are themselves grounded in reality (Bourdieu, 1987b). However, even if we accept that the definition of ‘street’ given by street rebuscadores is subordinated, the bottom line is that approximately 82,000 of them work in the streets of Bogotá. Why? Do they really have a choice?

As I argued before, individual choices are constrained by historical, legal, cultural, political and economic factors. Consequently, individuals with less amounts of total capital have less room for choice. However, as Sylvestre argues, living or working in the streets “is not the end of choice, but rather the context within which choices and options must be imagined” (Sylvestre, 2007, p. 382).

<sup>51</sup> All of the names of the informants have been omitted, except the names of some of my main informants (Patricia, Isadio, Oswaldo, William, Martha, Rosa, Ernesto, Gustavo, Teresa Gina, Carol and Omar) who specifically asked me to mention them by their name.

For instance, in his anthropological account of the people of *El Barrio*, Bourgois tells the story of different crack dealers who entered the legal labour market at exceptionally young ages, but before reaching twenty years of age virtually none had fulfilled their early childhood dreams of finding stable, well-paid legal work. They could not keep a job because most of the contexts in which job opportunities presented were completely anathema to the norms of street culture (Bourgois, 2003). In *Sidewalk*, Duneier tells the story of different people that live and work in the street of Greenwich Village (New York). Ishamael, for instance, ‘chose’ to sleep on the block, not because it was his best sleeping alternative, or because he had no money, but because he was on the block first and foremost to work, and, through that work, to live his life. Even though broader economic and social factors did limit the chances of the men on Greenwich Village in the formal economy, they nevertheless felt a satisfaction associated with their jobs, which give them a sense of dignity and the possibility to interact with persons otherwise separated by vast social and economic inequalities (Duneier, 1999).

Therefore, while choices exist for the people that live and work in the street, they are actually constrained in many ways. As Sylvestre puts it: “choosing between begging, squeegeeing, selling stolen or lost goods, singing or performing qualifies as a choice between dying (and doing nothing) or doing something (anything) to survive.” (Sylvestre, 2007, p. 383). During my fieldwork, it was common for street rebuscadores to tell me that the reason they worked in the street was because they were uneducated and other working alternatives were not really available. Others, however, admitted they had other working alternatives besides working in the street (washing cars in parking lots, cooking, working as construction workers, attending small businesses or marketplaces, picking flowers, etc.), but argued they ‘chose’ the street because they had flexible hours, more

stability, but most importantly, because they had higher incomes, could comply with caregiving responsibilities and had to withstand less humiliations. For instance, a female street vendor told me:

“My brother tries to rebuscarsela as much as possible. During the weekend he sells alcohol, at night he washes trucks, and during the day he works in a gym. But he makes less money than those of us who concentrate on the street. Or else, why do you think that the streets are full of workers? (...) There is nothing like the street. I once worked in a marketplace where they relocated a group of vendors. But while in the street you need *un plante* (amount of money to start selling) of around 100,000 pesos per week to make your *diario* (approx. CAD 45 in 2016), in the marketplace you need about 1 million pesos to make the same *diario*! (approx. CAD 452 in 2016) And yes, of course, the marketplace is more organized, the police do not harass you and you feel more... like a human being. But isn't the point to get food on the table? I don't have to tell you that life is no fairytale. Plus, I work close to where I live, so I can make sure that my daughters are having lunch and that they are behaving. No... I'm not leaving the street. Leaving the street means becoming some asshole's slave for eight hours a day. They can tell you to stand up, to sit, to pick up that piece of trash, to move, to stay still. No mamita... I'm not selling my life to any bastard... and for a minimum wage? Ha! You work in the street and you make the same kind of money in three hours.” (Audio 120831-001)

Once a public rebuscador ‘chooses’ to work in the street, fieldwork data shows that they will defend their job with all they have, including rhetorical strategies. Street vendors, for instance,

advocate for the concrete defense of their working spot. In other words, it is not the right to work they are after, or even the right to work in the street, but the right they believe they have to work in the exact working spot where they feel they gained competitive advantage.<sup>52</sup> A male street vendor told me:

“In this country all we have is the specific working spot where we have worked in sunny and rainy days for years. The working spot we have defended with our lives and for which we have been wounded (he shows me a physical wound). Moving us to another place means starving... do you know how long it takes for people to recognize your working spot?”

A female street vendor interrupted the conversation to add:

“Between sons, daughters and grandchildren I’m in charge of feeding 10 mouths. The only time I was forced to leave my working spot I had to walk almost 20 blocks to make 5000 pesos (approx. CAD 2.3 in 2016). My merchandise is heavy and it was difficult for me to carry it, so I ended in the hospital. We are not defending the right to work. We are defending our recognized working spot” (Audio 120819-001).<sup>53</sup>

<sup>52</sup> Duneier shares very similar findings in his anthropological account of the men in Greenwich Village: “an informal system governs property rights on the street. Vending space is scarce, and some locations are more remunerative than others.” (Dunier, 1999, p. 85).

<sup>53</sup> Unfortunately, that is exactly what many public servants reject the most. For instance, an IPES official (Institute for Social Economy) who was in charge of street vending in one of the localities of Bogotá, told me: “If any other individual wanted to occupy the spots they are occupying, they would have to pay approximately 14 to 15 million pesos (approx. CAD 6340 to 6794 in 2016). And for them... well, for them it’s free. But they won’t even let us move them to other areas to be able to organize this mess! The street is the best shopping mall in all Bogotá and for street vendors it is free. And of course... they don’t appreciate it because no one ever appreciates what is free. It is only when you have to pay that you start giving value to things. That happened to me when I left my house. My mother always bought me fine clothes Chevignon, Americanino, Levis... a sweater could cost her 200,000 pesos (approx. CAD 91 in 2016) and I used to say... mom that is really cheap! But nowadays I don’t buy it, because it comes out of my pocket and I value what I have. You see... for them public space is insignificant because it’s free. It is *we* the

Suggesting that many street rebuscadores have enough room to ‘choose’ to work in the street, can be seen as a way to recognize their agency, as well as the soundness of the reasons that many give to argue that they actually ‘like’ to work in the street (flexible hours, increased labour stability, higher levels of income, complying with caregiving responsibilities, lack of subordination etc.)<sup>54</sup> However, stating that they ‘like’ to work in the street, can also be seen as their way to make “virtue out of necessity” (Bourdieu, 1990), or in other words, as a way to accept exclusion or exclude oneself rather than attempt to achieve what is already denied. Bourdieu makes the point that people do not necessarily make those kinds of calculations and decisions freely, uninfluenced by habitus. For instance, if a young man from a poor neighbourhood says he likes football more than anything else in the world, it might also be because he has never been in a swimming pool in his life: “the most improbable practices are therefore excluded, as unthinkable, by a kind of immediate submission to order that inclines agents to make a virtue of necessity, that is, to refuse what is anyway denied and to will the inevitable” (Bourdieu, 1990, p. 54).

Bearing that in mind is important, because the fact is that working in the street is not easy. As Patricia always told me, the street “wears you out (*te acaba*).” As much as I acknowledge that many street rebuscadores argue they ‘like’ to work in the street, I also want to insist that their working conditions are very difficult. Their daily income is low to cover life’s basic necessities, they labour excessively, their social protection rights are severely restricted, their jobs usually take

people, people like you and me who value it, because it is regular normal people like you and me who actually pay for it.” (Audio 120818-001)

<sup>54</sup> Dakduk, Kenbel and Giraldo report very similar reasons given by street rebuscadores to argue they like to work in the street (See: Kenbel, 2010, p. 17; Dakduk, 2008, p. 71-73; Giraldo, 2016, p. 128).

place in stressful and violent areas, they can rarely access the financial system so they access informal loans at absurdly high rates, their work is usually physically and emotionally exhausting, they get sick frequently, it is common for them to be treated arbitrarily by the police and other public employees, and there is no associational structure that allows them to expose their demands as a group.

Furthermore, street rebuscadores make poverty visible to public authorities. As Andrea Brighenti argues, visibility is a double-edged sword, as it can be both empowering and disempowering (Brighenti, 2007). According to the author, visibility can be empowering if it is framed in a larger struggle for social recognition. In sociological literature, for instance, visibility appears in gender, racial, sexual and minority studies, where it is easy to find a link between being socially invisible and being deprived of recognition. However, visibility can also be disempowering, because it can imply subjugation, imposition of conduct and means of control over groups of people previously targeted through processes of selectivity and stratification (Sylvestre, et al., 2011; Porras, 2015). For instance, visibility could be inherently oppressing for the socially excluded if what happens is that they become supra-visible for the police but invisible when it comes to acknowledging their fundamental rights. According to the work of Sylvestre, Bellot, Couture Ménard and Tremblay on homelessness and the criminal justice system in Montreal and Ottawa, for example, homeless persons are highly visible for the police and other administrative authorities, increasing their chances of being profiled and of becoming unwillingly involved with the criminal justice system. However, once within the justice system, they become invisible (Sylvestre et al, 2011).

My fieldwork confirmed that visibility could be inherently oppressing for the socially excluded. For instance, street rebuscadores sustain more conflicts with public authorities than private rebuscadores. During informal encounters with private rebuscadores in small closed door businesses (*fami-empresas*) informants argued that their conflicts with public authorities were rare. A female owner of a small *maquila*<sup>55</sup> told me:

“I only had a problem with a local authority once, because my electricity bills were too high and they wanted to find out what was happening. There was no way I was going to let them find out about my business because I was not going to pay commercial bills, so with the help of my family I dismantled the whole operation before letting them in. Problem solved.” (Audio 121022-001).

On the other hand, street rebuscadores are very aware that being public implies more problems with public authorities. Isadio (one of my main informants) once told me:

“I know that the only way to get rid of these bastards (referring to the police and other public officials) is to buy or rent a place. A policeman once told me: as long as you are in the street, you have to follow our rules... buy or rent a house and do whatever you want. Stupid son of a bitch! If I had money to buy a house I wouldn't be selling avocados in the street!” (Audio 120912-001).

<sup>55</sup> Maquila is the common name used to refer to the production system consisting of the manual or unitary assembly of parts in industrial workshops located in countries with cheap labour, whose result are products that generally target a developed country. For an incredible assessment on the manufacturing industry in Colombia, see: Ramírez, 2015.

Hard working conditions are not easy to deal with. For instance, street rebuscadores frequently made clear that alcohol consumption helped them deal with day-to-day work. I documented in detail an episode where a drunken street vendor drove a car many times up and down San Francisco Street in Ciudad Bolívar. He was shouting and laughing and offering *aguardiente* through the window to other vendors. It was his 33rd birthday celebration. His daughter (5 years) and son (7 years) were sitting in the backseat of the car quietly. They seemed scared. At that moment I was with a group of around four street vendors. The scene was very shocking for me, so I immediately asked “what is the best way we have to protect the children?” the answers I received were as shocking as the scene itself. A male street vendor answered: “Nothing! Let him celebrate! If the owner of the car is not worried, why are you worried?” Another male street vendor added:

“It is healthy to pour alcohol through your blood, because if blood becomes too sweet, worms will eat you faster (*hay que echarle alcohol a la sangre, porque si no, la sangre de uno queda muy dulce y los gusanos se lo jartan muy rápido*).”

A female street vendor added:

“Don’t worry Laurita, nothing will happen. They are used to see their father drunk. Plus, he can’t leave the street because he doesn’t have a driver’s license. He works very hard and he is not a bad father. You’ve seen him.... we all need our doses of anesthesia.” (Audio 120912-001).

As hard as it can get, but also as rewarding as it can be sometimes, more than eighty thousand citizens work in the streets of Bogotá and the number is not likely to decrease any time soon. An employee of the Secretary for Economic Development of Bogotá (*Secretaría de Desarrollo Económico*) once told me: “it is simple: there will never be enough money to get everyone out of the streets. We all know that... judges, local mayors, the police..., everybody knows that. But no one can say it out loud.” (Audio 120817-001) For street rebuscadores it is even clearer. During an ordinary conversation I had with sex workers and street vendors, a female sex worker told me: “the street is not a temporary option. I’m no expert but just by observing you see that the movement is not from the street to formal jobs but from formal jobs to the street.” A male street vendor added:

“Trying to eradicate street vending is just foolish. I think it might be easier to find all prostitutes a husband that will pay for all your expenses than to end street work. *Looking at the sex worker* - No offense intended. *Looking back at me* - when you write that book, let them understand that this is the new working class. That we are growing. That they can stop dreaming about Bogotá without us.” (Audio 121114-001)

#### **4.4.2 Working by and for themselves.**

Street rebuscadores have been portrayed as free individuals, who manage everything by themselves, and who act under the law “every man for himself” (Mendoza, 2011, p.123). Following Castel, and highlighting their lack of attachment to a given community, Mendoza also characterizes them as a good example of “negative individualism,” by which Castel refers to those who have opted out of the regulations that govern the wage-earning society and are detached from

social issues due to precariousness and the wakening of social protection (Mendoza, 2011, p. 123). Gómez puts it in terms of primacy of individual over public rationality: “the type of rationality of rebuscadores is based on individual creativity, diversity, imagination, tenacity, against the incapacity of generating collective projects and of solving the most basic public problems” (Gómez, 1999, p. 71; My translation<sup>56</sup>). Giraldo simply states that it is a myth to argue that solidarity is a value shared by rebuscadores: “most of their economic activities take place within strong schemes of competition. Solidarity is present only when they face adversity, more specifically when they are attacked by the State” (Giraldo, 2016, p. 73; My translation<sup>57</sup>). However, their relationship with their families is a very important exception to the individualistic nature of street rebuscadores (Mendoza, 2011, p.129). For instance, Kenbel argues that rebuscadores usually look for help within their closest family members to perform their different productive strategies. What they reject is to work with people outside their closest family ties (Kenbel, 2010, p. 14).

My fieldwork confirms that street rebuscadores distrust neighbours and usually run away from offers of cooperation to build better strategies of employment and divide earnings, although they rely heavily on their families to perform their different productive strategies. How can we explain the resistance of street rebuscadores to work together? I will offer three possible explanations: First, many of them do not see how cooperation could increase their revenues. Instead, they believe it will mean splitting their meagre income in half. I was once trying to explain to a female street

<sup>56</sup> Quote in Spanish “Un tipo de racionalidad basado en la creatividad individual, la diversidad, la imaginación, el rebusque, la tenacidad, contra la incapacidad de hacer proyectos colectivos y resolver los problemas públicos más esenciales”

<sup>57</sup> Complete quote in Spanish: "El otro mito es afirmar que los sectores de la economía popular son solidarios. No lo son en cuanto la mayoría de sus actividades económicas se hacen en el marco de la competencia de unos contra otros, lo son en cuanto se enfrentan a la adversidad, entre ellas cuando el Estado los ataca."

vendor the advantages of joining efforts and building economies of scale. She quickly interrupted me:

“I see it differently, and my point of view is based on real experience. To associate means that if we make a *diario* of 30,000 pesos (approx. CAD 13 in 2016), you get 15,000 and I get 15,000. It is a way to divide earnings between the associates. See? No thank you. I am not interested in learning any more about it” (Audio 121003-001).

Second, cooperation is difficult to achieve in an environment of distrust. Street rebuscadores not only distrust politicians and the public sector in general, but they deeply distrust their own leaders and themselves. According to Patricia, “distrust is generalized and that makes things really difficult (*muy berracas*)... it is better not to get too close to anyone. We all know that” (Audio 120917-001).

Finally, cooperation is difficult to achieve within an environment where violent behavior is the rule. Oswaldo, leader of a group of street vendors, explained it in the following words:

“I once tried to make a small group work together, and what happened? I got there and they were fighting with iron rods. You need to know that... they will start a fight for almost anything. They will insult, blame, and physically threaten each other for anything. I used to ask them to stop that kind of behavior. What do you gain by fighting each other? Is that the way you are going to put food on your tables? Is that the way you are going to pay your

*gota a gota*?<sup>58</sup> Is that the best way to make *el diario*? Ha, ha, ha! Now I don't make that kind of speech anymore.” (Audio 120817-001).

The resistance of street rebuscadores to work together translates into their practical desire to work by and for themselves. During our many conversations it became clear that self-employment was not a burden for most of them, and that many actually embraced the kind of autonomy that came with it. For instance, a male street vendor who sold avocados in the street, told me:

“Every Wednesday I go to *corabastos* (the biggest marketplace of Bogotá) at 4am to buy the avocados. I wrap them in newspaper, put them in boxes, and let them ripen fully at room temperature. I sell most of them during the weekend... leftovers are sold during the week, and what is left I give it to the poor. You know... there's always someone poorer than you. The kind of job I have gave me the time to build my own house. 40 years ago I managed to buy a small piece of land and ever since I have had the time to build my house the way I like it. It has not been easy, and sometimes I don't have the money... but I always manage somehow to get the extra money I need. Those are just the blessings of self-employment!” (Audio 120912-001).

William, who became one of my closest informants, told me something very similar:

“I love my work, not only because it saved me from alcoholism, but because it is really creative and I help other people (he buys shoes from recyclers who pick them in the garbage

<sup>58</sup> Street rebuscadores can rarely access the financial system, so they access informal loans called *gota a gota* (drop by drop) at very high rates (usually 20% of daily interest).

in wealthier parts of the city, fixes them, and then sell them back in the streets of Ciudad Bolívar). Plus, I like working by and for myself. I don't bother anyone, and no one bothers me" (Audio 120916-001).

The reluctance of street rebuscadores to work with others also explains why the whole discourse of individual entrepreneurship is well understood and received by them. By entrepreneurship discourse, I am referring to the neoclassical-based idea that entrepreneurship is a key player in ending global poverty by reversing the cycle of dependency with a cycle of self-sufficiency and employment (Amorós, Cristi & Naudé, 2010). Entrepreneurship adherents believe that small businesses are the building blocks of prosperous economies, although their attention has been largely confined to advanced economies. Shane, for instance, reviewed 472 entrepreneurship papers published in 19 different international journals, and found that the 13 most frequently published authors all resided in advanced economies, and their work dealt with advanced economies (Shane, 1997). However, although the literature is incomplete, the message is that offering people in developing countries the choice of entrepreneurship through self-employment drives structural change and economic growth, and allows people to escape from both absolute and relative poverty and informality (Amorós, Cristi & Naudé, 2010).

That message has been well understood by local politicians in Bogotá. Nowadays the main policy to end poverty and foster economic growth within vulnerable groups such as street rebuscadores is to strengthen self-employment through different entrepreneurship strategies.<sup>59</sup> In

<sup>59</sup> Please consult: <http://www.ipes.gov.co/index.php/emprendimiento> (last viewed, April 2017)

the words of a senior official of the Institute for the Social Economy (IPES), which is the public agency in charge of street rebuscadores in Bogotá:

“(...) our goal is to help street vendors and other street workers to find their way towards corporatization through entrepreneurship. In each and every one of you (he was talking to a groups of street vendors) there is a businessman. That is what we are working on. We are convinced that you are capable and that you are the key to your successful future” (Audio 121022-001).

The entrepreneurship discourse is reflected in documents of the United Nations Development Programme on legal empowerment of the poor, and other international organizations.<sup>60</sup> However, it has been largely criticized. According to Giraldo, there are at least three lines of criticisms: First, it gives hope to poor individuals with the idea that they can reach success through their own individual efforts, while in reality most of them fail. According to Giraldo, there is even an expression in the literature around the issue: ‘the valley of death.’ Even though we lack solid statistics, in general terms the literature indicates that in the case of subsistence entrepreneurship, more than 95% fails within the first three years (Giraldo, 2016, p. 73). Guevara adds to Giraldo’s arguments by stating that the entrepreneurship discourse hides bad experiences, while rare successful experiences are widely publicized (Guevara, 2013, p. 111). Secondly, it is a discourse that blames the poor for their success or failure, eclipsing the many structural factors that contribute to poverty, while highlighting the agency of the poor (Giraldo, 2016). Thirdly, it conveniently

<sup>60</sup> See, for instance, [http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-ii---english-only/making\\_the\\_law\\_work\\_II.pdf](http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-ii---english-only/making_the_law_work_II.pdf). (last viewed, April 2017)

shifts the discussion from talking about precarious workers to talking about small capitalists. In the context of developing countries, Giraldo asks, can half of the working population really become a successful businessman or woman? (Giraldo, 2016, p. 136). Guevara also makes the following points which I share: First, the discourse hides the fact that, to be successful, entrepreneurship requires individuals with a total amount of capital that is not commonly shared by the public poor (Guevara, 2013). Secondly, it strengthens the vulnerability of poor individuals by making them believe that they are to blame for their failure (Guevara, 2013). This is exemplified by the words of one street rebuscador who once told me: *gallina criada con mierda, cuando se le tira maíz... dispara* (if you drop corn to a chicken nurtured with shit, it will shoot you). He was convinced that he was the one to blame after being unable to make the ‘right’ choices to take advantage of a small loan given by the government.

If many of those criticisms are true, then why is the entrepreneurship discourse so successful within street rebuscadores? It gives hope in the end. Without hope, how can you go on? It is a mechanism of domination that is linked to seduction more than to coercion (Bourdieu, 1990). It makes vulnerable individuals feel powerful, awakening the illusion of being able to choose and to create their own destinies (Guevara, 2013). It also resonates perfectly with their desire to work independently. A male street vendor once told me: “it is different to work 12 hours for someone than 24 hours for myself. I might not sleep, but the money I make, I make it for myself... not for some unknown asshole” (Audio 120916-001). It also appeals to creativity, autonomy, to the cultural code of ‘becoming someone’ of ‘beating poverty’ and doing it against all possible odds. A male street vendor told me:

“See that car with armored glass? It is owned by a guy who was born poorer than me. What he has done is remarkable (*es verdaderamente un berraco*). I want to be like him. If he did it, anyone of us can do it. (...) Why is he inside a car with armored glass? (I asked) Well... no one becomes someone without making some enemies right?” (Audio 120912-001).

‘Becoming someone’ is an illusion for most street rebuscadores. Most of my informants did not escape poverty or have been able to reach the entrepreneurs dream. But again, most street rebuscadores make more money in the streets than in any other available job for people with similar amounts of total capital, although they have to work longer hours. Making more money, strengthens the interiorization and reproduction of choice narrative amongst them. According to a female street vendor:

“I definitely make more money here. The street gives me money every day, and if you know how to handle money, then the street is the best choice (...) of course; there are those who don’t make money, but that is either because they are not well located or because they don’t know how to sell. (...) The only problem I find here is lack of time. Even if we don’t work fixed hours, we end up working many more hours than in any business... but I don’t care. I used to work in a formal business and I don’t miss that job at all... AT ALL! I actually got a lot of rest since I have been working in the street. Plus, I feel free. If I want a day off, well... I just take my day off. And you know I had a job with paid benefits! I know it sounds crazy but this is actually the only place where I’ve worked without paid

benefits, and the place where I've made more money in my life (she laughs)" (Audio 121003-001).<sup>61</sup>

Self-employment and the entrepreneurship discourses are particularly successful among women *rebuscadoras*, because for different reasons most of them do not share the aspiration of holding a full-time job. According to Vosko, full time jobs were structured over the male breadwinner/female caregiver contract. More specifically, the gender contract assumed a male breadwinner with access to "a full-time continuous employment relationship with a single employer and in receipt of a family wage", together with a female caregiver "performing unpaid work necessary for social reproduction, possibly earning a "secondary wage", and receiving supports such as social insurance via her spouse" (Vosko, 2010, p. 8). Full-time permanent employment is therefore gendered. However, the male breadwinner/female caregiver gender contract upon which it was built is disintegrating. According to Vosko, "even though gender relations remain a site of contestation, the notion of a normative citizen male worker unencumbered by caregiving responsibilities is, thankfully, "history"" (Vosko, 2010, p. 209).

As much as I share all the criticisms against the entrepreneurship discourse, I also think it is undeniable that self-employment has been useful to empower street *rebuscadoras*. Entrepreneurship might not be enough to escape poverty, but it helps women fight for less harmful gender arrangements. For instance, when I asked women of different ages if they could help me

<sup>61</sup> Scholars from different disciplines corroborate similar findings (Dakduk, 2008; Avendaño & Paz, 2013; Muñoz & Andrade, 2014).

explain why there were always more women than men in the streets I visited, common answers included the following:

- Female street vendor (23 years old) - “Because women are stronger (*más berracas*), and one has to be strong to *rebuscársela*, one has to be strong to work independently.” (Audio 120912-001).
- Female street vendor (36 years old) - “Because we are the ones fighting the battle. While men hide, we fight the battle with our children in our arms.” (Audio 121003-001)
- Female street vendor (42 years old) - “What you find here are fighters, warriors. Women who know they have to stand up right after falling. I used to work in a business office and things were different. Rules, rules and rules... and people thinking how not to comply with rules. Here the attitude is different. It is the attitude of fight, of survival, and I always felt like a fighter. Maybe that’s why I feel better here.” (Audio 121003-001).
- Female street vendor (43 years old) - “I could have studied... sure... but I decided to move with a guy who told me to help him to study first. He promised that when the children would be older he would help me... and I was fool enough to believe him. When the kids were older, he left with someone else. Those are the type of bad decisions one makes... but that is also why I love the street so much. The street is tough but it is a school, the school of life. One learns not to be afraid, to feel strong... I would never be so stupid again (*nunca más volvería a ser tan pendeja*). (Audio 121003-001).
- Female street vendor (28 years old) - “The street saved me. I arrived here when I divorced the father of my son. I thought I was going to go crazy, but the street saved me. It allowed me to recover my dignity.” (Audio 121003-001).

- Female street vendor (53 years old) - “The street teaches you that you need men as long as they provide you with good sex (*mientras le hagan rico a una*). They are not really needed for anything else.” (Audio 121003-001).

Women’s answers were strong and consistent. Most of them feel the street has empowered them. At the beginning of my fieldwork, I was frequently criticized by other women for being ‘too gentle,’ ‘too soft.’ However, the day finally came when I felt genuinely welcome. It was a day when a public employee of the local mayor’s office of Ciudad Bolívar noticed I was ‘different’ and asked me who I was in front of a group of female street vendors. “No one really,” I answered. Patricia interrupted me: “No one? Ha! Of course you are not ‘no one.’ You are a fighter... just like us... she is one of us” (Audio 121011-001).

The answers provided by men to the same question were clearly different. There is no doubt that gender power relations are being redefined by structural changes in the composition of the labour market, and that many men are feeling threatened. Common answers amongst men of different ages included the following:

- Male street vendor (38 years old) - “There’s usually more women than men because nowadays women have to support men economically and we are obviously more expensive” (Audio 120912-001).
- Male street vendor (52 years old) “because most women don’t have a husband, and if they have, they prefer to hide it” (Audio 121003-001).

- Male street vendor (42 years old) “because nowadays they are just crazy. Sometimes deliciously crazy, other times just violently crazy” (Audio 121003-001).

Most men could not answer my question without making a joke. They felt threatened and nervous. Self-employment is increasingly becoming the principal way to generate income for women, allowing them to believe they can provide for their family without having a partner, and without having to withstand the humiliations many associate with subordination and formal employment. Having a steady income allows women to demand less harmful arrangements, to ask for a divorce, and to feel strong and able to make their own decisions. That doesn't mean, of course, that female subordination is over. Social constructions that characterize patriarchy such as the one associating housecleaning and caregiving responsibilities with women are far from being overcome. However, many of the unspoken traditions and conventions performed in everyday life that characterize strong patriarchal arrangements, are definitely starting to be threatened.

I argued that women's 'choice' of self-employment in the street increase their agency in terms of demanding less harmful gender arrangements, but I hope it is clear that it is still a 'choice' made within a context of sexist structural constraints. For instance, most women say they 'prefer' self-employment because flexible hours allows them to comply with a lot of everyday duties, particularly with caregiving responsibilities which – as stated before – clearly affects them disproportionately. A female street vendor explains:

“The street gives women more time for their children. I used to work in a business, and I arrived home so tired that I just shouted at my children so they would hurry up with their

homework and go to sleep. The street has given me more time for my children. It's a pity that they all grew up and that my time is over. I could have helped them with their homework" (Audio 121003-001).

Caregiving is not limited to childcare but includes other forms, such as care of a sick parent or spouse and care of the elderly. Street rebuscadoras are usually subject to a triple burden (ensuring housekeeping, complying with caregiving, and providing a daily income). However, most of my female informants argued they 'liked' working in the street because it allowed them to comply with caregiving responsibilities. I always questioned that kind of rhetoric because most of them did not have much choice. For instance, according to Patricia, a full-time job is a "luxury for women without responsibilities" (Audio 120912-001), by which she meant those with only one child, or those with someone else to take care of the sick and the old. She added "if my little girl was raped with me working close by and trying to take care of her as much as possible, imagine what could have happened if I had had a full-time job?" (Audio 120912-001). For a female head of the household who doesn't count on the support of their children's father or on the support of a big family, it is almost impossible to have a full-time job. As Bourdieu argues, it is easier to refuse what is anyway denied and to say you 'like' the inevitable (Bourdieu 1990, p. 54). However, questioning that kind of rhetoric does not mean that I don't acknowledge that many of them actually enjoy flexibility. As Vosko argues, "to question the rhetoric surrounding 'choice' is not to dismiss many workers desire for flexibility" (Vosko, 2010, p. 210), and I would add, is not to dismiss that some female rebuscadoras actually enjoy complying with caregiving responsibilities. My aim is just to question 'choice' when few alternatives are available, especially after I saw women driven to physical and emotional exhaustion.

Finally, the resistance shown by street rebuscadores to work with each other, to build economies of scale or to start collaborative projects, does not mean they cannot be supportive of each other during everyday duties. For instance, street vendors will take care of the working spot of other vendors, or they will look out for their children during temporary absences. I also met recyclers who used to pick up “good stuff” for those who were ill and could not walk, so that they could sell them in the street. A female recycler once told me: “I try to help as much as I can... if someone is ill, then I try to go to the northern (wealthier) part of the city to pick something good that they can sell. One has to be supportive, because one never knows...” (Audio 121014-001) In other words, street rebuscadores can help each other without receiving immediate economic compensation. As Bourdieu makes clear, debts of gratitude can be understood as a form of symbolic capital that can be convertible in the future into more traditional forms of economic capital (Bourdieu, 1987a).

#### **4.4.3 Living with a minimum uncertain daily family income (el diario) and to be constantly ready for change.**

Street rebuscadores work each day to amass what they call *el diario* (daily income needed to cover life’s basic necessities). Kenbel emphasizes that they act under the logic of living the present without having space for long-term planning (Kenbel, 2010, p. 22). Giraldo adds that although their daily income generally fluctuates for different expected and unexpected circumstances (weekends, holidays, commercial seasons, rain, disease, evictions etc), street rebuscadores generally enjoy more stability and less uncertainty working in the street than in ‘formal’ jobs available for people with similar levels of cultural, economic and social capital (Giraldo, 2016, p.

79 and 100). When I started my fieldwork, I was most concerned about family income. I used to ask street rebuscadores how much money they made per month, because within my habitus income is usually paid or accounted for on a monthly basis. Generally they had no idea: “I can tell you approximately how much I make in a day, but in a month? I don’t know (*es que como uno gasta es el diario...*)” (female street vendor, audio 120817-002). According to my field notes, street rebuscadores reported a daily income between 20.000 – 60.000 pesos (approx. CAD 9 - 27 in 2016). That means they made on average 1,080.000 pesos per month (approx. CAD 490 in 2016) assuming that they rested one day per week (which is not necessarily true). In any case, their monthly average income was higher than the minimum wage (689.454 pesos – approx. CAD 312 in 2016). Daily income was mainly used to pay for food, rent, loans (*gota a gota*), utility bills, transportation, school day care, and medicines (Audio 120817-002).

The importance of *el diario* became obvious to me during the many meetings I attended with street rebuscadores. While I was waiting with Patricia, Isadio and other street vendors for a meeting at the local mayor’s office of Ciudad Bolívar, they had the following conversation among themselves: Patricia (tired of waiting): “are you going to pay for my *diario* Isadio?” Isadio: “*Hay mija*, who is going to pay for mine? If we continue like this we are going to starve (*si seguimos en ésta maricada nos vamos es a morir de hambre*) (Audio 120917-001). Their concern was not isolated. During the meetings, it was common for street rebuscadores to make clear that their subsistence depended on a daily income and that they couldn’t lose time. German once confronted a public official who was reluctant to start a meeting without his colleague with the following statement: “with all your respect, if I don’t work, my family won’t eat. I live with *el diario*. Unlike you, I don’t have a salary and I don’t get paid to attend meetings. I’m not saying that losing two

hours will conduct me to extreme poverty itself, but we need to start right now” (Audio 120821-001). In fact, the urgency of achieving *el diario* is maybe one of the reasons why many of the leaders I met, could actually ‘lose time’ attending meetings, only because they had additional sources of income. According to Ernesto:

“I can give myself the luxury of wasting time defending vendors, because I rent a small house I bought with the money of an inheritance. I am very human, very social... I was a true hippie back in the days. That is why I try to help. I know they only have their *diario* because I lived like that for many years. I know what it feels like.” (Audio 120831-001)

As street rebuscadores need to gather a basic daily income, they cannot afford the unemployment gaps between temporary or part-time jobs typical of the globalized era. The family is simply unable to cover them for long, so they have to *re-buscarsela* (find quickly something else to live from and survive). There is no welfare in Colombia, so that excludes the possibility of using it to bypass unemployment gaps. Following the methodology used by Lipscomb and others (2007), I asked street rebuscadores how long they could be out of work without pay before the loss of income would be a major problem. According to my field notes, loss of their income creates hardship usually for more than a week and almost always for more than two weeks. In all cases, loss of their income for more than three weeks would become a major problem. For instance, I was once with a small group of street vendors in Suba. They were selling different items in a street that was going to be paved, when a female street vendor told me:

“They are saying (referring to the police and other public officials from the local mayor’s office) that we are forced to rest for 8 to 15 days. And who is going to provide us with *el diario* during those days? And those bastards are stupid enough to say that it is for our own good! Is it good for us to stop working? Or is it that those sons of bitches are stupid enough to think that starving is good for us? (*será que esos hijos de puta piensan que aguantar hambre nos hace bien?*)” (Audio 121025-007).

Living with *el diario* also means that the most vulnerable segment of the working population buys goods at higher prices than wealthier citizens. For instance, it is common to see street rebuscadores buy two expensive tablespoons of sugar for their daily needs, instead of a full bag of sugar at a cheaper price that would last them at least two weeks. Rent is also often paid on a daily or weekly basis. As Roig points out, fractionated consumption implies that goods are acquired at higher prices both in absolute terms as well as in relative terms when associated with the income of the poor. It is the opposite of economies of scale (Roig, 2017). As a male recycler once told me: “have you ever seen one of us picking a shopping cart and filling it? Of course not... people here live on a daily basis, on buying 2000 pesos of tomato per day (*de los 2000 de tomate diarios*)” (Audio 120817-001).

Living from *el diario* also implies, that the price of the items sold by street rebuscadores is usually not established by market prices, but by the need to amass the daily income they need to cover life’s basic necessities (Guevara, 2013). For instance, according to my field notes, it is common to see street vendors lower the price of the goods they sell by the end of the weekend or late at night to secure *el diario* if needed. A female sex worker also told me: “I ask some clients –

the ones I like the most - to come on Tuesdays and they will get a good discount. Tuesdays are the hardest days to make *el diario*, so one has to think about different strategies (*una se tiene que ingeniar sus estrategias*)” (Audio 121025-007).

Living from *el diario*, has also an undeniable impact upon how street rebuscadores understand and live with time. The fact that they don't have any plans for the future, for instance, can be understood as a defense mechanism against the unpredictable or even the tragic, but it can also reflect the somehow liberating experience of living in very short intervals of time. *Cada día trae su afán* (each day brings/presents new challenges), is a common expression heard in the street. The relationship of street rebuscadores with time is one of the ways in which I could see more clearly how “habitus is internally incorporated through postures, movements, feelings and gestures of the body,” how it is “not a mental process.” (Sylvestre, 2007, p. 367). Having been socialized in a very different habitus, one of the many things I will always be grateful for is how during my fieldwork I could practice - if only for brief moments - that embodied experience of living life in very short time frames. As a female recycler told me: “Once you take the street (*ya cuando uno agarra la calle*), you start to live day by day and not thinking about the future” (Audio 121008-001). From a public policy point of view, short time frames and lack of planning can be very problematic. However, there is a strong liberating logic underneath that practice that should not be underestimated.

Finally, living from *el diario* also means that street rebuscadores need to be extremely flexible and constantly ready for change. As Mendoza States, “if it rains they will sell you umbrellas, if it's hot, ice-creams.” (Mendoza, 2011, p. 124). Street rebuscadores need to accommodate to

changing economic and social conditions. As a female street vendor told me: “I cannot wake up to see my children starve. That is something no one can live with (*eso no lo aguanta nadie*). You simply get up and try to rebuscártela somehow” (Audio 120916-003). More specifically, Ernesto gave me the best possible explanation when I asked him to explain in depth what being deeply flexible meant from the standpoint of a street rebuscador:

“I was trying to explain that to a *gringa* the other day... I told her that *el rebusque* was sent to us from above to teach us how to survive... but *gringos* are usually atheists, so I had to give her an example. I once had to live two weeks without my *diario* after my crafts were seized during an eviction. So what did I do? I dismantled my motorcycle the best way I could, and got back in business by selling it by parts. I told her that being adaptable, being a true *rebuscador*, means being always recursive (*no bararse por nada*). The problem is she didn’t understand what *bararse* meant, because apparently there is no word for it in English” (Audio 120831-001).

Being adaptable however has its own limits. For instance, rebuscadores are not ready for change if they feel it will make their lives more difficult. Different mayors in Bogotá implemented over different periods of time perhaps one of the most aggressive public space recovery campaigns in the global south (Donovan, 2008, p. 30). Most of those campaigns, however, were not successful, because street vendors were relocated in places away from massive transit areas where their sales decreased (Giraldo, 2016, p. 119). In fact, during my fieldwork, it became clear that change was unsuccessful when it was triggered by public authorities or by law, and that it only really happened when market forces or personal circumstances triggered it. For instance, I met Patricia as a street

vendor, but approximately after a year she had to change her productive strategy from selling vegetables in the street to opening a closed door 'bar.' She explained the transition in the following words:

“Police is never going to be able to get us out of the street. Never. But fruvers (small shops organized by wealthier food brokers) made that miracle happen (*les hizo el milagrito*). They look clean, they look nice, and they are selling fruits and vegetables in small bags of 500 and 1000 pesos each (CAD 0.2 and 0.4 in 2016). They also allow people to get rid of the bad fruits and vegetables that are already packed and change them for good ones that they can pick by themselves. Most of us cannot compete with that. See Laura? It is either alcohol abuse or economic failure that can get us out of the street. Not the police.” (Audio 121008-002).

#### **4.4.4 Having big families.**

During my fieldwork I was thoroughly questioned by street rebuscadores (especially women) about my family. I have no brothers or sisters, my father died years ago, and at the time I had no children. Isadio's wife (50 years) confronted me once in front of a group of at least five other street rebuscadores and gave me a (kind) but strong warning:

“Let's hope that at your age you can still have children. Don't give us more crap about it... when time is over, guess what you are going to miss (*lo que vas a añorar*). We don't want you to be alone. Men come and go, but who is going to take care of you? Family is all we

have in life, but yours is just too small. Hate them or love them, or hate them and love them, but it's all we have" (Audio 120916-003).

Given the way I was raised, it would never have crossed my mind to lecture someone for not having children, much less, think and openly admit I could have children to keep me company or care for me in my old age or during bad times. For street rebuscadores, however, it is not only a matter of *wanting* but of *needing* large families, because large families play a very important economic role in their lives. As Giraldo explains, social protection schemes in Colombia are tied to a labour contract. Among self-employed rebuscadores, the traditional role of the family is extended, because in addition to the biological and social reproduction of the group, the family also assumes the roles of providing economic support and of helping individuals to cope and recover when something goes wrong (Giraldo, 2016, p. 76).

In Colombia, the only non-contributive social protection mechanism is the subsidized health-care system. Social insurance schemes all require that beneficiaries make a financial contribution. As vulnerable self-employed workers are very rarely able to contribute, their social security rights are restricted because they don't have any real access to social pension, unemployment or disability benefits. Consequently, family members are usually carrying the responsibility of replacing the worker during their temporary or permanent absences. If the self-employed worker is very sick, for example, members of the family who depend on the sick worker's income but who cannot easily find a job for themselves (e.g. children and the elderly), do their best to take the place of their loved one and they are usually able to do it at least to some point. That was the case of a male street vendor (50 years old) who suffered from advanced colon cancer spreading to his pancreas

and liver: “while I was healthy, I worked all day long, but nowadays when I feel I cannot walk very well after my chemotherapy and radiotherapy treatments, or when I am hospitalized, my wife takes my place.” (Audio 120819-001). His wife, however, was a 62 year old woman with her own health problems. Therefore, his brothers and sisters (eight in total of whom I met four) complemented their daily income.

The case of that street vendor was not exceptional. In the street, extensive families usually cover risk. Ramirez conducted research with street vendors in the locality of Suba (Bogotá) during 2013. One of her main conclusions was that “in case of misfortune, the only insurance of street vendors is to recur to their children and family” (Ramírez, 2013). According to my field notes, street *rebuscadores* support between 4 to 10 members of their closest family, but at the same time receive help from their closest relatives to perform their daily activities. Male street vendors, for instance, generally admitted that their partners helped them while they were away for different reasons, or if something unexpected happened. While I was conducting fieldwork in Ciudad Bolívar, for instance, Gustavo was in a very bad economic situation. Another male street vendor explained his situation as follows:

“Gustavo is screwed. I told him to find a woman. I know he likes to help people, to go to meetings and stuff like that, but then he needs a partner to sell for him while he’s losing time. Right now he is sick, and look what is happening. You just need a partner. I’m losing time talking shit with you (*hablando mierda*) because my wife is staying in my working spot. Any other way we would simply starve.” (Audio 120916-001)

While partners helped male street vendors in unexpected situations, their children and brothers or sisters usually helped female street vendors. Teresa once told me:

“I used to sell in the mornings while my children studied, so that I could spend most of the afternoon with them, or go to *rebuscármela* any other way. However, one of my daughters got sick and I had to take care of her, and after that, I needed a surgery so I couldn’t work... don’t you see? Life does not give you a break (*la vida no da tregua*), but I had my other children, and fortunately those little boys managed to sell with the help of one of my sisters while I was gone. You see? My God squeezes but does not strangle (*Mi dios aprieta pero no ahorca*).” (Audio 121008-001).

And it was precisely to God that most street *rebuscadores* turned to when asked about their plans for their future or their old age, whenever family could not or would not be present for any given reason. While a small minority had actually made plans such as building extra space in their house for renting (*echar plancha*), most resorted to faith. For instance, a female street vendor told me:

“One should not worry for things like that *mamita*... we have to take it every day at a time... but you are right, no one really knows what is going to happen *mami*... If I get there and my children turn their back on me, my God is so big and powerful that he will send me some kind of help... and one will lack nothing if one does good deeds... I was there for my mother... so, why would I waste time worrying right now? We have no certainty that we will wake up tomorrow (Audio 121003-001).

In sum, in the case of street rebuscadores, risk is generally not covered by insurance schemes or long term planning, so there is the expectation that it will be covered by their families, or if family fails, by God: “God will provide.” But family’s help is not only vital in unexpected situations, or situations of illness, but also for day-to-day duties. Street rebuscadores regularly need the help of other members of their family (usually children, siblings and seniors) to comply with all the requirements needed to perform their different productive strategies. While according to official statistics of DANE, family workers without compensation occupy around 0.2% of the *formal* workforce, they occupy around 4% of the *informal* workforce.<sup>62</sup> The number is not insignificant, especially if we consider that many might not appear in official statistics, mainly because family work without compensation is usually denied. Like housekeeping, it’s part of culturally invisible forms of work that are rarely registered. It is very common, for instance, that girls (rarely boys) help with the family business (cooking, cleaning vegetables, ironing clothes) until late at night. However, if you ask their mothers about their children’s work, they will immediately deny they *work*. They will say that their children study and perform regular household duties, but will likely deny labour not only because of the potential legal implications, but because as frequent as it is, it’s also the object of social disapproval.

Finally, as many authors suggested, there is a lack of differentiation between family and labour activities within the informal or popular economy sector (Kenbel, 2010; Guevara, 2013; Giraldo, 2016). For instance, Giraldo argues that a key element to understand how the popular economy works is to see how the frontier between the public and the private is blurred: “In an industrial

<sup>62</sup> See: <http://www.dane.gov.co/index.php/estadisticas-por-tema/mercado-laboral/empleo-informal-y-seguridad-social>. (Last viewed, April 2017)

society, remunerated labour was exercised outdoors, while domestic work was carried out in the hidden private space of households. The first was regarded as a masculine activity, while the second as feminine. As a result, women's labour was not recognized. Within contemporary popular economy, the frontier between the privacy of the household and the public world is lost, because an important part of the economic activities are carried inside the households, although the monetary income is generally perceived in the street. Families acquire an economic role because they are the very mechanism through which income is generated" (Giraldo, 2016, p. 76; my translation<sup>63</sup>).

Rosa's story (52 years old) illustrates that lack of differentiation in a family of street *rebuscadores*. Rosa is the mother of nine children. She works approximately 10 to 14 hours a day as a recycler:

"I have too many mouths to feed, but I am a good worker. I start at 4am with the help of two of my daughters. We walk for six or seven hours looking into trashcans and getting what we can. Meanwhile, my sister who lives with one of my sons and me sell in the street the good stuff that we managed to collect the days before. They make lunch with the money they get from that. Sometimes when we come back, we go straight to the waste disposal warehouse (*bodega de reciclaje*) where my other two sons are waiting for us to separate the trash in differentiated piles of plastic, paperboard, metal scrap (*chatarra*), bottles and

<sup>63</sup> Original quote: "En la sociedad industrial el trabajo remunerado en el mercado se ejercía en la calle, mientras que el trabajo doméstico se hacía en el espacio privado (oculto) del hogar. El primero generalmente era una actividad masculina, mientras que el segundo femenina. Esto llevaba al no reconocimiento del trabajo de la mujer. Pero en la economía popular contemporánea la frontera entre el mundo privado del hogar y el mundo público de la calle se está perdiendo, porque las actividades económicas cada vez se hacen más al interior del hogar y sus ingresos monetarios se reciben en la calle. La familia adquiere un rol económico a medida que las famiempresas se convierten en el mecanismo para generar los ingresos necesarios para el sostenimiento del hogar."

so on. We sell from 150 to 200kg of trash every day. At night... well, at night we do household stuff and we work... I feel I never stop working, but that is a good thing. My kids can tell you a lot of crap about me, but all of them learned how to *rebuscársela*. They won't starve and that is for sure." (Audio 121003-001).

As Giraldo argues, blurring the frontier between the household and the economic activity can create tension within the family (Giraldo, 2016, p. 76). That impact is yet to be studied and will not be addressed here for street rebuscadores. For now, Rosa's story is useful to illustrate the lack of differentiation between family and labour activities, as well as how children get involved in daily survival activities performing different intertwined tasks (Kenbel, 2010, p. 21).

#### **4.4.5 Developing practical skills needed for their different productive strategies (cooking, heavy lifting, befriending clients, flirting, tolerating high and low temperatures, amongst others).**

As Dakduk puts it for the case of Venezuela: "Not everyone has the skills to *rebuscársela*, and the ones who know how to do it should be considered ingenious entrepreneurs, atypical Venezuelans, not for their economic shortcomings but for their ability to overcome limitations" (Dakduk, 2008, p. 71; my translation<sup>64</sup>). I collected many testimonies from street rebuscadores about the practical skills needed to develop different productive strategies, whether it is cooking, heavy lifting, tolerating high and low temperatures, tolerating long hours without food, etc. However, in this section, I will focus only on two of them that are less documented: befriending

<sup>64</sup> Original quote: "No todo el mundo tiene las habilidades para rebuscársela y quienes lo hacen deberían ser considerados personas emprendedoras e ingeniosas; unos venezolanos atípicos, no por sus carencias económicas, sino por su habilidad para vencer las limitaciones."

clients/flirting (in the case of male street vendors and sex workers), and tolerating strong smells (in the case of recyclers).

Interestingly, both my closest street vendor male informant (Isadio, 53 years old), and female sex worker informant (Gina, 27 years old) thought that the main practical skill needed to be able work in the street was to flirt, since that was the best way to end up befriending clients. Isadio, for instance, is the leader of the street known as “El Líder” in San Francisco neighborhood, Ciudad Bolívar, where I conducted participant observation. He had one of the best working spots any vendor could have because he was visible from almost any part of the street and he was in front of a store whose friendly female owner allowed him to take shelter when it rained. The day I asked him how he was able to get that excellent working spot, he replied as follows:

“Don’t think it is because I threatened someone! No... no, no. It is more difficult and simple at the same time. In this spot I started many friendships. I started to tell stories to the girls (*echarle cuentos a las muchachas*), and they like that, and they protect me more than anyone else. One has to talk to women so they won’t think one is mute. And they just enjoy their brief time with me (*esas viejas gozan conmigo miya*). You’ve seen me at work when I ask a woman to buy my avocados, I say that they are just like me: the smallest, blackish, wrinkled and buttery fruit of Bogotá! (*mis aguacaticos mamacita son chiquitos, negritos, arrugaditos y mantequilluditos como yo*). Ha, ha, ha!! They laugh so much with me, that they come back any number of times just to hear my stories” (Audio 120912-001).

I thought his answer was reasonable. Although Isadio is a big, strong man, maybe the most compelling reason why he is the leader of the street where he works, is that he has managed to build relationships with most of his fellow female vendors (who make up the majority), and has a large loyal clientele that is also basically feminine. At first, it was really shocking for me (socialized in a very different habitus) to put up with what seemed to me to be patriarchal, offensive, even abusive ‘compliments’ reinforcing sexist status quo made by Isadio to the women. However, it is undeniable that street rebuscadores are socialized in a deeply patriarchal habitus, where sexist oppression is deeply naturalized, and where his ‘compliments’ are taken as ‘harmless,’ ‘nice,’ ‘gentle,’ and ‘warm.’ In that context, flirting and befriending customers can be seen as an extremely helpful practical skill to be able to survive in the street. Something very similar happens with sex workers. Gina told me that many of her clients are not necessarily looking for sex but for someone to pamper them and listen to their stories:

“You approach clients by knowing how to flirt, but it’s really listening that allows you to have a fixed clientele. I should get a psychologist diploma for free. I’m sure that if I had the money to study, I would fall asleep in every class unless they let me teach. Sex work is not easy... because it’s not really about having sex. Not that having sex is necessarily easy either (she laughs)” (Audio 121008-001).

Tolerating very bad smells is also a practical skill that is needed in order to be able to perform certain kind of jobs in the street. As stated in the methodological part, one of the main difficulties I experienced during my fieldwork was to overcome what I felt was a natural impulse to physically reject the smell of trash or human wastes. Most eloquently, Georg Simmel argues that “the social

question is not only a moral question, but a nasal one.” And he adds: “many individuals of the upper classes would surely make considerable sacrifices in their personal comfort if they were asked to do so in the name of social or moral interests. They would give up many privileges and enjoyments for the disinherited, and if this does not happen yet to a greater degree, it is surely due to the fact that no appropriate forms have yet been found. But many would tolerate such renunciations and sacrifices a thousand times, rather than endure bodily contact with the worker, covered by the honest sweat of labour.” (Simmel, 1987, p. 686; my translation)<sup>65</sup> Well, it turns out that tolerating very bad smells is also a practical skill that is learned by street rebuscadores as it is needed to be able to perform certain kind of jobs in the street. According to a female recycler:

“Being able to work in this, is something that often has to do with one’s own story (...) My mother taught me how to separate trash since I was very small because it was there where I could find my toys. She taught me what I needed to learn to survive... but it’s not easy. Don’t think I don’t feel revolted sometimes. Like any other job, recycling is something you learn to do. It’s my job, but it’s not what I want for my children.” (Audio 121008-001)

In addition to the practical skills street rebuscadores have to cultivate to work in the street, Mendoza argues that they need to develop a keen intuition, emotional tools to be able to control

<sup>65</sup> Original quote: “La cuestión social no es sólo una cuestión moral, sino también una cuestión nasal (...) Seguramente muchos individuos de las clases superiores realizarían sacrificios considerables en su confort personal si se les pidiese en nombre de intereses sociales o morales; renunciarían a muchos privilegios y goces en pro de los desheredados, y si ello no acontece todavía en mayor grado, se debe, seguramente, a que no se han encontrado aún formas apropiadas. Pero muchos tolerarían mil veces tales renunciaciones y sacrificios antes que soportar el contacto corporal con el obrero, cubierto por el honrado sudor del trabajo.”

constant uncertainty, the capacity to be permanently alert, as well as the ability to improvise different strategies in the moment (Mendoza, 2011, p. 133). Not everyone can develop those skills, which explains why there are hierarchies among street rebuscadores. For instance, workers who share similar levels of total capital but have additional limitations that do not allow them to develop the skills they need to survive as self-employed workers in the street, are generally ‘hired’ by those who have developed those skills. I am referring here to young people with alcohol or drug problems, children, the elderly, homeless people and sometimes the mentally or physically disabled. They do not have the necessary skills to be precariously self-employed, so unfortunately they depend on what other street rebuscadores ‘want’ to give them to survive.

The stories of Rosa (18 years old) and Carol (21 years old) can illustrate how that type of hierarchy works. A female vendor (43 years old) ‘hired’ both of them to help her clean and slice the fruits and vegetables she sold in the street:

“If one hires someone, it’s because you want that person to do something you don’t like to do. In my case, I hired them (Rosa and Carol) to clean and slice because I feel tired. I pay them 10,000 pesos for a day of work (approx. CAD 4.5 in 2016) ... but that is when they actually show up (...) I know the poor girls are a disaster (*esas pobres niñas son un desastre*), but when they work, they work, and I am one of the rare people who still like to treat people fairly. In fact, I think they like and respect me because I treat them fairly. I give them the 10,000 pesos regardless of how much I sell during that day, and of how much I can keep for my own *diario*. You know that not everyone does that.” (Audio 121003-001)

Both Rosa and Carol are young women with drinking problems who have to work because each has a child to support. Their drinking addiction impedes them from showing up at work sometimes. According to their employer, that is why she kept both of them:

“See for instance what happened today? Rosa did not show up because she must have been drinking a lot last night (*se la debió haber pegado fuerte anoche*). They both drink a lot, and frequently get into a lot of problems, but they have to work because they both have children. Rosa, for instance, has a boy who is almost two years old. Last week she did not come home or come to work for three whole days. She finally appeared on Wednesday... I think. Yesterday she came back to work but I assume she went drinking again (*seguro se fue a jartar otra vez*) because she didn't come today. Carol did not show up yesterday. Her mother was really worried because she heard that her daughter was injured last night (*que habían chuzado a su hija*). I asked her to calm down, I bought her a cup of aromatic water and I assured her that she might just be around drinking or with a guy she picked up last night. Fortunately she appeared unharmed today... I always think about their children. Poor little boys. Those girls picked up a drinking problem (*se alcoholizan*) and they have to start working for anything. That is why I try to be fair with them.” (Audio 120926-003)

Over time, I learned much more about Rosa and Carol's lives. Much to my surprise, Carol told me that she had started to study to become a nursing assistant. Her brother was paying for her tuition fees:

“I was actually really good at it, and I liked it. However, not long after I started studying, I got a job, but I was fired because I didn’t get along with my boss and I ended up physically fighting (*agarrándome de las mechas*) with her. You know... there are people who just feel superior, and I couldn’t put up with that” (Audio 121008-001).

Carol’s boss was suspended for six months, while she was fired permanently. After that, she started drinking, got pregnant and had to start working in any available job. When I asked her how she managed to survive with her daily income she answered:

“My mother helps me a lot... and well, the booze and the party are paid by the person who invites first (she laughs). Last night I was in a good place but they started firing weapons. Nothing happened to me but I had to leave because if I don’t work that kid will starve. That kid screwed my life Laura. I think I can tell you that because you won’t go judging around or talking shit (*hablando mierda*) of the people around... I feel tied. I was free before” (Audio 121008-002).

So who are the ones who manage to be ‘employed’ by street rebuscadores? Normally, people who lack the necessary skills to be precariously self-employed, or in Carol’s employer’s words, ‘who don’t have what it takes to be a real entrepreneur’ (Audio 121008-002).

#### **4.4.6 Acting like second-class citizens.**

*Recycler (36 years) - “We (street rebuscadores) are just like a doggie full of fleas. Politicians from the left usually try to clean us... politicians from the right normally prefer to kill the animal” (Audio 120831-001).*

It seems unavoidable that street rebuscadores feel and therefore act like second-class citizens. For example, they have good reasons to feel that their voice is not heard in different public spheres and act accordingly. Omar (64 years old) a street vendor and one of my main informants, used to believe that the only way to get a public official to listen to them was to block the entry to their offices. A female vendor I met while I was waiting for a meeting with the local mayor of Suba, corroborated that idea:

“They just don’t see us. I managed to gather almost 700 women and to create a productive project. Isn’t that what they want? But this is the seventh meeting they cancel. What do we need to do to get their attention? Who do I need to screw around here?” (Audio 121022-001).

During my fieldwork it became obvious that public authorities did not hear street rebuscadores through regular means (for instance, asking for a meeting) unless they appeal to other methods. Several times after street vendors protested against public evictions, for example, different public authorities agreed to meet with them as long as they stopped public protests. However, after a first meeting where vendors basically had the chance to blow off steam, and to agree on a schedule to

work around different issues, nothing happened and vendors ended up reacting in different ways. Once, after the fifth time that a meeting was canceled, a street vendor told me:

“I’m leaving Laura, I cannot take it anymore. I don’t know how to read or write... I’m dumb. I only went three years to primary school. The day I got my ID I almost couldn’t even sign. Do you really think that someone like me is going to get an appointment?” (Audio 120916-001).

Others, especially the leaders who are used to persevere even when feeling deeply humiliated, recur to other methods. Isadio, for instance, had the following interesting conversation with Patricia during the same event:

- “Patricia – The guy (referring to the public official who was supposed to meet us) just left for the bathroom. Isadio, get inside his office!
- Isadio – (feeling quite uncomfortable) But we are supposed to wait...
- Patricia – To wait? When you feel sick and they make you wait in line forever, what do *people like us* do?
- Isadio - You get inside the doctor’s office.
- Patricia - Exactly! So do it!” (Audio120917-001)

Street rebuscadores also feel like second-class citizens because they are frequently associated with tax evasion and crime. Ernesto once told me:

“What really pisses me off is that we are treated like thieves. Come on... our only real crime is poverty! We don’t even evade taxes as they do. People tell you that if you come from SL 1 or 2 you are not a real citizen because you don’t pay your taxes... but we pay more taxes than everyone else! If I give myself the pleasure of buying a chocolate I am paying IVA (sales tax). In fact, I’m the type of person who pays more taxes! If you own a building, you hire a fancy lawyer and an accountant and you make them work all day long to figure out how to evade taxes... maybe the only difference is that we don’t have the knowledge, or the money to defend ourselves.” A male recycler added to Ernesto’s words: “I’ve never stolen anything in my life... but every time they treat me like a thief, I feel a strong impulse to steal from the bastard who treated me like shit” (Audio 120818-001).

Furthermore, in terms of social security rights, street rebuscadores feel like second-class citizens, because they get what many believe is second-class health care. Before 2008, the content of the Mandatory Health Plan (POS) of the contributive system (intended for those who have the economic capacity to contribute) included many more medicines, procedures, services etc., than the Mandatory Health Plan of the subsidized health care system (intended for those without economic capacity to contribute). In 2008 the Colombian Constitutional Court ordered to unify both systems (ruling T-760/2008), but unfortunately, there is still the perception that the quality of healthcare offered to poor people is significantly worse. A female street vendor told me:

“If you are a second-class citizen, you receive second-class healthcare. Or have you ever seen a rich kid in this country with meningitis, harelip or physically deformed? No! Or can

you compare your white, beautiful cavities free teeth to mine? No! Why? Because your parents could pay for good healthcare” (Audio 120819-001).

If street rebuscadores feel like second-class citizens, they will act accordingly. For instance, I was always surprised by the fact that many did not carry their ID (*cédula*), and did not even remember the number. Middle class citizens in Bogotá need their ID for almost everything (attending a medical appointment, entering a public building, paying with their credit card, taking an airplane, voting etc.) However, many street rebuscadores manage to live without having the very card and number that recognizes them as citizens. Of course, there is no coincidence.

Also, as second-class citizens, street rebuscadores show deep distrust towards the public sphere. This is reflected in their daily practical actions. They believe that law - as well as those who act in its name - cannot be trusted. A male street vendor recalled an episode that clearly illustrates how distrust is frequently well earned by public authorities:

“Someone who worked for the local mayor visited us. He was very kind, and asked us to pick up our stuff so that he could take some photos of the street to send to his boss. He said that making his boss believe that we were evicted was the best way to protect us, and that we could go back to work the next day. Next day the street was full with police and they said we couldn’t go back. We couldn’t work in our spot from quite some time. Finally, we returned... but by paying 2000 pesos (approx. CAD 1 in 2016) per day to some of those police bastards who bribed us” (Audio 120819-001).

Finally, second-class citizens – and that was very hard and frustrating for me to understand - cannot even share the dreams of full citizens. At the end of my fieldwork, Patricia confessed that there was a time when she dreamed of becoming a lawyer. I was happy to hear that, because it felt as if she was proud of me, of our friendship, and of whatever I was able to give her during our time together. However, Isadio immediately reprehended her by making the next comment:

“Ha, ha, ha! Really? ...Well if you still want to become a lawyer, the first thing you need to do is to learn how to steal. Remember that we live surrounded by four different types of thieves: the police - if they catch you peeing and you don't bribe them they put you in jail, - the lawyer - if you don't give him money he will screw you, - the doctor (*physician*) - if you don't pay him he will let you die, - and the priest who lives from our pockets. Those four steal from us, take advantage of our poverty to make money.” “But what about me?” I asked, “you know I am a lawyer...” Isadio immediately answered: “No you are not! You are an alien.” (Audio 120917-001).

#### **4.4.7 Performing illegal yet legitimate actions supported by one main informal rule: survival at any cost.**

After spending a few months with street rebuscadores, I wrote the following note in my field notes:

“Rebuscadores and I definitely do not share the same limits and social patterns of coexistence. Looking back, I now I understand that I have internalized cultural codes such as ‘do not steal,’ because it was easy for me to abstain from doing it.”

I wrote that note as I was trying to understand the discrepancies between the informal rule of survival as shown in the daily practices of street rebuscadores and State law. A female street vendor once told me:

“Maybe there are no State laws that protect us... but there is always the law of reason which is above everything... and the law of reason is loud and clear: one has to survive at any cost. So, that is what we do. That is the law by which we live” (Audio 121025-004).

Let me give just three of many common examples of illegal yet legitimate practices from the moral standpoint of street rebuscadores. First, and most obviously, when street rebuscadores occupy public space, they violate several State regulations (section 92.10<sup>66</sup> of the *National Police Code*, section 69.2,<sup>67</sup> section 70.2 and 70.3<sup>68</sup> of *Bogotá Police Code*, amongst others). However,

<sup>66</sup> Spanish version. Artículo 92: Comportamientos relacionados con el cumplimiento de la normatividad que afectan la actividad económica: Los siguientes comportamientos relacionados con el cumplimiento de la normatividad afectan la actividad económica y por lo tanto no deben realizarse: (...) 10. Propiciar la ocupación indebida del espacio público.

<sup>67</sup> Spanish version. Artículo 69: Deberes generales para la protección del espacio público. Son deberes generales para la protección del espacio público, entre otros, los siguientes: (...) 2. Colaborar y facilitar el ejercicio de las actividades y funciones propias de cada lugar - circulación vial y peatonal, vida social, cívica y cultural, recreación activa y pasiva - y evitar toda acción que pueda limitarlas o entorpecerlas, y respetar el ordenamiento espacial y las normas de uso particulares a cada uno.

<sup>68</sup> Spanish version. Artículo 70: Comportamientos que favorecen la protección y conservación del espacio público. Se deben observar los siguientes comportamientos que favorecen la protección del espacio público: (...) 2. No encerrar, ocupar u obstaculizar el espacio público sin contar con el permiso para ello y solo en los casos en que las normas vigentes lo permitan. 3. No patrocinar, promover o facilitar directamente o a través de un tercero la ocupación indebida del espacio público mediante venta ambulante o estacionaria.

occupying public space is a legitimate action from the moral standpoint of street rebuscadores. According to a female street vendor:

“We are not asking them (the police and other State officials) to find us a job. They have never been able to do it... but they have to be real son-of-a-bitches to prevent us from working honestly (*que no sean tan hijueputas como para no dejarnos trabajar honestamente*)... to prevent a poor person from rebuscársela in any possible way (...) the law of life is that one survives as one can... and those bastards cannot deny the law of life... even if they believe we are illiterate, we deserve respect (Audio 121025-007).”

During a different conversation, a male vendor told me something very similar:

“I’m not leaving my working spot. They have to kill me first. That is the law of life. You make them kill you before they make you starve (*uno se hace matar antes de que lo pongan a aguantar hambre*) (Audio 120916-001).

Second, as street rebuscadores usually do not recognize the legitimacy of public institutions, deceiving them can be seen as a legitimate course of action. For instance, in Colombia we use a system called SISBEN (System for Selecting Beneficiaries of Social Programs), to target social programs for the poor and vulnerable.<sup>69</sup> Variables such as availability and quality of housing and basic public services, possession of durable goods, and human capital endowments, are included as indicators of a household’s economic well-being. Home visits are part of the mechanisms used

<sup>69</sup> For more about SISBEN, you can consult the web page: <https://www.sisben.gov.co>

to assess applicants. While we were talking about the recent home visit she received, a female recycler told me:

“If you show as much as a fridge to the people of SISBEN, you are screwed. One has to juggle (*uno hace malabares*) to get a good score, and get into *Familias en Acción* (conditional cash transfer program). My brother screwed everything up because he gave his correct address and showed them the stuff he had. Can you believe it? Who does that? I gave the address of a friend of mine who is in a very bad condition because he drinks a lot. Once there, they asked me about his old and filthy fridge. I told them I found it in the garbage. They asked me how many people slept on that bed, and I told them, my son and two nephews. I also told them I was raising my four children alone ... which you know is not true. And you see... I got a good score!” (Audio 120916-003).

Deceiving public authorities is therefore another example of illegal yet legitimate actions from the moral standpoint of some street rebuscadores. It happens frequently in scenarios where access to social programs is determined by social failure (Giraldo, 2016, p.142).

The third example relates to lack of access to the financial system (Muñoz & Andrade, 2014, p. 332). As street rebuscadores can rarely access the system, they obtain informal loans called *gota a gota* (drop by drop) at absurdly high rates (usually 20% of daily interest). Those loans are illegal because they charge higher interest than permitted by law, and usury is a crime in Colombia (section 305 of the *Penal Code*<sup>70</sup>). They are also a source of public concern for the State, because

<sup>70</sup> Spanish version. Artículo 305: *Usura*. El que reciba o cobre, directa o indirectamente, a cambio de préstamo de dinero o por concepto de venta de bienes o servicios a plazo, utilidad o ventaja que exceda en la mitad del interés

the business is usually controlled by armed actors that used to belong to different left or right wing armed groups (Giraldo, 2016, p.133; Guevara, 2013, p. 110). Therefore, when people do not pay, they can be physically threatened, attacked or killed, which means that *gota a gota* generates violence. However, accessing illegal loans is also seen from the moral standpoint of street rebuscadores as necessary and legitimate, although it is an act of non-compliance with the law. While we were talking about *gota a gota*, a male street vendor told me:

“Ha! Really Laura? Is *gota a gota* illegal? Really? So they would prefer us to steal to get the money we need to buy *el plante*? (money needed to start the business). Can you believe that? You explained to me once that rice is cheaper for wealthier people... then money should be cheaper too! That is life! It’s really amazing... we don’t complain of the unfairness, we don’t steal from them, we survive without hurting anyone, we don’t even ask them to find us a job or lend us money, but we always end up owing to those who invent the law... who own the country... Bastards!” (Audio 120819-001).

Therefore, for street rebuscadores, accessing *gota a gota* clearly illustrates another obvious discrepancy between State law and the informal rule of survival, which in this case is particularly ironic since usury was first criminalized in order to protect vulnerable citizens who needed money.

bancario corriente que para el período correspondiente estén cobrando los bancos, según certificación de la Superintendencia Bancaria, cualquiera sea la forma utilizada para hacer constar la operación, ocultarla o disimularla, incurrirá en prisión de dos (2) a cinco (5) años y multa de cincuenta (50) a doscientos (200) salarios mínimos legales mensuales vigentes. El que compre cheque, sueldo, salario o prestación social en los términos y condiciones previstos en este artículo, incurrirá en prisión de tres (3) a siete (7) años y multa de cien (100) a cuatrocientos (400) salarios mínimos legales mensuales vigentes.

The three last examples show that street rebuscadores are prone to disregard State law whenever they consider it as an obstacle for survival (Giraldo, 2016, p.112). Remember that street rebuscadores are usually socialized in very violent areas of the city where distrust and abuse are the rule, where survival is not taken for granted, and where different strategies are actually put in practice to survive. Remember also that habitus is fairly resistant to change, and that primarily socialization “is more formative of internal dispositions than subsequent socialization experiences” (Swartz, 1997, p. 107). Therefore, it is not surprising that street rebuscadores defend their right to ‘survive at all cost’ even if it means disregarding State law. We definitely do not abide by the same limits and social patterns of coexistence. Within their habitus, non-compliance with the law is a legitimate choice whenever it interferes with the informal law of survival.

#### **4.4.8 Sharing common yet unarticulated feelings of discontent with the political and economic system.**

Both Mendoza and Giraldo argue that street rebuscadores share common feelings of injustice, uncertainty and discontent with the political and economic system, although they are unable to articulate a common political discourse. According to them, this is so in part because it is not even clear to which group or social class they belong (Mendoza, 2011, p.123; Giraldo, 2016, p.75). Vargas and Urinboyev present a slightly different point of view. After conducting an ethnographic study of street vendors in Bogotá, they believe that vendors manifest their political claims through individual acts of noncompliance with the law: “street vendors’ non-compliance with the law is not only a coping mechanism to participate in the economic system, but also a way to voice their ideas and opinions about the unfairness of the political and economic system in which they live”

(Vargas & Urinbojev, 2015, p. 623). More specifically, they found that vendors share a ‘common legal consciousness’ articulated in two important political claims: lack of trust in the formalization policies, and in the ability of the formal social protection system to secure their basic needs if evictions take place (Vargas & Urinbojev, 2015, p. 636).

My empirical findings also show that vendors reject State’s actions to move them out of the streets, because they believe that the State is unable to secure their basic needs by providing them with a minimum income or with realistic and stable work alternatives. In that sense, I agree that they exhibit what Vargas and Urinbojev call a “common legal consciousness that is critical of the legal system regulating their work” (Vargas & Urinbojev, 2015, p. 636).” However, that ‘common legal consciousness’ only appears when they feel at risk. The male leader of a group of street vendors once told me:

“It is only under pressure, the pressure of the State or the pressure of armed groups (*de grupos pesados*) that we join efforts and get together. I know I can be killed for telling you this, but I actually miss evictions. When they occur, we all suddenly share common claims. Rebuscadores live on a daily basis (*quien se la rebusca vive del diario*). If we don’t feel touched, if we are not thrown out of the streets, then we don’t move (*si no los tocan, si no los botan de la calle, no nos movemos ni avisamos*) or even think about speaking with one voice. There is no time for that” (Audio - 120817-001).

In sum, street rebuscadores can share short-term claims when they feel at risk, but as Mendoza and Giraldo argue, that does not mean they can articulate a common political discourse, at least in

the sense of sharing a common project of society with general emancipatory claims (Mendoza, 2011; Giraldo, 2016).

In fact, my observations confirm that although street rebuscadores share common feelings of discontent with the political and economic systems, their political activism is generally limited to short-term atomized manifestations. This was shown most eloquently by a frustrated female street vendor who told me the following after a meeting with some members of the local mayor's office of Ciudad Bolívar:

“*Mamita*, I actually understand the administration. We are more than six hundred organizations. Having a cup of coffee at least 600 times with 600 different people is very difficult... and we are not capable of joining efforts or agreeing upon common claims. That is the reality” (Audio 121025-004).

But why is that the ‘reality’? Why is it so difficult for street rebuscadores to join efforts or to articulate a common political discourse? I will offer three partial explanations. First, both the police and the administration implement different tactics to dismantle their weak organizations. My informants identified two main common tactics used by the police and two different ones used by the public administration. Talking about the techniques used by the police, Isadio told me:

“The police came here last month (*vinieron del cuadrante hace como un mes*) and they told me and Martha to pick up our stuff and leave because we were occupying public space without a permit. As if we were the only vendors selling on this street! I hope they find a

big pile of shit and eat it! The only reason they are after us, is because we lead the rest of the group (*es porque somos nosotros quienes ponemos el pecho por el resto*). Last week, Martha was alone and those bastards asked for her ID... only for hers! And you know we never really know what can happen in those cases. Remember when they took Gilberto after checking his criminal record because he was convicted for not paying child support? Remember he had no idea about that complaint? (Audio 120829-001).

Asking for a leader's ID in order to check his or her criminal record, and threatening to enforce different administrative rules only against those who lead, are seen as common harassment tactics used by the police. Public officials use their own tactics. Common ones include paying money to the main leaders, or even offering them stable well-paid jobs in exchange for their silence. According to Oswaldo:

“What many public officials call ‘exercising direct democracy’ (*ejerciendo la democracia directa*) means negotiating with every leader individually to find a way to get them out... to neutralize them. When you show money to people they move the way you tell them to move. That is just human nature (Audio 120901-001).”

Shortly after that conversation, I found out that one of the leaders I had met in Ciudad Bolívar was badly injured in a ‘street fight.’ When I asked what happened, I learned that unfortunately those who accept money then are likely to pay the price. A male street vendor told me:

“They say he was one of the leaders that the administration bought. And well... someone has to trace the whereabouts of those sweet doves (*alguien se tiene que ir detrás de esas palomitas*)” (Audio 120916-003).

There is yet another common tactic used by the public administration and that is to generate distrust amongst street rebuscadores. For instance, during my fieldwork a public officer (Z) tried to generate distrust between two of my main informants who were also very strong leaders (Oswaldo and Patricia). Z told Oswaldo that he saw Patricia talking to different people at the local mayor's office during the past weeks. Oswaldo immediately thought she was coopted. Fortunately, he followed my advice and talked to her in front of me: “Ok, tell me... why you have been around there leaking their asses?” He asked (Audio 120918-001). They then engaged in a much-heated discussion, which I was able to mediate because I knew and respected both of them. However, there was no doubt in my mind that Z succeeded in planting a seed of distrust between them.

The second reason explaining rebuscadores' inability to get together to articulate a common discourse, is that leaders are usually very poor themselves, and lack the economic means to give away their time for free, or to pay the costs that an organization implies. When I met Oswaldo he was one of the main leaders of different groups of street rebuscadores in Ciudad Bolívar. These groups are mostly composed of – but not only – street vendors. I met him through a friend who worked as one of the main leaders of a left-wing faction of a political party called MOIR (Independent and Revolutionary Labour Movement). Oswaldo was a political leader of MOIR in Ciudad Bolívar. As such, he used to receive a small amount of money to pay for the local headquarters of the organization, as well as a cell phone. Oswaldo had worked as a street vendor

in the past, but his exceptional leadership skills, as well as his cultural capital (he had graduated from high school, read a lot, and was therefore ostensibly more educated than the others), allowed him to find support in MOIR. Unfortunately, not very long after we met, he told me that he might be forced to stop leading the movement as well as joining me at meetings:

“MOIR is going through a very tough economic situation right now... and you know Laura, without money to rent the room where we meet (*la sede*) or money to pay the phone, it is really difficult... plus, all this time I have survived with what Katherine (his wife) can make selling dairy products, but she is getting tired. Right now we are going through a very rough crisis (*una crisis berraca, muy berraca*). Since our daughter was born, Katherine cannot work as much as she used to, so she is really pushing me to make some money. I know the movement is very weak and it will agonize without someone dedicated full-time to it, but I don't think I have a choice” (Audio 120829-001).

Finally, generalized distrust (both for good or ill-founded reasons) between the members of the different associations, make them weak and ephemeral. While I was conducting fieldwork, I constantly had to listen to people complaining of corruption amongst different leaders. For instance, Patricia once told me: “did you know that W (a known leader) is selling false permits (*carnets*) [to sell in the street], and telling people that the police cannot evict them if they have them? I told them that you told me that *carnets* were useless!” (Audio 120916-001). On another occasion, Oswaldo was having problems convincing a group of street vendors to buy a trash can for their vending spot. During that meeting, one of the male vendors accused another of provoking recent police harassments, because he was unable to comply with simple agreements such as

buying a trashcan. Within two minutes the discussion became physically violent and Oswaldo had to interrupt them to say: “don’t you feel ashamed of always behaving as a bunch of douchebags (*atarbanes*) who cannot even handle a meeting? Don’t you feel ashamed with Laura? Maybe she will also stop caring (Audio 120817-001). The male vendor answered using the following words: “you snitch son-of-a-bitch, I never asked you or Laura to move your asses to defend me, I can lookout for myself just fine (*sapo gran hijo de puta, yo nunca le pedí ni a usted ni a Laura que pusieran el culo por mí... yo me defiando solito*)” (Audio 120817-001). As a group leader, Oswaldo was used to those replies, but he still had moments of doubt. Later he told me: “leading rebuscadores is not easy. Most people cannot handle the heat and leave quickly because they find it frustrating. After so much efforts, one ends up being the bad guy (*uno les sale es debiendo*). I like helping a lot... but sometimes it’s easy to forget why I do it” (Audio 121107- 002).

Ideally, the political claims of street rebuscadores (even if they manifest themselves only through short-term atomized expressions) should be articulated through political parties or unions. Most political parties have at least one leader working in big localities such as Ciudad Bolívar and Suba in Bogotá, trying to gain their votes. Similarly, some unions have tried to incorporate street rebuscadores into their organizations. However, for different reasons, the voice of street rebuscadores is still marginal within political parties and unions. On the one hand, some of the main political leaders do not want to be associated with political parties or unions. For instance, I felt so much respect and admiration for Patricia’s leadership that I once told her she should campaign for a public position. She felt obviously offended and replied: “you know me too well by now to suggest that I am a thief!” (Audio 120917-001). I shared Patricia’s answer with Isadio who added the following:

“I don’t believe in politicians or unions. Politicians are thieves who steal from people; they don’t help. As for union members... mmm... I know there were some good ones, but they were killed. Unions don’t exist in Colombia anymore. Those who were not killed, were not killed for a reason... they were working for themselves (*los que no mataron, por algo no los mataron... se hicieron a lo que pudieron*). In the United States unions really work... but we are not *gringos* and here everyone works for themselves (Audio 121003-001).”

In sum, street rebuscadores distrust both political parties and unions so much that their leaders do not want to be associated with them. But political parties and unions also have strong incentives to refrain from making additional efforts to incorporate street rebuscadores into their ranks. Political parties, for instance, are aware that most street rebuscadores belong to SLs 1 and 2 who never or only sometimes vote (see Figure 45). An important leader of a left-wing political party (Polo Democrático Alternativo), once told me:

“It is really unfortunate, but that part of the population doesn’t vote. And it’s a pity because maybe they are the ones who suffer the most with political decisions and changes. After so many battles, I actually feel very grateful with the few votes I had from those sectors. If one tries to help them, it is really out of altruism (*uno lo hace por amor al arte realmente*)” (Audio 121011-001).

Furthermore, those who vote tend not to do so in accordance with the ideas or ideals of a determinate political party, but in return for personal ‘favors,’ ranging from offering a free meal to getting a place in a school or a daycare for their children. According to a male recycler:

“I vote, but I vote for the person or party who offers the most (*por el paciente o el partido que más ofrece*). I can vote for different political parties for Presidency, Congress etc. The point is to get a piece out of everyone (*el punto es comer de quien se pueda*) (Audio 120901-001).

At the beginning of my fieldwork I was skeptical about how politically unscrupulous they could really be. I wrote in my field notes: “they can appear to be truly cynical, but I am not so sure... they are very clear that they dislike certain political figures. For instance I don’t think that Enrique Peñalosa (center-right wing political leader famous for massive evictions during his previous administration) has any chance of being mayor of Bogotá again. I bet there would be massive mobilizations against him.” Well, I was wrong. After 14 years out of office, Peñalosa was re-elected mayor of Bogotá in October of 2015, and some of the street rebuscadores I know supported him.

Additionally, political parties in Colombia (even left-wing political parties) seem to be largely unaware of the existence of a new working class, at least in the sense that I have been describing so far in this dissertation. Although they incorporate sometimes some of the particular political claims of street rebuscadores (e.g. stopping evictions) in their political platforms, they do not have

a comprehensive discourse incorporating broader emancipatory ideals for that new working class. As professor Cesar Giraldo once told me:

“The really sad thing Laura is that political parties don’t see them. I have tried to discuss the issue with A and B (important political leaders of a left-wing political party), but they don’t see them as precarious workers but as petty bourgeois. They still work with the idea of the industrialized worker in their head. They are unable to see that the party that will be able to capture the claims of the workers we are talking about will gain political power” (Audio 120912-001).

I will not discuss here the reasons why political parties are either not aware of the changes in the labour market, or lack the political motivation needed to incorporate those changes into their discourse, or both. The point is that political parties in Colombia do not incorporate broader emancipatory plans for street rebuscadores into their agendas.

As for unions, in 2009, informal workers created a division called “United Workers of the Informal Economy” (UGTI) as part of the biggest Colombian union (at least in number of affiliated members) “United Workers Trade Union Federation” (CUT). UGTI brings together street vendors, recyclers, motorcycle-taxis, and rebuscadores who work with animal-drawn vehicles, amongst others. They typically go beyond gathering ‘informal workers’ to capture all street rebuscadores. They ask for unity, democratic use of the public space, and the right to work and to earn a minimum living income.<sup>71</sup> Unfortunately, UGTI has received marginal attention from street rebuscadores

<sup>71</sup> There is not much information that can be found online about the UGTI. However their official facebook page is: <https://es-la.facebook.com/Ugti-Cut-Colombia-185141238248548/> (last consulted, September 2016).

themselves. Only two of my closest informants knew it existed (Oswaldo and Patricia), and both agreed that the impact of the union was still negligible. I had the opportunity to talk to Alfredo Manchola (one of the main leaders of the union) and to ask his opinion on the role of the union in articulating the broader emancipatory claims of street rebuscadores. While he acknowledged the political potential of street rebuscadores, he pointed to the difficulties to mobilize them mainly because of financial reasons:

“Our impact is still marginal because it is very difficult to organize informal workers. It is simple: if they go to a meeting, they can’t work, and that means many won’t eat that day. Unfortunately, we generally lack the resources to pay them for their *diario* when they attend meetings. It is very difficult... we all agree that if a union or a political party could mobilize the informal sector of Bogotá... I mean, just by mobilizing street vendors... we could paralyze the city. Guerillas paralyzed the whole country with a tiny fraction of the potential number of associates we have. *¡Cuál trasmilenio, ni cuáles taxistas!* We would simply paralyze the city (Audio 120831-001).

So far, however, political parties or unions have not been able to mobilize massively street rebuscadores to demand specific short-term claims, much less to help them articulate a common political discourse incorporating broader emancipatory claims.

## **5. How do both State and non-State laws interact to influence the productive strategies of street rebuscadores in Bogotá?**

I suggest that the category of ‘street rebuscadores’ is a useful one to target and characterize the most vulnerable group of workers in Bogotá. The whole purpose of section 4 was to allow the reader to have a clear idea of the social grouping I am referring to. To do that, I demonstrated that the cultural, social and economic variables situating socio-economic levels 1 and 2 in a particular position within the social space, informed the habitus and therefore structured the logic underneath the practice of street rebuscadores, as much as their daily practical actions contribute to structure that very same habitus. I will now introduce the theoretical framework on which I rely to suggest an answer to my second research question. This question specifically focuses on understanding how both State and non-State laws interact to influence the productive strategies of street rebuscadores.

### **5.1 Theoretical framework - Legal pluralism and the concept of semi-autonomous social field**

Bourdieu didn’t explore at much length the way law affects the individuals within a determinate social field. For Bourdieu, law was the ‘quintessential form of legitimized discourse,’ and therefore one of the ‘structuring structures’ or means for ordering and understanding the social world. According to him, such structuring structures are arbitrary in the sense that they do not reflect directly social realities, but they are also not arbitrary in their social consequences since they serve as instruments of domination (Bourdieu, 1987a). But law, even State law, is not just an instrument

of domination. Bourdieu doesn't go as far as trying to understand how the internal rules of the field can deflect the operation of State law, or how both State and non-State rules can interact to influence behaviour, even sometimes emancipatory behaviour, within the field. This is where Sally Falk's concept of the semi-autonomous social field becomes a valuable theoretical tool.

Sally Falk Moore is a legal anthropologist and one of the first scholars writing in the tradition of legal pluralism (Moore 1973, 2005). Before introducing her concept of 'semi-autonomous social field,' however, I will briefly introduce the notion of legal pluralism as opposed to legal centralism, as well as some of the main findings raised by legal scholars as well as anthropologists who are concerned with how law works in practice (Fitzpatrick, 1984; Merry, 1988; Griffiths, 1986; De Sousa Santos 1987, 2004, 2005; De Sousa Santos & Rodríguez, 2005; Teubner, 1997; Tamanaha, 2000).

The doctrine of legal centralism is based on the idea that "law is and should be the law of the State," administered by the State, and uniform for all persons (Griffiths, 1986, p. 3). Consequently, other normative orders not only *ought to be*, but according to the doctrine of legal centralism *in fact are*, hierarchically subordinate to the law of the State (Griffiths, 1986, p.3). Therefore, legal centralism is based on assertions not only of how the world *ought to be*, but most importantly, on a priori assumptions about how it *actually is*.<sup>72</sup>

<sup>72</sup> As Sally Merry Engel puts it, according to legal centralism, law and ordering are supposed to take place "in courthouses and law offices, not in corporate gossip, university regulations and tribunals, or neighborhood bars" (Merry, 1988).

Legal pluralists find the idea that only the law of the State is law (at least properly called as such), empirically indefensible. They believe that at least two or more legal systems generally coexist within a given social field (Griffiths, 1986; Moore, 1986). Thus, the researcher's duty is to be attentive to all the different versions of law and not only to State law. Using the metaphor of de Sousa Santos, laws are like maps. Written laws are painted cartographic maps, and non-State laws are mental maps (De Sousa Santos, 1987). The researcher should use written maps to guide him, but he also has the duty of inquiring about the mental maps that people have in a given social field. When do these mental maps apply? Under what circumstances? For legal pluralists, therefore, legal centralism is no more than a myth that has been presented as a fact, even if most people in the legal community accept it. Since they are interested in how law works in practice, the non-empirically based assumptions made by legal centralism are understood as the major obstacles to the development of a descriptive theory of law (Griffiths, 1986). The objective of legal pluralists, then, is not to describe law as it ought to be (as important as that type of research also is), but to describe how law actually is. With that in mind, they don't work only from a desk, but apply different qualitative methodologies to back their empirical findings.

For my purposes, some of their most important conclusions can be summarized in the following six propositions. First, society is not the "homogenous whole supposed by legal centralism", but "a chaotic mess of competing, overlapping and constantly fluid groups," with complex relationships between each other and with the State (Griffiths, 1986, p. 27). Secondly, social heterogeneity (or social pluralism) entails legal heterogeneity (or legal pluralism). As society is heterogeneous, there is a plurality of legal orders generally coexisting within a given social field. For capitalist societies, for instance, Boaventura de Sousa Santos identifies at least six legal orders

intertwined with “six structural clusters of social relations” (De Sousa Santos, 2002, p. 384), namely: domestic law (or the law of the household), production law (or the law of the factory/corporation), exchange law (or the law of the marketplace), community law (which could be invoked either by hegemonic or oppressed groups), territorial law (or the law of the State), and systemic law (or the legal form of the workplace) (De Sousa Santos, 2002, p. 389-393). The relative pluralism of social fields might vary, but every society entails social and legal pluralism, even if some societies are more pluralistic than others.

Thirdly, the social space between legislator and subject is never a normative vacuum, since the inapplicability of State law is usually compensated by the increase of local regulation (Moore, 1973; De Sousa Santos, 1987). As a social space is always normatively full, never empty, State law will rarely produce the anticipated results. Fourthly, as with the State, other legal orders are also disciplined through coercion, sometimes even much more forcibly. From the standpoint of a new born Christian, for example, going to hell is far worse than going to prison if considering abortion. Fifthly, the arrangements within a plurality of legal orders are highly dynamic. In other words, the dialectic between legal systems develops and changes over time. Finally, legal systems not only interact with others (interaction between systems), but certain norms within those systems interact at different points of contact with other norms within other systems (interaction between norms within systems or internormativity). Those arrangements are also highly dynamic (De Sousa Santos, 2005).

At first sight, the main tenets of legal pluralism sound convincing and, even obvious for those preoccupied with the disconnection between legal discourse and reality. However, the main

challenge for legal pluralism, is that there is no general agreement around the definition of what is 'law' or a 'legal system.' As Tamanaha argues, it sounds frail to declare that there is a plurality of "normative orders not attached to the State which nevertheless are *law*," with no underlying agreement about what *law* is (Tamanaha, 2000, p. 298). Some advocates of legal pluralism define very broadly what they mean by legal system, including small social groups among non-State legal orders, such as community associations, sports leagues, factories and the family. With such a broad definition, they ask, which forms of social control are not to be called law?<sup>73</sup> Are domestic or community normative orders imperfect or inferior or in any case unworthy of the name? Their underlying assumption is that much of social life is in effect 'law' (Abel, 1982; De Sousa Santos, 1995). However, other authors criticise what they believe is an excessively broad definition of law. Sally Merry, for instance, considers that such a view raises the danger of being unable to distinguish law from social life or legal norms from social norms. She asks: "where do we stop speaking of law and find ourselves simply describing social life? Is it useful to call all these forms of ordering law?" (Merry, 1988, p. 878).

As Bohannan suggests, "it is likely that more scholarship has gone into defining and explaining the concept of "law" that any other concept still in central use in the social sciences" (Bohannan 1965, 43). However, without any underlying agreement about what law is, "there can be no proper cumulative observation and data gathering" (Tamanaha, 2000, p. 299). How can we describe, understand, study, analyse and evaluate legal phenomena, if we don't agree on what a legal

<sup>73</sup> For instance, I was born in a society that has been described as profoundly legalistic but lawless. It is common for Colombians to claim both obedience and disobedience to formal laws that do not even exist. It is common to confound community law and religious principles with State law. It is even common for people to ask... the law of whom? Of X or Y armed group? Of the thug of the neighborhood? Of the church? Of the policeman? Of the government?

phenomenon is? According to Tamanaha, the problem lies in that “promoters of the concept have relied upon function-based, essentialist concepts of law” (Tamanaha, 2000, p. 296), or in other words, with the assumption that “law is a fundamental category which can be identified and described” (Tamanaha, 2000, p. 299). *Law is...* and scholars fill the remainder phrase with the abstraction of their choice (institutionalized dispute resolution, norm enforcement, governmental social control, different means of maintaining social order, etc.). To move forward, Tamanaha suggests that we should work with a non-essentialist version of law. Law is a cultural construct, therefore it makes no sense to try to capture its essence in a single definition. It has no essence. Therefore, what we need is to specify the criteria for the identification and delimitation of law. According to Tamanaha, “law is whatever people identify and treat through their social practices as 'law' (or recht, or droit, and so on). Thus, what law is, is determined by the people in the social arena through their own common usages, not in advance by the social scientist or theorist” (Tamanaha, 2000, p. 313).

I agree with Tamanaha’s proposal. It is highly unlikely that legal theorists will ever agree upon a function-based, essentialist concept of law. But even if it were possible, it would not necessarily be convenient. Should a scholarly elite decide what is and what is not law? Isn’t it more respectful and realistic to allow different communities to decide for themselves? Furthermore, should that scholarly elite be the one deciding the hierarchy of different versions of law? For instance, it is well-known that the relation between State law and other forms of law is highly contested within the scholarly literature. Some attribute no superiority to State law and even see it as subordinate to other social forms (Griffiths, 1986). Others argue that State law stands in a relation of superior power to other systems of regulation as the ultimate source of coercive power (Abel, 1982; Merry,

1988). Others mediate between the two positions. For instance, Fitzpatrick argues that State law is one social form among many others as its identity is built around the support it derives from other social forms. However, to maintain its identity, “State law stands in opposition to and in asserted domination over social forms that support it.” It is a mutual “contradictory process of support and opposition” (Fitzpatrick, 1984, p. 116). To avoid such controversy, one of the big advantages of applying a non-essentialist version of legal pluralism, is that “no one version of law is placed in a hierarchy above any other” (Tamanaha, 2000, p. 318). Since “plural legal orders vary greatly in power, in coercive potential, in symbolic strength and in attachment to class groupings” (Merry, 1988, p. 879), it is reasonable that the degree of actual influence in any social field is determined only following empirical investigation.

Following a non-essentialist version of legal pluralism, however, presents its own challenges. For instance, the researcher has to deal with the very difficult question of who and how many people must identify a phenomenon as law for it to qualify as such. I agree with Tamanaha that such a question must be ultimately resolved arbitrarily, though not without reasons. “A minimum threshold to qualify is if sufficient people with sufficient conviction consider something to be 'law', and act pursuant to this belief, in ways that have an influence in the social arena.” That will at least “screen out the lone lunatic who considers his every wish to be the law” (Tamanaha, 2000, p. 319). It is clear that “transient or idiosyncratic identifications of law” should be ruled out (Tamanaha, 2000, p. 319). However, it is still difficult to generalize, especially from qualitative studies drawn from statistically non-representative samples. How many people are “sufficient” to consider something to be law? For instance, can I consider something to be law within a community of thousands of street rebuscadores, even if I conducted participant observation only with a small

group of them? There is no simple answer to that question. I can only rely on Bourdieu's conviction that the only way to possibly understand the social world's logic is by immersing oneself in the specifics of a historically and contextually situated empirical reality, which can be presented as a single representation of the "possibles" found in a universe of other possible configurations (Bourdieu, 1998a).

Having introduced the interests and main challenges of scholars who work in the tradition of legal pluralism,<sup>74</sup> I will now focus my attention on Sally Falk Moore's concept of the semi-autonomous social field, which is central to understanding how both State and non-State law interact to influence the behavior of individuals within a determinate social field, such as the street rebuscadores. Falk Moore's proposal is to take the "small field observable to an anthropologist" and to study it "in terms of its semi-autonomy - the fact that it can generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded." The semi-autonomous social field in her words, "has rule-making capacities, and the means to induce or coerce compliance: but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance" (Moore, 1973, p. 720).

<sup>74</sup> There are, of course, other challenges faced by scholars writing in the tradition of legal pluralism. For instance, Jamie Chai Yun Liew points out that there's a preference for legal monism. According to Chai, some legal scholars "argue that if there is no sole legal order that ultimately makes the final decision, then we risk chaos, uncertainty and even violence in many forms" (Liew, 2015, p. 618-619). She is referring, for example, to the work of Daniel Bonilla, a professor at Los Andes University in Bogotá. Bonilla suggests that the diversity of non-State property regimes in a high number of developing countries creates a risk for people's rights (Bonilla Maldonado, 2009). I will not consider that type of challenge at length, because any preference for legal monism is based on assertions about how the world *ought to be*. As I argued before, I'm interested in a descriptive theory of law, on understanding how the world actually is, not how it ought to be. From such a descriptive perspective, there's no point in preferring legal monism, because it simply does not exist. It is also important to add that there is a complete other trend of legal pluralism studies interested in the recognition of non-State legal systems (e.g. Indigenous studies). However, that is not my focus. As I will argue later, my hope is not in enforcing the internal rules of the system since they are not necessarily better to protect street rebuscadores.

Looking at complex societies in terms of semi-autonomous social fields provides a practical way of looking at “the place of State enforceable law in ongoing social affairs and its relation to other effective rules.” (Moore, 1973, p. 745) That is exactly what my second research question is about. Either complete autonomy or a total absence of autonomy in social fields is rare. Since the law of sovereign States is hierarchical in form, for instance, no social field within a modern State can be absolutely autonomous from a legal point of view. Likewise, total dependency is difficult to conceive even in rule-run institutions such as armies or prisons. In ordinary circumstances we find semi-autonomy of various kinds and degrees. Therefore, the behaviour of individuals within a determinate social field is usually influenced by rules that were “consciously made by legislatures and courts and other formal agencies to produce certain intended effects”, but it is also influenced by “rules that could be said to have evolved "spontaneously" out of social life” (Moore, 1973, p. 744). Interestingly, however, the ways in which State law affects human behaviour are often exaggerated, while the ways in which more spontaneous rules affects behaviour are often underestimated.

Moore applies her concept to two concrete examples: a small segment of the dress industry in New York City, and to the Chagga, the third largest ethnic group in Tanzania (Moore, 1973). She uses both examples to show how a semi-autonomous social field works, their “internal and external links”, and “how legal, illegal and non-legal norms all intermesh” to influence behaviour (Moore, 1973, p.723). Within the garment industry, for instance, some of the rules governing the field emanate from the government and the marketplace. Other rules are produced within the field of action itself through what she calls “the explicit quasi-legislative action” of organized corporate bodies such as unions and associations, and other rules arise through “the interplay of the jobbers,

contractors, factors, retailers, and skilled workers in the course of doing business with each other” (Moore, 1973, p. 728). State rules are only a small piece of the complex (Moore, 1973, p.729). Even more interestingly, of all of State rules, only some are significant in the bargaining, competing, and ex-changing processes, while the rest are left in the background.

Moore uses another example to illustrate further how our understanding that State-law affects human behaviour is often exaggerated. The agrarian socialist government of Tanzania issued a declaration in 1963 ordering that there would no longer be any private freehold ownership of the land. However, Moore shows how the declaration did not have the expected effects upon the Chagga of the Kilimanjaro (a region without vast stretches of unclaimed unoccupied territory) most probably because their internal rules deflected the operation of external law. According to Griffiths, in both examples, Moore’s central point is “that the social space between the legislator and the subject is not a normative vacuum. The social medium through which rules are transmitted and the social context within which they are operative is full of norms and institutions of varied provenance” (Griffiths, 1986, p. 34). In both of her examples, external legislation has not had, and could not be expected to have the apparently intended effects, simply because internal rules are frequently stronger. Therefore, the main utility of looking at legal rules in terms of the way they affect a semi-autonomous social field, is that “it tempers any tendency to exaggerate the potential effectiveness of legislation as an instrument of social engineering, while demonstrating when and how and through what processes it actually is effective” (Moore, 1973, p. 742).

The concept of the semi-autonomous social field can be used as a way of defining a research problem, or a way of “defining areas for social anthropological study in complex societies”, because it designates an arena to which anthropological techniques of inquiry and observation can

be applied without losing attention to the problem of connection with the larger society (Moore, 1973, p. 722). Its key aspect is processual: the fact that a field “can generate rules and coerce or induce compliance to them” (Moore, 1973, p. 722). The issue of its semi-autonomy “draws attention to the connection between the internal workings of an observable social field and its points of articulation with a larger setting” (Moore, 1973, p. 742). State law is but only one of a number of factors affecting people’s behaviour, actions and relations. Although theoretically universal in application, most legal rules affect only a limited category of persons in a limited number of situations. Therefore, from a descriptive point of view, the “rules of the game” in Bourdieu’s terms, include some State laws as well as other non-State laws and practices that are nonetheless effective.

The symbiotic articulation of many different social fields constitutes one of the basic characteristics of complex societies (Moore, 1973, p. 722). “Some semi-autonomous social fields are quite enduring, some exist only briefly. Some are consciously constructed, such as committees, administrative departments, or other groups formed to perform a particular task; while some evolve in the marketplace or the neighborhood or elsewhere out of a history of transactions” (Moore, 1973, p. 745). Moore’s conception of semi-autonomous social fields is variable and is one of interacting systems. There is no a priori reference-point in terms of which system receives its definite and distinctive structural position. Her theory draws attention to the dynamic aspects of a situation of legal pluralism. Rules of conduct are the product of struggle, negotiation, and other forms of interaction. They are not stable features of the social landscape.

As a social group engaging in regulatory activities, street rebuscadores are situated in a semi-autonomous social field generating internal normative rules, but this field is also vulnerable or

influenced by rules from the larger social matrix in which it is situated. The forces emanating from the larger world sometimes induce external normative rules, but sometimes these rules are also present at the invitation of the persons inside it. One of the reasons why Moore's conception is appealing is that it draws no definitive conclusions about the nature and the direction of the influence between the normative orders. The outside legal system penetrates the field but does not necessarily dominate it. Internal normative rules can be in a position of superiority to external systems of regulation, but even if they are not, there is always room for resistance and autonomy. As they interact, internal and external normative rules may support, complement, ignore or frustrate one another. Consequently, the law that is actually effective in the semi-autonomous social field is the result of enormously complex patterns of competition, interaction, negotiation and the like (Griffiths, 1986, p. 39).

The job of the researcher who adopts a legal pluralist approach is not only to posit the existence of multiple legal spheres, but most importantly, to develop hypotheses concerning the relationships between them. In other words, the challenge is to trace the complex and changing arrangements among the different legal orders within interacting semi-autonomous social fields. Different authors theorize the different types of relations among different legal orders. For instance, Fitzpatrick suggests a mapping founded on the "dichotomy of convergence and separation between State law and other social forms" (Fitzpatrick, 1984, p. 121). This dichotomy is further divided into positive and negative aspects. According to him, there is a positive convergence when State law and other social forms take identity<sup>75</sup> from each other, there is a negative convergence when

<sup>75</sup> By "identity" Fitzpatrick is referring to that which makes State law and other social forms definable and recognizable. He acknowledges that State law does take identity by deriving support from other social forms (thus it would appear to be one social form among many), but he argues that in the constitution and maintenance of its identity, State law stands in opposition to and in asserted domination over social forms that support it (Fitzpatrick, 1984).

State law is penetrated by corrosive social forms, there is positive separation when State law simply assumes a separate and autonomous identity in positive constitutive relations to other social forms, and there is a negative separation when State law's identity is asserted or maintained by rejecting other social forms. In such instances, State law keeps other social forms apart from itself, although it claims to exercise overall control. Yet, this control is merely occasional and marginal (Fitzpatrick, 1984, p. 121-127).

In the case of street rebuscadores, for instance, two different versions of negative separation might apply. First, outright rejection of State labour law represented as a problem of access to legal services by the exclusion of street rebuscadores due to the cost of litigation and lack of the cultural capital required to access State courts. Second, rejection through acceptance. An example of this might be for State courts to admit an initial claim knowing that the eventual ruling cannot be enforced. Think, for example, of a labour judge who accepts the request of a street rebuscador knowing that his very poor employer (a street rebuscador himself) will not be able to comply with the ruling. Another way is to admit a claim but transform it in the courts' own terms. Fitzpatrick exemplifies that type of rejection by referring to the relation between a State court and a local Indian community in a region of Mexico. When the State court recognizes Indian claims, for instance, those are often distorted in ways alien to the community: "an action brought against a witch who failed to bring rain, when paid to do so, was treated as one of fraud. In the Indian view, the resulting fine was too light" (Fitzpatrick, 1984, p.124). Local employment agreements of street rebuscadores may also have to be transformed because they are as alien to State labour law as witchcraft is to the Mexican court. What would happen, for instance, if a homeless person who

agreed to sleep every night to guard the preferred spot of a street vendor in exchange for a daily pay stopped doing it? Could that be interpreted as a breach of contract in employment law?

Boaventura de Sousa Santos also theorizes the different modes of relation among different orders but from a very different standpoint. Writing in the tradition of legal pluralism, he considers that “in phenomenological terms one cannot properly speak of law and legality but rather of interlaw and interlegality” since law operates on different scales and from different interpretative angles (De Sousa Santos, 1987, p. 288). From that standpoint, he argues in favour of exploring what he calls “contact zones.” He started to develop this idea in the last chapter of his 2002 book *Toward a New Legal Common Sense. Law, globalization, and emancipation*, where he tried to answer the question: can law be emancipatory? He believes law can be emancipatory if counter-hegemonic forces across the world system fighting against neoliberal hegemonic globalization are able to visualize common interests beyond the many differences that separate them (De Sousa Santos 2002, 446). However, for those social forces to converge in counter-hegemonic struggles, it is necessary to have a previous exercise of translation aiming to identify and reinforce what is common in the diversity. The place where translation (if possible) takes place, receives the name of ‘contact zone.’ In other words, a contact zone is the social field where different normative life worlds could meet and clash.<sup>76</sup>

To further explain the concept of contact zone, Santos wrote a text in 2005 titled *The future of the World Social Forum: the work of translation*. The World Social Forum (WSF) is an annual

<sup>76</sup> More specifically, Santos defines contact zones as areas “in which rival normative ideas, knowledges, power forms, symbolic universe and agencies meet in unequal conditions and resist, reject, assimilate, imitate, subvert each other, giving rise to hybrid legal and political constellations in which the inequality of exchanges are traceable” (De Sousa Santos, 2002, 472).

meeting held by civil society organizations, which share the goal of developing alternatives to hegemonic neoliberal globalization. It brings together NGOs as well as formal and informal social movements seeking international solidarity. In the context of the WSF, the concept of contact zone became very important, because the differences between social movements (despite their shared opposition to neoliberalism) can be so profound, that without an exercise of translation of knowledges a common counter-hegemonic agenda might not become possible.<sup>77</sup> Santos believes in the urgency of such a political agenda, and therefore advocates in favor of the work of translation as the only possible “procedure we are left with to give coherence and generate coalitions among the enormous diversity of struggles against neo-liberal globalization when there is no (and would not be desired if existed) general theory of progressive social transformation to be brought by a privileged historical subject according to centrally established strategies and tactics” (De Sousa Santos, 2005, p. 21).

Santos’ argument, however, is insufficiently attentive to the asymmetries between the parties who converge in a hypothetical contact zone, plus he assumes that they all procure the same goal (at least a shared opposition to neoliberalism) which is not clear in the case of street rebuscadores and other subordinated groups. He acknowledges that it is probably unavoidable that unequal relations of power will be present in the first steps of the construction of contact zones, but argues that those unequal power relations must yield to relations of shared authority for translation to be

<sup>77</sup> Santos exemplifies the type of work of translation that he believes must be done, using the idea of human dignity. In western culture, the idea of human dignity is expressed by the concept of human rights. However, many of the social movements that gather at the WSF do not formulate their concerns in terms of human rights and others express a hostile stance against the idea. “Does this mean that these movements do not care for human dignity?” Santos asks. “Or is it rather the case that they formulate their concerns for human dignity through a different set of concepts?” He believes the latter is the case, and accordingly he proposes a “translation on concerns for human dignity between the western concept of human rights, the Islamic concept of *umma* (community), and the hindu concept of *dharma* (cosmic harmony involving human and all the other beings)” (De Sousa Santos, 2005, p.17).

possible and for cosmopolitan contact zones to be constituted (De Sousa Santos, 2004, p. 133). Is it possible that in today's world, powerful legal cultures agree to yield to relations of shared authority with those with less power? Or is it wishful thinking that will simply never correspond to practice? In the context of the World Social Forum, Santos theory has been strongly criticized for being insufficiently attentive to the asymmetries persisting among the different progressive movements. Conway argues, for instance, that Santos does not sufficiently recognize or problematize the coloniality of power and knowledge, its imbrication with patriarchy, and the resulting inequalities and incommensurabilities that impede cross-movement and cross-cultural communication and collaboration within and between progressive movements, both across the North-South axis and within and among movements of the South (Conway, 2011, p. 233). If that is true for progressive movements, then what can be said of contact zones in which the asymmetries between different legal cultures are even more obvious? Is the work of meaningful translation possible in scenarios where differences between both parts seem incommensurable? For instance, is it possible when illegal immigrants enter into asymmetric encounters with dominant cultures of countries that are not their own? Or when street rebuscadores enter into asymmetric encounters with the police and other public authorities?<sup>78</sup>

<sup>78</sup> Interestingly, Santos also distinguishes between demo-liberal legality and cosmopolitan legality by the types of contact zone sociability that each legal paradigm tends to privilege or sanction. He distinguishes four types of sociability: violence, coexistence, reconciliation and conviviality. "Violence is the type of encounter in which the dominant culture or normative life world vindicates full control over the contact zone and as such feels legitimated to suppress, marginalize or even destroy the subaltern culture or normative life world. Coexistence is the sociability typical of cultural apartheid in which different cultures are allowed to unfold separately and in which contacts, intermingling or hybridizations are strongly discouraged if not outright forbidden. Reconciliation is the type of sociability based on restorative justice, on healing past grievances. It is a past-oriented rather than future-oriented sociability. For this reason the power imbalances of the past are often allowed to go on reproducing themselves under new guises. Finally, conviviality is, in a sense, a future-oriented reconciliation. Past grievances are settled in such a way as to make possible sociabilities grounded in tendentially equal exchanges and shared authority. Each of these sociabilities is both the producer and the product of a specific legal constellation. A legal constellation dominated by demo-liberalism tends to favour reconciliation and, whenever impossible, coexistence or even violence. A legal constellation dominated by cosmopolitanism tends to favor conviviality" (De Sousa Santos, 2002, 473-474).

Santos' political goal behind his development of the idea of contact zone and internormativity is unlikely to be reached, because the idea is grounded in the questionable assumption that powerful legal cultures will find enough incentives to yield to relations of shared authority. However, his idea of internormativity is still very important since it makes clear that not only entire legal systems are interacting with one another, but that certain norms within those systems, interact with other norms within other systems at different points of contact. Moore's theory is not sufficiently clear in this regard. When she explains how a semi-autonomous social field works, and more specifically, how legal, illegal and non-legal norms all intermesh to influence behaviour, Moore's conception seems to be one of interacting systems as a whole. Santos' idea of internormativity can add complexity to Moore's conception by stating that legal systems not only interact with others (interaction between systems), but certain norms within those systems interact at different points of contact with other norms within other systems (interaction between norms within systems or internormativity).

Having introduced the theoretical framework on which I rely to suggest an answer to my second research question, I will now develop three hypotheses regarding how both State and non-State laws interact to influence the productive strategies of street rebuscadores. I will consider State constitutional law, labour law, and administrative law as regulatory fields with different levels and layers of interactions. The general questions, are as follows: 1) to what extent and how is State constitutional law able to penetrate the social field of street rebuscadores? When and under what circumstances? How does it interact with non-State rules? 2) To what extent and how is State labour law able to penetrate the semi-autonomous social field of street rebuscadores? How is State labour law situated in relation to non-State rules regarding labour relations? 3) To what extent is

administrative State law penetrating the semi-autonomous social field? Is it ‘invading’ the field? Which methods are used to induce or coerce compliance? Which strategies of resistance are put in place by street rebuscadores? Are they being able to ignore or frustrate the attempts of administrative State law to dominate the field?

## **5.2. State constitutional law exceptionally penetrates the social field of street rebuscadores**

Mariana Valverde suggests that we should call ‘bad’ legal pluralism the kind of interlegality that occurs when rights and protections gained at one scale are invisible at other scales (Valverde, 2009, p. 142). For instance, according to her, the emergence of sophisticated constitutional rights regimes (at least in North America and in the UK) has done nothing to undermine “the quasi-medieval micro-management of harmless conduct effected by myriad parks regulations banning playing, drinking, camping, and so forth” (Valverde, 2009, p. 141). The point she makes is that we cannot expect great principles and plans to actually guide everyday governance, if State-scale constitutional rights are not coordinated with low-level regulations governing specific urban spaces. In Colombia, however, the *acción de tutela* has been very useful in helping to bridge the gap between constitutional rights and low-level regulations governing different areas, including regulations governing urban spaces and street rebuscadores.

The *acción de tutela* is an injunction that was included in the 1991 Constitution of Colombia to allow individuals to seek the immediate protection of their constitutionally guaranteed rights. Any person without the need of a lawyer can file the injunction before any judge, both in writing or orally. Judges have a maximum of 10 days to issue their ruling. It is hugely popular with close to

3.5 million tutelas filed during the past 25 years. Almost 70% of them seek protection against different violations to the fundamental right of health care, as service suppliers deny without sufficient reasons different types of medicines, medical exams, surgeries and treatments for people in need. The Constitutional Court reviews less than 1% of the tutelas filed in the country. Yet, by September 29, 2016, the Constitutional Court had reviewed 17,873 tutelas.<sup>79</sup> After health care, due process, pensions, and violations to the right of equality and non-discrimination, violations related to labour conflicts are the most frequent. Getting ahead of his time, César Rodríguez wrote in 2001, only 10 years after the Constitutional Court was created: “the dysfunctions of ordinary labour justice, both from the point of view of demand and supply, explain the existence of a marked tendency towards the use of tutelas to resolve labour disputes” (De Sousa Santos & García, 2001, p. 677).

### **5.2.1 Constitutional rulings regarding street rebuscadores.**

In relation to urban spaces and street rebuscadores, the Constitutional Court has reviewed more than 70 tutelas so far. Most of them were filed by street vendors who were evicted by the police following low-level regulations governing public space. However, there are at least 20 rulings filed by other types of street rebuscadores. For instance, in three tutelas (T-610/1992, T-724/2003, and T-387/2012) the Court reviewed different cases of informal waste collectors (recyclers) seeking their inclusion in the privatization process of waste management in different cities. In Colombia, recyclable materials have traditionally been collected and sold by individuals and families

<sup>79</sup> The number of tutelas was taken from the speech of the Secretary General of the Constitutional Court (Martha Victoria SÁCHICA) during the most recent overview on the work of the Court. See: <https://m.youtube.com/watch?v=6lLJdxraw3g&feature=youtu.be>. (Minute 20)

organized into recycling associations. Recyclers are among the poorest, most marginalized members of society. In general terms, the Court acknowledged that recyclers are part of a vulnerable, marginalized and discriminated group, and that public authorities cannot aggravate their situation but they should work to improve their working conditions. Since recyclers were excluded from the bidding process of privatization of waste management for various reasons, including the development of narrow terms of reference which de facto excluded their associations, in two of its rulings the Court ordered the suspension of the bidding process until affirmative actions were included in contracts for waste transportation, disposal and treatment services. More specifically, the Court argued that recyclers could not be excluded from entering the formal economy of waste collection, because the section 13 of the Colombian Constitution<sup>80</sup> requires the State to promote conditions of substantive equality in favour of marginalized groups.

A different ‘type’ of street rebuscadores, those who work washing and watching over cars in public areas, also filed three tutelas that were reviewed by the Constitutional Court (T-458/2011, T-904/2012, and T-820/2013). In each case, the Court used the principle of *confianza legítima* to analyze possible violations of their fundamental rights. According to that principle, if public authorities allowed or did nothing to prevent a certain (legal or illegal) activity, then citizens should be able to *trust* them and believe that they were actually allowed to perform it (such as occupying public space). If public authorities suddenly change the conditions that citizens thought they could trust, they have to make every possible effort to minimize the effects the change might cause,

<sup>80</sup> Spanish version. Artículo 13: Todas las personas nacen libres e iguales ante la ley, recibirán la misma protección y trato de las autoridades y gozarán de los mismos derechos, libertades y oportunidades sin ninguna discriminación por razones de sexo, raza, origen nacional o familiar, lengua, religión, opinión política o filosófica. El Estado promoverá las condiciones para que la igualdad sea real y efectiva y adoptará medidas en favor de grupos discriminados o marginados. El Estado protegerá especialmente a aquellas personas que por su condición económica, física o mental, se encuentren en circunstancia de debilidad manifiesta y sancionará los abusos o maltratos que contra ellas se cometan.

especially when affected citizens belong to vulnerable, marginalized or discriminated groups. Two of the cases (T-458/2011 and T-904/2012) took place in Montería and Cartagena where street rebuscadores used the water from the river Sinú (Montería) and from the beach (Cartagena) to wash cars in public areas. In both cases, rebuscadores were evicted by public authorities because they were contaminating the water. The Court acknowledged the legitimacy and the importance of protecting the environment, but clearly stated that the fundamental rights of citizens, more specifically, the right of vulnerable citizens to earn a minimum income to meet their basic needs, should be respected. In the first case, car washers could prove *confianza legítima* and therefore the Court ordered local public authorities to relocate them in an area where they could continue with their work but without contaminating the river. In the second case, *confianza legítima* could not be proven because rebuscadores worked washing and watching over cars in an area where parking was clearly prohibited by traffic signals. However, the Court argued that any public decision aimed at recovering public space has to acknowledge the fundamental rights of vulnerable citizens who use public space, even if they are not protected by the principle of *confianza legítima*. In that event, citizens do not necessarily have to be relocated, but public authorities should adopt compensation measures depending on the nature and degree of prejudice. At the very least, public authorities are obliged to inform affected citizens about economic alternatives and training programs in order to improve their standard of living.

It is not uncommon that street rebuscadores survive by performing different survival strategies that have an impact on the environment. In yet another recent ruling, T-204/2014, the Court reviewed the case of a father who was violently displaced and who had dedicated 10 years of his life breaking stone on the outskirts of Mitú (Vaupés), a form of artisanal mining in an

environmentally-protected site. Municipal authorities prevented him from continuing his activity. Once again the Court acknowledged the legitimacy of protecting the environment and stressed the importance of fulfilling the requirements established by the legislator to constitute a legitimate mining activity. However, it considered that the closure of the mine infringed on this person's fundamental right to a minimum level of subsistence (*mínimo vital*)<sup>81</sup>, in accordance with the principles of good faith and legitimate expectations (*confianza legítima*). Therefore, the Court argued that municipal authorities had the constitutional obligation to adopt measures during a transitional period of time while this citizen adapted to the new reality. In other words, they have to design and implement reasonable public policies aimed at granting viable economic alternatives to any affected vulnerable, marginalized or discriminated citizen.

Street rebuscadores who work on beaches performing other jobs (such as artisanal fishing or renting beach tents), filed at least four additional tutelas that were reviewed by the Constitutional Court (T-095/1994, T-348/2012, T-606/2015, T-376/2012). They were all evicted for different reasons including for violations of beach concessions offering tourism services, urban improvements and yet again, environmental issues. Regarding the eviction of artisanal fishermen, the Court argued that all affected communities (not only afro or Indigenous) should be consulted before beach concessions are given or urban improvements take place, and that discussions should include previous and future measures that prevent the fundamental rights of affected communities from being breached. Furthermore, the Court stated that offering fishermen economic alternatives,

<sup>81</sup> According to Cepeda and Landau, from a substantive perspective, “the right to a minimum level of subsistence has played a prioritization function for social rights in Colombian constitutional law. Like the international law concept of the “minimum core” with which it shares some similarities, the right to a minimum level of subsistence suggests that the state must prioritize the basic needs of the poorest members of society. Although the Court and the Colombian state have not always succeeded in adhering to this principle, it acts as a basic guiding ideal for the enforcement of social rights by the Court.” (Cepeda & Landau, 2017, p. 150)

such as being hired as construction workers or as tourism guides, while urban improvements take place, is not enough, because such activities have nothing in common with their fishing activities, ignore their culture, and force them to change their traditional ways of subsistence (T-348/2012). The Court added: “State policies, programs or measures whose implementation becomes a source of poverty for those affected, and which do not provide for complementary mechanisms to counteract these negative effects proportionately and effectively, are unjustifiable in light of this country's international obligations, specifically in the promotion of economic, social and cultural rights, as well as in light of the constitutional principle of the *Estado Social de Derecho* (Social State of Law)<sup>82</sup> and its various manifestations throughout the Colombian Constitution” (T-606/2015; my translation).<sup>83</sup> Consequently, the Court ordered public authorities to design reasonable relocation plans, create training programs, enable access to soft loans and productive inputs, and to guarantee a food and economic support of a transitional nature to affected citizens.

Street rebuscadores, who performed old-fashioned jobs that were most likely to disappear, filed three additional tutelas that were reviewed by the Court. Two of them, T-021/2008 and T-1179/2008, were filed by shoeshine boys who were evicted from the main square of a middle sized town (Ibagué), after municipal authorities awarded a limited number of cleaning modules to the people who worked shining shoes in that square. The Court decided that although both citizens

<sup>82</sup> The *Estado Social de Derecho* (Social State of Law) is the legal politic framework proposed in the 1991 Constitution of Colombia. It is based in principles and values such as human dignity, solidarity and civic participation. It emphasizes the duty of the State to provide a safety net to protect the poorest and to transform the socioeconomic structure (See: Cepeda & Landau, 2017).

<sup>83</sup> Original quote: “Las políticas, programas o medidas estatales cuya ejecución se convierta en una fuente de pobreza para los afectados, y que no prevean mecanismos complementarios para contrarrestar en forma proporcionada y eficaz dichos efectos negativos, resultan injustificables a la luz de las obligaciones internacionales del país en materia de promoción de los derechos económicos, sociales y culturales, así como a la luz del principio constitucional del Estado Social de Derecho y sus diversas manifestaciones a lo largo de la Carta.”

were excluded because they did not comply with all the requirements required by municipal authorities to award the cleaning modules, *confianza legítima* applied in both cases, and therefore ordered to give each of them a module. Another interesting tutela (T-660/2012) was filed by an *escribiente* (a person who works writing by dictation or helping others to fill basic forms), who was evicted after working for 15 years in one of Cali's main squares (Plaza de Caicedo). The tutela was denied because the claimant did not prove that he actually worked in the square; he was not part of the associations of the area, he did not appear in any census, and there were testimonies of those who said that he had never worked there. Therefore, in his case, the principle of *confianza legítima* did not apply.

Finally, street rebuscadores who used bicycle taxis or animal traction vehicles to make a living and survive, filed two tutelas reviewed by the Court (T-442/2013 and T-514/2014). Municipal authorities were issuing fines to bicycle taxis drivers (who had worked for more than 10 years) by enforcing rules that did not exist in a very literal manner, because the activity was not regulated. At the time there were about 8000 drivers. The Court stated that those who exercised that activity strongly believed that they were acting with the consent of the administration (*confianza legítima*). The Court also acknowledged that the activity was not regulated, and warned concerned authorities that it could not be eliminated suddenly or at least before a plan was designed to enable affected citizens to pursue another activity. However, it also stated that the tutela was not the proper judicial action to order the suspension of traffic sanctions. In the case of animal traction vehicles, the Court reviewed the case of people who had been working for more than 20 years, who were prohibited from continuing to do so after the city launched a plan to replace every animal traction vehicle with a motorized vehicle or seed money opportunities. Rebuscadores who filed the tutela

did not comply with all needed requirements to benefit from the plan. However, the Court concluded that their rights were violated, that it did not matter that they did not comply with every requirement, and it ordered municipal authorities to include them as beneficiaries of the plan.

The different rulings from the Constitutional Court I just described regarded street rebuscadores, but excluded street vendors. However, as I stated before, most of the tutelas reviewed by the Constitutional Court regarding urban spaces and street rebuscadores were filed by street vendors who were evicted by the police following low-level regulations governing public space.<sup>84</sup> Since the Court only reviews less than 1% of the tutelas filed nationwide, we can assume that ground-level injunctions can be counted in the thousands. The Court read the conflict as one between the social and economic right to work (section 53 of the Colombian Constitution)<sup>85</sup> and the collective right to maintain the integrity of public space and restrict its usage to common use (section 82 of the Colombian Constitution)<sup>86</sup>. There is a flurry of public space regulation (including

<sup>84</sup> See: Constitutional Court of Colombia, rulings T-225/1992, T-400/1992, T-372/1993, T-091/1994, T-578/1994, T-115/1995, T-133/1995, T-395/1995, T-160/1996, T-647/1996, T-398/1997, T-396/1997, T-530/1997, T-550/1998, T-778/1998, SU-360/1999, SU-601A/1999, T-364/1999, T-706/1999, T-940/1999, T-754/1999, T-499/1999, T-1263/2000, T-372/2000, T-983/2000, T-660/2002, T-883/2002, T-726/2003, T-772/2003, T-146/2004, T-034/2004, T-521/2004, T-103/2006, T-465/2006, T-722/2006, T-729/2006, T-773/2007, T-021/2008, T-053/2008, T-1098/2008, T-394/2008, T-566/2008, T-630/2008, T-1179/2008, T-200/2009, T-775/2009, T-908/2010, T-210/2010, T-926/2010, T-135/2010, T-527/2011, T-578A/2011, T-970/2011, T-940/2011, T-454/2011, T-703/2012, T-244/2012, T-904/2012, T-314/2012, T-376/2012, T-904/2012, T-437/2012, T-264/2012, T-631/2013, T-386/2013, T-204/2014, T-231/2014, T-607/2015. All the rulings can be read in Spanish in the following web page: <http://www.corteconstitucional.gov.co/relatoria>

<sup>85</sup> Spanish version: Artículo 53. El Congreso expedirá el estatuto del trabajo. La ley correspondiente tendrá en cuenta por lo menos los siguientes principios mínimos fundamentales: Igualdad de oportunidades para los trabajadores; remuneración mínima vital y móvil, proporcional a la cantidad y calidad de trabajo; estabilidad en el empleo; irrenunciabilidad a los beneficios mínimos establecidos en normas laborales; facultades para transigir y conciliar sobre derechos inciertos y discutibles; situación más favorable al trabajador en caso de duda en la aplicación e interpretación de las fuentes formales de derecho; primacía de la realidad sobre formalidades establecidas por los sujetos de las relaciones laborales; garantía a la seguridad social, la capacitación, el adiestramiento y el descanso necesario; protección especial a la mujer, a la maternidad y al trabajador menor de edad. El Estado garantiza el derecho al pago oportuno y al reajuste periódico de las pensiones legales. Los convenios internacionales del trabajo debidamente ratificados, hacen parte de la legislación interna. La ley, los contratos, los acuerdos y convenios de trabajo, no pueden menoscabar la libertad, la dignidad humana ni los derechos de los trabajadores.

<sup>86</sup> Spanish version: Artículo 82. Es deber del Estado velar por la protección de la integridad del espacio público y por su destinación al uso común, el cual prevalece sobre el interés particular. Las entidades públicas participarán en la

*acuerdos* (by-laws) adopted by the Council of the City of Bogotá and decrees enacted at the District level) directed at literally ‘recovering public space’ from street vendors. Actually, between 1988 and 2003, different mayors implemented perhaps the most aggressive public space recovery campaign in the global south (Donovan, 2008, p. 30).<sup>87</sup> However, space recovery campaigns were often frustrated by Constitutional Court rulings.

To make a long story short, the Constitutional Court adopted relocation measures to satisfy both the right to work and the right for public space guaranteed in the 1991 Constitution, as long as street vendors could prove *confianza legítima*. Within that scenario, the Court ruled that evictions could only take place if municipal governments were able to guarantee sustainable work for relocated vendors prior to the eviction. The Court moved back and forth between conservative and more progressive rulings. It started with what could be characterized as a conservative stand on the matter (1992-1998), then turned to a more progressive point of view (1999-2009), and then returned to conservative rulings (2010). Finally, very recently (2017), and partly due to this dissertation, it issued one of the most progressive rulings so far.

From 1992 to 1998, the Court clearly stated that the State’s obligation to relocate after an eviction only existed insofar as vendors used public space before the administration issued the

plusvalía que genere su acción urbanística y regularán la utilización del suelo y del espacio aéreo urbano en defensa del interés común.

<sup>87</sup> According to Donovan, during that period “Bogotá mayors collectively recovered more than 1 million square metres of space, constructed or rehabilitated 1500 parks, built nearly 40 enclosed markets with stalls for 5000 former street vendors and invested more than US\$20 million in malls for relocated street vendors. At least 10 different institutions experimented with nearly every plausible policy for Bogotá’s large vendor population, including microcredit, worker retraining, rotating street fairs, co-operatives, relocation, pacts with ‘reformed’ vendors and public debates on informal commerce restrictions. Simultaneously, lawmakers enacted 2 articles in the Constitution, 7 national laws, 6 accords of Bogotá’s City Council, 10 decrees at the District level and 23 rulings of the Constitutional Court. Such a level of intervention was not only unprecedented in Bogotá, but also unforeseen.” (Donovan, 2008, p. 30)

order of eviction, and as long as their previous occupation was allowed by a permit or licence issued by the respective authorities (*confianza legítima*). Otherwise, “to accept that someone illegitimately, that is without the authorization of the competent authority is automatically allowed to be relocated when occupying public space, would mean to provoke arbitrary lawless actions, and to impair the authority of mayors as superior chiefs of the police in their respective areas” (T-160/1996; my translation)<sup>88</sup>. With time, however, the Court softened its position because street vendors were having trouble proving *confianza legítima*. In ruling SU-360/1999, the Court stated that there were multiple ways to prove it (not only by showing a licence or a permit). It was enough to show past agreements between the administration and the vendors or their union leaders, or simply to prove the general omission of the administration to act upon their presence. However, the Court considered that the testimony of the street vendor was not enough.

The Court issued a more progressive decision (T-772/2003) four years later. The presiding judges held that every eviction process must be preceded by a careful and individualized evaluation of the socio-economic effects of the decision. If the subsistence of vulnerable citizens is at risk, then evictions cannot be carried out because any policy that impoverishes citizens is regressive and violates both international instruments of human rights that Colombia has ratified, as well as the text of the Constitution itself. Most eloquently, the presiding judges stated that in a *Estado Social de Derecho* (Social State of Law), citizens cannot be forced to become “martyrs” in the name of urban esthetics or in the name of abstract ideals of wellbeing (T-772/03, 54; my

<sup>88</sup> Original quote: “aceptar que quien de manera ilegítima, esto es sin autorización de autoridad competente, ocupe un espacio público y automáticamente se haga acreedor al derecho de ser reubicado en otro espacio público, daría paso a la prevalencia de la arbitrariedad y las vías de hecho, y al menoscabo de la autoridad de los alcaldes en tanto jefes superiores de policía de sus respectivos municipios.”

translation)<sup>89</sup>. The Court made four additional statements of the utmost importance. First, according to the Court, the testimony of the vendors is enough to prove *confianza legítima*. Secondly, vendors who carry on their bodies the goods they sell can never be accused of occupying public space. Thirdly, the police cannot confiscate the material goods that vendors carry, unless a *previous* legal procedure is carried out before the competent authority based on sufficient grounds. Fourthly, the police cannot hold in custody any citizen for the mere fact that he or she is selling in the street. Decision T-772/2003 was groundbreaking. Only four years before, it was common for judges at the municipal and circuit level to make reactionary statements such as: “the right to work, as it is well established, must be regulated by the competent authorities and in the case *sub-judice* by the police authorities, so that the city appears orderly and does not look like a Persian market with goods spread everywhere (...) We have a few street vendors that we have to deal with, who do not want to comply with the different administrative orders of improvement and beautification of the city” (First instance judge cited by the Court. Ruling T-398/1997; my translation)<sup>90</sup>.

Following T-772/2003, Bogotá’s mayors limited the type of space recovery campaigns that they had pursued between 1988 and 2003 (Donovan, 2008, p. 46). The city also experienced a political shift, and elected left-wing mayors from 2004 to 2016 who pursued a more tolerant

<sup>89</sup> Complete original quote: “según ha indicado la Corte, el desalojo del espacio público está permitido constitucionalmente, siempre y cuando exista proceso judicial o policivo que lo autorice, con el cumplimiento de las reglas del debido proceso previo, y que se dispongan políticas que garanticen que sus ocupantes no quedarán desamparados, porque estamos en un Estado Social de Derecho. De lo contrario, tras la preservación formal de ese “interés general” consistente en contar con un espacio público holgado, se asistiría –como de hecho sucede- al sacrificio de individuos, familias y comunidades enteras a quienes el Estado no ha ofrecido una alternativa económica viable, que buscan trabajar lícitamente a como dé lugar, y que no pueden convertirse en los mártires forzosos de un beneficio general.”

<sup>90</sup> Original quote: “El derecho al trabajo, como bien se encuentra estatuido, debe ser regulado por las autoridades competentes y en el caso sub-judice por las autoridades policivas, para que la ciudad presente un aspecto de ordenamiento y no parezca como un mercado persa, esparcido por todas partes (...) tenemos que son unos pocos los vendedores ambulantes y estacionarios los que no quieren dar cumplimiento a las diferentes órdenes administrativas de mejoramiento y embellecimiento de la ciudad.”

(although far from ideal) attitude towards street vendors. Relocation projects were failing because vendors associated them with declining income levels in the short term (Donovan, 2008, p. 31). Actually, the frequent abandonment of formalized markets (or permanent vending spots where former street vendors were relocated) and the return to street vending was a phenomenon amply documented by Cross (1998), Cutsinger (2000) and Hansen (2004). However, the level of protection obtained by street vendors through tutelas was being challenged by *acciones populares* (popular actions) filed to ‘protect’ public space. Popular actions is one of the group litigation procedures adopted by the 1991 Colombian Constitution to protect collective rights and interests, “(...) related to patrimony, public space, security, public health, administrative morality, the environment, free economic competition, and other related issues” (section 88)<sup>91</sup>. Their nature is not compensatory or restorative but preventive. Since they are preventive, any person can file them without the need of a lawyer to demand the protection of a collective right. Law 472 of 1998 introduced “monetary incentives” for the plaintiff or plaintiffs of popular actions, which greatly incentivized public interest litigation to protect all types of collective rights including the right to ‘public space.’ So far, the Ombudsman office registers 84 popular actions filed by citizens to recover public space from street vendors, 40 of those filed in Bogotá.<sup>92</sup>

The existence of both public actions and tutelas increased the tension between the individual right to work (protected by tutelas) and the collective right to maintain the integrity of public space

<sup>91</sup> Complete original quote: artículo 88: “La ley regulará las acciones populares para la protección de los derechos e intereses colectivos, relacionados con el patrimonio, el espacio, la seguridad y la salubridad públicos, la moral administrativa, el ambiente, la libre competencia económica y otros de similar naturaleza que se definen en ella. También regulará las acciones originadas en los daños ocasionados a un número plural de personas, sin perjuicio de las correspondientes acciones particulares. Así mismo, definirá los casos de responsabilidad civil objetiva por el daño inferido a los derechos e intereses colectivos.”

<sup>92</sup> See: [http://eliseo.defensoria.org.co/visionweb/rap/mues\\_consulta.php?tconsulta=1&codsic=3](http://eliseo.defensoria.org.co/visionweb/rap/mues_consulta.php?tconsulta=1&codsic=3) (Last consulted, March 2016).

and guarantee its common use (protected by popular actions). Up until early 2000s, it was common for local mayors to complain about having to choose between complying with public actions (which ordered them to move on with recovery campaigns) or with *tutelas* (which ordered them to stop evictions unless vendors were relocated). Furthermore, frictions between the *Consejo de Estado* (supreme administrative authority reviewing popular actions) and the Constitutional Court are common, because although both Courts are supposed to have the same level of importance, in practice the Constitutional Court holds more political power. This time, the friction between both Courts diminished as the *Consejo de Estado* conceded and harmonized its judgments with those of the Constitutional Court by ordering evictions to take place but only after vendors protected by *confianza legítima* were relocated or were guaranteed a minimum income to survive.

To name just two examples, in a ruling issued the 19<sup>th</sup> of October of 2000, the *Consejo de Estado* ordered Bogota's public authorities to evict a group of street vendors located in a specific area of the city, but not before those protected by *confianza legítima* were offered alternative means to survive. In yet another ruling issued the 30<sup>th</sup> of June of 2000, the *Consejo de Estado* stated that although the general interest of preserving the public space prevails over the particular interest of street and stationary vendors, it is necessary to harmonize proportionally and harmoniously the conflicting rights and duties. Therefore, evictions are constitutionally allowed, but only in compliance with the rules of due process prior to eviction.

Twelve years later, and after holding that most evictions could not take place because street vendors had no real alternatives to survive, the *Consejo de Estado* issued a ruling on the 2<sup>nd</sup> of February of 2012 where it specifically ordered public local authorities of Bogotá to: 1) fully

identify the street vendors who benefited by its programs, 2) to create a single registry of street vendors, 3) create local awareness campaigns to inform them about the different programs in place in order to offer them economic alternatives and training, and 4) create an inter-institutional coordination and verification committee to ensure the effective implementation of the rules issued in the decision. However, preserving the general (more conservative) tone of its previous decisions, it also ordered to 5) inform street vendors that there is no need for a police procedure before an eviction is carried out when the designation of an economic alternative is proven, and to 6) implement a special policy to mitigate the negative impact generated by the sale of products violating copyright in the public space. Popular action litigation has slowed down considerably since Congress enacted Law 1425 of 2010 that eliminated monetary incentives for the plaintiffs.<sup>93</sup> However, decisions regarding evictions and street vendors follow the same legal reasoning. In a recent ruling issued the 14<sup>th</sup> of May of 2015, for instance, the *Consejo de Estado* again emphasized the importance of carrying out the restitution of public space while observing vendors' rights, as ordered by constitutional jurisprudence. It also warned that to that day, public authorities had not been able to comply with the judgments rendered in the early 2000s.

As for the Constitutional Court, it returned to more conservative rulings in 2010 using low-level regulations as bureaucratic barriers to deny street vendors' rights. That political shift might be explained in the context of the existing tensions between two jurisdictions as an attempt of the Constitutional Court to decrease the tension with the *Consejo de Estado* in issues related to public space. In decision T-135 of 2010, for example, the Court partly returned to the 1996 requirements by stating that the testimony of the vendor was not enough to prove *confianza legítima*.

<sup>93</sup> The Law was declared constitutional by the Colombian Constitutional Court (See: C-630/2011).

Furthermore, in decision T-926 of 2010 the presiding judges held that, in order to be relocated, vendors had to comply with regulations enacted by local administrations (such as a minimum number of years of occupation, the absence of debts to judicial authorities, no additional members of the family working in the street, etc.) Moreover, when the vendor complied, the Court added that there had to be public space ‘available’ to relocate him. These rulings are rare and are not yet setting the tone. They were made possible because the Constitutional Court is composed of nine justices who decide tutelas in groups of three. Regularly, a case involving the right to work and the right to maintain the integrity of public space is decided by three justices following the court’s agreement on the issue. However, sometimes, a small group departs from the general consensus without even acknowledging it. Those tutelas are dangerous, but they also remind us that politics matters, and that the rulings of the Constitutional Court also depend on the political inclination of their justices (Hirschl, 2008). As justices become more conservative, tutelas might no longer help to bridge the gap between constitutional rights and low-level regulations.

Finally, very recently in T- 067 of 2017, the Constitutional Court enacted a progressive ruling that will hopefully help street vendors resist against massive evictions. In the following two paragraphs I will first give some contextual information about the ruling that can help understand the Court’s shift. In 2016, Justice Jorge Pretelt was suspended by the Senate after being investigated by a congressional commission and being accused of seeking a bribe from an oil company, in return for his push of a ruling undoing a multi-million fine that had been ordered by a lower court.<sup>94</sup> Justice Aquiles Arrieta replaced him temporarily, while the Congress elected a new justice. Contrary to Pretelt, Arrieta is a progressive lawyer and professor who has worked in

<sup>94</sup> See: <http://www.elespectador.com/noticias/politica/senado-suspendio-del-cargo-pretelt-y-dejo-manos-de-cort-articulo-650883>

the Court for more than twenty years. We have known each other for many years and have discussed some of the main arguments of this dissertation. Arrieta received a tutela from an evicted female head of household and member of an Indigenous community. We discussed the matter and agreed that the principle of *confianza legítima* had been useful for the Court to force public authorities into making every possible effort to minimize the effects of evictions over vulnerable, marginalized and discriminated citizens. However, over time, it had also contributed to deepen the divisions amongst the poor (those who could prove *confianza legítima* vs. those who could not) and to create more bureaucratic barriers as public authorities invented more requirements for vulnerable citizens to be able to prove *confianza legítima*. In Bogotá, for instance, public authorities often suggested that vendors who were located in areas where public space was previously ‘recovered’ could not access economic alternatives because they were not covered by the principle of *confianza legítima*. Being poor and vulnerable did not seem to be enough. Vendors were advised to argue that they belonged to a protected class of citizens (female heads of house, handicapped, members of Indigenous communities, elderly citizens etc.) to strengthen the arguments of a tutela and increase their chances of success.

In order to overcome those problems, but also bearing in mind that classical legal approaches were better received by fellow justices, Arrieta wrote a draft with the following arguments that were later accepted by the majority: being in a previously ‘recovered’ area does not mean that evicted street vendors are not covered by the principle of *confianza legítima*. For instance, “when the administration has recovered a portion of the public space, and allows for the peaceful resettlement and permanence of the evicted group, or of another group of informal sellers, it is

doing nothing different than reconfiguring *confianza legítima*” (My translation)<sup>95</sup>. That being said, *confianza legítima* is only one of the cornerstones of the broader and more comprehensive concept of *due process*. According to the Court, in order to comply with *due process*, the following procedure needs to be satisfied before, during and after an eviction takes place: First, there has to be a previous agreement establishing specific obligations for the administration to provide a minimum income for those evicted. It is not sufficient to incorporate street vendors into a database, registry or waiting list. Public officials involved will be disciplinarily liable for their non-compliance. Secondly, prior to the eviction, the administration must obtain a certificate of budgetary availability proving that it has the economic resources necessary to relocate the vendors or guarantee through other means a minimum income. Programs must take into account the special characteristics of the targeted population such as the periodicity of expenditure (the Court cites the findings of this dissertation regarding ‘el diario’<sup>96</sup>). Thirdly, evictions should be carried out with full guarantees for the personal integrity of the affected population. The assets owned by the evicted sellers cannot be seized. Fourthly, after the eviction takes place every vendor should be able to obtain a minimum income. If that is not the case, he can file a tutela based on the violation of his or her fundamental right to due process. The Court ends by stating that the ruling “is not intended to legitimize the invasion of State-owned property, but to impose a burden of diligence on the State to comply with the fundamental postulates of a Social and Democratic State of Law, which outlaws solutions that are limited to impose repressive measures that are not accompanied

<sup>95</sup> Original quote: “cuando la administración ha recuperado una porción del espacio público, y permite el reasentamiento pacífico y con vocación de permanencia del grupo desalojado, o de otro grupo de vendedores informales, no está haciendo cosa diferente que reconfigurando su confianza legítima y con ello asume las mismas cargas de reubicación que tuvo que haber cumplido en la primera reubicación.”

<sup>96</sup> Excerpt in Spanish: “la Sala también encuentra que los programas deben tener en cuenta las especiales características desde el punto de vista económico que tiene la población objetivo. Por eso, por ejemplo, deben evaluar si la población objetivo tiene una periodicidad común de gasto que implique erogaciones mensuales o si se trata de una población que deriva su sustento de un ingreso diario particular, situación que según se ha visto es muy extendida en la comunidad de vendedores informales en Colombia.”

by additional measures aimed at protecting the fundamental rights of citizens.” (My translation)<sup>97</sup>

It is a key ruling that changes precedent by stating that even if street vendors cannot prove *confianza legítima*, the State is always bound to abide by the principles of *due process* as stated above.

Legal systems develop and change over time. Before the *acción de tutela* was included in the 1991 constitution, there were no legal mechanisms available for common citizens to demand coordination between low-level regulations that affected them and their constitutional rights. As of today, *tutelas* are important for street rebuscadores such as street vendors who seek constitutional protection against the flurry of public space regulations enacted to recover public space. They are used as swords against low-level regulations used by the police and other public officials to pursue aggressive public space recovery policies. However, that decisional pattern might change as justices become more conservative. For instance, four of the nine justices of the Constitutional Court will end their terms by mid-2017 and their replacements will likely hold more conservative points of view.<sup>98</sup> If that is the case, then State constitutional law might no longer be used as a sword, at least in the case of street vendors, and will cease to penetrate the field.

<sup>97</sup> Original quote: “Con ello no se pretende legitimizar la invasión de los bienes de propiedad del Estado, sino imponer al Estado una carga de diligencia consistente, simplemente, en cumplir con los postulados fundamentales del Estado Social y Democrático de Derecho, que proscriben soluciones que se limiten, simplemente, a imponer medidas represivas que no se acompañen de actuaciones adicionales que propendan por la protección de los derechos fundamentales de los ciudadanos.

<sup>98</sup>For a good discussion of what is at stake with the changes in the Court, See:  
<http://www.semana.com/nacion/articulo/elecciones-magistrados-corte-constitucional/521029>

**5.2.2 State constitutional law penetrates the field at the invitation of some individuals who possess a superior amount of total capital as compared to that of the social base.**

Are tutelas so immensely popular and easy to file that even street rebuscadores with very low levels of cultural, economic and symbolic capitals in Bourdieu's sense are able to activate the entire adjudication process and be successful? In other words, is State' constitutional law able to penetrate the social field of street rebuscadores at the invitation of the persons inside it? If so, under what circumstances? As I suggested earlier, street rebuscadores are definitely disadvantaged in the increasingly significant sphere of legal knowledge and they lack the cultural capital necessary for successful litigation. Based on my fieldwork observations, I can attest to the fact that even if tutelas can theoretically be filed orally, without the need of a lawyer, and before any judge, the truth is that the majority of street rebuscadores are not able to file a tutela. Most of the people I befriended during my fieldwork had heard of the injunction, but did not really understand its possibilities and limitations, or more importantly, had any idea of how to actually file it. They did not know where judges were to be found, but even if they did, most tutelas cannot be filed orally and functional illiteracy is common amongst rebuscadores. In practice, the very exceptional cases that I have heard of tutelas filed orally are from children who arrive at the courthouse alone, or from dying patients who need immediate medical procedures in a hospital. Street rebuscadores do not classify within those informal categories, so they are expected to write the tutela and to 'file it properly' in specific offices across town that will then distribute it randomly to a given judge.

This is exemplified in the following episode that occurred at the beginning of my fieldwork. The first group of rebuscadores that I befriended was a group of street vendors. Since I was well-connected with ground-level political leaders, these street vendors were relatively confident that I was not working for the local government, and – as some of them later told me – I did not look threatening so they even thought I could be trusted. This being said, the main reason why I could get close to them so easily and so quickly is because I am a lawyer and that they were in desperate need of legal aid. Two weeks after I arrived to the locality of Ciudad Bolívar, evictions were taking place in the San Francisco neighbourhood, more specifically in a block called “El Líder.” Street vendors were desperate. Some were ready to confront the police using violence; some suggested that they protest in front of the local mayor’s office, while others thought they needed to beg friendly public officials for help. To my surprise, no one thought of filing a tutela. A brief conversation with Oswaldo, a leader of a group of street vendors, a political leader and one of my main informants can illustrate the issue:

- “Laura: why is no one thinking about filing tutelas?”
- Oswaldo: no way, all those legal things take too much time.
- Laura: a tutela only takes 10 days.
- Oswaldo (looking very surprised): ... 10 days? Really? Oh, Ok. I like it... I do. You know I distrust lawyers... if anyone else told me what you just told me there’s no way I would believe it. But I believe you... It’s just... I don’t trust anything related to legal stuff... those things always take so much time... and you know what it means for a vendor to stop working for more than two days... I talked with some of the people

today and they are working elsewhere, but that is not the same ... but, what the hell (*que carajo*) I trust you! You are doing this for free.

- Laura: Gather the people and let me talk to them.
- Oswaldo: You just don't wake up one morning and go looking for the poor to try to help them. No lawyer does that, believe me. I'm sure that what you are doing has to do with your political position." (Audio 120817-001)

After Oswaldo managed to schedule a meeting with evicted street vendors from "El Líder," I gave them a very emotional speech and convinced many of them to file individual tutelas (Audio 120819-001). I made it clear that I was not going to charge them, then I initiated the long process of gathering information and evidence, I wrote each tutela, and kept them company during the whole judicial process. It was a challenging experience. I interviewed each of them for around an hour and we talked more about their lives and daily misfortunes than about what lawyers call 'legally relevant facts.' They needed someone to listen. Many of them belonged to different protected class of citizens such as internally displaced or female heads of house. As Atehortúa, Salcedo and Vidal suggested, after decades of internal armed conflict, Colombia has no internally displaced or refugee camps. What we have are immense concentrations of internally displaced persons in peripheral areas of cities (2013). It took us around two weeks, but we were able to file 24 tutelas. After that major challenge was over, it became clear to me that regular street vendors were not the ones filing the largest number of tutelas nationwide. So I kept asking myself the same questions: who is filing the tutelas? Are street vendors paying for them? Where are they getting the money?

As I got to know them better, met other groups of vendors in other neighbourhoods of Ciudad Bolívar and in Suba (which are situated almost three hours away from each other), I learned that most of the tutelas were written by specific political leaders (most of whom had been vendors at some point in their lives), who managed to accumulate more economic and cultural capital than regular vendors for different reasons. Most of them are the leaders of different associations created to protect the right of vendors to work. They charge small monthly fees to be able to fund their initiatives (around CAD 2 per month), and although many vendors never really pay, they are surrounded by accusations of corruption, stealing money, and in general taking advantage of those most in need. Some of those accusations are occasionally true, but their intensity, and the violence with which they are voiced, remind us that rebuscadores often seem to be at war against one another. Street rebuscadores distrust their leaders as much as they pursue them for help. They need their help, but they also need to blame them.

Since vendors' associations are very fragile, leaders are prone to compete desperately for any chance they get to gain legitimacy. I met at least five leaders who tried to increase their symbolic capital in Bourdieu's sense, by publicly sustaining that they were the ones who filed one of the most progressive tutelas later reviewed by the Constitutional Court (T-772/03). They even invented part of the content of the ruling, as well as the facts leading to the decision. The decisions of the Constitutional Court are usually very long (that one alone has 93 pages) and even though the cultural capital of the leaders of the vendors is higher than the capital of the social base, they still don't possess what is required to fully read and understand judicial decisions. In fact, they have limited physical access to the decisions, because rulings are posted online and their use and knowledge of the internet is limited. Leaders can also obtain a copy of the decision from the actual

Constitutional Court, but most likely what they look for are summaries (some of them sold in the streets of downtown Bogotá) of key rulings. It is common to see them carrying a printed page of disconnected paragraphs from key rulings that they read over and over again to regular vendors, or what they consider to be their potential constituency. In fact, most of the leaders are also interested in local political positions. Winning judicial battles to guarantee the right to work of their potential electorate is a key political move, because there is definitely a link between knowledge of and access to State legal systems and the local competition for power. Therefore, they actually look for the opportunity to help their social base for very little money to file poorly argued tutelas (usually with the help of poorly trained lawyers), and later brag about the great juridical changes they initiated.

State constitutional law, therefore, is only exceptionally able to penetrate the social field of street rebuscadores, and when it does, it is at the invitation of individuals inside the field who possess a superior amount of total capital as compared to that of the social base (see figure 82).

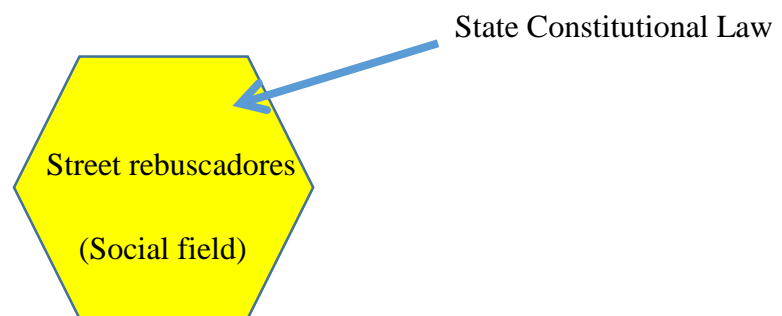


Figure 82. State constitutional law exceptionally penetrates the social field

The *acción de tutela* is the mechanism used, since it is relatively easy to access at least for the most privileged actors within the field. Police know that regular vendors are not filing tutelas

themselves. This explains why they target leaders to discourage them from helping them. As I argued in art 3.4.8, both the police and the administration implement different tactics to dismantle their weak organizations, and one of those tactics is to target the leaders by threatening to enforce different administrative rules only against those who lead. They even tried to discourage me from helping street rebuscadores to file tutelas. For instance, one policeman once told me:

“You are getting inside difficult areas, but don’t worry, we will take good care of you... don’t worry. All we ask is for you to show some restraint (*mostrar un poco de mesura*) ... how many tutelas have you filed on their behalf? It’s your job, we know you are just doing your job, but you have to bear in mind that not everything they tell you is true. Life is not easy for anyone... we only ask for you to be neutral” (Audio 120818-001).

A few weeks later I told Isadio about my conversation with the policeman, and he laughed:

- Isadio: “So that *hijo de su puta madre* is threatening you? Hahahaha! Of course... many of them are worried. But there are also nice policemen you know. One of them asked me the other day about you, and I told him you were a student, so he asked me for how long you had been studying.
- Laura: mmm... most of my life?
- Isadio: Fuck no Laurita, no way. Have you ever left school? I have never met anyone like you! (He makes a pause) After we had had a few beers he (the policeman) then asked me who was paying you, and I told him that it was some people from Canada... was it Canada? He knew we couldn’t have done all of that without you. Fuck we are lucky! So, we both

started imagining your life. Ha! Living the good life, sitting here listening to our stories while earning money. I want a job like that! See? It was nice talking to him... it was nice talking to him about you.” (Audio 120916-003)

### **5.2.3 State constitutional law interacts with non-State rules when it penetrates the field.**

As State constitutional law penetrates the field, it definitely interacts with internal rules. While observing street rebuscadores, I tried to be attentive to all the different versions of law and not only to State law. Within the social field of street rebuscadores, for instance, State law frequently coexists with what De Sousa Santos calls ‘community law’ (De Sousa Santos, 2002). I will now describe a series of events that occurred during and after the process of filing the 24 tutelas, to illustrate how the internal rules invoked by oppressed groups can interact with State constitutional law. The whole purpose will be to exemplify in practice the issue of the semi-autonomy of a social field.

Filing tutelas was a challenging process, but waiting for the rulings and explaining what they meant to the group of street vendors turned out to be an even more challenging task, but also a more interesting one. I tried not to encourage their expectations, but many were anxious. They also needed to work and continued to do so nearby but not specifically in “El Líder.” The fact that they were working in nearby blocks was hurting our legal strategy since we were arguing that evictions prevented street vendors from making a living. However, I was obviously not going to ask them to starve while we waited for a judicial decision. One morning, Martha approached me and asked

me to take her to the judge's office to find out what was going on. I accompanied her and observed what happened. She was dismissed within literally two minutes. They told her to wait for the ruling in a dismissive way (Audio 120901-001). I was upset because I knew nothing like that would have happened to me. In fact, I had filed a tutela for unrelated reasons not long before that, and when I had decided to go to the judge's office I was well attended and heard long before the ruling was issued.

Finally, rulings were issued and they started to arrive. They were mailed to their houses (when they had an address) or to friends or relatives who had an address. In those areas of the city, living arrangements can be so precarious that they don't always have or know they have an address. We were very disappointed as we learned that most tutelas were being denied. However, a closer look allowed me to understand that the reason why we were losing was not what we had expected. Both the police and the local mayor's office argued that evictions never took place. They accepted that from time to time they ordered police patrolling operations to 'guarantee the safety of the area', especially when concerned citizens filed complaints against the behavior of some of the street vendors. However, they argued, those were not evictions. They proved their point by showing photographs of street vendors working in places nearby "El Líder" after the eviction was supposed to have happened.<sup>99</sup> Therefore, the judge's main argument to dismiss the tutelas was that there was no violation of the right to work or to access of a minimum income, since affected street vendors were actually working.

<sup>99</sup> The administration also argued that they held 26 different meetings with street vendors where they were offered different economic alternatives to change their productive strategy. However, there was no copy of the reports of the meetings in the file, so that might be the reason why it was not a strong argument for the judges. In any case, I wrote a formal petition to the local mayor's office asking them for a copy of the report of every meeting. Reports were never handed to me, and the formal petition was never answered.

- “Read me that ruling” Isadio told me. “You know I can’t read well”
- Laura (reading the resolutive part of the judgement): “The tutela has no purpose (*carece de objeto*) because the street vendor is working in the area. It was not proven that a permanent eviction took place. Therefore, the right to work and to obtain a minimum income is not being breached.
- Isadio: Can you believe that Laurita? The judge did not understand anything. Those photos were taken in another block, not in our ‘recognized working spot’ (*sitio de trabajo acreditado*).
- Laura: there is nothing like the right to a ‘recognized working spot.’ There is, however, the right to work. If vendors work, even if they are working in another area, then there is no violation to the right to work.
- Isadio: don’t tell me you don’t understand either! Ask Oswaldo (their leader). I’m sure there is the right to work in one’s ‘recognized working spot.’ It doesn’t make any sense that there isn’t. So what? You work your ass off to keep your clients, to make a name, to be found every day when there’s rain or sun in the same working spot. And you tell me that it is the same to work somewhere else? Come on Laura... all that study is making you dumb? (*¿tanta estudiadera me la tiene boba?*) (Audio 120912-001).

At the time, I remembered the words of María Victoria Uribe, one of Colombia’s most experimented anthropologists, who had told me to write down key words that people tell you despite the fact that at the moment you just don’t understand or give them a different meaning. So

I wrote the words ‘recognized working spot’ in my field notes. Not long after that, I was talking to one of the oldest street vendors of the block about the tutelas:

- Agapito (68 years old): “So... I don’t understand, did we lose?”
- Laura: Well, Don Agapito... results are both bad and good. We formally ‘lost’ most tutelas but only because the judge knew that vendors as yourself continued to work close by. The good news is that you can continue working.
- Agapito: I don’t understand.... can we continue working in “El Líder”?
- Laura: The rulings were not so clear about that, but I guess you can.
- Agapito: you *guess* we can? That makes all the difference!
- Laura: Can you explain to me a little more what you mean?
- Agapito: There’s not so much to explain... sometimes you make half *el diario* in a different working spot, sometimes even less. What we need is to go back to our ‘recognized working spots.’
- Laura: Ok Don Agapito. Go back, go back... and we will take it from there. (Audio 120912-001).

As most street vendors returned to “El Líder,” I was worried. I tried to explain the risks to most of them. A young female street vendor told me:

“I understand what you are saying Laura, but don’t worry. Maybe the laws of the Republic of Colombia don’t differentiate between the right to work and the right to a ‘recognized

working spot.’ But the law of reason does, and that one will always protect us *mamacita*.”  
(Audio 121025-004).

I just hoped she was right. Not long after that, the police arrived to “El Líder” and demanded vendors to leave the sidewalk. I was present at the time, so I talked to the leading policeman:

- Laura: “why are you telling them to leave?”
- Policeman: I know you are helping them, but I cannot do anything. They stabbed a young man (*un pelado*). So see, *doctora*,<sup>100</sup> I’m just here following orders and waiting for a representative of the mayor's office to follow up with the eviction. (...) It’s a matter of coexistence. We tolerate them as long as they work peacefully. But since they began to fight again, to obstruct the street, to leave all that trash, people got tired. I follow orders. Now, if the people from the mayor’s office tells me to get out of the way ... well, I will never come back here. It’s a problem of coexistence... coexistence you see?” (Audio 120917-001).

We were lucky that day. The representative of the mayor’s office never arrived, the policeman couldn’t even remember the name of the vendor who was accused of stabbing a young man, he had no written order, and I was able to show them the tutelas where they specifically differentiated between police patrolling operations against the behavior of a specific individual and massive evictions.

<sup>100</sup> Word commonly used to refer to lawyers in Colombia, which has nothing to do with holding a Phd.

Still, I was very worried. While trying to figure out what to do next, Isadio gathered the people together for a meeting. He had an incredibly interesting plan. He first suggested that vendors should take advantage of the argument of the administration, according to which, they carried out police patrolling operations, but not evictions. In Isadio's words:

Isadio "We were dumb asses if we left and there was never an eviction. Ok... fine... we will never do it again. Police patrolling operations? Yeah right... A friend told me that in Kennedy (another locality in Bogotá) they (the police) say they carry out operations to 'safeguard public health' not evictions. Ok... we are smart too." (Audio 120916-001).

He then encouraged vendors to spread the word that tutelas acknowledged their right to a 'recognized working spot.'

- Laura: "But they don't!"
- Isadio: You are the only one who knows that Laurita. You are the only one who reads" (Audio 120916-001).

After that, he advised every vendor to keep a copy of the ruling in their 'recognized working spot' and challenge the police to read the whole ruling (around 20 to 30 pages in average) if they were ever told to leave the sidewalk again.

- Laura: "But that's a big risk!"

- Isadio: Risk? I bet you as much *aguardiente* (local alcoholic beverage) as you can take that they will never read it. In fact, a couple of days ago, a policeman came and started harassing me, asking me to leave the sidewalk. I told him... I will leave as soon as you bring your superior here and we all read together a bunch of papers that I have around here. He left and never came back” (Audio 120916-001).

Finally, Isadio concluded:

Isadio: “They have a point with our behavior... with the behavior of some of us... some of whom are sitting right here. So let me tell you, and I hope you all agree, we will make a list of rules and we will stick to them. Those of you who don’t like the idea, leave the sidewalk. Those who stay and do not comply... *la llevan* (you will see it coming).” (Audio 120916-001).

A couple of weeks later, Isadio, Oswaldo and Patricia held a meeting with people from the mayor’s office. As a lawyer, it was the closest thing to a surreal experience. Isadio started by stating that different judges acknowledged their right to a ‘recognized working spot’ while literally holding some of the tutelas in his hand. Although one of the assistants to the meeting was a lawyer, no one in the mayor’s office said anything against it, as if they accepted it to be true! After Isadio, one of the public servants (a lawyer), talked. He first argued that if street vendors could file tutelas, so could those affected by street vending (neighbours, owners of small shops, amongst others) and that most likely, they would also win.

- Laura: (whispering to Isadio) “That’s not true. Their fundamental rights are not at stake... plus, we didn’t win!
- Isadio: I know... don’t worry” (Audio 120829-001).

Secondly, he argued that tutelas only have *inter partes* effects<sup>101</sup>. Therefore, tutelas could not protect street vendors who didn’t file them.

- Isadio (whispering) “What the fuck is inter... inter?”
- Laura (joking) the opposite of *erga omnes*” (Audio 120829-001).

After both parties showed their ‘legal’ arguments, of which the only one that was true was that tutelas have *inter partes* effects,<sup>102</sup> they all seemed to forget about the ‘law’ and started to talk about what everyone seemed to understand as the *real* problem:

- Public servant to Isadio: “So... what are we going to do with all that mess? And what about the obstruction of the street?”
- Isadio: We agreed to follow a series of rules and we wrote them down. (Handing him the paper...) people know that if they don’t follow them we will have the same problem in a week. We will deal with those who don’t” (Audio 120916-001).

<sup>101</sup> *Inter partes* is the Latin for only between the parties.

<sup>102</sup> Even though a tutela has *inter partes* effects, judicial precedent exists in Colombia. Therefore, if a different judge rules a similar case in a different way without enough arguments, it violates the right to equal treatment under the law.

They discussed ‘coexistence’ issues for a couple more hours until they reached ‘an agreement’ and we left. The agreement was basically to follow a series of coexistence rules to prevent people from complaining. For instance, they agreed that vendors should stop fighting and obstructing the street, that they should pick up the trash, that they should have only one ‘working spot’ per family, amongst others.

As legal pluralists would argue, State law rarely produces the anticipated results. We ‘lost’ the tutelas, but State law was only a small part of a broader legal puzzle. As Moore suggests, a semi-autonomous social field is vulnerable to rules and decisions emanating from the larger world by which it is surrounded, but it also generates rules internally (Moore, 1973). In this specific case, street vendors read the judgments that they knew were invested with sufficient power to improve or worsen their situation, with their own rules in mind. For instance, they understood that the law created a right to a ‘recognized working spot.’ As Tamanaha argues, “law is whatever people identify and treat through their social practices as ‘law’” (Tamanaha, 2000, p. 313). For them, the right to work which they acknowledge and is written in section 25 of the Colombian Constitution, is as much ‘law’ as the right to a ‘recognized working spot.’ Using the metaphor of De Sousa Santos, what street vendors did was to overlap a painted cartographic map (written law) with their mental map (non-State law) (De Sousa Santos, 1987). That trick allowed them to advocate for the right to a ‘recognized working spot,’ as if that right was part of the constitutional right to work. It also allowed me to see in practice how a semi-autonomous social field operated, or the articulation between its internal workings and the larger setting.

Moore also suggests, that the ways in which State-law affects human behavior are often exaggerated, while the ways in which more spontaneous rules affects behavior are often underestimated (Moore, 1973). However, in this case Isadio and other street rebuscadores were able to engage successfully in the struggle of naming the classifications they use. To my surprise, they were strong enough to identify what they also considered to be ‘law’ and to negotiate with others who had accumulated more cultural and economic capital throughout their lives. In other words, street vendors managed to appropriate enough power to create publicly a form of law that only existed implicitly. What street vendors did was truly extraordinary, particularly if one bears in mind that agents are unequally armed to impose a definition of classificatory systems, and that the balance of power usually depends on the total amount of capital accumulated by those who aim at imposing the various visions in contention (Bourdieu, 1987). The amount of total capital accumulated by street vendors doesn’t get close to that accumulated by the public servants who attended the meeting, but they were still capable of imposing their representation in such a way, that the ‘legal’ discussion seemed to evolve to a point where it was ‘even’ and both parties started to discuss the issue that really bothered them; namely coexistence.

- Laura (talking to Isadio): “So, to sum up, the meeting was really about coexistence issues... it was not a battle between the right to work and the right to maintain the integrity of public space...
- Isadio: Hahaha! You are so funny. It was a meeting where we were able to fight those bastards. I’ve learned a lot from you. They think we are dumb because we are poor and we have not studied. But we are not so dumb, are we? You opened the door with the

tutelas, and we learned. I learned. Fortunately we could take advantage of that, because I thought that stabbing that kid was going to become a bigger issue.

- Laura: Oh God... so that kid was actually stabbed?
- Isadio: well, yes... but like six months ago. Ages ago.” (Audio 120916-001).

After talking to Isadio, I started asking myself if they could have reached an agreement with the local administration without my intervention. In other words, have the street vendors been able to voice their opinions, even their legal opinions, only because I gave them some tools and increased their cultural capital in the process of filing tutelas? Without any doubt, as an old Spanish saying goes, the students here quickly surpassed the teacher! However, without my intervention, would they have been able to advocate for such a thing as the right to a ‘recognized working spot’? Would internal and external rules have interacted in the way they did and complemented each other? Or would external systems of regulation have simply prevailed? I am still not sure of the answer. As Griffiths suggests, the law is the result of enormously complex patterns of competition, interaction, negotiation and the like (Griffiths, 1986, p. 39). Plus, the arrangements within a plurality of legal orders are highly dynamic, or in other words, the dialectic between legal systems develops and changes all the time. So, I asked Isadio what he thought.

- Isadio: “Well Laurita, without the tutelas we would have resorted either to what Oswaldo calls political pressure, or to direct violence.
- Laura: but what if Oswaldo (political leader who possesses a superior amount of total capital) didn’t exist either?
- Isadio: Well, then all we would have had is violence” (Audio 120916-001).

### **5.3 State labour law's inability to penetrate the semi-autonomous social field of street rebuscadores**

Regarding State labour law, my hypothesis is that it is unable to penetrate the semi-autonomous social field of street rebuscadores, for a series of reasons that I will state as follows. First, it is rarely applicable since most street rebuscadores are self-employed and dependent on multiple parties, which theoretically situate them in the commercial sphere and not in the labour market. Secondly, even when applicable, street rebuscadores generally lack the cultural and economic capital required for the adjudication of their rights to be successful; they are usually unaware of their legal rights, have very limited access to lawyers, and their demands are usually so “small and unmanageable that the cost of enforcing them outruns any promise of benefit” (Galanter, 1974, p. 98). Thirdly, the State is not interested in facilitating the enforcement of labour law in the applicable cases. Fourthly, even if it were, internal rules regarding labour relations are situated in relation of superior power to external rules and therefore deflect the operation of external law in the rare cases that could apply. Fifthly, after the tutela was created in 1991, labour disputes regarding street rebuscadores are more often translated as constitutional disputes litigated in the constitutional jurisdiction. And finally, often labour law is only called upon exceptionally by street rebuscadores, who do not necessarily hope to win the legal case, but who strategically use it to demonstrate strength through their alleged knowledge of the external State legal system (see figure 83).

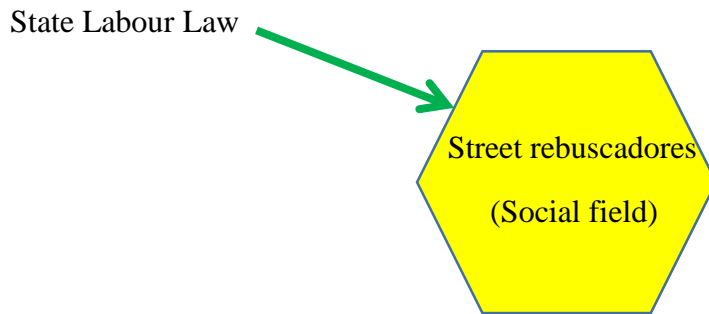


Figure 83. State labour law is unable to penetrate the social field

In the following section, I will explain further each of these propositions.

### 5.3.1 State Labour law is rarely applicable in the case of street rebuscadores.

State labour law is rarely applicable since most street rebuscadores are self-employed and dependent on multiple parties, which theoretically situates them outside the realm of labour law. As mentioned in the literature review, after the Second World War, most western societies adopted regulation around the protection of a *Standard Employment Relationship* (SER) which is defined by a full-time continuous job, supported on three central pillars: “employee status (i.e. bilateral employment relationship), standardized working time (normal daily, weekly, and annual hours), and continuous employment (permanency)” (Vosko, 2010, p. 51). Regulation focused on wage-earners (especially industrial workers) who, possessing neither the capital nor the means of production, earned their living by selling their labour. Those wage-earners, also known to be part of the *proletariat*, were – and still are – commonly associated with the poorest class of working people.

However, as Vosko's analysis confirms, since the neoliberal era (post-1980 period), the SER has been increasingly eclipsed by 'non-standard' forms of employment, such as part-time, fixed-term, temporary agency work and self-employment (Vosko, 2010). To address the situation, legislators in both developed and developing countries have tried to stretch State labour law drafted to protect the parties involved in a standard employment relationship (SER) to cover other types of 'non-standard' forms of employment. However, only workers in situations closely resembling the employment relationship received labour protection whereas all those falling outside the employment relationship also need protection (Vosko, 2010). For example, the ILO Convention on part-time work (1994) limited its scope to *permanent* part-time wage-earners, excluding the self-employed as well as those engaged on temporary or casual bases. As a result, it neglected not only the most sizeable segment of part-time employees (casuals) but also, those who are worst off. As for the regulation on the precarious self-employed, the ILO Recommendation on the Employment Relationship (2006) protected only *dependent workers* (those without a contract of employment but who depended mainly on a single client), excluding the vast majority who worked for more than one client. Even for the groups of workers protected under the new regulation, the most innovative proposals involved extending only limited economic support mechanisms and rights (Vosko, 2010).

While in developed countries, most poor workers can at least be fitted into the categories constructed as 'non-standard' (i.e. part-time, fixed-term, self-employed dependent on a single client), in many developing countries, most of the workers deviating from the SER are also excluded from the categories constructed as 'non-standard' (i.e. temporary or casual workers, temporary agency work, self-employed dependent on multiple parties, amongst others). In

Colombia, most street rebuscadores are self-employed and dependent on multiple parties, which theoretically situates them in the commercial sphere and not in the realm of labour law. But are they really part of the commercial sphere? Do they see themselves as businessmen/women? I talked to many rebuscadores about the issue, but maybe the best answer was given to me by Rosa (52 years old), mother of nine, who works approximately 10 to 14 hours a day as a recycler:

Rosa: “A businesswoman? (*¿una empresaria?*), like the people who work or own companies or corporations or stuff? No way... come on! You know I earn my money with the sweat of my forehead (*con el sudor de mi frente*). I was destined to be a worker, to work. I came to this world with nothing and will probably leave the same way. Plus, we were born women... we were born to bring children to this world. I bet you know some businesspeople... I imagine them waking up in the morning with money in their pockets figuring out what to do next. Ha! No... not me. I wake up with empty pockets and go to *rebuscármela*. You’ve seen me, you know. Remember how you felt exhausted (*mamada*) after walking with me for a while? Remember? That’s the life of a worker. We don’t wake up to eat and drink. We arrive exhausted. Plus, I have 9 kids’ right? I’m no businesswoman Laurita. I was born like the ox that plows the earth.” (Audio 121025-007).

I thought Rosa was right. Business entrepreneurs are supposed to possess at least some capital or means of production to justify their exclusion from labour-related regulatory schemes. In fact, the term businessperson is usually used to refer to the founder, the owner, or the majority shareholder of a business, or to describe a high-level executive who does everyday running and management. Rosa described herself as an “ox” born to “plow the earth.” She used an insightful

metaphor that brings to mind images of endurance, honesty, diligence, hard work, hardships and difficulties. In fact, the image of an ox plowing the earth is incredibly similar to the image I have of Rosa pulling her recycling cart with the strength of her shoulders. At least intuitively, she brings to my mind *the* image of a worker, not of a business entrepreneur.

In Colombia, business entrepreneurs are mandated to make contributions to the social security system as ‘independent workers’, because they are not part of a labour contract. As stated in article 23 of the Labor Code, the three intrinsic elements of a labour law contract are: the personal rendering of services by the worker, an accorded salary for such services, and a relationship of subordination of the employee to the employer.”<sup>103</sup> The jurisprudential interpretation of the elements pertaining to the labour relationship centers its attention on the element of subordination. The Supreme Court of Justice interpreted the element of subordination as “the legal possibility that the employer has to give orders and instructions at any time and in the correlative obligation of the worker to comply.”<sup>104</sup> When facing a labour contract, the employer is mandated by law to

<sup>103</sup> Article 23 of the Labor Code also establishes a reality clause: “(...) once the three elements referred to in this article are met, it is understood that there is a work contract and it does not stop being so as a result of the name it is given, or other conditions or modalities that are added to it.

Original in Spanish. Artículo 23: Elementos esenciales. 1. Para que haya contrato de trabajo se requiere que concurren estos tres elementos esenciales: a. La actividad personal del trabajador, es decir, realizada por sí mismo; b. La continuada subordinación o dependencia del trabajador respecto del empleador, que faculta a éste para exigirle el cumplimiento de órdenes, en cualquier momento, en cuanto al modo, tiempo o cantidad de trabajo, e imponerle reglamentos, la cual debe mantenerse por todo el tiempo de duración del contrato. Todo ello sin que afecte el honor, la dignidad y los derechos mínimos del trabajador en concordancia con los tratados o convenios internacionales que sobre derechos humanos relativos a la materia obliguen al país; y c. Un salario como retribución del servicio. 2. Una vez reunidos los tres elementos de que trata este artículo, se entiende que existe contrato de trabajo y no deja de serlo por razón del nombre que se le dé ni de otras condiciones o modalidades que se le agreguen.

<sup>104</sup> Complete original quote: “respecto del elemento de subordinación se han elaborado diversas teorías como la personal, la técnica, la económica y la jurídica; esta última es la que ha tenido mayor aceptación por la doctrina y la jurisprudencia, y se le hace consistir en la posibilidad jurídica que tiene el patrono para dar órdenes e instrucciones en cualquier momento y en la obligación correlativa del trabajador para acatar su cumplimiento” Supreme Court of Justice, ruling issued the 21<sup>st</sup> of February, 1984. Also see, Supreme Court of Justice, ruling issued the 14<sup>th</sup> of June, 1973.

recognize all benefits associated with the standard employment relationship.<sup>105</sup> However, the Court makes clear that there is a difference between subordinated and independent work.<sup>106</sup> The benefits derived from a labour law contract are only applicable to subordinated work. Subordination, therefore, becomes the litmus test for the entrance or exit into the labor law realm.

In the case of Rosa, subordination does not exist, because she does not have an employer who gives her orders. Therefore, she is not part of a labour contract. She should make contributions to the social security system as an independent worker, but since the law assumes that independent workers are business entrepreneurs with economic capacity, the minimum contribution required of the independent worker who earns a minimum wage in 2017 is 210,400 pesos (CAD 87.51 - Resolución 5858 of 2016). That could be close to a quarter of the income (or more) of a street rebuscador. Therefore, it is unusual that street rebuscadores make contributions to the social security system, leaving them only with health-care protection provided by the subsidized health-care system. In sum, associating Rosa with the commercial sphere and with 'independent' work leaves her unprotected. Therefore, in most cases, it's not even a problem of the existence of well-intended but ineffective regulation or a problem of lack of enforcement. The real excluded just don't exist legally as workers that deserve protection because of the way categories have been framed.

<sup>105</sup> According to the Labour Code, mandated benefits include: affiliation to health insurance, affiliation to a pension fund, affiliation to a workplace accident insurance, affiliation to a family allowance compensation fund (aimed at promoting redistribution and solidarity from employers to workers), transport subsidy (applies for workers who earn two minimum salaries or less per month), working footwear and dress, service premium (obligatory share of the business profits with the workers. Its amount is the cost of one month of salary per year of services for the same employer), severance pay (every employer is mandated to pay his employees one month of salary per year of services as severance pay) and paid vacations (every worker is entitled to a period of 15 business days of vacations per year of service).

<sup>106</sup> See: Supreme Court of Justice, ruling issued the 17<sup>th</sup> of October 2008 and Supreme Court of Justice, ruling issued the 4<sup>th</sup> of February 2009.

### **5.3.2 Street rebuscadores lack the cultural and economic capital for the adjudication of their rights to be successful.**

Most street rebuscadores are self-employed. However, about one third of them are actually part of one or more bilateral employment relationships. For instance, as I've demonstrated before, it is common for rebuscadores to 'hire' someone to help them. The majority of those workers are very young people (many of them with alcohol or drug problems), children, the elderly, homeless people and sometimes the mentally or physically disabled. According to my observations, they are paid less than half the minimum wage, if paid with money at all. They don't have the necessary skills to be precariously self-employed, so they become part of an exploitative bilateral employment relationship very similar to that 'rejected' by some of their employers. Unfortunately, as Bourgois argues, vulnerable individuals internalize the very stereotypes that are used against them and eventually take part in administering their own mutual self-destruction (Bourgois, 2001). As part of a bilateral employment relationship, workers could theoretically take legal action against their precariously self-employed employers. However, they are usually unaware of their legal rights, have very limited if any access to lawyers, and even if they did, and could overcome the common fear of losing their job, their demands are usually so small and unmanageable that the cost of enforcing them outruns any promise of benefit.

In part 4.4.5 of this dissertation, I briefly told the story of Rosa (18 years old) and Carol (21 years old) who were both 'hired' by a female vendor (43 years old) to help her clean and slice the fruits and vegetables sold in the street. They were both young women with drinking problems who had to work because each of them had a child to support. Their boss used to pay them 10,000 pesos

for a day of work (approx. CAD 4.5 in 2016), which means that they were paid less than half the minimum wage in Colombia. However, their boss described herself as belonging to that “rare type who still likes to treat people fairly” (Audio 121003-001). One day I was having a beer with Rosa and Carol, when some relatives of Patricia arrived and sat at our table. It was Patricia’s son, Camilo (13 years old), her sister, Alba (27 years old), and her sister’s boyfriend, Orlando (26 years old). Camilo felt frustrated because he was working in the biggest marketplace of Bogotá (Corabastos) but was being paid half *el diario* as compared to the other carriers. The conversation went as follows:

- Orlando: “You should not complain brother (*no joda hermano*), you are too young and they are treating you well. I worked 15 years in *abastos* for a guy who paid me well but treated me like shit. When I left I wanted to sue him because I worked for him 14 hours a day and he never gave me vacations or any other legal stuff. And he treated me like shit. I really wanted to sue him because he treated me like shit. I looked for a lawyer and stuff but it was too expensive, it took too long and was too risky. I was not going to go through all that trouble of suing for my grandchildren to enjoy the money, was I?”

Alba, who worked at a ‘formal’ job added:

- Alba: “That’s why I don’t even think about it. I know I can work binding books in that company because I passed the physical exams.
- Laura: Exams? What type of exams?”

- Alba: Physical exams. I don't have carpal tunnel syndrome yet. However, as soon as I get it, I know I will have to leave that place with nothing" (Audio 121008-001).

Rosa and Carol heard the conversation without saying a word. I asked them what they thought about it.

- Carol: "About what? Suing? I don't know. The only decent lawyer I know in the world is you... not that I know many. Plus, I wouldn't mess around with the people of *abastos*. No way. Plus, I don't work in anything proper or legal to think about suing. Do I? (Audio 121008-001).

Camilo (a youth) and Carol (a young adult with alcohol problems) are the typical workers 'hired' by other rebuscadores because they are expected to work for very low wages. Additionally, they don't represent any legal risk. This conversation shows power imbalance between the parties, but it also illustrates that both Camilo and Carol lack the cultural and economic capital required to sue their employers even though they are paid half or less the minimum wage (and they both know that a minimum wage exists). Not only they lack the economic capital required to hire a lawyer, but also the cultural capital required to know their legal rights. "I don't work in anything proper or legal to think about suing. Do I?" Carol asked me. Orlando is not young, old, mentally or physically handicapped and has no alcohol and/or drug problems. Plus, he had a boss who owned a spot in Corabastos, which means that most likely his employer possessed more economic capital than the social base I was used to work with. Still, he felt he had no real incentives to sue: he had restricted access to lawyers, a lawsuit took too much time, and it could be dangerous (his boss

might resort to violent means to dissuade him). Not even Alba, the only one who was in a traditional employment relationship, thought about State labour law as a way to deal with the injustices she had to deal with. As a precarious ‘formal’ employee she also seemed to be unaware of her legal rights, and it felt as if she already knew and accepted in advance, although not without certain resignation, her ‘destiny’: working until becoming ill, and then, continue working in the ‘informal’ sector for less money. While listening to them I remember thinking about the days when I worked giving free legal assistance at law school. Orlando and Alba were the ‘typical’ clients who we usually discouraged – unless we thought we could reach a legal agreement with former employers – because their demands were too small, it was unlikely that we could win, and even if we did, it was unlikely that the decision of the judge could be enforced because employers were poor themselves. However, I never saw people like Camilo or Carol look for free legal assistance. Although they are the typical rebuscadores involved in a bilateral employment relationship, they don’t have the amount of capital required to know where to ask for help.

### **5.3.3. The State is not interested in facilitating the enforcement of labour State law for street rebuscadores.**

It is not that street rebuscadores are invisible to the State or to State officials. On the contrary, as I will argue later, street rebuscadores are extremely visible when it comes to enforcing different types of administrative law. It’s not that public officials do not want to help. On the contrary, they strongly believe that they are helping by discouraging rebuscadores to spend money they don’t have in hiring a lawyer that will most likely lose the case. The State does not facilitate the enforcement of labour State law for street rebuscadores, because they are not part of the social

contract<sup>107</sup>. As happens with Standing's *precariat*, street rebuscadores have minimal trust relationships with capital or the State (unlike the *salariat*) and none of the social contract relationships of the proletariat. They share "a sense that their labour is instrumental (to live), opportunistic (taking what comes) and precarious (insecure)" (Standing, 2011, p. 14). Welfare States as well as systems of labour regulation were built with the proletariat in mind. The proletariat consists of mostly industrial workers, for whom labour regulation regarding stability, routes of advancement, fixed hours, unionization etc., makes sense. Street rebuscadores have access to none of those social contract guarantees. By using Standing's categories, they could also be characterized as *denizens*: people with a more limited range of rights than citizens; disposable workers, with no access to State or enterprise benefits (Standing, 2011, p. 96).

Being excluded from the social contract is something that is not openly discussed or said. Colombia lived an internal armed conflict for more than 50 years, and one of the main arguments made by the rebels was precisely that a considerable part of the population had been historically excluded. The 1991 Constitution was drafted with that in mind. However, labour law remained little affected. As a matter of fact, if a street rebuscador is involved in a bilateral employment relationship, he/she can seek advice regarding employment issues at the Ministry of Labour (and no one will tell her that she is actually excluded). If she has enough information to get there, she will be sent to an 'orientation meeting' with a public official that will very likely discourage her to take legal action based on the 'particularities' of her case. In the unlikely event that the rebuscador insists, she will be sent to the Ombudsman Office (Defensoría del Pueblo) to find a

<sup>107</sup> As defined by Webster's New Universal Unabridged Dictionary (2003), by social contract I refer to the way by which, according to any of various theories (Hobbes, Locke, Rousseau), organized society is brought into being and invested with the right to secure mutual protection and welfare or to regulate the relations among its members.

public defender (because she has no money to pay for a lawyer herself). Yet, the Ombudsman Office receives only 200 people per day (people line up before sunrise to get an appointment), and a public defender will most likely refuse the case, because even if he or she won after a few years of litigation, it would be almost impossible to get a very poor employer (a rebuscador himself) to comply with the ruling and pay workers compensation fees. In sum, street rebuscadores are either excluded by *de jure* or *de facto* rights, or most likely, as a result of both.

This might appear to be just a lack of interest from the State, but there is more to it. While there is no conspiracy, it makes organizational sense for public employees to dismiss without further thought the demands of street rebuscadores, because they will not face resistance from them and will not be criticized by their superiors. According to Chambliss, public officials can stay out of trouble when they deal with the poor and socially excluded (while avoiding encounters with the powerful), because there is very little chance of bad publicity as well as criticism from their superiors (Chambliss, 1999, p. 78). Furthermore, both public officials and street rebuscadores have acquired and internalized a sense of dealing with only second-class, unthreatening citizens. Refusing or being refused seems only natural to all the parties involved. A public official from the Ministry of Labour once told me:

“I understand what you mean by rebuscadores. They are not the typical kind of workers who come for legal aid, but I get what you mean. I feel bad for them. But you know we can’t perform miracles. What I do is I try to listen to them. We cannot eradicate poverty, right? So I guess my job is more about listening. But I get paid for being a lawyer, not a priest or a psychologist, right? So I don’t have much time. I do what I can... at least I try

to make their trip worth it. That's more than most people around here do. When they leave, they are usually grateful." (Audio 121114-001)

#### **5.3.4 Superiority of internal over external rules.**

As if all of the above were not enough (labour law is rarely applicable, even when applicable street rebuscadores lack the cultural and economic capital required to be successful, and even if they do, the State is not interested in facilitating the enforcement of labour State law), the hardest obstacle for State labour law to penetrate the semi-autonomous social field of rebuscadores, is that internal rules regarding labour relations are frequently situated in relation of superior power to external rules and therefore deflect the operation of external law in the rare cases that it could apply. That should come as no surprise. As De Sousa Santos suggested more than two decades ago, the legal capital of a given legal order is not equally distributed across the legal space, and therefore each legal order has a center and a periphery (De Sousa Santos, 1987). The configurations dominant at the center (in this case, State labour law built with the proletariat in mind) tend to be taken out of the context in which they originate and exported to – or imposed upon – the periphery (where street rebuscadores are situated). The periphery is also the legal area - the “twilight zone” - where the interpenetration between different legal orders is most frequent as little attention is paid to local regulatory needs (De Sousa Santos, 1987, p. 292).

The vast majority of individuals at the periphery continue to follow customs and some of those customs are incompatible with State law. State labour law regarding stability, routes of advancement, fixed hours, unionization etc., for instance, makes no sense for self-employed

rebuscadores, or even for those ‘employed’ by a poor rebuscador him or herself. What makes sense are survival strategies based on common unwritten customs and expectations. For example, it is expected that small children and the elderly work, helping to increase the income of the household. Camilo (13 years old), Patricia’s son, is just one of many examples. One day, while keeping me company as I was waiting for the bus (or to be honest, while taking care of me), he recalled how hard he worked:

Camilo: “Every day I wake up at 4am and work as a carrier (*cargo bultos*) until around 10am. Then I get back home, change and go to school to sleep (he laughs). After I leave school, I help my mother until around 9pm, and when there is work I take care of the cars parked near that bar. I might be getting 2 or 3 hours of sleep a day” (Audio 121008-001).

Section 35 of the *Code of Children and Adolescents in Colombia* (Law 1098 of 2006)<sup>108</sup> indicates that the minimum age for work is 15 years and only exceptionally, can minor children be authorized to perform remunerated activities in culture, recreation, art and sports. However, Camilo’s story is not uncommon. Quite to the contrary, Patricia is a woman who raised her five kids hoping they could go to school because she couldn’t.

Patricia: “You know I’ve always tried to do my best. It was never easy... never easy... I always told them that school came first. Actually Camilo only started working when he

<sup>108</sup> Original in Spanish: Artículo 35. Edad mínima de admisión al trabajo y derecho a la protección laboral de los adolescentes autorizados para trabajar. La edad mínima de admisión al trabajo es los quince (15) años (...) Parágrafo. Excepcionalmente, los niños y niñas menores de 15 años podrán recibir autorización de la Inspección de Trabajo, o en su defecto del Ente Territorial Local, para desempeñar actividades remuneradas de tipo artístico, cultural, recreativo y deportivo. La autorización establecerá el número de horas máximas y prescribirá las condiciones en que esta actividad debe llevarse a cabo. En ningún caso el permiso excederá las catorce (14) horas semanales.

was eleven. I had too much pressure... my father, my mother, my brothers. We've all worked for as long as I can remember. I didn't want the same for my children. Unfortunately, his grandfather convinced him to start working because I was ill and could not produce the same *diario*... I had to get ill. And see? Now that he has money in his pockets, he likes it, and he's not doing well at school. My poor boy...I wish he never had to help me" (Audio 120912-001).

As argued before, it is also expected that homeless people, alcoholics, drug addicts as well as the mentally or physically handicapped work for very low wages, or for protection, or for a plate of food, while being frequently mistreated. In his book *Sidewalk*, Mitchell Duneier describes how homeless people sleep at night in the vending spot of street vendors in exchange for some money or a plate of food (Duneier, 1999). I saw the same phenomenon in Chapinero, Bogotá. A male street vendor who worked in the area told me:

Street vendor: "There's always someone poorer than you. Always. For instance there is that young guy, poor guy, who is heavily using drugs. He lost his home. I don't judge, everyone carries his own burden. I help him with a few girls who work in the corner of that block (sex workers) when he takes care of our working spots. He takes really good care of us. Sometimes we give him some food, sometimes money. I know he will spend the money in drugs, but I don't judge. It's very cold at night. If I had to spend my night here I'm sure I would look for a way to get high" (Audio 120917-001).

Homeless people work hard for a plate of food or for a few thousand pesos. It would be difficult to prove the existence of all three elements of a labour contract in the case of the homeless person that I described above. There is a personal rendering of services, a retribution for the services (although not necessarily agreed upon previously and not necessarily in cash), and subordination (although not necessarily continuous). If the case was made that a labour contract existed, then the employer would breach the Labour Code since he is required by law to recognize all the benefits related to the employment relationship, as well as a minimum salary.<sup>109</sup> It is highly unlikely, however, that being in breach of the Labour Code would discourage those types of informal working arrangements, since they are extremely important as part of the daily surviving strategy of those most in need.

Furthermore, street rebuscadores often don't understand what a hostile work environment is, because they are socialized in areas where violent behavior rules. They typically disregard State legislation against sexual harassment in the workplace, not only because most of its forms are deeply naturalized, but because in extreme cases the way of handling the situation has little to do with following State legal procedures. I had to witness a deeply disturbing situation while I was in Ciudad Bolívar. Most of the time women are victims of sexual harassment, but this time it was a

<sup>109</sup> In practice, it is extremely unlikely that such a case would be made in a Court of law. I could not find any rulings of the Constitutional Court where a street rebuscador argued that a labour contract existed in his or her case. The closest ruling I found of a precarious worker (not a street rebuscador) was of a sex worker who labored for little more than a year in a brothel under a “verbal labor contract of indefinite duration” (Ruling T-629 of 2010). With five months of pregnancy, she was fired from the brothel. The Constitutional Court stated that the essential elements of the labor contract were present and ordered the employer to undertake the responsibility for her maternity leave ordering him to pay her a monthly minimum wage for the duration of the period of maternity leave plus sixty days of salary as compensation for the wrongful termination. It is highly unlikely that similar cases would be litigated before the Supreme Court due to procedural limitations. Indeed, article 66 of the Code of Labour Procedure establishes a minimum sum of 220 minimum monthly salaries (CAD 68,165 of 2017) as the quantity to access the *recurso de casación* (extraordinary request for review of the decision of a lower court), which would enable the Supreme Court to evaluate the merits of an ordinary labour case. Lower courts could study cases involving street rebuscadores, but access to those rulings is extremely limited.

group of young boys. A female street vendor (42 years old) ‘owned’ at least four different vending spots on a street. She had more economic capital than those with whom I used to work, because she was the daughter of a man who made money in dubious circumstances. She was known for ‘hiring’ young men to take care of her vending spots. I talked to her because I wanted to learn more about bilateral employment relationships amongst rebuscadores, but we ended up talking about something slightly different:

Vendor: “I love to work with those young asses. Most women my age cannot choose, we have to live with what we get... I don’t (she laughs). They know I will take good care of them if they take good care of me. There’s nothing like fresh meat” (Audio 120917-001).

Over time, I learned that this female vendor particularly ‘liked’ to be found having sex with her employees to make her husband jealous. Once one of the young boys (16 years old) was severely beaten by the vendor’s husband and publicly humiliated. I talked to the boy a few weeks later:

- Young boy: “that bitch is crazy. Crazy as hell. And that guy (the husband)... well I understand what he did. I would’ve done the same in his place. The guy looked for me afterwards. He doesn’t care I fuck his wife. He knows I have to do it. But you know... he is a man. And she’s the one with the money” (Audio 121016-002).

A mix of gender stereotypes and recent reconfigurations of gender roles in public spaces gave rise to that unfortunate situation. Not long before that conversation, I had written a paper about Law 1010 of 2006 which enacted measures to prevent, correct and punish harassment within the

framework of labour relations in Colombia. After witnessing the events described above, it was clear to me that external legislation could not have the intended effects in the semi-autonomous field I was observing, because the internal ordering of the social field in which it operates is strong enough to deflect the operation of external law.

A fourth internal rule consists in, for example, how street rebuscadores avoid minimum compliance with health and safety regulations, because they don't know about them, consider them to be unnecessary, or because they increase the cost of their survival strategies. For instance, many street rebuscadores work with food in a variety of ways (they sell fruits or vegetables, they prepare different types of food from a juice to whole meals, etc.) In Colombia, the sanitary conditions of food sales in public spaces are regulated. For instance, every person who manipulates food should wear "a blouse or apron and a cap that completely covers his or her hair. Those garments must be white and kept clean and in good condition." (Section 3 of Resolution number 604 of 1993 - Ministry of Health). Moreover, according to section 4, he or she "must wash his hands with running water, which in any case must be drinkable, using soap, before preparing the food, before serving them, after using the toilet, after taking money, after handling raw food, or changing the activity." Furthermore, according to section 8, "the manipulator/seller must refrain from smoking, eating, coughing, spitting or sneezing on food or in the area where they are prepared." If sanitary conditions such as those described above are not satisfied, measures such as partial or total suspension of work, confiscation of objects and products, destruction of articles or products, etc., might be taken (section 15, Decree 2780 of 1991).

For street rebuscadores, however, regulations regarding sanitary conditions are seen as costly and unnecessary. After I shared some information regarding those regulations with a female street vendor who sold fruit salads on a street corner in Suba, she told me:

“Those people write that stuff just to fuck with us, right? Do they even comply with all that shit in fancy restaurants? Picture me washing my hands every five minutes. It’s the street assholes... the street!” (Audio 121008-001).

In fact and not surprisingly, many street rebuscadores prefer to work in the streets, even if they would be offered a ‘formal job,’ because they are able to avoid State labour law. By staying where they are, their family can help them in their daily duties usually without compensation; their family can replace them during temporary or permanent absences; they are not subjected to subordination; they can express themselves freely even if that means being perceived as rude, violent or unpleasant by wealthier members of society; they can enjoy flexible hours; they can apply for important subsidies only available for those who are not formally employed; and finally, but most importantly, women can comply with caregiving responsibilities even if that means working for 15 or more hours a day.<sup>110</sup> Again, that does not mean that their working conditions are desirable or even that they believe them to be desirable. It is just what they have, what they know. It is part of their habitus in Bourdieu’s terms. Street rebuscadores can choose their working strategies only within a limited range of options determined by their particular trajectory in the social structure (Bourdieu, 1990). That does not mean that they cannot eventually resist (willingly or unwillingly)

<sup>110</sup> Unfortunately, the concept of ‘double burden’ which is used to describe the workload of people who work to earn money, but who are also responsible for significant amounts of unpaid domestic labour, does not make much sense to women who don’t even know where to draw the line between labour and household work.

and act inconsistently in relation to their habitus, or even against the structures that made them, but it means that it rarely occurs. There are strong pressures to conform to their system of binding rules and customs. If adopting State labour law means disrupting the boundaries of their habitus, then most likely State labour law will not be adopted.

According to Tamanaha, “many legal pluralists are anti-State law by inclination” and “consequently have a tendency to romanticize non-State normative systems” (Tamanaha, 2000, p. 305). That it is not what I’m doing. There are times and places where legal pluralism and discretion and power at a local level are a good thing for workers. For instance, the work of Harry William Arthurs suggests that at the beginning of the nineteenth-century in England, it was the independence and freedom from State control that allowed factory inspectorates to distance themselves from bourgeois interests, since State law was closely associated with mill-owning interests (Arthurs, 1985). However, discretion at the local level is not necessarily good for street rebuscadores. Although their forms of work arrangements respond to some of their needs, their habitus is profoundly violent, prejudiced towards women, children and the weak. Informal rules are regularly informed by patriarchal, capitalist, hierarchical and class-based contents that, in turn, legitimize inegalitarian arrangements. Many times, informal rules end up protecting the strongest members of a determinate community (men, young, healthy) and not the weakest ones. I agree with Boaventura de Sousa Santos when he argues that legal pluralism must always be subjected to a kind of litmus test in order to determine which norms contribute to reducing unequal power relations, thereby reducing social exclusion or upgrading the quality of social inclusion, and which norms rigidify unequal exchanges and reproduce social exclusion (De Sousa Santos, 2004). Certain elements of rebuscadores’ working arrangements are desirable and should be kept (such

as flexible hours), but many other aspects should be rejected wholeheartedly (such as extenuating child labour). I believe in the importance of State regulation, and consequently I ultimately distance myself from anti-State or anti-regulation advocates who come both from the political right (such as the libertarians) or from the left (such as left anarchism).

### **5.3.5 Tutela prevails over labour disputes.**

Since the tutela was created in 1991, labour disputes regarding street rebuscadores are more likely to be understood as constitutional problems and relegated to the constitutional sphere. As I stated before, after health care, due process, pensions and violations to the right of equality, violations related to labour conflicts are the most frequent claims litigated using the *acción de tutela*. In part 5.2.1 of this dissertation, I described different types of tutelas filed by street rebuscadores with respect to their productive strategies. More specifically, I reviewed different cases of informal waste collectors (recyclers) seeking inclusion in the privatization process of waste management in different cities, or of rebuscadores who worked washing and watching over cars in public areas, as well as of shoeshine boys, street vendors, and others who used bicycle taxis or animal traction vehicles to make a living and survive. The common denominator in all those cases, was that the conflict was no longer between an employer and its employee, but between the precarious self-employed worker and the State. More specifically, street rebuscadores use tutelas to fight against low-level regulations governing public space affecting their different survival strategies. As César Giraldo informally suggested “the site of social struggle is no longer the conflict between employer and employees” (Audio 120902-001). Consequently, the site of resolution of disputes has shifted from labour law to constitutional law.

Labour law does not have what it takes to translate the needs of street rebuscadores into a legal language, because most street rebuscadores are not part of a bilateral relationship of employment. The needs of street rebuscadores have been more successfully framed using the language of fundamental rights, and more specifically, the right to work and to access a minimum level of subsistence (*mínimo vital*). As this dissertation shows, the Colombian Constitutional Court has never considered the element of subordination when dealing with cases of street rebuscadores, at least so far. The Court assumed that street rebuscadores are workers (it never treats them as business entrepreneurs), who deserve protection, as they are part of a particular group of vulnerable citizens. Furthermore, constitutional law has also expanded our knowledge of the meaning of the collective right to maintain the integrity of public space and its limits.

That being said, in terms of access to justice, César Rodríguez wrote a chapter in a book written with Boaventura de Sousa Santos where he analyzed ordinary labour justice both from the point of view of demand and supply. Regarding the demand for judicial protection in the labour jurisdiction he concluded, as expected, that there was a predominance of conflicts related to labour debts, particularly those related to compensations, social benefits and wages in traditional bilateral relations of employment. In other words, labour judges in Colombia are primarily concerned with solving a large number of repetitive micro complaints amongst the traditional parties involved in an employment relationship. Furthermore, in terms of users, the study showed a clear predominance of litigation between occasional users (workers) and frequent users (private and public companies). Most occasional users belonged to the middle class, since litigation costs are considerable for workers who belong to lower economic and occupational strata. For them,

“recourse to a labour court appeared as a complicated and distant mechanism”<sup>111</sup> (De Sousa Santos & García, 2001, p. 678). All of the above, García adds, could also “explain the existence of a marked tendency towards the use of tutelas to resolve labour disputes”<sup>112</sup> (De Sousa Santos & García, 2001, p. 677). Therefore, in terms of access, street rebuscadores’ access to the acción de tutela is easier (although not without complications) as compared to their only hypothetical access to labour Courts.

### **5.3.6 Strategic use of labour law.**

There is one exception to State labour law’s lack of penetration in the semi-autonomous social field. Street rebuscadores, who do not necessarily hope to win the legal case, use it in a strategic manner in order to demonstrate strengths through their alleged knowledge of external State legal systems. Most street rebuscadores do not know State labour law, but they have heard of it. To use De Sousa Santos’ metaphor, if laws are like maps, rebuscadores identify non-State laws or the mental map of their productive strategies very well, but they have problems with painted cartographic maps (or State labour law), not only because they lack access, but because they do not possess the cultural capital required to read them appropriately (De Sousa Santos, 1987). However, they can identify loose dots, usually out of context, which they normally fill with information from their mental map, and then try to use it strategically. Most of the times, however, they are unsuccessful.

<sup>111</sup> Complete quote in Spanish: “Los costos de litigar son muy considerables para los trabajadores que, como se vio a lo largo del estudio, pertenecen a estratos económicos y ocupacionales medios y bajos. En estas condiciones, el recurso a un juzgado laboral aparece como un mecanismo complicado y lejano (...)”

<sup>112</sup> Complete quote in Spanish: “Las disfunciones de la justicia laboral ordinaria, tanto desde el punto de vista de la demanda como del de la oferta, explican la existencia de una notoria tendencia hacia la utilización de la acción de tutela para resolver conflictos laborales.”

A brief anecdote can help understand my argument. Sandra, a teenage rebuscadora with alcohol problems, proudly told me once that she was able to threaten her boss (another rebuscadora who sells beer on the 'sidewalk' of a slum) with a lawsuit. The threat was as follows: if her employer did not increase her salary to around CAD 6 per night, then she would go to the local mayor's office and sue her for not paying mandated employment benefits, which she thought consisted of giving her food at night. The teenage rebuscadora knew that employees should have access to mandated benefits, but she was unaware of their content. Since it is common for street rebuscadores to share their food with their employees, she filled the gap with knowledge from her habitus. Her threat included filing the lawsuit at the local mayor's office, where it would probably be readily rejected without even instructing her to go to a judge. Sandra thought, however, that she was 'successful' because her employer increased her salary temporarily, only to tell her after a couple of weeks that she was not needed any more. Her employer later told me that even if Sandra was "legally right," she hated dealing with "greedy drunks." (Audio 120917-001)

At a more theoretical level there are certain conclusions made by legal pluralists that are corroborated by my fieldwork observations. As socio-legal life always involves interlegality, the inapplicability of State law is definitely compensated by the increase of local regulation. The social space between legislator and subject, therefore, is never a normative vacuum. The assumption that both lawyers and economists make when arguing that the informal labour market is unregulated because State labour law is either inexistent or unenforceable is empirically indefensible. However, the dialectics between legal systems develop and change over time. As of today, I gave different examples of internal rules regarding labour relations that are hierarchically superior to

external rules in the semi-autonomous social field of street rebuscadores in Bogotá. That arrangement is highly dynamic, however, and could change at any time. Furthermore, there are competing, contesting, and sometimes contradictory orders outside of State law. My purpose in this section was to describe what I consider to be general trends and agreements within the population I studied.

#### **5.4 The semi-autonomous social field of street rebuscadores is being invaded by *derecho de policía* although not without resistance**

##### **5.4.1 Patricia's story.**

Patricia and her family are among the street rebuscadores with whom I spent more time during my fieldwork. Patricia is a single mother of five, who provides for her family by selling beer in a very poor area of Ciudad Bolívar that was invaded by a group of settlers (which included her parents) more than 30 years ago. The people who live there still have not legally acquired ownership of the land, but they have access to water and electricity provided by the city for which they are charged. Patricia used to live with her parents, but she moved to a very small place alone with her children, because her father was abusing them. Like most rebuscadores, Patricia has had multiple jobs during her life. When I first met her, she was a local leader without remuneration from the program *familias en acción* (families in action). *Familias en acción* is a key State-level program aiming to contribute to reducing poverty and income inequality through conditional cash subsidies given to 2.6 million families.<sup>113</sup> Patricia is a beneficiary of this program. It literally allows her and her family to eat when there is no additional daily income.

<sup>113</sup> For more information, see: [http://www.dps.gov.co/Ingreso\\_Social/FamiliasenAccion.aspx](http://www.dps.gov.co/Ingreso_Social/FamiliasenAccion.aspx).

Soon after we first met, she changed her productive strategy from selling vegetables to selling beer. Selling vegetables no longer provided her with the daily income she needed to survive, as wealthier food brokers organized a series of small shops called fruvers in the area, where they sold vegetables and fruits at very low prices. As explained previously, individual rebuscadores have a hard time building economies of scale, as they deeply distrust their peers and run away from cooperation strategies. Many were being left out of business, and Patricia was one of them:

Patricia: “fruvers look clean and nice Laurita... they sell fruits and vegetables in bags. Each bag is worth between 500 and 1000 pesos (0.18 – 0.35 US of 2017) and they let their customers remove bad fruits and change them for good. Fruvers are kicking us out of the street. They are doing what the police couldn’t do” (Audio 120831-001).

Patricia needed to change her productive strategy. She walked around different neighborhoods of Ciudad Bolivar, observed “without asking many questions” that beer sales were on the rise, made calculations of how much it would cost her to buy the first 20 beers to start her business and turn the very precarious shack where she used to store vegetables into a ‘bar’. She then commissioned her son to call in some favors and put together a list of popular dance music to attract clients, and even made security arrangements by asking her brother to walk by her bar at least every couple of hours in case she had problems with “violent customers she couldn’t handle.” The shack was very small and had no door so she made arrangements for customers to sit on chairs located in the sidewalk.

Patricia needed approximately US \$80 to start her business, and by the time I met her she had no money at all. She used the system called *gota a gota* (drop by drop) to borrow the money she needed. The system is immensely popular with rebuscadores, because for them it is extremely difficult to have access to credit or to access the financial system or other ways of borrowing money. Rebuscadores return a portion of the money they borrow on a daily basis, paying interest of around 20% per day. They do their very best to pay on time because they know that moneylenders are closely connected to drug dealers and militias from ex-paramilitary groups. Patricia completed her research, borrowed the money, bought the beer, cleaned and organized her bar, and prayed for the whole strategy to work so that she could pay her debt and buy food for her children. I was happy for her when she had her first profitable night. She sold all the beer, kept a small profit and bought more beer. “My new job is working,” she told me. “Tomorrow we will start all the paperwork. Fortunately, I have you by my side” (Audio 120912-001).

Indeed it started. To make a long story short, in order to operate her business, Patricia needed approximately six different licenses: first, she needed to register in the registry of commerce (registro mercantil), then she needed to obtain a land use permit (certificado de uso de suelos), a copyright license to be able to reproduce music (certificado Sayco y Acinpro), a sanitary and food handling license (concepto sanitario y certificado de manipulación de alimentos), a security license (certificado de seguridad), and a single tax number – RUT (registro único tributario). Most licences came with a fee, which meant that she had to borrow more money. In any case, she was unable to comply with the necessary requirements to obtain all of them. For instance, since she built her shack on illegally occupied land, it complicated the procedure to obtain a land use permit. She felt frustrated and did everything she could to “complete the paperwork,” because otherwise she knew

that the police and other public officials would have the “perfect excuse” to close the “doors” (the shack didn’t even have doors) of her new survival strategy.<sup>114</sup>

For a street rebuscador such as Patricia, licenses are difficult to obtain for many reasons: they are expensive, most of them are unable to comply with all the requirements, and (most importantly) forms are very difficult to fill in as the following excerpt shows:

- Patricia to Laura: “Do you know how to fill in the form needed for the registry of commerce? A friend told me that there’s a lady who can help us to fill them in, but she is expensive. In this country there are many fuckers who know how to make money while taking advantage of the poor (*en éste país no falta el hijo de puta que vuelve plata la pobreza de la gente*).
- Laura: “let me see... (Reading) Corporate name? Legal person or natural person? Opening balance? Current assets? Total equity? Ufff... I know some of those terms, but for instance, I don’t have the slightest idea of the difference between current assets and total equity. Let me call a friend...” (Audio 120916-001)

To help Patricia, I called a friend who was completing an MBA. My friend was not sure of the answer and wanted to confirm with some of her colleagues. Patricia: “I feel better. I thought I was the dumb one... but you don’t have a clue! Jajaja! (*joking*) after all those years of study it is obvious

<sup>114</sup> Many analysts from different ideological perspectives have studied the tremendous efforts that the poor must make to start a recognized business in the developing world. Hernando De Soto, for instance, has worked extensively on the matter. My fieldwork matches his detailed description of the tremendous efforts required to start a small business. De Soto suggests that Perú should focus on reducing the costs of transaction rather than the cost of production as a possible solution (De Soto, 1989, p. 257). I agree that costs of transaction should definitely be reduced. However, I think it is problematic to leave the costs of production entirely to the market.

that you also lack what it takes to be an entrepreneur... I feel better.” (Audio 120916-001) After a few minutes my friend called back and answered our questions. I was shocked. How could public officials insist on assimilating street rebuscadores with business entrepreneurs? Could someone tell them that the vast majority of the population lacked the cultural capital required to fill in those forms?

Laura: “(joking with Patricia) don’t tease me. You are the one with the experience and the one who should know. Didn’t you have to fill in the same forms when you started to sell vegetables in the street? Patricia: no... I don’t remember... I used to keep important papers under my bed but they rot. The problem with papers is that they rot” (Audio 120916-001).

Patricia’s story is one of many that illustrate the daily encounters of street rebuscadores with *derecho de policía*. To analyze what that means, I will divide the rest of this chapter in five parts. First, I will introduce what I mean by *derecho de policía*, and I will introduce the jurisdiction of different public officials who interact with street rebuscadores on a daily basis (part 5.4.2). Secondly, I will return to Patricia’s story to characterize, in general terms, the attitude of the police and other public officials towards street rebuscadores (part 5.4.3). Thirdly, I will argue that public officials exercise a highly discretionary form of power, and that they can normally decide whether or not to intervene. When they do, they use different rhetorical strategies to justify the soundness of their decisions (part 5.4.4). Fourthly, I will describe different police practices that public officials exercise when they decide to intervene (part 5.4.5). Finally, I will describe street rebuscadores’ different strategies of resistance (part 5.4.6).

#### 5.4.2. Derecho de policía.

*Derecho de policía* is a rather neglected area of administrative law that Colombian lawyers rarely study as such in law schools. The Constitutional Court of Colombia defined it as “a set of administrative activities aimed at issuing general rules and individual measures necessary for the maintenance of public order” (Ruling T-425 of 1992; My translation).<sup>115</sup> The Court also distinguishes between police power (*poder de policía*) and police function (*función de policía*). By police power, the Court refers to the normative power to issue rules “which limit or restrict individual rights for the purpose of maintaining internal public order and safeguard public safety, tranquility, health and morality” (Ruling T 490 of 1992; my translation).<sup>116</sup> By police function, it instead refers to the “exercise of the sanctioning power by the administrative authorities,” and it argues that such exercise requires the “rational and proportionate use of force, as well as the choice of the most benign and favorable means to protect fundamental rights when countering the dangers and threats that surround the community” (Ruling T 490 of 1992; my translation)<sup>117</sup>. Therefore, the mandates emanating from the police power are enforced through the police function (Nieto & Pineda, 2003).

<sup>115</sup> Original quote: “(...) un conjunto de actividades administrativas que tienen por objeto la expedición de reglas generales y de medidas individuales necesarias para el mantenimiento del orden público.”

<sup>116</sup> Original quote: “(...) atribución o facultad de expedir normas, - leyes o reglamentos, - que limitan o restringen los derechos individuales con la finalidad de conservar el orden público interno y salvaguardar la seguridad, tranquilidad, salubridad y moralidad públicas.”

<sup>117</sup> Original quote: “La función de policía puede dar lugar al ejercicio de la potestad sancionatoria por parte de las autoridades administrativas. El ejercicio de la función de policía exige el uso racional y proporcionado de la fuerza, así como la escogencia de los medios más benignos y favorables para proteger los derechos fundamentales al momento de contrarrestar los peligros y amenazas que se ciernen sobre la comunidad.”

*Derecho de policía* is not an area of law that has been explored in depth in Colombia, but there are some recent approaches that should be mentioned. For instance, Miguel Malagón, professor of administrative law at Los Andes University, argues in *Ciencia de policía, policía de seguridad y vagancia*, that both Europeans and Latin Americans have used administrative law, most particularly *derecho de policía*, to repress vagrancy and enforce social discipline (Malagón Pinzón, 2016). Malagón questions how, despite the social and progressive ideas of Colombia's Social State of Law "in the area of *derecho de policía* we continue to act under absolutist parameters of concentration of administrative and judicial powers in the executive branch, and of unconstitutional decisions in matters of public freedoms" (Malagón Pinzón, 2016, p. 234; my translation).<sup>118</sup> Vagrancy does not constitute a crime in Colombia anymore,<sup>119</sup> but as I will show below, the executive branch uses *derecho de policía* to police and control different survival strategies that take place in public spaces.

Carlos Castro and Paula Ramírez also wrote about *derecho de policía* but from a different standpoint. Castro is a professor of criminal law at El Rosario University. As such, he is interested in the grey area between criminal law and *derecho de policía*. In his view, the main difference between these two areas is that criminal guilt implies an "ethical judgment of depreciation on the author," while that same judgement is not present when considering an administrative offense that is part of *derecho de policía*. More specifically, he distinguishes between *acciones prohibita quia mala* (activities that are prohibited because they are bad) and *acciones mala quia prohibita*

<sup>118</sup> Original quote: "(...) en materia de derecho de policía seguimos actuando bajo los parámetros absolutistas de acumulación de competencias administrativas y judiciales en la rama ejecutiva, y de decisiones inconstitucionales en materia de libertades públicas"

<sup>119</sup> Until 1997 did the Constitutional Court ruled that begging did not constitute a crime (Ruling C-016 of 1997). Sixteen years later, Congress enacted a Bill that creates the guidelines for social policy regarding the homeless (Bill 1641 of 2013).

(activities that are considered to be bad because they are prohibited), and suggests that the first refers to criminal offenses, while the second refers to administrative offenses (Castro & Ramírez, 2010, p. 285). He acknowledges that there are problems with this division, basically because administrative offenses are not necessarily ethically neutral (for instance, some offences related to traffic can put life or personal integrity at risk) (Castro & Ramírez, 2010, p. 285-288). However, he argues that the difference between criminal and administrative offenses is still worth using, basically for four reasons: First, there can be no prison for debt, but certain types of debts can be sanctioned as an administrative offense. Secondly, criminal law does not admit criminal liability of corporations, but they could be sanctioned through an administrative process. Thirdly, there is no joint liability in criminal law for a crime that someone else committed, while that might exist in administrative law. Fourthly, criminal law cannot sanction reckless conducts that produce no harm, and finally, it allows sanctioning conducts that have been decriminalized (Castro & Ramírez 2010, p. 289-291).

I believe that the division between criminal and administrative offenses<sup>120</sup> is not only artificial, but also pernicious when it is used to penalize vulnerable individuals, such as street rebuscadores, through non-criminal forms of social control. There is no need to use criminal law, because as suggested by Velloso, non-criminal forms of social control can be used alternatively and often more ‘efficiently’ to detain, fine and/or exclude someone from society (Velloso, 2013, p. 171). Other socio-legal scholars have also shown that non-criminally based normative systems are used to deal with urban disorder (Blomley, 1994; Sylvestre, 2010; Valverde, 2009). In fact, when conflicts are administratively translated, they are eventually punished in a more effective way because administrative justice not only offers greater enforcement capacity but also lower legal

<sup>120</sup> To broaden the debate, see: Pita 2003 and Sarrabayrouse 2004.

guarantees: “no mens rea is required, strict liability is often sufficient and lower standards of proof are applied” (Velloso, 2013, p. 178-180). Castro is right when he argues that administrative offenses allow to sanction conducts that have been decriminalized. However, I don’t see that as a good but as a bad thing. In fact, I believe Velloso is right when he argues that we have to stop thinking that decriminalization means depenalization, because depenalization can actually imply more punishment. To address the problem, Velloso argues as follows:

I propose a wider conception of the penal field which operates as a mobile (kinetic sculpture) and includes the criminal law realm, but also other institutional normative systems that configure ‘less’ prominent locations of punishment, such as: regulatory criminal law, civil courts, immigration law, military law, parole boards and other administrative legal systems that play an increasing role in social reaction. I ultimately argue that criminologists should also focus on such administrative-based justice systems in order to better address and resist punitiveness. (Velloso, 2013, p. 166).

In Colombia, *derecho de policía* is used to address urban disorder. In fact, one of the main statutes (the National Police Code) includes in section 2 a list of specific objectives that start by “promoting in the community behaviours that favor coexistence in public spaces, common areas, places open to the public or that being private can impact the public sphere” (My translation).<sup>121</sup> However, national and local police codes are not the only ones regulating the field of *derecho de*

<sup>121</sup> Complete quote of Section 2 of the National Police Code in Spanish: “Objetivos específicos. Con el fin de mantener las condiciones necesarias para la convivencia en el territorio nacional, los objetivos específicos de este Código son los siguientes: 1. Propiciar en la comunidad comportamientos que favorezcan la convivencia en el espacio público, áreas comunes, lugares abiertos al público o que siendo privados trasciendan a lo público. 2. Promover el respeto, el ejercicio responsable de la libertad, la dignidad, los deberes y los derechos correlativos de la personalidad humana. 3. Promover el uso de mecanismos alternativos, o comunitarios, para la conciliación y solución pacífica de desacuerdos entre particulares. 4. Definir comportamientos, medidas, medios y procedimientos de Policía. 5. Establecer la competencia de las autoridades de Policía en el orden nacional, departamental, distrital y municipal, con observancia del principio de autonomía territorial. 6. Establecer un procedimiento respetuoso del debido proceso, idóneo, inmediato, expedito y eficaz para la atención oportuna de los comportamientos relacionados con la convivencia en el territorio nacional.”

*policía*. As I will show for the case of Bogotá, there is a substantial body of regulation at the State level dealing with the increasingly complex social, economic and political challenges of the city, and Bogotá also has its own government agencies at the district level equipped both legally and fiscally to make binding decisions. The city is further divided into 20 localities each of which has additional administrative units with decision-making capacities. Some of those statutes and by-laws issued by different administrative units of government at different levels are also part of *derecho de policía* as they are enacted to maintain public order. I will argue in the rest of this dissertation that the semi-autonomous social field of street rebuscadores is being invaded by *derecho de policía* although not without resistance (see figure 84).

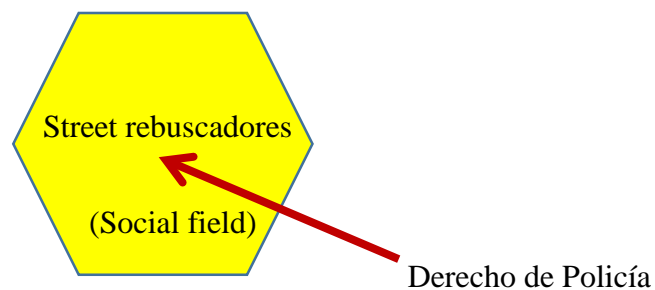


Figure 84. The social field is being invaded by *derecho de policía*

Finally, and before moving on, I will say a few words about the distinctive jurisdiction of different public officials who interact with street rebuscadores on a daily basis. On one side, there is the police, whose multiple tasks and responsibilities are included in the National Police Code (Decree 1355 of 1970 recently derogated by Bill 1801 of 2016) and Bogotá's Police Code (*Acuerdo* 079 of 2003).<sup>122</sup> On the other side, there are public servants from three different public

<sup>122</sup> Regarding street rebuscadores, the specific tasks and responsibilities of the police are mentioned in the first two pages of part 5.4.5.

institutions who interact with street rebuscadores. The first institution is the IPES (Institute for the Public Economy) whose tasks are regulated in section 79 of *Acuerdo 257* of 2006. The main task of the IPES is to provide alternatives for individuals who work in the street<sup>123</sup>. The second institution is the DADEP (Administrative Department for the Defense of the Public Space) whose tasks are regulated in section 2 and 3 of *Acuerdo 018* of 1999. The main task of DADEP is to ‘improve’ the quality of life of Bogotá by creating a “new public space culture that guarantees its common use and enjoyment and encourage community participation.” In order to do that, the DADEP has the responsibility to “defend,” “supervise,” “regulate” and “control” the public space in Bogotá, amongst others.<sup>124</sup> Finally, local mayors’ offices have the responsibility to promote peaceful coexistence, apply rules regarding *derecho de policía*, coordinate peaceful resolution of conflicts, and facilitate the dialogue of “all bodies and agencies that carry out functions that have an impact on the locality,” amongst others.<sup>125</sup>

<sup>123</sup> The complete list of principal tasks in Spanish is as follows: Acuerdo 257 de 2006. Artículo 79. Funciones del Instituto para la Economía Social - IPES. A) Definir, diseñar y ejecutar programas, en concordancia con los planes de desarrollo y las políticas trazadas por el Gobierno Distrital, dirigidos a otorgar alternativas para los sectores de la economía informal a través de la formación de capital humano, el acceso al crédito, la inserción en los mercados de bienes y servicios y la reubicación de las actividades comerciales o de servicios. B) Gestionar la consecución de recursos con entidades públicas, empresas privadas, fundaciones u Organizaciones No Gubernamentales - ONGs nacionales e internacionales para ampliar la capacidad de gestión de la entidad y fortalecer la ejecución de los programas y proyectos. C) Adelantar operaciones de ordenamiento y de relocalización de actividades informales que se desarrollen en el espacio público. D) Administrar las plazas de mercado en coordinación con la política de abastecimiento de alimentos. E) Adelantar operaciones de construcción y adecuación de espacios análogos y conexos con el espacio público con miras a su aprovechamiento económico regulado. F) Ejecutar programas y proyectos para el apoyo a microempresas, famiempresas, empresas asociativas, pequeña y mediana empresa e implementar el microcrédito.

<sup>124</sup> Complete quote of section 2 and 3 of Acuerdo 018 of 1999 in Spanish: Artículo 2°. Misión de la Defensoría del Espacio Público. La misión es contribuir al mejoramiento de la calidad de vida en Santa Fe de Bogotá por medio de una eficaz defensa del Espacio Público, de una óptima administración del patrimonio inmobiliario de la ciudad y de la construcción de una nueva cultura del Espacio Público que garantice su uso y disfrute común y estimule la participación comunitaria. Artículo 3°. - Funciones. Son funciones de la Defensoría del Espacio Público, sin perjuicio de las atribuciones de otras autoridades, la defensa, inspección, vigilancia, regulación y control del espacio público del Distrito Capital; la administración de los bienes inmuebles, y la conformación del inventario general del patrimonio inmobiliario Distrital.

<sup>125</sup> Decreto 101 de 2010. Artículo tercero. Funciones de la Alcaldía Local. Son funciones de la Alcaldía Local: A. Misionales. (...) 2. Promover la convivencia pacífica, la aplicación de las normas de policía y coordinar los distintos mecanismos e instancias de resolución pacífica de conflictos tales como mediación, conciliación, facilitar la interlocución de todas las instancias y organismos que ejerzan funciones que impacten en la localidad (...).

### **5.4.3. Attitude of police officers and other public officials towards street rebuscadores.**

Patricia's story taught me that licenses were often used as an excuse by police officers and other government employees to selectively intimidate rebuscadores when they felt the need to do so. Police officers did not bother Patricia because she did not cause them problems. She once told me: "policemen are usually nice to me because I did the smart thing to do... I befriended the nice ones. That's what I tell everyone they should do. If they like you, they will give you time to get the papers they want." (Audio 120916-001). However, when police officers receive what they think are too many complaints (it does not matter if they were well-grounded or not) about the behaviour of a particular street rebuscador, they intervene. Complaints may include threats of violence, actual physical violence, alcohol abuse, etc. I talked to some of the neighbours in the areas where I conducted my fieldwork, and they confirmed that many of them complained. For instance, a female neighbour of Plaza de Lisboa (Suba) told me:

Neighbour (Plaza de Lisboa): "I nag the police all the time because those people (street vendors and recyclers) intimidate me... I know they will either rape me or steal from me one of these days. But the police tell me that they cannot kick them out without an order from the mayor's office. Can you help me with that? Can you help me get that order?" (Audio 120917-001).

Complaints are so annoying for police officers that they became one of the central topics of a focus group that I conducted in Suba with the police. In the following excerpt, they explain some of the issues they face:

- Policeman (28 years): “I always tell them the same thing *doctora*, the same thing. Look! We don’t want to start a confrontation with you. But we have the pressure of the community on the one hand, and the pressure of local authorities asking us what we are doing in relation to public space ... we are between the rock and a hard place (*entre la espada y la pared*). (...)”
- Policeman (33 years): “Believe me when I tell you that we spend most of our time trying to reach an agreement with them. I know they have the right to work, but others like the owners of small businesses who pay taxes also have the right to work, the right to a peaceful environment, and the right to enjoy public space ... as a lawyer you must know that not everything can be given only to a specific group of people... what about the others? They are also citizens! Should we ignore them? (...)”
- Policeman (24 years): “They are difficult people *doctora*, they are difficult. Believe me when I tell you I sympathize with many of them. I do. But everything is a problem with them, everything. If you ask them to move a little bit they will insult you, threaten you... talk to the community, they will tell you the same thing. Believe me, they are a problem.”
- Policeman (42 years): Have you been to Plaza del Rincón, for example? There is a church and a school there, and people can barely walk in and out because it is packed with street vendors (*hay una chichonera de vendedores terrible*). Plus, everything looks

dirty and smells bad, because no matter what we do they never pick up their mess.”

(Audio 121114-001)

Police officers in Bogotá are usually poor people themselves. Many of them even come from the same areas as street rebuscadores. However, their jobs and other circumstances made them slightly wealthier and educated, allowing them to consider themselves in a higher position in the social scale. Still, they know rebuscadores intimately. Most of the police officers I met insisted that they “understood” and “tried to help” rebuscadores “as long as they behaved.” By “behaving,” they meant being invisible to the police, or in other words, not causing any “problems” that would “oblige them to work harder” as if they “had nothing to do” (Audio 121114-001). As I said before, police officers were usually nice to street rebuscadores such as Patricia who specifically avoided giving them any trouble.

- Laura to Patricia: “(*worried*) I heard that the police passed by today... and your papers are not completed yet!
- Patricia: Oh, yes... I have to get those papers right Laura... plus we forgot something about hygiene and firefighters... fortunately they were nice, one of them was making a bad face (*me empezó a hacer como mala cara*) but I could deal with him. They were nice” (Audio 120916-001).

The situation is quite different with public officials. As opposed to the police, public officials that deal with street rebuscadores do not know them intimately, and they have developed a very different habitus. During my fieldwork, I interacted with dozens of different public officials from

different institutions, attended multiple meetings with them, and arrived at the conclusion that, for analytical purposes, most of them could be placed in three different categories: the preachers, the mercenaries and the skeptics. These are of course only ideal-type in the Weberian sense (Weber, 1954). One official can sometimes alternate from one discourse to the next depending on the circumstances. Like Weber's ideal types, they are pure or even caricatured, but are still useful to explain differences in attitudes towards street rebuscadores.

The *preachers* form the first and most important group. They deserve that label because they preach what they believe is a more advanced view of the world. They deliver sermons about urban aesthetics, about what should be considered to be clean and unclean, loud and quiet, proper and improper, violent and non-violent, advanced and regressive. They have a clear idea of progress and development that could be closely associated with the progressive mindstate of modernism. For instance, during an informal conversation with a public official who worked for the IPES, he stated the following:

IPES official: "I've been in the District working for 5 years, and you ask me ... what have you done in 5 years? And I tell you... well, I have new clothes, I live well, I improved my socio-economic level (*mejoré el estrato*), I have a car, I have some savings... if I get fired tomorrow I have enough money to live for around three months ... yeah?... but these people (referring to street rebuscadores)... these people don't even save 100 pesos a day. And well, I try to teach them minimal things... small things. You have to start by telling them that it is important to be clean, to smell good. No one pays me for that... but I guess that's part of the job." (Audio 120818-001)

Some street rebuscadores are convinced that they should obey the code of behaviour that is imposed upon them, and even admire *preachers*, others strategically ‘adopt’ those standards, but most rebuscadores feel truly uncomfortable with their moral high ground and refuse to comply with them. Interestingly, most of the leaders I met were either convinced or strategically prone to adopt their standard of goodness (quiet is better than loud, good manners are essential, etc). As Foucault argued, power is not simply based on prohibition but also on the positive formation of norms and shaping of individuals to fit these norms (Foucault, 1979). “Law is not simply a set of rules exercising coercive power, but a system of thought by which certain forms of relations come to seem natural and taken for granted” (Merry, 1988, p. 22). For instance, while I was in a meeting with street vendors, two of them became physically violent with each other and one of them pulled out a knife:

Germán (one of the leaders): “here we go again! Is it impossible for us to avoid making ridiculous spectacles every time we meet? Get them out! *La doctora* Laura will never come back to a meeting because we cannot behave. She fell from the sky, she is not charging us anything, but you still have to act like pigs (*se tienen que comportar como cerdos*)” (Audio 120817-001).

Germán was shouting while most people were cheering for one of the sides. I was petrified and tried to get as far as I could from the fight. After it was over, I talked to other leaders about what happened:

- Patricia: “Sorry Laurita. I saw your face (hahaha!) I thought you were going to pee in your pants.
- Laura: I’m fine...
- Isadio: Those fuckers... one can be poor but not fucking violent (*pobre pero no un atravesado de mierda*), poor but not a bastard (*pobre pero no un cerdo*).
- Patricia: Yeah. I always tell them that we all need to learn how to behave... and it’s not only about learning how to talk instead of beating each other. For instance, I try to dress as best as I can and that improves my self-esteem. I try to say better words... it’s not true that because one works in the street, one has to be rude or filthy (...)” (Audio 120817-001)

Although I felt that the words of the leaders were sincere, I couldn’t help but interpret what they said as an unconscious (or conscious?) strategic move to show me that they were closer to that ‘standard of goodness’ that is supposed to be shared by those who are closer to me in the social space. As expected, leaders use the tools at their disposal to differentiate themselves within their own habitus, and the fight we witnessed gave them an opportunity to show that they felt different (better?) compared to the others. In contrast to the leaders, regular rebuscadores felt clearly uncomfortable. After we left the meeting, a female street vendor told me:

Female street vendor: “they were right to pick that fight (*tenían razón de sacarse cuchillo*) and sorry... but I’m glad you were there. If you can’t stand a little fight, then you have no place with us... right? As Germán said, most public officials don’t come back when they

get to know us. Well, fuck them! We are not beautiful girls (*no somos niñas bonitas*) and with all due respect, we don't want to become one." (Audio 120817-001)

Whether their 'advice' is heard or not, however, *preachers* use any possible excuse to discipline all kinds of street rebuscadores into observing their rules which always skillfully and surprisingly match different administrative regulations that are part of *derecho de policía*. In fact, *preachers* appear to master the legal technical discourse more than any other type of public official, since most of them have developed the skills to interpret *the law* in ways that allow them to pursue their own agenda. For instance, while I was talking to the same public official working for the IPES, I asked him about the procedure he had to follow to allocate tents to particular street vendors:

- IPES official: "first, the vendor has to be found in the IPES database. Second, the committee of vendors (chosen by themselves) needs to endorse her. However, to be honest, if I don't agree, she will not get a tent. If I believe she does not deserve a tent, she won't get it. Sorry to say it that way... I know it sounds ugly, but it's true. I'm the one who makes the decisions around here (*yo soy el que manda acá*).
- Laura: But if they comply with all the requirements, how can you still decide who gets a tent and who doesn't?
- IPES official: it's easy. Somewhere in the procedure it says that only one tent can be allocated per family unit. So... what is a family? It depends, right? When I don't want someone to have a tent, because I think it's unfair, then I will argue that the person has a family member (even a distant relative) with a tent in the area. I know it sounds unfair, but it isn't. I'm an ethical person and I don't see it as unfair. Whether you believe it or

not, I am overwhelmingly humane (*tengo una calidad humana desbordante*). I feel when people need help and when they don't" (Audio 120818-001).

*Mercenaries* form the second group of public officials. They actually dislike their job as well as the people they have to deal with, but they do it basically for the money. They are precarious employees themselves (as preachers are) with fixed term contracts of 4 to 6 months, and they spend their day working as little as they can while actively strategizing to keep their jobs. Mercenaries want to interact with street rebuscadores as little as possible, but when they do, they are tough, usually arbitrary and also prone to invent State regulations that do not even exist. During my fieldwork, for instance, I spent a week with former street vendors who were relocated in fixed stands situated at the corner of a very busy square in Suba. High-level public officials from the IPES asked the public officer in charge of the area to introduce me to the vendors. He thought I was only going to go once, with him, but I went back the next day, without him, and sat with different vendors to learn about their experiences. The first thing vendors wanted to talk about was how arbitrary State law was concerning the use of bathrooms. I told them that it was not State law but the arbitrary non-State rules imposed by that particular officer. "What you're saying is not really important" one of them replied. "He is the real flesh incarnation of State law because he can close our stand." (Audio 120818-001)

Ana Maria Vargas and Rustamjon Urinboyev wrote an ethnographic study of street vendors in Bogotá (Vargas & Urinboyev, 2015). In their paper, they argued that State officials' views on street vendors were "somewhat negative" (Vargas & Urinboyev, 2015, p. 632). For instance, during an interview, one of the officials in charge of a formalization program told the story of a

program called social snacks (*mecato social*) designed for older people or people with disabilities. According to Vargas and Urinboyev,

(...) the official complained that one vendor with a disability was making around 3 million Colombian pesos a month (1,300 USD), even more than what she was earning as a State official. Although the government reached a compromise with this vendor to use the location for only two years, after the expiration date, the vendor refused to leave and declared they would have to drag him to death to get him out of there. The official explained that because he was disabled no one would dare touch him (Vargas & Urinboyev 2015, p. 633).

The official portrayed by Vargas and Urinboyev is the typical *mercenary*. I met many officials whose main topic of conversation was how to keep their jobs or to find another job with a higher salary. One IPES official arrived one day at plaza de Lourdes (Chapinero) and greeted us with the following words:

IPES official: “I have two pieces of good news: first, I signed the contract (he had a fixed term contract of 3 months), so you can get back to bother me again. I signed yesterday (street vendors applaud). Second (*joking?*), I am in a good mood, so I will deal with all of you today... maybe not tomorrow” (Audio 120818-001).<sup>126</sup>

Thirdly, there is a small group (the smallest of them all but still worth mentioning) of *skeptics*, for whom rebuscadores are just another group of people who the wealthy erroneously believe they

<sup>126</sup> Most eloquently, a street vendor later told me: “poor guys... their jobs are more unstable than ours. They are just making a living... *rebuscándose* in their own way.” (Audio 121025-007).

can help, or even worse, make happy. They do what they are asked to do, but truly believe it will make no real difference. I once met a public official from the local mayor's office of Ciudad Bolívar in a meeting with rebuscadores who publicly asked me the following question:

- Public official: "Are you willing to do this investigation to win a degree or are you among those who actually think we have the answers to make their lives better?"
- Laura: Why are you asking me that?
- Public official: Well... just to see if we are going to become friends or not" (Audio 120831-001).

Skeptics are frustrated and tired. When confronted with cases of domestic violence during my fieldwork, for instance, it was common for public officials to advise me to do nothing. "You will not change anything" was a short sentence that I wrote over and over again in my field notes. The skepticism of skeptics is further fueled by their working conditions. As I have argued before, officials in contact with street rebuscadores are usually precarious employees themselves with fix term contracts. Another public official who worked in the mayor's office of Ciudad Bolívar explained the situation as follows:

Public official: "We are all struggling... everybody carries his own burden. Today I am employed, but tomorrow... you never know. Street vendors are not the only ones fighting to keep their jobs. You know that, I know that. The truth is Laura, but please don't cite my name on this one, that we can't help them. I don't even know if I will be able to look out

for my family in a couple of months. That's why I don't like to fuck with them (*no me gusta joderlos*). I know what it means to have a family and no job.” (Audio 120821-001).

Many street rebuscadores are aware of the precarious working conditions of those who are supposed to take care of them, and do not expect much. William, acknowledging their difficult position, once told me:

William: “Some IPES officials have contracts for only three months and they are treated like slaves (*son muy negreros con ellos*). Others are put there by politicians for a couple of years and then leave. We have had engineers, architects, people who don't have a clue of what to do with us, but who were put there by politicians. We even have had the nephew of X (high ranking public official of Bogotá) who used to be drunk all day! We need people committed to the cause... but see? The government doesn't take us seriously. How can we have any type of continuity with that kind of people? Love is not about what you say, but what you do” (Audio 120821-001).

Skepticism among public officials is also fueled by the lack of coordination between different local public institutions in charge of street rebuscadores, and it was common for public officials to express their frustration about that. In fact, during a meeting I attended with street vendors and officials from the local mayor's office of Ciudad Bolívar many complained since most middle term efforts to improve the living conditions of street vendors needed coordinated actions between the IPES, DADEP, the police, the local mayor's office and the mayor's office of Bogotá, and these

were very difficult to articulate. A tired female skeptic working at the local mayor's office of Ciudad Bolívar during the meeting very eloquently expressed this frustration:

Public official: "It's easier to make it rain, than to get these people together. The representative of the IPES usually comes, but what do I have to do to get the people from the DADEP here? And you know it gets worse if I start to talk about others... if we cannot even meet, how are we supposed to work together? So... here I am, wasting time the whole day. Apparently, that is what I'm paid to do" (Audio 120818-001).

#### **5.4.4 Rhetorical strategies used by the police and other public officials to intervene in an arbitrary manner.**

Regardless of whether we speak of public officials from different institutions in charge of street rebuscadores or about the police, it is important to highlight that they all exercise a highly discretionary form of power. In other words, they are often able to decide whether or not to intervene, and how to intervene. As Markus Dubber and Mariana Valverde argued, that form of power-knowledge works in a qualitatively different manner than "high" law because it is inevitably discretionary: "police powers target specific, typically local, ever-changing situations (typically, situations of disorder rather than crime) that seem to require tailor-made risk-management strategies rather than the application of fixed laws" (Dubber & Valverde, 2006, p. 147-148). Therefore, what Dubber and Valverde call "*le droit de police*," or what I call *derecho de policia* are both highly discretionary types of law.

However, it is important to distinguish between discretion and arbitrariness. Everybody, everywhere interprets the law,<sup>127</sup> so it can be difficult, but necessary, to trace the line between discretion and arbitrariness. The Colombian Constitutional Court made the distinction and understood arbitrariness as acting outside the framework established by law. In ruling C-031 of 1995, it stated that:

“Arbitrariness and discretion should not be confused. It is arbitrary the individual impulse of one who exercises the power without subjection to the law. The discretionary power, on the other hand, is subject to inviolable norms such as pre-existing rules of law, which the competent official adopts in fulfillment of the social duties of the State, in order to protect the life, honor and property of associates, as well as their rights and freedoms” (My translation).<sup>128</sup>

More specifically, in the case of *derecho de policía*, Lalinde distinguishes between discretion and arbitrariness as follows:

The discretion of the police activity consists in the power of appreciation awarded to the people to whom this power has been assigned, to decide how to prevent disturbances according to criteria of opportunity and convenience. Thus, those who exercise police activity must evaluate whether, in the face of a particular fact, it is better to carry out a

<sup>127</sup> For a discussion within legal theory of the indeterminacy of rules from Legal Realists to proponents of the Critical Legal Studies, see: Landers, 1990. For an interesting discussion about the “open texture” of language analyzing Wittgenstein, Hart and Waismann, see: Narváez, 2002.

<sup>128</sup> Original quote: “No debe confundirse lo arbitrario con lo discrecional. En lo arbitrario se expresa el capricho individual de quien ejerce el poder sin sujeción a la ley. El poder discrecional, por el contrario, está sometido a normas inviolables como las reglas de derecho preexistentes en cabeza del órgano o funcionario competente para adoptar la decisión en cumplimiento de los deberes sociales del Estado y de los particulares, a fin de proteger la vida, honra y bienes de los asociados, así como sus derechos y libertades.”

search, to ask for an ID, to carry out a preventive detention, etc. But in order to prevent this discretion from being arbitrary and becoming a tool to persecute disproportionately certain sectors of the population as dangerous on the basis of prejudices and criminal stereotypes, police activity must be guided by predetermined criteria which, even though it exists, is insufficient to completely eliminate arbitrariness.<sup>129</sup> (Lalinde, 2015, p. 51).

I agree with Lalinde when he argues that police discretion should be guided by predetermined criteria (principles, not only rules) to prevent arbitrariness. In a democratic system, police officials have the legal responsibility and obligation to inform, justify and explain their decisions, and they should be accountable. However when dealing with street rebuscadores, in practice, it rarely happens. I will illustrate this further in the following paragraphs, by describing different rhetorical strategies used by the police and other public officials to intervene in an arbitrary manner. In short, while public officials try to justify arbitrary interventions by citing *the law* or what they consider to be the right interpretation of *the law*, policemen with less cultural capital cite State rules that do not even exist, or justify their interventions by suggesting that they follow orders to enhance coexistence.

Public officials try to justify arbitrary interventions in the lives and productive strategies of street rebuscadores, by framing them within the context of their discretionary power to interpret *the law*. In other words, they play with the grey area between discretion and arbitrariness and try

<sup>129</sup> Original quote: “La discrecionalidad de la actividad de policía consiste en un poder de apreciación que tienen los órganos y personas a quienes se les ha asignado esta facultad, para decidir, según criterios de oportunidad y conveniencia, cómo prevenir perturbaciones en el orden público. Así, quien ejerce actividad de policía debe evaluar si ante determinado hecho es mejor practicar una requisa, pedir documentos de identificación, realizar una detención preventivamente, etc. Pero para evitar que esta discrecionalidad raye con la arbitrariedad y que se convierta en una herramienta para perseguir desproporcionadamente a ciertos sectores de la población por considerarlos peligrosos con base en prejuicios y estereotipos criminales, la actividad de policía debe guiarse por unos criterios predeterminados que si bien existen son insuficientes para eliminar totalmente la arbitrariedad.”

to justify arbitrary decisions as discretionary. Remember the story of the *preacher* who worked for the IPES and allocated tents based on his interpretation of *the law*? According to low-level regulations, it is prohibited to allocate tents in the same area to more than one member of the same family unit. The *preacher* interpreted the terms ‘family unit’ in a broad or restrictive way depending on whether he wanted to allocate a tent to a particular public rebuscador or not. His decisions became arbitrary when he stretched regulations to argue, for example, that a tent could not be allocated to a particular rebuscadora because she was the ex-girlfriend of the son of the partner of a male rebuscador who had a tent in the area (Audio 120818-001). Like him, many other public officials interpret *the law* in ways that allow them to intervene in an arbitrary manner. Remember how they argued that evictions never took place in El Líder (Ciudad Bolívar) by differentiating ‘evictions’ from ‘police patrol operations,’ even if it was obvious that they were evicting all the street vendors of a block? Different public officials used the same argument several times during my fieldwork to try to pressure street rebuscadores into leaving the street without an order.

Furthermore, high ranking public officials (those who didn’t directly work with street rebuscadores but whose decisions had a big impact upon their lives), also used *the law* in an arbitrary manner to justify their positions. For instance, I once attended a meeting at the Mayor’s office where the discussion fluctuated between those who cited ‘pro-rebuscadores’ rulings of the Constitutional Court, and those who cited ‘anti-rebuscadores’ rulings of the Consejo de Estado, the Police Code, and all types of low-level regulations. All of them, however, pretended that they were interpreting *the law* in a technical way that had nothing to do with their personal preferences. In the heat of the moment, one of the lawyers who attended the meeting cited out of context some

of the rulings of the Constitutional Court, to argue that the State had the duty to guarantee a minimum income *only* to those who belonged to a protected class of citizens (people with disabilities, female heads of house, amongst others) before an eviction. At the end of the meeting Oswaldo told me: “See Laura? *The law* is the closest thing to bullshit I can think of. Everything depends on the political will of the public official in question. Anyone can twist *the law* as they wish. That’s why, what really matters is political struggle” (Audio 120821-001).

Police officers with less cultural capital, on the other hand, try to justify the soundness of arbitrary interventions by citing rules that do not even exist, or arguing that they just follow orders. Isadio was the first who draw my attention on the subject:

- Isadio: “Sometimes the police bother us with rules that I don’t know if they really exist.
- Laura: well... next time ask them exactly the type, number and year of the rule they are talking about, and download it from the internet.
- Isadio: and how can I get into the internet?
- Laura: there are many places where you can buy minutes in a computer...
- Isadio: I know, I know... I just don’t know how to use the internet.
- Laura: I’ll teach you.” (Audio 120916-001)

It took me a long time to teach Isadio how to search on the internet for a specific rule. I wrote in my field notes: ‘it’s not really about teaching him how to google something... it almost feels as if I am teaching him how to read and write.’ With time though, he learned how to do it and confirmed his intuition:

- Isadio: “I’ll give you two [examples of police inventing the rules] right now: a policeman told us that the people from the shops can sell their stuff on the sidewalk because they pay taxes. Bullshit! I told him I couldn’t believe him unless he gave me the type, number and year of the rule he was talking about. Just the way you told me... and BOOM! *Más rápido cae un mentiroso que un cojo* (the liar is caught faster than the lame man). Another policeman told Martha the other day, that if she didn’t clean her mess he could prohibit her from working in her recognized working spot for a week or more. Ah? Can you believe those bastards? But now I know... you taught me and I know. They were pissed off. It pissed them off that I knew... so he tried to provoke me because if I hit him he would have an excuse to kick me out of the street (*ese man lo que quería era que le tirara para ahí si poder justificar levantarme*).
- Laura: Wow!
- Isadio: See Laura? I don’t need you any more... and I can tell you already miss me” (Audio: 120821-001).

As I stated before, policemen usually have lower economic and cultural capital than most public officials. Particularly, most of them have not accumulated enough cultural knowledge to ‘know the law.’ During a focus group that I conducted with 14 policemen in Suba, it was obvious that many felt frustrated and tried to deal as best as they could with a social problem that went beyond their expertise or abilities. For instance, after I questioned them about their ‘unlawful’ practices, a policeman told me:

Policeman: “What do you want us to do? I feel like the firefighter who is sent to extinguish a never-ending fire. If we try to evict them, then we are not following the rules. But we also have the community saying that they pay their taxes and they own private property and they don’t have to put up with dirt and noise all around. Here, at the local mayor’s office... well, they are not clear. Forgive me for saying this *doctora*, but you and I know that the local mayor is a leftist... so, she should give us the order to stop fooling around! But she doesn’t. And my commander... well he pressures us all the time, he says it’s our duty to protect public space. So, see? They [street rebuscadores] are not really the ones having a hard time... they have no law, no law applies to them. But law applies to us. Right now I have 197 formal petitions (*derechos de petición*) from people complaining about people working in the streets: street vendors, bicy-taxis, prostitutes... My boss tells me to deal with them, but what can I do? Talk to them? Don’t you think I’ve tried? Do you think that I like to fight them? To threaten them? I also know what need feels like. Plus, there are minors, disabled people, mothers... do you think I want to get involved in a problem? I always tell them, I almost beg them to follow basic rules. I tell them that if people stop complaining they will never see me again. But then I get more complaints, and I also understand those complaints because all that mess is annoying. Tell me *doctora*, would you live with a messy person or with that kind of mess around your house? Mmmm... I don’t think so” (Audio 121114-001).

In his statement, the policeman made clear that he and his colleagues have to deal with a lot of pressure from different parties and expressed how frustrating that daily experience felt. Another older policeman added, that the pressure also depended on the political position of the mayor of

Bogotá, the local mayor in charge of the specific place of the city, as well as on the particularities of each locality of Bogotá:

Policeman: “Can I speak freely *doctora*? Everything also depends on the mayor and the local mayors in charge. For instance, with Petro (left-wing mayor) I have not felt the pressure of other administrations. He named local mayors who prefer not to intervene, or to intervene only in specific areas. For instance, if a policeman works in downtown Bogotá, he will have to deal with more pressure for sure... but let me tell you the truth. As my colleague just argued, public space became a problem of *tire y afloje* (pull and release). Sometimes we are allowed to be permissive; sometimes we are not. We have to pull out a crystal ball after we wake up and before we arrive to work every morning. In any case, even when we do intervene, the truth is that it’s usually useless. After twenty-four hours, public space will be occupied again. You would have to militarize every corner of Bogotá to stop people from making a living. You know that, we know that. So it’s a foolish game after all” (Audio 121114-001).

Within the context of *derecho de policía*, discretion is not only inevitable but also necessary. The police and other public officials should be allowed to decide how to prevent disturbances according to criteria of opportunity and convenience. However, police discretion should be guided and constrained by the general principles of the State of Law to prevent arbitrariness against those who are more vulnerable such as street rebuscadores. Just as it is important to listen to the police and other public officials to try to understand the reasons (if any) behind their actions, it is also

important to remember that there is a clear asymmetry of power between street rebuscadores and State agents who interact with them on a daily basis.

#### **5.4.5 Police practices.**

How both public officials and the police decide to intervene is a different issue. While I was conducting fieldwork, police activity regarding public space was regulated mainly by the Colombia Police Code (Decree 1355 of 1970)<sup>130</sup>, the Bogota's Police Code (Acuerdo 079 of 2003)<sup>131</sup> and the Decree 463 of 2003<sup>132</sup>. The Colombia Police Code says very little regarding street rebuscadores and public space (just a few considerations about sex work) and does not establish specific sanctions restraining their productive strategies. However, the Bogota Police Code does. Section 70.3 of the Code specifically prohibits "undue occupation of public space" through street vending<sup>133</sup> and section 181 allows the police to evict those who occupy public space<sup>134</sup>. The Code also includes different corrective measures as well as criteria for the application of those measures. Mayor Antanas Mockus issued decree 463 of 2003 to regulate the administration, maintenance and the economic exploitation of public space in Bogotá. The decree says nothing about street vendors, sex workers, recyclers and other street rebuscadores. Mockus left the Mayor's office on

<sup>130</sup> Decree 1355 of 1970 can be found at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6945>. (Last consulted, August 2017).

<sup>131</sup> Acuerdo 079 of 2003 can be found at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6671>. (Last consulted, August 2017).

<sup>132</sup> Decree 463 of 2003 can be found at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=10966>. (Last consulted, August 2017)

<sup>133</sup> Complete original quote: "Artículo 70. Comportamientos que favorecen la protección y conservación del espacio público. Se deben observar los siguientes comportamientos que favorecen la protección del espacio público: (...) 3. No patrocinar, promover o facilitar directamente o a través de un tercero la ocupación indebida del espacio público mediante venta ambulante o estacionaria."

<sup>134</sup> Complete original quote: Artículo 181. Restitución del espacio público. Consiste en la restitución inmediata del espacio público impuesta por las autoridades de Policía, cuando éste haya sido ocupado indebidamente.

December 31<sup>st</sup>, 2003 when Luis Eduardo Garzón from the political left was elected as the new mayor of Bogotá. Just before that, on September 4<sup>th</sup>, 2003, the Constitutional Court issued decision T-772 of 2003. As I argued in part 5.2.1, decision T-772 of 2003 was a key ruling. The presiding judges held that every eviction process must be preceded by a careful and individualized evaluation of the socio-economic effects of the decision. Evictions could not be carried out if the subsistence of vulnerable citizens was at risk, because any policy that impoverished citizens is regressive and violates the Constitution. Following T-772/2003, Decree 463 of 2003 was repealed, and Decree 98 of 2004<sup>135</sup> was issued by the new leftist elected mayor. Before it was enacted, the authorities widely discussed Decree 98 of 2004 with different leaders of street vendors and other street rebuscadores. After indicating that there is a tension between the Bogotá's Police Code and ruling T-772 of 2003, the Decree establishes a detailed procedure that needs to be carried out before any kind of eviction or confiscation of goods takes place (section 8). The procedure starts by stating that local mayors (not the police) are the only ones entitled to order operations to preserve public space. Furthermore, before any kind of eviction or confiscation of goods takes place, the State needs to offer economic alternatives to street rebuscadores who then have a month to decide. The whole point of the Decree is to agree on a procedure allowing to 'recover' public space progressively without violating the fundamental rights of street rebuscadores. However, once an area is 'recovered', it is labelled as such, and the same procedure does not apply the next time around. In other words, in previously 'recovered' areas, street rebuscadores are not covered by the

<sup>135</sup> Decree 98 of 2004 can be found at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Normal.jsp?i=12726>. (Last consulted, August 2017)

principle of *confianza legítima*.<sup>136</sup> In the following subsections, I now turn to discuss a series of police practices.

#### **5.4.5.1 *Trying to reach an agreement.***

I conducted fieldwork under that normative framework. At the time, Gustavo Petro – who was not particularly prone to evictions – was the Mayor of Bogotá. It was not a time when political pressure was particularly exerted, and a time when the law proposed utopian permanent solutions such as finding an economic alternative for every public rebuscador. In practice, this meant that short-term solutions depended on the parties. Therefore, both public officials and the police did their best to find a negotiated solution with street rebuscadores before deciding to intervene in any other way. Oswaldo who was both the leader of a group of street vendors and a political leader associated with the left, explained to me that short-term dynamic which he had named *the game*:

Oswaldo: “Conflict does not suit any of the parties. Permanent solutions are never going to happen. The police depend on the Mayor, the Mayor on the IPES (Institute for Social Economy), and the IPES has no way of responding to the problem. In practice, they cannot evict street vendors, and they know that. That is why they invent all sorts of stuff... why sometimes they resort to incite violence. It becomes a dynamic... a game” (Audio 120821-001).

<sup>136</sup> That is one of the reasons why decision T- 067 of 2017 is so important. It States that evicted street rebuscadores can still be covered by the principle of *confianza legítima* even if they are situated in a previously ‘recovered’ area. (For a detailed description of the content of the decision T- 067 of 2017, see part 5.2.1)

Oswaldo was right. According to Decree 98 of 2004, the police needed the local Mayor's order to proceed with an eviction, but before that could happen, the local Mayor needed to guarantee that street rebuscadores would be offered economic alternatives that are supposed to be designed and funded by the IPES. Unfortunately, both the financial and management capacity of the IPES is limited. Once, for instance, a public official from the IPES who was working in Ciudad Bolívar told me that they were trying to find every possible way to conduct a census of street vendors in the locality (they did not have one yet):

- Laura: "Mmm... this would require a lot of money and people... but let's hypothetically think that it happens. Where is the IPES going to get the money to pay for economic alternatives for all of them?"
- Public Official: there's no way Laura, but we all have to play our part in the game"  
(Audio 121011-001).

Public officials involved with street rebuscadores and the police are not the only ones with strong incentives to negotiate. There are also strong incentives for street rebuscadores to negotiate. Street rebuscadores frequently run into problems of coexistence in public spaces with the community, and public authorities try to mediate these conflicts with different degrees of success. When I asked about them, both Isadio and Oswaldo were quite clear about the fact that public authorities also helped them resolve some of their issues:

- Isadio: "Laurita we have fucking bad security issues (*tenemos un lío de seguridad ni el hijo de puta*). And well... all those problems with the police and the people from the

mayor's office is an opportunity to deal with them. Having people fighting with iron rods on the sidewalk (*dándose varilla en la calle*) is not good for business.

- Oswaldo: It's not my mate (*no lo es mi hermano*)... it's not. We have to reach agreements. There are people here who are being criminally prosecuted (*con medidas de aseguramiento*), people who have stabbed (*han chuzado*) sons of neighbors, who throw stones at cars, who rape others. One of the women who always complain to the police is the mother of a guy who was badly beaten... and I understand her, I truly do. She got tired because the police didn't help her (*se hacían los gringos*) and she managed to bring her complaint to the Ombudsman's Office, until she got the police to come here and threaten to evict us. You see? It's better to reach agreements. People get tired *compañera*; they get tired. You have to think about all of that too." (Audio 120901-001).

Coexistence issues, therefore, can constitute a big barrier for street rebuscadores to develop their survival strategies. If "things get too hot" they might have to migrate to other parts of the city, which means they have to pay the cost of losing their recognized working spot. According to one female vendor:

- Female vendor: "moving means losing half my *diario* or more... it means moving away from my children, walking more, working more. It means more rain, more sun... moving is the last thing I want, the last thing I need" (Audio 120821-001).

Since both parties have strong incentives to negotiate, it is the first thing they do. I often heard sentences like “let’s reach an agreement and talk about more permanent solutions later” (Audio 121025-007), or “let’s just find a way to survive through December” (Audio 120821-001), or “for now let's get together and then we'll see what to do” (Audio 120901-001). After that, the script seems to repeat itself: street rebuscadores and local officials reach basic coexistence agreements, street rebuscadores fail to comply with them, tension rises, they reach a crisis point, and resume their negotiations. The script repeats itself because most street rebuscadores fail to comply with coexistence agreements. For instance, a frustrated lawyer at the mayor’s office of Ciudad Bolívar told me:

Public official: “All we ask for is a cart per family unit, a sunshade corresponding to the size of the cart, no merchandise on the floor, no rubbish, no children around the carts, no alcohol or drugs, no weapons and no violence. Is that so difficult? Really? Are we asking for the impossible?” (Audio 120821-001)

Yet, according to my analysis, it is very difficult for street rebuscadores to follow those types of rules. Rules made to sanitize poverty, and to hide the face of misery, are rarely applicable in practice. A female vendor explained her relationship with the law in what qualifies as perhaps one of the most interesting statements in this dissertation:

Female street vendor: “We can reach any agreement, whatever they want... I don’t care, since that is not *the law* for us. They can think it is, but it isn’t. The only *law* we follow is the *law* of survival... to survive at any cost. Don’t take me wrong, but that’s why I don’t

care about reading and I don't care about lawyers. I know I'm no more than an ignorant woman but I don't give a fuck. In this country *the law* changes every day. Today they threaten us with one thing and tomorrow with another. In the long run, everything has to be negotiated... everything has to be negotiated... which makes me think that for them *the law* is also worth nothing (*también les vale mierda*). So I'm not afraid. I'm too old, and I have seen too much to be afraid." (Audio 120917-001)

#### 5.4.5.2 Verbal warnings.

While tension rises (before they reach a crisis and negotiations are resumed), public officials and the police use different kinds of threats to deal with street rebuscadores. As mentioned previously, many of them exercise their highly discretionary form of power in an arbitrary manner. The police, I argued, mostly use threats based on rules that do not even exist. However, some of them actually follow the Bogota's Police Code and use "verbal warnings" (*llamado verbal de atención*) to sanction making loud noise, littering, drinking on the sidewalk, etc. Speaking of "verbal warnings," a male street vendor told me:

Street vendor: "Yeah... it's really a form of bullying (*una forma de intimidarnos*), but 'the dog that barks does not bite' (*perro que ladra no muerde*). It's a way to fuck with us... to harass us. I just move on" (Audio 120917-001).

Police officers leave a record of verbal warnings and other contraventions in the CAI (small police station)<sup>137</sup> where they work. There are more than 140 in Bogotá. According to my informal interviews with police officers, aggregated figures of the number of contraventions issued *might* be found in the 22 police stations of Bogotá. In practice however, there are significant hurdles to finding this data, and it is beyond the scope of this dissertation to document this.<sup>138</sup> During my fieldwork it was not common for police officers to use “verbal warnings” at least as instructed in section 206 of Bogotá’s police Code<sup>139</sup>. According to section 206, police officers can use verbal warnings to instruct a particular citizen against breaching rules of coexistence that are listed in the Code, such as street vending. However, it was not common for a police officer to limit his or herself to warn street rebuscadores, for example, against street vending. What was usual, unfortunately, was for street vendors to leave their usual vending spots when the police arrived for a couple of hours to avoid the conflict, or for the police to use additional, usually arbitrary threats such as the ones mentioned in part 5.4.4.

<sup>137</sup> CAI literally translates to Immediate Attention Site. For more information about CAI’s see: [https://en.wikipedia.org/wiki/National\\_Police\\_of\\_Colombia](https://en.wikipedia.org/wiki/National_Police_of_Colombia) (Last consulted, September 2017).

<sup>138</sup> This would have required to go to every police station, consult the list of contraventions, make a list of those which specifically targeted street rebuscadores, and reach an approximate number. In fact, while trying to deal with the book of contraventions in one CAI of Bogotá, and after begging for any kind of information regarding aggregated figures, a policeman told me: “you can make a formal petition, but I don’t think you will get anything from it. No one has made a list of contraventions against what you call street rebuscadores. I’ve never heard anyone interested in that kind of information before. What do you exactly need it for?” (Audio 121114-001).

<sup>139</sup> Section 206 of Bogotá’s Police Code in Spanish. Artículo 206. Procedimiento verbal de aplicación inmediata. Se tramitarán por este procedimiento las violaciones públicas, ostensibles y manifiestas a las reglas de convivencia ciudadana, que la autoridad de policía compruebe de manera personal y directa. Las autoridades de policía abordarán al presunto responsable en el sitio donde ocurran los hechos, si ello fuera posible, o en aquel donde lo encuentren, y le indicarán su acción u omisión violatoria de una regla de convivencia. Acto seguido se procederá a oírlo en descargos y, de ser procedente, se le impartirá una Orden de Policía que se notificará en el acto, contra la cual no procede recurso alguno y se cumplirá inmediatamente (...).

### *5.4.5.3 Evictions.*

When tension between the parties rises even more, evictions take place. Evictions are frequent, and generally provoke violent reactions from some vendors, who are then arrested for being violent. Seizing their materials is also frequent. There are strict regulations regarding due process when materials are seized<sup>140</sup>, but they are frequently breached, so most rebuscadores just prefer to assume their loss. Destroying goods and property during the eviction is less and less frequent (I only saw this twice), as is the use of pure unreturned violence (I only saw it once), because superiors advise police officers to avoid doing it. “It is not good for us to have men destroy their merchandise or beat them up” a policeman once told me. “Those men are a nuisance because they mean more paperwork in the best case scenario, or public lynching in the worst” (Audio 121114-001). The DADEP is a local institution that keeps track of the evictions in the city. According to DADEP, the city ‘recovered’ 28.68 km of roads with high levels of pedestrian flow between 2016 and 2017, “giving back to citizens’ clean, safe and orderly public spaces.” Their data only includes recoveries “advanced through voluntary restitution groups, or in collaboration with the local mayors and the National Police.”<sup>141</sup> Real figures might be higher because local mayors are constantly exercising control over public space independently. Moreover, the information given by DADEP does not tell us much. 28.63 km compared to what? What is their basis of comparison? Bogotá is regularly measured in square kilometers (approximately 1,775 Km<sup>2</sup>) not in kilometers, and that makes a big difference. But even if the measuring units were comparable, we cannot

<sup>140</sup> Decree 98 of 2004 establishes a detailed procedure that needs to be carried out before any kind of eviction or confiscation of goods takes place (section 8). The Constitutional Court has also added additional requirements to those strict regulations in different rulings. See, for instance, ruling T-772 of 2003.

<sup>141</sup> The information was sent via email on April 2017. Interestingly, the public official with whom I spoke before formally asking for the information, ‘advised’ me to use the words “recovered public space” instead of “evictions.”

assume that the whole area of Bogotá is ‘improperly occupied.’ So, should we assess 28.63 km of recovered public spaces against what? Furthermore, they don’t say *where* the recoveries took place, maybe because the space was likely to have already been ‘occupied’ again. In sum, despite my best efforts, I did not find reliable data that could give us an idea of the scope and impact of evictions on the productive strategies of street rebuscadores in Bogotá.

This, however, will change soon. In 2016 Congress adopted a new National Police Code (Bill 1801 of 2016) that included for the first time fines against street rebuscadores. More specifically, section 140.4 prohibits any “occupation of public space in violation of current regulations,”<sup>142</sup> and paragraph 2 sanctions this behavior with “type 1 general fine.” According to section 180, “type 1 general fine” corresponds to 4 times the statutory minimum daily wage (98.360 pesos or US 33.44 of 2017). The provision adds that “disobedience, resistance, disrespect, or reiteration of behavior contrary to coexistence, will increase the value of the fine (...)”<sup>143</sup> The Bill came into force in August of 2017.

Dejusticia (a Colombia-based research and advocacy organization) and other organizations, asked that the norms be declared unconstitutional.<sup>144</sup> Unfortunately, the Constitutional Court only ruled that the norms were conditionally enforceable (*constitucionalidad condicionada*), stating that “(...) when dealing with people in situations of manifest vulnerability which are protected by

<sup>142</sup> Complete original quote: Ley 1801 de 2016. Artículo 140. “Comportamientos contrarios al cuidado e integridad del espacio público. Los siguientes comportamientos son contrarios al cuidado e integridad del espacio público y por lo tanto no deben efectuarse. (...) 4. Ocupar el espacio público en violación de las normas vigentes.”

<sup>143</sup> Complete original quote: Ley 1801 de 2016. Artículo 180. “Multas. Es la imposición del pago de una suma de dinero en moneda colombiana, cuya graduación depende del comportamiento realizado, según la cual varía el monto de la multa. Así mismo, la desobediencia, resistencia, desacato, o reiteración del comportamiento contrario a la convivencia, incrementará el valor de la multa, sin perjuicio de los intereses causados y el costo del cobro coactivo.”

<sup>144</sup> See: [https://www.dejusticia.org/wp-content/uploads/2017/04/fi\\_name\\_recurso\\_869.pdf](https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_869.pdf)

the principle of *confianza legítima*, fines cannot be imposed and goods cannot be confiscated or destructed, until these individuals have been offered relocation programs or alternatives of formal work (...)" (decision C-211 of 2017; my translation)<sup>145</sup>.

Justice Alberto Rojas wrote a dissenting opinion arguing that a declaration of conditional enforceability was not enough to protect vulnerable citizens who have systematically been subjected to persecution and mistreatment. Who is going to decide if a citizen is vulnerable and covered by a technicality such as "the principle of *confianza legítima*" before imposing the fine, he asked? The police. This will necessary deepen the asymmetrical relation between the police and street rebuscadores, expanding the discretionary power of the police. As suggested by Velloso, the use of fines will amount to a type of penalization through non-criminal forms of social control (Velloso, 2013).

#### ***5.4.5.4 Licences.***

Recent studies have also pointed to another technique of control used by public officials. According to Valverde and Hubbard, for instance, specific subordinate urban livelihoods are subject to administrative practices of licensing (Valverde, 2008; Hubbard, 2009). Here, public officials use the law to 'formalize' street vendor's in an attempt to regularize their situation though the imposition of licences and permits. Many cities in the world resort to legal formalization

<sup>145</sup> Complete original quote: "(...) cuando se esté frente a colectivos en condiciones de vulnerabilidad y amparados por la confianza legítima, la aplicación inmediata de la multa, el decomiso o la destrucción de bienes, resultaría desproporcionada, si previamente no se han adelantado programas de reubicación o alternativas de trabajo formal, que materialicen los derechos a la dignidad humana, al mínimo vital y al trabajo."

(Lyons, 2013; Gandolfo, 2013; Ferragut & Gómez, 2013). It has been described as a time-consuming, expensive, and complicated bureaucratic process. One of the most recent studies conducted by Rodrigo Meneses-Reyes about street vendors in Mexico City, shows how the strict regulation of licences and space in the city has prevented many vendors from initiating the bureaucratic process of getting legal permits. According to Meneses-Reyes, the majority of these vendors become itinerant and mobile in order to avoid regulation and control. Regarding licences, Meneses-Reyes further suggests that “from an administrative perspective licenses represent a means to administer urban space through the institutional formation of ideal hierarchies of would-be social agents in specific sites” (Meneses-Reyes, 2013, p. 340). Licenses create a finely tuned system of surveillance as they generate a pervasive insider-outsider dichotomy: “the authorized agent who needs to be systematically supervised and the unauthorized agent who needs to be systematically excluded” (Meneses-Reyes, 2013, p. 340). Therefore, licences can play an important role in terms of social exclusion as public officials use them to reject and marginalize certain economic activities. They have “long been tied to class anxieties about money and the poor, while also being closely wedded to class discipline and the production and regulation of the working class,” says Blomley (Blomley, 2007). Similarly, in an ethnographic study of market vendors in Lima, Perú, Daniella Gandolfo showed how vendors, despite formalization efforts, preferred informality, arguing that they do not understand why they have to comply with so many rules and regulations when the nature of their work is mobile and informal (Gandolfo, 2013).

Generally speaking, street rebuscadores in Bogotá cannot acquire licences or permits to work legally. For instance, public authorities have not granted licences allowing street vendors to work on certain sidewalks of the city for a long time. Some vendors are allowed to work in specific

vending zones where they were relocated, and others in transitional vending zones for short periods of time, but they are not given proper licenses or work permits to do so. However, rebuscadores who are sitting in a gray area, such as Patricia, who sells beer in a shack and sits customers on chairs located on the sidewalk, need a series of licenses to operate (six in the case of Patricia as the reader will recall). In fact, while I was conducting fieldwork, the police and other public officials used licenses to threaten mainly indoor but also street rebuscadores. When the typical *preacher*, for instance, wanted to clean what he perceived as dirty, to silence what he perceived as noisy, - in other words, to sanitize poverty, - he would use license-related transgressions to threaten rebuscadores into observing his rules. If they did not comply, the main punitive strategy against indoor rebuscadores was to close their businesses for a certain amount of time. This rarely happens, but I have witnessed the closing of small bars, of places where food was sold, and even of a place performing “beauty tricks.” Once closed, the rebuscador will spend a lot of time, energy and money to do what is necessary to obtain an order to open the place again. Street rebuscadores were also threatened with being evicted. I had a brief conversation with Isadio and Janeth (the owner of a small vending place of traditional meat pies called *empanadas*) that can help illustrate my argument:

- Janeth: “Let’s say Laurita that I have more problems with them (referring to public authorities) asking for licenses and Isadio has more problems with evictions. Police officers don’t fuck with me so much. There is no comparison. Sometimes they ask for licenses, but they don’t fuck with me as they do with them (meaning with street rebuscadores).”

- Isadio: That's right, the police don't fuck with you so much. They say it's because you own private property. See? (Joking with Janeth) that's why sometimes I think Chávez (referring to Hugo Chávez the former president of Venezuela) is right. The fuck with private property, hahaha!" (Audio 120916-003)

It took me a long time to really understand what was going on with licenses. During my fieldwork, I just assumed that both indoor and street rebuscadores were required to hold different licenses and that they could be sanctioned for transgressing the rules related to them. However, after I studied *the law*, things looked different. Section 86.12 of Decree 1421 of 2003 grants local mayors the power to regulate “prices, weights and measures and to take the necessary actions to avoid or sanction hoarding and speculation.”<sup>146</sup> Although it is not explicitly written, the Decree targets only commercial establishments open to the public. Bill 232 of 1995 is more specific. It lists a series of mandatory requirements for “establishments open to the public” (section 2). Such requirements included compliance with the rules regarding the use of the soil, auditory intensity, sanitary conditions, and copyright, amongst others. The police have to verify that people strictly complied with the requirements (section 3), and the mayor, or a delegated official, can impose sanctions on those who do not comply. The severity of the sanctions increased gradually, going from written warnings, to fines, to suspension of the commercial activities, and the definitive closing of the establishment (section 4). Bill 232 of 2005 was in force while I was conducting fieldwork. Therefore, what rebuscadores called ‘licences’ did not really exist. As an officer from the Secretary of Government of Bogotá later told me “what we have is a series of ‘functioning

<sup>146</sup> Complete original quote: Artículo 86. Atribuciones. “Corresponde a los Alcaldes Locales (...) 12. Ejercer, de acuerdo con la ley, el control de precios, pesas y medidas y emprender las acciones necesarias para evitar o sancionar el acaparamiento y la especulación.”

requirements’ not ‘licences’ for commercial establishments opened to the public. Local mayors who act as delegates of the mayor of Bogotá sanction non-compliance. (Audio 122110-001)<sup>147</sup> My study of *the law* also made clear that those ‘functioning requirements’ applied only to ‘establishments opened to the public’ and not to street rebuscadores, or at least not to street rebuscadores of the purest kind:

- Laura, speaking to an officer from the Secretary of Government of Bogotá: “but I swear I heard the police asking people in the street for different ‘licences’ while I was conducting fieldwork... at least in Ciudad Bolívar.
- Officer from the Secretary of Government of Bogotá: Well... we live in the land of the Sacred Heart (*en el país del Sagrado Corazón*), right? Anything can happen here. But, did you *actually* see them evicting people based on licence-related violations just like you must have seen commercial establishments closed for not complying with all the mandated requirements?
- Laura: Well, no... I guess you are right. So... just to be sure I understand: indoor and not street rebuscadores are the ones who need to comply with a series of ‘functioning requirements.’ However, both the police and other public officials threaten street rebuscadores by asking them to comply with a series of ‘licences’ to which they don’t really need to comply.

<sup>147</sup> This legal arrangement recently changed with the adoption of the new Police Code (Bill 1801 of 2016). Title VIII of the Code regulates economic activities that can affect the public sphere, lists a series of more specific mandatory requirements (section 87), and a series of prohibited behaviors which will now be sanctioned by the police and not by the local mayors (sections 92, 93 and 94).

- Officer from the Secretary of Government of Bogotá: Right. They don't. Why should they have to comply with 'functioning requirements' if their activity is prohibited by law in the first place?
- Laura: Well... we could have a long discussion about that. I think it's more complicated. It's not clear that their activities are really prohibited by *the law*.
- Officer from the Secretary of Government of Bogotá: Oh, ok. I see where this is going. Don't start quoting decisions of the Constitutional Court. It's Friday and I'm tired (he laughs)." (Audio 122110-001)

In sum, street rebuscadores do not have to comply with the series of 'functioning requirements' that indoor rebuscadores need to comply with. However, in practice, police officers sometimes ask street rebuscadores for specific licences by citing rules that do not even exist, in yet another way in which they try to justify the soundness of arbitrary interventions.

#### ***5.4.5.5 Criminal law.***

Finally, public authorities also indirectly use criminal law to intimidate, coerce and sometimes blackmail street rebuscadores into observing their rules. For instance, as is often the case with poor individuals (Wacquant, 2009), rebuscadores are more likely to have a criminal record for different minor crimes (e.g. failure to pay child support, injury claims etc.) which are not directly related to their productive strategies. Some of them have been judged and sentenced by default or without knowing about the procedure. The police are aware of that, and they often threaten to inspect their criminal records. Within the group of street vendors I befriended, for instance, there was a woman

who was found guilty of domestic violence. Her two daughters filed a claim against her years ago and she was not even aware of it. The police disliked her because they thought she was particularly dirty and did not “take care” of her vending spot. One day they looked for her criminal record and she was immediately arrested and taken into custody. She was sentenced to twenty-eight months in prison, but was released after a year. I met her in Ciudad Bolívar while she was taking care of her seventeen month-old granddaughter, and after we finally connected, we talked about what happened as follows:

- Street vendor: “I really regret beating up my daughters so much... I really do. I was very young at the time. Now I really try to be aware of what I do. I don’t go out drinking or dancing anymore because I don’t want to lose my girl (referring to her granddaughter). I love her as if she were my daughter. I overprotect her a lot. So I just go from work to home and from home to work and no more. I don’t even keep my ID (*cédula*) with me (the police ask for IDs to look into criminal records), and I try to avoid problems... fights and things like that. That’s why I avoid people. With people around, you can never know when a fight is going to take place and then you are fucked. I know I’m not smart, but I can still think. I flee from the police. I’m scared that they might take my granddaughter away from me because sometimes I have to leave her alone at home when I go to work... it would break my heart if they took my baby away from me... so I just try to avoid any kind of trouble. I don’t even carry a knife with me anymore” (Audio 120912-001).

While I was conducting fieldwork I documented three more cases of street rebuscadores who were arrested after the police looked into their criminal records. They were all cases of individuals

that the police disliked for different reasons (they were perceived as particularly violent, neighbors complained about their behavior, etc). It goes without saying that the Colombian police have never looked (or threatened to look) into my criminal record.

#### **5.4.6 Strategies of resistance from street rebuscadores.**

In the last sub-section, I've tried to describe different techniques used both by public officials and the police to intervene in the productive strategies of street rebuscadores. However, rebuscadores resist when the rules imposed on them clash with their way of being, or their habitus in Bourdieu's sense. More specifically, they resist when the *law of survival* is threatened. Patricia Ewick and Susan Silbey wrote an incredible paper on stories of resistance to legal authority (Ewick & Silbey, 2003). They understand resistance as the different ways in which relatively powerless persons accommodate to power while simultaneously protecting their interests and identities (Ewick & Silbey, 2003, p. 1329). Even when it is opportunistic and individualistic, resistance is not random. Through everyday practice, individuals identify the cracks and vulnerabilities of institutionalized power such as the law, and then disturb ongoing expectations to shift the dynamics of a given power relation (Ewick & Silbey, 1998, p. 187). As a result, acts of resistance have consequences beyond the specific social transaction; they show the way in which an aspect of a social structure can be threatened to achieve a momentary reversal of power.

Ewick and Silbey developed a typology of resistant practices based on a series of stories that they collected. According to them, people resist through various means, including: the manipulation of social roles, the disruption of the hierarchy, the colonization of space, playing

with the rules and regulations, and playing with time. Their typology can be used to illustrate the ways in which street rebuscadores resist the interference of *derecho de policía* in their semi-autonomous social field. Rebuscadores who work outdoors resist more because *derecho de policía* affects them more. As poor individuals that cannot afford privacy, they are more visible to the police and other administrative authorities, increasing their chances of becoming unwilling victims of the everyday punitive use of administrative law. For instance, street vendors constantly challenge law and legality by relying on the incompleteness and indeterminacy of the rule system. To give one of many examples, *derecho de policía* in Bogotá applies to stationary and semi-stationary vendors. Vendors subvert the purpose of the rule by finding different ways of carrying their goods with them while moving (walking). Constant movement allows them to avoid evictions and legal control, or in other words, to resist authority.<sup>148</sup> They also play with the rules when they give the police their rotten products when they seize their goods:

Isadio: “I regularly keep a bunch of rotten avocados because who knows... if they take them away from me based on bullshit rules, maybe I can find a way to have them give them back to me... but new ones! (*me invento la manera de cobrarlos por buenos!*) (Audio 120829-001).

Vendors also resist sometimes by manipulating social roles and pretending to be something or someone that they are not. For instance, women claim they are pregnant and men claim they are

<sup>148</sup> As Meneses-Reyes argues, neither the daily mobility nor the spatial location of street vendors is restricted to what the law mandated. Based on his fieldwork in Mexico City, he concludes that one of the ways in which vendors resist is basically through movement patterns. “(...) movement represents the opportunistic manipulations of the space crafted by the circumstance. Consequently, one can conclude that street vendors have learned that in a system of rules based upon the principle of being out of place, movement has served as one of the best ways to resist authority. In other words, they have found a lacuna—permanent movement—within a network of rules that by virtue of not being governed or defined allows them to be momentarily immune to control.” (Meneses-Reyes, 2013, p. 17)

handicapped to enact the position of someone who is needier or less powerful and dissuade the police from evicting them. I even met a female street vendor who screamed when the police approached her.

Street vendor: “I just shout and shout... I just start to scream, so that people think that they are trying to touch me inappropriately. As my mother always told me, I was born with this pair of blue eyes for a reason. Hahaha... don’t look at me like that! Everyone tries to get some leverage with what they have.” (Audio 121008-001).

Street rebucadores also resist by making the lines of authority explicit and disrupting the hierarchy. They live in an unequal society obsessed with hierarchies and they know how to take advantage of that. For instance, it is common for them to turn to someone occupying a higher social position to demand deference and disrupt the hierarchy. Leaders, in particular, take advantage of that strategy. The leader of a small group of sex workers explained:

Sex worker: “that policeman is pissed off with me... but who cares. He told me that we had to move from this block because we are close too close to a new Christian church and people were complaining... but we are two blocks away, and we don’t work on Sundays! It’s not my fault if Christians want to pray all week long! So, the policeman told me that he was going to call the lieutenant of the police station and he made all the charade and took his phone out. But his boss was not answering... Are you having problems? Your boss is not answering the phone? Let me help you with that, I told him. Ha! And I called the lieutenant. Fortunately, he answered. I got his phone number during those meetings we

held last month; he's not a client of mine, or anything like that. He was very kind.” (Audio 121114-001)

Rebuscadores are also very good at resisting by colonizing space when they are being ignored. During my fieldwork, the mayor of Bogotá enacted two Decrees (Decrees 54 and 83 of 2013)<sup>149</sup> limiting the operating hours of establishments selling alcoholic beverages (which can hardly be called “bars”) in some of the most violent neighborhoods of the city. Rebuscadores resisted by literally camping outside of the mayor's office as well as nearby some of the local mayor's offices. Public officers were extremely bothered with their occupation and they worked quickly to reach an agreement.

Acts of resistance by rebuscadores all have one very important thing in common. They are based on the common unwritten expectation that individuals should be allowed to eliminate all barriers (including *derecho de policía*) in order to be able to make a living and survive. Any external legislation that comes into conflict with that simple but extremely powerful non-written rule, won't achieve its intended effects, unless compliance is coerced through the overwhelming power of authority. Acts of resistance and stories of resistance are common amongst rebuscadores. Physical acts of violence are not so common, but it should be crystal clear that street rebuscadores are willing to do anything to survive. After the police tried to evict her, Martha told me:

<sup>149</sup> Decree 54 of 2013 can be found at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=51702>. Decree 83 of 2013 can be found at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=52204>. (Last consulted, August 2017).

Martha: “I told that son of a bitch to stop harassing me. I told him I have been very patient and very decent so far but I’m getting tired (*me estoy mamando*).... If he doesn’t stop fucking with me he will know who I am. I have a family and I need to pay my rent. Is he going to pay for that? Or what... should I sit down to watch him eat while I starve? While my children starve? Believe me Laurita when I tell you... if that rat’s ass comes back, I will throw stones at him (*si esa porquería vuelve yo le echo es piedra*), I will beat him with anything I have, with my cart, with the food, with anything. They still don’t know who I am. It is when one sees all this injustice, when one suffers all this injustice in one’s own flesh that one starts to understand why we have guerrillas. Believe me when I tell you that now I understand why they are willing to kill or get killed.” (Audio 120829-001).

Colombia will not achieve peace by signing peace agreements. It will achieve it when we start taking people like Martha seriously.

## 6. Conclusion

My mother worked as a public school teacher all her life. The school where she worked was not situated in one of the poorest areas of the city, but there was still a significant difference when compared to the private school I attended. Sometimes, when I was in school break (I had ‘summer’ vacations although we have no seasons in Colombia), she took me to her school. When I was around seven years old, I remember talking to a girl my age who was bragging about the new clothes that her father bought for her in “*El Ley*”, one of the biggest department stores of Colombia. Her father sold strawberries in a small marketplace. Some of her playmates were happy for her while others asked her to stop showing off. I remember feeling embarrassed about myself and the school where I went. If someone at my school bragged about clothes bought in *El Ley* they would be bullied and humiliated, because it would be considered low-class clothing. Furthermore, it was the first time I had heard someone my age speaking with pride of the way either of their parents made a living. I remember discussing this with my mother at the end of the afternoon, and asking her if I could change school, because children at her school looked happier. As loving and caring as she was (and still is), she made the same argument I had heard a thousand times: I was privileged (someday I was going to understand that), the lives of the children she taught were not as easy (at least not as easy as mine), and I could and should work to make their lives better.

As years passed I always found a way to spend time with those from that “other world.” At first, it meant being part of groups of “wealthy” teenagers with good intentions trying to “help” the “poor.” I was young, but I still felt uncomfortable with the implicit moral high ground that this exercise implied. Those years passed, and I found other ways to be close, either by working for

the political left, participating in political campaigns and/or traveling. It took me a long time to understand why that “other world” attracted me so much and far more to stop idealizing the poor and sanitizing poverty. This dissertation allowed me to do both.

First, and most importantly, my supervisor introduced me to a theoretical framework that allowed me to explore my intuitions. Reading Bourdieu literally felt like walking with glasses that fix myopia. I took as much advantage as I could of that theoretical and methodological framework to try to describe and characterize a specific group of poor workers. In doing so, I used correspondence analysis to prove several points that obsessed me, including that different social positions do exist (it is not something that the political left invented), that people who occupy different positions within the social space share a similar habitus (although they try to differentiate themselves from their own habitus as well as from others), that socio-economic status is the most important source of differentiation in Bogotá (even more important than age, sex, race and sexual orientation), and that the invisible line I always felt existed, really exists, and it can be seen in a series of figures. There is class apartheid in Bogotá, and the statistical analysis done in this dissertation proves it.

If people occupying a different position within the social space share different lifestyles, then those with less amounts of total capital “see” the world differently from others like me. I had learned that early on in that public school playground when I was seven years old. However, it took me a long time to understand, as my mother wisely anticipated, that I am privileged. It is not that I am happier, or that I cry less or laugh more. It is that the universe of possibilities, in which choice really begins, is much wider for me. Street rebuscadores’ choices are constrained by all

types of historical, legal, cultural, political and economic structural factors, some of which can also constrain my choices, but not in the same way or with the same intensity.<sup>150</sup> I saw that clearly in Ciudad Bolívar and Suba as I tried to understand (without trying to justify, but also not to judge) some of the difficult decisions street rebuscadores made, such as leaving crawling babies alone at home while their mothers went out to rebuscársela.

I also felt it in my own life. It took me seven years to complete the Ph.D. program, partly, because during that time I had two babies with two different fathers, and raising children as a single mother reduces considerably the universe of possibilities for a woman of my habitus, even when she is educated and has a job. Individualistic approaches that fail to note how structures constrain the lives of people depending on their characteristics and also on where they are situated in the social space are overly simplistic, if not simply wrong. Based on my findings and my own experience, I am convinced that a person is not fully capable of choosing his or her behavior, which does not mean that the person is incapable of choosing and therefore of being held responsible. Emphasizing the fact that subjects are constrained by structural factors and that individuals do not have the same capacity to choose from what is thought to be universally available to all (but in fact, is only available to a few), sheds new light on the liberal idea of the “free” and “rational” agent that has increasingly gained more attention with neoliberal doctrines and that affects the lives of street rebuscadores on a daily basis. It is also necessary in order to guard oneself against offering a sympathetic reading of what is witnessed. I now understand that I am privileged because

<sup>150</sup> That being said, I agree with Duneier when he argues that the ethnographic method is hardly adequate for calculating precisely the structural forces that constrain the lives of individuals, which does not mean that those constraints do not exist. “There is a middle ground: to try to grasp the connections between individual lives and the macroforces at every turn, while acknowledging one’s uncertainty when one cannot be sure how those forces come to bear on individual lives.” (Duneier, 1999, p. 344).

the more choices a person has the easiest it is to comply with social expectations (I never had to leave my crawling baby alone for instance). The actions of those who have a narrower universe of possibilities and thus, can make fewer choices, can frequently look bad and are easily judged. Still, if one understands how structural forces affect the lives of the poor, then the effects of such forces should be described as perceived. I am well aware that exposing the lives of vulnerable individuals encounters the risk that unfriendly readers (especially those who believe firmly in individual responsibility and failure) find evidence to confirm their negative stereotypes. However, describing their practices as I perceived them was not only a matter of intellectual honesty, but also of respect for those who oppose my political views and my thoughts. If we are going to think about how to improve the lives of particular groups of vulnerable individuals we should begin by guarding ourselves of either elevating the qualities of the group we are studying, or judging them based on prejudices.

The second part of this dissertation is about the relationships between street rebuscadores and the law. I come from a Western civil law tradition, which holds a strong idea of the autonomy of legal doctrine and the separation between law and social sciences. However, there is a growing number of scholars in Colombia who try to connect law with experience and detach it from the rigidities of logic and formalism by emphasizing law's dependency on social practice. This group of critical scholars, most of whom can also be linked to political progressivism, rejects the notion of law as a rational, coherent, and autonomous system and embraces legal pluralism. Therefore, by adopting a legal pluralist framework in the second part of this dissertation and borrowing methodological tools from the social sciences to understand a specific social phenomenon, I tried to add my voice to that group. As Bourdieu argues, law is a field where there are fierce clashes

among its members for the possession and distribution of the great deal of social and symbolic capital it holds (Bourdieu, 1987a). Such a struggle is not only intellectual but also political, given the fact that most legal debates have direct implications in the distribution of power and goods that occurs in the political field. This dissertation attempts to expand the social field that lawyers regularly keep under observation, as well as the resources they conventionally draw to it. It also challenges certain ideas and ideologies promoting distorted notions of individual responsibility, such as the entrepreneurship discourse and the legal empowerment of the poor movement.

Law is a vital part of the structural factors constraining the choices of street rebuscadores. But is law (only) an instrument of domination? Different authors have suggested an answer to that question. Douglas Hay thinks that law plays a key role in dominating the poor. He thinks of law as the main ideological instrument of domination of the powerful “by which the many submitted to the few” (Hay, 1976, p. 26). That does not mean that he thinks that there is a conspiracy of the ruling class to sustain a particular economic, political and social order. Rather, as Muir argues, it is their “unquestioned common sense” which leads them to act that way ((Beattie, Philipps, Muir & Hay, 2006, p. 31). Louis Althusser also believed that different ideological state apparatuses guarantee submission through the imposition of the ruling ideology, which is the ideology of the “ruling class.” There’s not much room for agency in Althusser’s account, although he does not deny its existence and possibilities: “(...) this concert is dominated by a single score, occasionally disturbed by contradictions (those of the remnants of former ruling classes, those of the proletarians and their organizations): the score of the Ideology of the current ruling class” (Althusser, 1971, p. 13). Gordon, on the other hand, emphasizes agency much more. He agrees that law is a “cluster of beliefs” and that when put together with other non-legal clusters it helps

to convince people that inegalitarian and hierarchical arrangements are natural and necessary. However, in *New developments in legal theory*, he dedicates a lot of space to discuss how we can “struggle against being demobilized by our own conventional beliefs,” and in doing so, he opens the space for agency. He believes we are reproducing the status quo only because we falsely believe that we have no choice. Yet, if we started acting as if those constraints were not real (because Gordon thinks they are not), then we can improve our lives and change history (Gordon, 1982, p. 422).

Duncan Kennedy has something rather different to contribute to this debate. According to Kennedy, in order to believe that law maintains inegalitarian arrangements and serves as an instrument of domination, one also has to believe (as formalists do) that law possesses a high degree of internal coherence. In *A critique of adjudication (fin de siècle)*, he rejects the idea that law can be internally coherent, and he goes further by stating that its content cannot be determined by external structures as they also lack systemic logic. Structures exist, but they are arbitrary in their social consequences. Their content is indeterminable. Therefore, it’s not true that law, like other structures, legitimates arbitrary arrangements that serve the interests of dominant groups. What is interesting in his work is that the internal contradictions in law open the legal discourse to ideologically-oriented work (in the sense of liberalism and conservatism). Judges decide based on ideologies. External factors still influence adjudication, but they do not succeed in imposing an external logic, because they don’t possess any more internal coherence than the process of legal reasoning (Kennedy, 1997).

While I agree with Kennedy that being incoherent and inconsistent, law cannot coherently legitimate the arbitrary arrangements that serve the interests of dominant groups, I believe he goes too far by stating that structures lack any type of systemic logic and as such are arbitrary in their social consequences. The second part of my dissertation shows how – in general terms – street rebuscadores’ vulnerability is legally constructed and accentuated by the State: labour law is unable to penetrate the semi-autonomous social field, constitutional law penetrates the field only exceptionally, and *derecho de policía* provides a framework for policing practices that interfere with their productive strategies (See figure 85).<sup>151</sup>

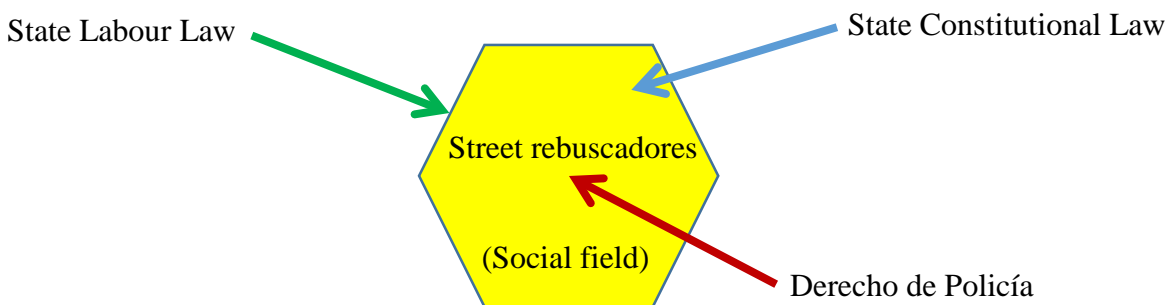


Figure 85. Street rebuscadores’ vulnerability is legally constructed and accentuated by the State

That does not mean that cracks do not exist or that resistance is not possible. Law has dramatic yet not necessary consequences. As I also argued, the right to a minimum level of subsistence (*mínimo vital*) and the right to work of street rebuscadores have been protected by the Constitutional Court of Colombia. Few Courts have had such a profound impact in protecting the

<sup>151</sup> John Beattie recalls that a group of historians wrote that criminal law “was not the absolute property of patricians, but a multiple use-right available to most Englishmen,” well yes, Beattie suggests, “except the very poorest” (Beattie, Philipps, Muir & Hay, 2006, 17).

core content of social rights. Moreover, this dissertation is in many ways a tribute to the courage and daily resistance of rebuscadores like Isadio, Patricia, Martha, William, Carol, Rosa, Ernesto, Gustavo, Teresa, and many others. As I argued in part 5.4.6, street rebuscadores resist when the *law of survival* is threatened. They resist by relying on the incompleteness and indeterminacy of the rule system, by manipulating social roles and pretending to be something or someone that they are not, by making the lines of authority explicit and disrupting the hierarchy, by colonizing space when they are being ignored, amongst others. Rebuscadores who work outdoors resist more because they are more visible to public authorities. As they resist, they achieve momentary reversals of power.

A pluralist approach rejects the idea that law only comes from above. There's another kind of structure, which is the one Susan Silbey and others in the tradition of the sociology of law are mostly interested in: the structure that comes from below. Socio-legal scholars suggest that if we focus on action and legal practice, we quickly understand law, "not as something removed from social life, occasionally operating upon and struggling to regulate and shape social forms, but as fused with and thus inseparable from all the activities of living and knowing" (Silbey & Sarat, 1987, p. 173). To illustrate their thesis, Silbey and Ewick use a beautiful metaphor: the songs of whales. Each school of whales has a particular song that changes with time to something completely different. That happens because individual whales have enough autonomy to add constant innovations to the main theme changing the song just a little. Over time, other whales incorporate the changes in their own song, to the point that "after a period of time the micro-contributions of the individual whales transform the very totality of the whale song which has given and continues to give shape and general direction to their individual action" (Silbey &

Ewick, 1998, p. 44). Silbey and Ewick are talking about structures from below, constructed by everyone, and in so doing they are conveying a feeling of generalized and democratic participation (they don't say anything about some whales singing more loudly i.e. having more power than others). In Kennedy's words, they are constructing a "more proletarian, multi-voiced, from-the-bottom-up-analyses" to preserve "the social theoretical ideal of determination while pursuing it of "idealism" and concomitant elite focus" (Kennedy, 1997, p. 278). In the second part of this dissertation I described different types of informal rules (rules from below) that interact with State law to influence the productive strategies of street rebuscadores. However, I also argued that internal rules are not necessarily better and that they can frequently clash with State norms that could protect street rebuscadores. Furthermore, internal rules such as the law of survival are constantly frustrated by police practices. Therefore, in the field I studied, I did not find fluency or harmony in the creation of the law (which is the feeling that the whale metaphor somehow produces in me), but a fierce struggle.

Yet, if I do not aim at reinforcing rebuscadores' internal rules, how can we improve their lives? How can we create additional cracks in the system? First, as Sylvestre argues, when thinking about social change, law reform is not enough because law is directly influenced by and depends on practices and culture (Sylvestre, 2007). However, "law has important political consequences and tremendous symbolic power, for as long as agents believe in it and remain caught up into it" (Sylvestre, 2007, p. 395). In that sense, I have some ideas derived from my fieldwork that could be useful for policy makers or political groups or organizations if they were to propose or adopt regulation to protect street rebuscadores. I will only sketch them as general ideas, and I am well aware that they can open bigger debates and will need further investigation.

First, given the characteristics of street rebuscadores it is unlikely and even undesirable that they will enter a standard employment relationship. As I discussed in the dissertation, they have different incentives to continue working in the streets including higher levels of income and labour stability (as compared to the alternative types of work they could access given their social trajectory and accumulated capital), income on a daily basis (*el diario*), help by the family (usually children, siblings and seniors), flexible hours which allow particularly women to comply with caregiving responsibilities, possibility to apply for subsidies that are only available for the vulnerable who are not formally employed, and (most importantly) avoiding the humiliations many associate with subordination and formal employment. In sum, street rebuscadores have many reasons to believe that their lives will not necessarily improve if they are able to find another job. It is not that the working conditions are good (their daily income is merely sufficient to cover life's basic necessities, they labour excessively, their social protection rights are severely restricted, their work is usually physically and emotionally exhausting, they are heavily policed, they have no associational structure that allows them to expose their demands as a group, etc). The point is that available alternatives, even "formal jobs" can be so profoundly precarious, that one has to problematize the generalized idea that informality is bad for all workers and that formal jobs are always better. In addition, as Vosko argues, it is not even clear that we want to keep the standard relation of employment at all. This relation of employment was built on a male breadwinner/female caregiver gender contract that is disintegrating, union membership is dropping precipitously, it does no longer guarantee access to social wage benefits, and many workers do not aspire to hold a full-time job: "to question the rhetoric surrounding "choice" is not to dismiss many workers' desire for flexibility" (Vosko, 2010, p. 312).

However, giving up on the idea that the best way to protect street rebuscadores is through a bilateral employment relationship does not mean losing some of the main benefits that have been associated so far with the existence of a bilateral employment relationship in Colombia. For instance, the social security system (health, old age, disability, survivors', sickness and maternity benefits) should be completely separated from salaried labor. Colombia has a complicated social insurance scheme. It was first enacted via Law 100 of 1993, partially modified several times (See: Law 1819 of 2006, 1580 of 2012, 1562 of 2012, 1250 of 2008, 1122 of 2007 amongst others), regulated by multiple decrees and interpreted by the Constitutional Court which has protected the core content of social rights and adopted systemic remedies aimed, for example, at the reform of the entire healthcare system.<sup>152</sup> However, in general terms, the only non-contributive social protection mechanism up until today is the subsidized health-care system. The other benefits are tied to the existence of a bilateral employment relationship, so employees need to contribute to them with part of his/her salary to gain access. Self-employed workers can also contribute to the system, but the minimum contribution required of the self-employed worker who earns a minimum wage in 2017 was 210,400 pesos (CAD 87.51 - Resolución 5858 of 2016). This is close to a quarter of the income (or more) of a street rebuscador. When asked about the possibility of contributing to the social security system a female street vendor told me:

<sup>152</sup> For two good summaries in English about Colombia's complicated social insurance scheme, see: <https://www.ssa.gov/policy/docs/progdesc/ssptw/2014-2015/americas/colombia.pdf> and [https://www.igpinfo.com/igpinfo/public\\_documents/ss\\_summaries/Colombia.pdf](https://www.igpinfo.com/igpinfo/public_documents/ss_summaries/Colombia.pdf). Last reviewed, July 2017.

- Street vendor: “Yes... of course! As soon as I win the *chance* (lottery) I will buy a house, invite all the block to a big *parranda*, kick that *bueno para nada* (referring to her partner) out of my house and... if I have nothing else to do with my money... contribute.”
- Laura: But what about old age benefits? Possible disability? Don’t you worry about those things?
- Street vendor: *Ay Laurita...* Of course I worry. As I told you if I win the *chance* I would buy a house I could rent so that I could live the good life if I get to be old. But for now let’s get through the day. I’m far from making *el diario* and it’s almost midday (Audio 120926-003).

In a recent book about popular economy in Colombia, Alexandre Roig and César Giraldo suggested that there is a clear dislocation between the practices of popular sectors and the devices to access social rights. They acknowledge that many vulnerable individuals do not aspire to be part of the proletariat, which means they do not have access to most social security benefits, although they are also particularly in need (Giraldo, 2017). However, they do not go as far as suggesting that the social security system should be completely separated from salaried labor. It is difficult for an economist like César Giraldo to make such a suggestion since it is clear that the system would have to be completely rethought or else the idea is financially unsustainable. Moreover, there is no political momentum behind such a change since the end of the armed conflict with FARC (Revolutionary Armed Forces of Colombia) has coopted the agenda of most politicians, journalists and critics, and might be the most important and decisive theme for next year’s presidential elections. However, this dissertation shows that street rebuscadores are part of the most vulnerable population of Colombia, that they are in desperate need of social security, that it

is unlikely that most of them will ever enter a standard employment relationship and that they do not have the means to contribute to the system as self-employed workers. Article 1 of the Colombian Constitution lays out the aims of the state, and the focus is on human dignity and the idea of a “social state of law” (*Estado Social de Derecho*), which is a complex but critically important idea that includes a social-democratic dimension.<sup>153</sup> As Cepeda (former justice of the Constitutional Court) and Landau argue: “the shift from the *Estado de Derecho* or rule of law in the old constitutional order to the *Estado Social de Derecho* in the new one suggests that the state must provide a safety net to protect the poorest and to transform the socioeconomic structure, which it perceived as highly unequal and with distressing levels of extreme poverty” (Cepeda & Landau, 2017, p. 8). If we are to take that mandate seriously, we need to find a way to provide social security benefits to the most vulnerable, and that way is no longer by tying social security benefits to employment.

In the same vein, we should seriously consider the idea of a universal basic income that takes the form of cash transfers that are universal in nature (not related to employment status). In the last decades, politicians and activists have made different proposals from very different, - even opposite - political perspectives (Friedman, 1962; Parijs, 1992; Offe, 1997; Gorz, 1999; Standing, 2002; Barchiesi, 2007; Munger, 2015; Stern, 2016). They share the common belief that a form of income should be provided by the state independently from individual employment conditions. Adherents recognize that existing social security programs are related to stable waged employment and therefore exclude increasing numbers of vulnerable citizens, such as the unemployed and

<sup>153</sup> Article 1. Colombia is a social state of law organized in the form of unitary republic, decentralized, with the autonomy of its territorial units, democratic, participatory and pluralistic, based on respect for human dignity, on the work and solidarity of the individuals who belong to it, and on the predominance of the general interest.

contingent workers. They see a “widening gap between wage labour as an icon of official discourse and waged employment as a material social reality” (Barchiesi, 2007, p. 124). Therefore, they believe that a universal basic income can be a vehicle to achieve social rights and inclusion by minimizing the dependence of the neediest on the labour market. How it could be done is heatedly debated. Conservatives and progressives tend to have very different opinions about how a basic income could work. Libertarians from the political right, for instance, support the idea of “the best of a number of less-than-perfect choices” (Munger, 2015). Their proposal requires the elimination of most if not all welfare programs directed to groups with special needs and vulnerabilities (the children, the elderly, the disabled), as well as leaving essential services such as education and health mainly to the market<sup>154</sup>. Adherents from the left, however, typically promote the idea of a universal basic income in addition to existing welfare programs and public education and health, not as a substitute. In any case, financing such a program would either require eliminating other social programs or increasing considerably government’s expenditure, and therefore taxes.

It is not my intention to discuss how it could be done or if it could be done (this would require a whole other dissertation), although in general terms I am closer to the idea of keeping the fight for publicly funded education and healthcare while eliminating the few and not sufficiently successful welfare programs we have. Instead, I want to suggest that it is rare for progressives and conservatives to agree on much of anything, that it is interesting that in other places of the world they are considering alternatives in the fight against poverty due to significant changes in the structure of work, and that such a debate should be seriously considered in Colombia when it

<sup>154</sup> To trace the debate from a libertarian perspective, see: <https://www.cato-unbound.org/issues/august-2014/basic-income-welfare-state>.

comes the time where we have the political space to do so. At least it is a proposal that does not rely heavily on policy discourses of self-help, family based solidarity, or the dream of finding decent jobs for those who are worse off. Furthermore, it is a proposal that resonates with most of the suggestions made by street rebuscadores. Whenever I asked them how we could improve their condition, their main suggestion was to create a public banking system where vulnerable citizens could obtain low interest or interest-free loans so they could run away from private loans like *gota a gota*. A universal basic income could open their universe of possibilities with no strings attached, without telling them what to do or how to do it. It could help them simply because they would have more options from which to choose.

Regarding the use of tutelas, I showed that this important tool has protected street rebuscadores' right to a minimum level of substance and right to work considerable times. Before the 1991 Constitution, there were no legal mechanisms available for ordinary citizens to demand coordination between low-level regulations that affected them and their constitutional rights. Tutelas can be read as a crack in the structure through which street rebuscadores have been protected. Furthermore, ruling T-067 of 2017 ordered that every street rebuscador should be able to obtain a minimum income through alternative means after an eviction. If that is not the case, he/she can file a tutela based on the violation of the fundamental right of due process. Let's hope T-067 of 2017 is read and used as a precedent in the matter. However, I also argued that it is difficult for citizens with low levels of cultural, economic and symbolic capital to file a tutela, and more specifically that most street rebuscadores lack the cultural capital necessary for successful litigation. Furthermore, the tutela was designed as an *exceptional* mechanism, through which vulnerable citizens are supposed to be protected only *exceptionally*. I was once in a conference

where a former justice of the Constitutional Court was proudly arguing that tutelas were the main mechanism of the Colombian state to protect the rights of particularly vulnerable citizens. The crowd (including myself) was really excited and his speech was generously celebrated. However, a foreigner intervened at the end of his speech and said something I will never forget. He said he did not understand our joy, since it should be a disgrace to live in a country where apparently nothing works or else citizens would not be filing tutelas in the millions. He was right. The State should protect the poorest of its citizens through ordinary and not exceptional means. Street rebuscadores need structural remedies. Their rights cannot be only protected through exceptional mechanisms.

Finally, I think it is obvious to say that the police and other administrative authorities should definitely refrain from policing street rebuscadores as long as they are unable to guarantee that they will be able to survive through other means than working in the streets. In the last part of this dissertation I argued that *derecho de policía* is invading the semi-autonomous social field of street rebuscadores and interfering with their productive strategies. I also argued that public officials and the police, unfortunately, frequently abuse their power. In that vein, it is important to distinguish between discretionary and arbitrary practices. There is no doubt that arbitrary practices should be eliminated. However, I believe it is important to maintain if not widen their discretionary (not arbitrary) form of power. Public officials and the police are often able to decide (and should be able to continue deciding) whether or not to intervene, and how to intervene. Since all parties have strong incentives to negotiate, the state should find ways to facilitate encounters between all parties to reach agreements that allow street rebuscadores to make a living while minimizing the negative effects that their activities entail. That being said, I am particularly worried about the new National

Police Code (Law 1801 of 2016), which for the first time introduced fines against street rebuscadores. The new Police Code is providing a framework that strengthens the legal arsenal against street rebuscadores, as if the existing one was not enough. It reinforces the asymmetry between the parties and decreases state officials' incentives to negotiate. It goes in the opposite direction of what this dissertation suggests we need: more symmetry between the parties, more incentives to negotiate, better agreements that protect the fundamental rights of all of those involved (particularly of the most vulnerable).

There are no easy answers or proposals. My aim with this dissertation was to characterize a particularly vulnerable group of citizens, make them visible, and try to illustrate how law affects them. I hope that in the next decades we can find political space to discuss more about poverty, employment, and possible solutions. For the time being, as a sex worker told me: "let's just hope someone reads what you are going to write. I hate to disappoint you, but if they don't give a damn about us, why will they give a damn about what you write?" (Audio 121016-002). Ultimately, I hope that I will have proven her wrong.

## 7. References

- Abel, R. (1982). *The Politics of Informal Justice*. 2 Vols. New York: Academic Press.
- Acosta, J., Maluendas, A. & Rivas, G. (2014). Indicadores socioeconómicos y su relación con La estratificación y La información catastral. In C.E. Sepúlveda, D. López & J.M. Gallego (Eds.), *Los límites de la estratificación: en busca de alternativas* (pp. 83-107). Bogotá: Editorial Universidad del Rosario.
- Actes de la recherche en sciences sociales, *L'économie domestique*. (1990).
- Althusser, L. (1971). Ideology and Ideological State Apparatuses. *Lenin and Philosophy and other Essays*: 121-176.
- Amorós, E., Cristi, O., & Naudé, W. A. (2010). *Romanticizing Penniles Entrepreneurs? Povertu, Vulnerability, Non-monetary Welfare and Bussines Star-up Rates across Countries*. Paper prepared for the Babson College Entrepreneurship Research Conference, Laussane Switzerland. Jun 9-12.
- Arthurs, H. W. (1985). *Without the Law: Administrative Justice and Legal Pluralism in Nineteenth-Century England*. Toronto: University of Toronto Press.
- Atehortúa, C., Salcedo, J. & Vidal, R. (2013). *Desplazados internos fuera de los campos. El papel de las autoridades locales en Colombia: estudio comparado en Bogotá D.C. y Cali*. Washington, D.C.: Proyecto De Brookings – Lse Sobre Desplazamiento Interno.
- Avendaño Castro, W. R. & Paz Montes, L. S. (2013). Rebusque y mendicidad: Muestra de desigualdad y pobreza en Cúcuta, Norte de Santander, Colombia. *Revista Apuntes del CENES*, 32 (55), 165-188. Available at <http://www.redalyc.org/articulo.oa?id=479548633008>

- Barchiesi, F. (2007). South African Debates on the Basic Income Grant: Wage Labour and the Post-Apartheid Social Policy. *Journal of Southern African Studies*, 33(3), 561-575. Available from <http://www.jstor.org/stable/25065226>
- Bayat, A. (1997). Un-civil society: The politics of the 'informal people'. *Third World Quarterly*, 18 (1), 53-72.
- Beattie, Philipps, Muir & Hay. (2006). Symposium on Property, Authority and the Criminal Law. *Legal History*, 10.
- Bebbington, A. (2007). Social capital and development studies II: can Bourdieu travel to policy? *Progress in development studies*, 7 (2), 155-162.
- Begley, L. (2013). The RPF Control Everything! Fear and Rumour under Rwanda's Genocide Ideology Legislation. In S. Thomson, A. Ansoms, & J. Murison (Eds.), *Emotional and Ethical Challenges for Field Research in Africa. The Story behind the Findings* (pp. 70-83). Houndmills: Palgrave Macmillan.
- Benach, J. & Muntaner, C. (2010). *Empleo, trabajo y desigualdades en salud: una visión global*. Spain: Icaria.
- Berg, J. & Kucera, D. (Eds.). (2008). *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World*. New York, NY: International Labour Organization.
- Bernal, R. & Cárdenas, M. (2003). *Determinants of Labour Demand in Colombia: 1976-1996*. NBER Working Paper No. 10077. National Bureau of Economic Research, 1050 Massachusetts Avenue, Cambridge, MA 02138. Available from <http://www.nber.org/papers/w10077.pdf>
- Bernal, R. (2009). The Informal Labor Market in Colombia: Identification and Characterization. *Desarrollo y Sociedad*, (63), 145-208. Retrieved September 04, 2017, from

[http://www.scielo.org.co/scielo.php?script=sci\\_arttext&pid=S0120-5842009000100005&lng=en&tlng=.](http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0120-5842009000100005&lng=en&tlng=)

- Bernstein, S., Lippel, K., Tucker, E., Vosko, L. (2006). Precarious Employment and the Law's Flaws: Identifying Regulatory Failure and Securing Effective Protection for Workers. In L. Vosko (Dir.), *Precarious Employment: Understanding Labour Market Insecurity in Canada* (pp. 203-220). Montréal & Kingston: McGill-Queen's University Press.
- Blomley, N. (1994). *Law, Space, and the Geographies of Power*. New York: Guilford.
- Blomley, N. (1997). The Cultures of Cities by Sharon Zukin Review. *Transactions of the Institute of British Geographers*, 22 (1), 134- 136. Stable URL: <http://www.jstor.org/stable/623057>  
Accessed: 25-08-2017 16:15 UTC
- Blomley, N. (2007). How to turn a beggar into a bus stop: Law, traffic and the 'function of the place'. *Urban Studies* 44(9): 1697–1712.
- Bogliacino, F., Jiménez, L. & Reyes, D. (2015). *Identifying the Effect of the Socio-Economic Stratification on Urban Segregation in Bogota*. Available at  
SSRN: <https://ssrn.com/abstract=2714907>.
- Bohannan, P. (1965). The Differing Realms of the Law. *American Anthropologist*, 67(6), 33-42.
- Bond, P. (2004). From Racial to Class Apartheid South Africa's Frustrating Decade of Freedom. *Monthly Review*, 55(10), 45- 59. Available at  
<http://ccs.ukzn.ac.za/files/BondMonthlyReviewMarch2004.pdf>
- Bonilla Maldonado, D. (2009). Extralegal Property, Legal Monism, and Pluralism. *University of Miami InterAmerican Law Review*, 40(2), 213-238. Available at:  
<http://repository.law.miami.edu/umialr/vol40/iss2/4>

- Bonilla, J., López, D. & Sepúlveda, C. (2014). Estratificación socioeconómica en Colombia. Contexto general y diagnóstico. In C.E. Sepúlveda, D. López & J.M. Gallego (Eds.), *Los límites de la estratificación: en busca de alternativas* (pp.). Bogotá: Editorial Universidad del Rosario.
- Bosch, M. & Maloney, W. (2010). Comparative analysis of labour market dynamics using Markov processes: an application to informality. *Labour Economics* 17(4), 621-31.
- Börjesson, M. (2005). *Transnationella utbildningsstrategier vid svenska lärosäten och bland svenska studenter i Paris och New York*. Ak. avh., Disputationsupplaga, Rapporter från Forskningsgruppen för utbildnings- och kultursociologi 37, SEC/ILU, Uppsala universitet, Uppsala.
- Bourdieu, P. & Wacquant, L. (1992). *An Invitation to Reflexive Sociology*. Chicago, IL: University of Chicago Press.
- Bourdieu, P. (1984a). *Distinction: a social critique of the judgement of taste*. (R. Nice, Trans.). Cambridge: Harvard University Press.
- Bourdieu, P. (1984b). *Homo Academicus*. París: Éditions de Minuit.
- Bourdieu, P. (1987a). The Force of Law: Toward a Sociology of the Juridical Field. *The Hastings Law Journal*, 38, 805-853. Translator's Introduction by Richard Terdiman.
- Bourdieu, P. (1987b). What makes a social class? On The Theoretical and Practical Existence of Groups. *Berkeley Journal of Sociology*, 32, 1-17.
- Bourdieu, P. (1989). *La Noblesse d'État. Grandes écoles et esprit de corps*. París: Éditions de Minuit.
- Bourdieu, P. (1990). *The logic of practice* (R. Nice, Trans.). Stanford, CA: Stanford University Press.

- Bourdieu, P. (2005a). The political field, the social science field, and the journalistic field. In R. Benson & E. Neveu (Eds.) *Bourdieu and the journalistic field* (pp.29-47). Cambridge: Polity Press.
- Bourdieu, P. (1998a). *Practical Reason: On the Theory of Action*. Stanford, CA: Stanford University Press.
- Bourdieu, P. (1998b). *The Racism of Intelligence. Sociology in Question*. London: Trans. Nice, R. Sage Publications.
- Bourdieu, P. (2005b). *The Social Structures Of The Economy*. Translated by Chris Turner Cambridge: Polity Press.
- Bourgois, P. (2001). The power of violence in war and peace: Post-Cold War lessons from El Salvador. *Ethnography*. 2(1), 5-34.
- Bourgois, P. (2003). *In Search of Respect: Selling Crack in El Barrio*. New York: Cambridge University Press.
- Brighenti, A. (2007). Visibility: A Category for the Social Sciences. *Current Sociology*, 55(3), 323–342.
- Butler, J. (1990). *Gender trouble: Feminism and the subversion of identity*. New York: Routledge.
- Campbell, A. (2016). *Sister Wives, Surrogates and Sex Workers: Outlaws by Choice?* New York: Routledge.
- Card, D. & Krueger, A. B. (1995). *Myth and Measurement: The New Economics of the Minimum Wage*. New Jersey: Princeton University Press.
- Casas, L. (2016). *The Legal Effectiveness of Sexual Harassment Law in Chile: from Theory to Practice*. (Dissertation). University of Ottawa, Canada.

- Castro Cuenca, C. & Ramírez Barbosa, P. (2010). *Derecho Penal Económico. Parte General*. Editorial Ibañez.
- Cassell, J. (Ed.). (1987). *Children in the Field*. Philadelphia: Temple University Press.
- Cepeda, M. J. & Landau, D. (2017). *Colombian Constitutional Law: leading cases*. Oxford University Press.
- Clark-Kazak, C. R. (2013). Research as “social work” in Kampala? Managing expectations, compensation and relationships in research with unassisted, urban refugees from the Democratic Republic of Congo. In S. Thomson, A. Ansoms, & J. Murison (Eds.), *Emotional and Ethical Challenges for Field Research in Africa. The Story Behind the Findings* (pp. 96-106). London: Palgrave Macmillan.
- Conley, J. & O'Barr, W. (1993). Legal Anthropology Comes Home: A Brief History of the Ethnographic Study of Law. *Los Angeles Law Review*, 27, 41-64.
- Conway, J. (2011). Cosmopolitan or Colonial? The World Social Forum as ‘contact zone.’ *Third World Quarterly*, 32(2), 217–236.
- Coraggio, J. L. (2012). La Economía Social y Solidaria (ESS) en América latina. In A. Guillén & M. Phélan (Eds.), *Construyendo el Buen Vivir* (pp. 236-256). Cuenca: Universidad de Cuenca/PYDLOS.
- Cotterrell, R. (1992). *The Sociology of Law: An Introduction*. 2d ed. London: Butterworths.
- Cross, J. (1998). *Informal Politics: Street Vendors and the State in Mexico City*. Stanford University Press.
- Cutsinger, L. (2000). Tips of the trade: street vendors and the State in Barbados. *International Journal of Sociology and Social Policy*, 20 (3/4), 64–75.
- Chambliss, W. L. (1999). *Power, Politics & Crime*, Westview Press, 1999.

- Dakduk, S. (2008). Vivir del rebusque o vivir para rebuscarse. *Debates IESA*, 8(4), 70-73.  
Available from <http://virtual.iesa.edu.ve/servicios/wordpress/wp-content/uploads/2013/12/Dakduk-Vivir-del-rebusque.pdf>
- Davey, G. (2009). Using Bourdieu's Concept of Habitus to Explore Narratives of Transition. *European Educational Research Journal* 8 (2), 276 – 284.
- Daza Pérez, J. L. (2008). Legal Determinants of Labour Informality. In J. Berg, & D. Kucera (Ed.), *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World* (pp. 218-233). New York, NY: International Labour Organization.
- Denord, F. (2003). *Genèse et institutionnalisation du néo-libéralisme en France (années 1930–1950)*. EHESS, Paris.
- De Soto, H. (1989). *The other Path*. New York: Harper & Row Publishers.
- De Sousa Santos, B. & Rodríguez, C. (Eds.). (2005). *Law and globalization from below. Towards a cosmopolitan legality*. Cambridge: Cambridge University Press.
- De Sousa Santos, B. (1987). Law: a Map of Misreading. Toward a Postmodern Conception of Law. *Journal of Law and Society*, 14, (3), 279-302.
- De Sousa Santos, B. (1995). *Toward a New Legal Common Sense. Law, Science and Politic in the Paradigmatic Transition*. London: Roudledge.
- De Sousa Santos, B. (2002). *Toward a New Legal Common Sense. Law, globalization, and emancipation*. London: Butterworths. LexisNexis.
- De Sousa Santos, B. & García, M. (Eds.). (2001). *El Caleidoscopio de las justicias en Colombia*. Tomo I. Bogotá: Siglo del Hombre Editores.
- De Sousa Santos, B. (2004). *The World Social Forum: a user's manual*. Madison Available at: [http://www.ces.uc.pt/bss/documentos/fsm\\_eng.pdf](http://www.ces.uc.pt/bss/documentos/fsm_eng.pdf)

- De Sousa Santos, B. (2005). The future of the World Social Forum: the work of translation. *Development*, 48(2), 15–22.
- DeWalt, K. M., DeWalt, B. R. & Wayland, C. B. (1998). Participant observation. In Russell Bernard, H. (Ed.). *Handbook of methods in cultural anthropology*. (pp. 259-99). Walnut Creek, CA: AltaMira Press.
- Dewalt, K. M., & Dewalt, B. R. (2002). *Participant observation: A guide for fieldworkers*. New York: AltaMira Press.
- Donovan, M. (2008). Informal cities and the contestation of public space: The case of Bogota's street vendors, 1988–2003. *Urban Studies*, 45(1): 29–51.
- Dubber, M. & Valverde, M. (Eds.). (2006). *The New Police Science: The Police Power in Domestic and International Governance*. Stanford, CA: Stanford University Press.
- Duneier, M. (1999). *Sidewalk*. New York: Farrar, Straus and Giroux.
- Duneier, M. (2002). What Kind of Combat Sport Is Sociology? *American Journal of Sociology*, 107 (6), 1551–76.
- Duval, J. (2004). *Critique de la raison journalistique. Les transformations de la presse économique en France*. Paris: Seuil.
- Echeverry, J. & Santamaría, M. (2004). The Political Economy of labor Reform in Colombia. *Documento CEDE*, (22).
- Esguerra, C. & Bello, J. A. (2014). Interseccionalidad y políticas públicas LGBTQ en Colombia: usos y desplazamientos de una noción crítica. *Revista de Estudios Sociales* (49), pp.19-32. Available from <https://res.uniandes.edu.co/view.php/907/index.php?id=907>
- Ettorre, B. (1989). Women and substance use/abuse: Towards a feminist perspective or how to make dust fly. *Women's Studies International Forum*, 12, 593-602.

- Ewick, P. & Silbey, S. (1998). *The Common Place of Law: Stories from Everyday Life*. The University of Chicago Press.
- Ewick, P. & Silbey, S. (2003). Narrating Social Structure: Stories of Resistance to Legal Authority. *American Journal of Sociology*, 108(6), 1328-1372.
- Eyraud, F. & Saget, C. (2008). The Revival of Minimum Wage Setting Institutions. In J. Berg & D. Kucera (Eds.), *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World* (pp. 110-119). New York, NY: International Labour Organization.
- Felipe, J. & McCombie, J.S.L. (2008). What Can the Labour Demand Function Tell Us About Wages and Employment? The Case of the Philippines. In J. Berg & D. Kucera (Eds.), *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World* (pp. 119- 150). New York, NY: International Labour Organization.
- Ferragut, S. & Gómez, G. M. (2013). From the Street to the Store: The Formalization of Street Vendors in Quito, Ecuador. In I. Hillenkamp, F. Lapeyre & A. Lemaitre. (Eds.), *Securing Livelihoods. Informal Economy Practices and Institutions*. Oxford: Oxford University Press. Retrieved from <http://hdl.handle.net/1765/50309>
- Fields, G. (1990). Labour market modelling and the urban informal sector: theory and evidence. In D. Turnham, B. Salome & A. Schwarz. (Eds.). *The Informal Sector Revisited* (pp. 49-69). Paris: OECD.
- Fitzpatrick, P. (1984). Law and Societies. *Osgoode Hall Law Journal*, 22(1), 115-138. Retrieved from <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1946&context=ohlj>
- Friedman, M. (1962). *Capitalism and Freedom*. Chicago: University of Chicago Press.
- Foucault, M. (1979). *Discipline and Punish: The Birth of the Prison*. Vol. 767. Vintage Books.

- Galanter, M. (1974). Why the “Haves” Come out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review*, 9(1), 95-160.
- Gandolfo, D. (2013). Formless: A Day at Lima’s Office of Formalization. *Cultural Anthropology*, 28 (2), 278-298.
- García- Villegas, M. (2006). Comparative Sociology of Law: Legal Fields, Legal Scholarships, and Social Sciences in Europe and the United States. *Law & Social Inquiry*, 31 (2), 343-382. Available at <http://www.jstor.org/stable/4092750>
- Gayo, M., Savage, M. & Warde, A. (2006). A cultural map of the United Kingdom. *Cultural Trends*, 15(2), 213–237.
- Gayo, M., Teitelboim, B. & Méndez, M. L. (2013). Exclusividad y fragmentación: los perfiles culturales de la clase media en Chile. *Journal Universum*, 1 (28), 97-128.
- Gayo, M., Teitelboim, B. & Méndez, M. L. (2009). Patrones culturales de uso del tiempo libre en Chile. Una aproximación desde la teoría Bourdieuana. *Journal Universum*, 2 (24), 42-72.
- Gayo, M. (2013). Revisiting middle-class politics: a multidimensional approach – evidence from Spain. *The Sociological Review*, 61, 814–837.
- Geertz, C. (1983). Local knowledge: Fact and Law in Comparative Perspective. In C. Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (pp.167-234). New York: Basic Books.
- Giraldo, C. (2007). *¿Protección o desprotección social?* Bogotá D. C.: Ediciones Desde Abajo. Fundación Escuela para el Desarrollo- Universidad Nacional de Colombia.
- Giraldo, C. (2016). Política Social Contemporánea: Un Paradigma en Crisis. *Documento Escuela de Economía*, 70. Documentos FCE-CID, Bogotá: National University of Colombia. Available from

[https://www.academia.edu/27814342/POL%C3%8DTICA\\_SOCIAL\\_CONTEMPOR%C3%81NEA\\_Un\\_paradigma\\_en\\_crisis](https://www.academia.edu/27814342/POL%C3%8DTICA_SOCIAL_CONTEMPOR%C3%81NEA_Un_paradigma_en_crisis)

- Golde, P. (1986). *Women in the Field. Anthropological experiences*. 2nd ed. Berkeley: University of California Press.
- Goldstein, D. M. (2013). *Laughter Out of Place: Race, Class, Violence, and Sexuality in a Rio Shantytown*. California: University of California Press.
- Goldstein, D. M. (2016). *Owners of the Sidewalk: Security and Survival in the Informal City*. Durham and London: Duke University Press Books.
- Gómez Buendía, H. (1999). Para donde va Colombia? Santa Fe de Bogotá: Tercer Mundo Editores.
- Gonzalez, N. (1986). The anthropologist as female head of Household. In T. L. Whitehead & M. E. Conaway (Eds.), *Self, sex and gender in cross-cultural fieldwork* (pp. 84-102). Urbana: University of Illinois Press.
- González, O. (2008). El rebusque, una estrategia de integración social de los migrantes colombianos en Francia. *Colombian Journal of anthropology*, 44, 251-279.
- Gordon, R. (1982). “New Developments in Legal Theory, in *The Politics of Law – A Progressive Critique*”, ed. by David Kairys, Pantheon Books, New York, pp. 413-425 (12).
- Gorz, A. (1999). *Reclaiming Work: Beyond the Wage-Based Society*. Cambridge: Polity Press.
- Greenacre, M. (2007). *Correspondence Analysis in Practice*. Second Edition. doi.org/10.1201/9781420011234
- Greenstein, R., Sabatini, F. & Smolka, M. O. (2002, noviembre). Segregación espacial urbana Fuerzas, consecuencias y respuestas normativas. Land Lines, Lincoln Institute of Land Policy. Available from <http://www.lincolninst.edu/publications/articles/segregacion-espacial-urbana>

- Griffiths, J. (1986). What is Legal Pluralism? *Journal of Legal Pluralism and Unofficial Law*, 18(24), 1-55.
- Guevara, C. A. (2013). *La cultura emprendedora en Bogotá: Las consecuencias de las nuevas formas de gestionar el desempleo*. (Tesis de Maestría en Sociología). Universidad Nacional de Colombia, Bogotá, Colombia.
- Guha-Khasnobis, B., Kanbur, R. & Ostrom, E. (2006). Beyond formality and informality. In B. Guha-Khasnobis, R. Kanbur, & E. Ostrom (Eds.) *Linking the Formal and Informal Economy: Concepts and Policies* (pp.1-18).Oxford: Oxford University Press,
- Hansen, K. (2004). Who rules the streets? The politics of vending space in Lusaka. In K. Hansen & M. Vaa (Eds.) *Reconsidering Informality: Perspectives from Urban Africa* (pp. 62–80). Uppsala: Nordic Africa Institute.
- Harcourt, B. (1998). Reflecting on the subject: A critique of the social influence conception of deterrence, the broken windows theory, and order-maintenance policing. *Michigan Law Review*, 97, 291–389.
- Harcourt, B. (2006). *Language of the Gun. Youth, crime, and public policy*. Chicago: University of Chicago Press.
- Hart, G. (2008). The Provocations of Neoliberalism: Contesting the Nation and Liberation after Apartheid. *Antipode*, 40(4), 678-705. Doi: 10.1111/j.1467-8330.2008.00629.x
- Hawthorn, K. (2013). *Outline the concepts of habitus and social field in Bourdieu's Sociology. How valuable are these concepts for the sociological analysis of social life?* Available from: <https://kirstyahawthorn.wordpress.com/sociology-2/outline-the-concepts-of-habitus-and-social-field-in-bourdieu-sociology-how-valuable-are-these-concepts-for-the-sociological-analysis-of-social-life/> (Accessed, January 2015).

- Hay, D. (1976). Property, Authority and the Criminal Law. In *Albion's Fatal Tree: Crime, and Society in Eighteenth Century England*. New York: Pantheon Books.
- Hirschl, R. (2008). The Judicialization Of Mega-Politics And The Rise Of Political Courts. *Annual Reviews of Political Science*, 11, 93-118. Retrieved from <https://doi.org/10.1146/annurev.polisci.11.053006.183906>
- Hjellbrekke, J., Le Roux, B., Korsnes, O., Lebaron, F., Rosenlund, L., & Rouanet, H. (2007). The Norwegian field of power anno 2000. *European Societies*, 9(2), 245–273.
- Hovden, J. F. (2008). *Profane and sacred. A study of the Norwegian journalistic field*. Bergen: University of Bergen.
- Hubbard, P., Matthews, R. & Scoular, J. (2009). Legal geographies controlling sexually oriented businesses: Law, licensing, and the geographies of a controversial land use. *Urban Geography*, 30 (2), 185-205.
- International Development Research Centre (IDRC). (2012). *Informality, Inclusiveness, and Economic Growth: An Overview of Key Issues*. Political Economy Research Institute. University of Massachusetts, Amherst, USA. SIG Working Paper 2012/2. Available from <https://idrc.ca/sites/default/files/sp/Documents%20EN/SIG-WP2-infomality.pdf>
- Jamil, U. (2007). The Stranger Within: Rethinking Distance and Proximity of Researcher as Community Member. In A. Williamson & R. De Souza (Eds.), *Researching with Communities: Grounded perspectives on engaging communities in research* (pp. 209-218). London and Auckland: Muddy Creek Press.
- Kaciak, E. & Louviere, J. (1990). Multiple Correspondence Analysis of Multiple Choice Experiment Data. *Journal of Marketing Research*, 27(4), 455-465.

- Kenbel, C. (2010). La ciudad desde los actores urbanos: el rebusque como modo de vida. *Question, Revista especializada en periodismo y comunicación*. 1(28). Available from <http://perio.unlp.edu.ar/ojs/index.php/question/article/view/1128/1006>
- Kennedy, D. (1997). *A Critique of Adjudication [fin de siècle]*. Cambridge: Harvard University Press.
- Kotiswaran, P. (2008). Born unto Brothels: Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area. *Law of Social Inquiry*, 33(3), 579-629.
- Kugler, A. & Kugler, M. (2009). Labor Market Effects of Payroll Taxes in Developing Countries: Evidence from Colombia. In (autores), *Economic development and cultural change* (pp. 335- 358). University of Chicago.
- Ladson-Billings, G. (2003). Racialized discourses and ethic epistemologies. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Landscape of qualitative research: Theories and issues* (pp. 398-432). Thousand Oaks, CA: Sage.
- Lalinde Ordoñez, S. (2015). *Requisas, ¿A discreción? Una tensión entre seguridad e intimidad*. Documentos DeJusticia 21. Bogotá: Ediciones Antropos.
- Landers, S. (1990). Wittgenstein, realism, and CLS: Undermining rule scepticism. *Law and Philosophy*, 9(2), 177-203.
- Latour, B. (1999). *Pandora's Hope: Essays on the Reality of Science Studies*. Cambridge: Harvard University Press.
- Lebaron, F. (1998). Exploring fields. Recent trends in French sociology. *Sociologisk Arbok/Yearbook of Sociology*, 2, 1-16.
- Lebaron, F. (2008). Central bankers in the contemporary global field of power: a 'social space' approach. *Sociological Review*, Wiley, 56 (Monograph 1), 121-144.

- Lebaron, F. (2001). Economists and the economic order: The field of economists and the field of power in France. *European Societies*, 3(1), 91–110.
- Lebaron, F. (2009). How Bourdieu “Quantified” Bourdieu: The Geometric Modelling of Data. In K. Robson & C. Sanders (Eds.), *Quantifying Theory: Pierre Bourdieu* (pp. 11-29). Springer, Dordrecht.
- Lee, S. & McCann, D. (2008). Measuring Labour Market Institutions: Conceptual and Methodical Questions on "Working Hours Rigidity". In J. Berg & D. Kucera (Eds.). *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World*. New York, NY: International Labour Organization.
- Levy, S. (2008). *Good Intentions, Bad Outcomes: Social Policy, Informality, and Economic Growth in Mexico*. Washington, DC: Brookings Institution.
- Li, J. (2008). Ethical Challenges in Participant Observation: A Reflection on Ethnographic Fieldwork. *The Qualitative Report*, 13(1), 100-115. Retrieved from <http://nsuworks.nova.edu/tqr/vol13/iss1/8/>
- Liew, J. C. Y. (2015). Finding Order in Calgary’s Cash Corner: Using Legal Pluralism to Craft Legal Remedies for Conflicts Involving Margianlized Persons in Public Spaces. *Alberta Law Review* (52)3, 605-634.
- Lipscomb, H. J., Dement, J. M., Epling, C. A., Gaynes, B. N., McDonald, M. A. & Schoenfisch, A. L. (2007). Depressive symptoms among working women in rural North Carolina: A comparison of women in poultry processing and other low-wage jobs. *International Journal of Law and Psychiatry*, 30, 284–298.
- Lyons, M. (2013). Pro-Poor Business Law? On Mkurabita and the Legal Empowerment of Tanzania’s Street Vendors. *Hague Journal on the Rule of Law*, 5 (1), 74-95.

- Loh, W. & Shih, Y. (1997). Split Selection Methods for Classification Trees. *Statistica Sinica*, 7, 815-840.
- Lozano Lerma, B. R. (1993). Una crítica a la sociedad occidental patriarcal y racista desde la perspectiva de la mujer negra. *Revista Pasos*, 42 (fasc. N/A), 15 – 26.
- Lozano Lerma, B. R. (2010). El feminismo no puede ser uno porque las mujeres somos diversas. Aportes a un feminismo negro decolonial desde la experiencia de las mujeres negras del Pacífico colombiano. *La Manzana De La Discordia*, 5 (2), 7 – 24.
- Malagón Pinzón, M. (2016). Ciencia de policía, policía de seguridad y vagancia. In A. Montaña & A. Ospina. (Eds.), *La Constitucionalización del Derecho Administrativo. Tomo II* (pp. 207-241). Bogotá: Universidad Externado.
- Marañón-Pimentel, B. (2013). *La economía solidaria en México*. Universidad Nacional Autónoma de México - Instituto de Investigaciones Económicas.
- Maya, M. (2002). Las pequeñas cooperativas rurales: surge un nuevo actor económico. *Journal Economía Pública, Social y Cooperativa*, 43, 85-10.
- Mendoza, P. (2011). Del arte de “rebuscar” o del nuevo rostro de los trabajadores. *Colombian Journal of Sociology*, 34(2), 121 - 136. Retrieved from <https://revistas.unal.edu.co/index.php/recs/article/view/27821/28064>
- Meneses-Reyes, R. (2013). Out of Place, Still in Motion. Shaping (Im) Mobility through Urban Regulation. *Socio Legal Studies*, 22(3), 335-356.
- Menni, A. M. (2004). Cómo rebuscársela: Trabajo informal en tiempo de crisis. *Journal Política y Cultura*, (25), 47-70.
- Merlinsky, M. G. & Rofman, A. (2004). Los programas de promoción de la economía social: ¿Una nueva agenda para las políticas sociales? In F. Forni (Ed.), *Caminos solidarios en la*

- economía Argentina: redes innovadoras para la integración* (pp. 161-190). Buenos Aires: Ed. Ciccus.
- Merry, S. E. (1988). Legal Pluralism. *Law and Society Review*, 22 (5), 869-896.
- Mina R. (2004). Estratificación socioeconómica como instrumento de focalización. *Economía y Desarrollo*, 3(1), 53-67.
- Mitchell, D. (1995). The End of Public Space? People's Park, Definitions of the Public, and Democracy. *Annals of the Association of American Geographers*, 85(1), 108-133.
- Mitchell, D. (2003). *The Right to the City: Social Justice and the Fight for Public Space*. New York: Guilford.
- Mondragón-Vélez, C., Peña, X. & Wills, D. (2010). Labour Market Rigidities and Informality in Colombia. *Documentos CEDE*: 1-32
- Moore, S. F. (1973). Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study. *Law and Society Review*, 7(4), 719-746.
- Moore, S. F. (1986). *Social Facts and Fabrications: Customary Law on Kilimanjaro, 1880-1980*. New York: Cambridge University Press.
- Moore, S. F. (2001). Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949-99. *The Journal of the Royal Anthropological Institute*, 7, 95-116.
- Moore, S. F. (Ed.). (2005). *Law and Anthropology: a Reader*. Oxford and Malden: Wiley-Blackwell Publishers.
- Munger, M. (2015). Editor's Introduction. The Basic-Income Debate. *The Independent Review*, 19(4), 485-488. Available from [http://www.independent.org/pdf/tir/tir\\_19\\_04\\_01\\_munger.pdf](http://www.independent.org/pdf/tir/tir_19_04_01_munger.pdf)
- Muñoz, C. & Andrade, M. C. (2014). Las fórmulas retóricas del rebusque. Un estudio desde la semiótica social de Halliday. *Journal Tabula Rasa*, (20), 329-345.

- Nader, L. (1965). The Anthropological Study of Law. *American Anthropologist*. 67(6), 3-32.
- Nader, L. (1972). *Law in Culture and Society*. Chicago, Aldine.
- Narciso, Carla Alexandra Filipe. (2014). Enfoques teóricos y usos políticos del concepto de espacio público bajo el neoliberalismo en la ciudad de Cuernavaca, México. *Cadernos Metrópole*, 16(31), 113-137. <https://dx.doi.org/10.1590/2236-9996.2014-3105>
- Narváez, M. (2002). Enunciados filosóficos vs. Enunciados teóricos. El caso de la textura abierta del derecho. *Analisi e diritto*, 2003, 211-240.
- National Department of Statistics of Colombia (DANE). (2009). Metodología Informalidad Gran Encuesta Integrada de Hogares - GEIH. Diciembre 30 de 2009. Available at: [https://www.dane.gov.co/files/investigaciones/boletines/ech/ech\\_informalidad/metodologia\\_informalidad.pdf](https://www.dane.gov.co/files/investigaciones/boletines/ech/ech_informalidad/metodologia_informalidad.pdf) (last consulted, April 2017).
- National Department of Statistics of Colombia (DANE). (2015). *Large Integrated Household Survey 2015*. Available at: [http://formularios.dane.gov.co/Anda\\_4\\_1/index.php/catalog/356](http://formularios.dane.gov.co/Anda_4_1/index.php/catalog/356) (last consulted, august 2016).
- Nieto Loaiza, R. & Pineda Estrada, T. (2003). *Tratamiento de la actividad policial en la jurisprudencia de la Corte Constitucional Colombiana*. (Monografía presentada para obtener el título de abogado). Universidad Javeriana, Bogotá, Colombia. Available at <http://www.javeriana.edu.co/biblos/tesis/derecho/dere5/TESIS75.pdf>
- Ochoa, D. & Ordoñez, A. (2004). Informalidad en Colombia. Causas, Efectos y Características de la Economía del Rebusque. *Estudios Gerenciales*, (9), 103-116.
- Offe, C. (1997). Towards a New Equilibrium of Citizens' Rights and Economic Resources?. In W. Michalski, R. Miller, & B. Stevens (Eds.), *Societal Cohesion and the Globalising*

- Economy. What Does the Future Hold?* (pp. 81-108). Paris: Organisation for Economic Co-operation and Development (OECD).
- Ortner, S. (1996). Making Gender: Toward a Feminist, Minority, Postcolonial, Subaltern, etc. Theory of Practice. In S. Ortner (Ed.), *Making Gender: The politics and erotics of culture* (pp. 1-2). Boston: Beacon Press.
- Parijs, P. (1992). *Arguing for Basic Income: Ethical Foundations for a Radical Reform*. London: Verso.
- Perazzi, J.R. & Merli, G.O. (2017). Análisis de la estructura del mercado laboral en Colombia: un estudio por género mediante correspondencias múltiples. *Cuadernos de Economía*, 40 (113), 100-114.
- Perry, G., et al., (2007). Informality: Exit and Exclusion [online]. Washington, DC: World Bank. Available from: <http://hdl.handle.net/10986/6730> [Accessed 17 February 2015].
- Pine, A. (2008). *Working Hard, Drinking Hard. On Violence and Survival in Honduras*. California: University of California Press.
- Pita, M. V. (2003). *Lo infinitamente pequeño del poder político. Policía y contravenciones en el ámbito de la Ciudad Autónoma de Buenos Aires*. (Tesis de Maestría en Administración Pública). Universidad de Buenos Aires, Buenos Aires, Argentina. Available from: <http://www.antropojuridica.com.ar/wp-content/uploads/2012/03/Pita.pdf>
- Porras, L. (2015). *Rebuscadores: Indignation about the Legal Misrecognition of the Most Vulnerable Segment of the Working Poor in Bogotá*. *Oñati Socio-legal Series [online]*, 5 (1), 218-236. Available from: <http://ssrn.com/abstract=2567262>
- Portes, A. (Ed.) (1988). *La economía del rebusque*. Volumen 16 Cuadernos de Ciencias Sociales. San José: FLACSO.

- Portes, A. (1995). *En torno a la informalidad: Ensayos sobre teoría y medición de la economía no regulada*. 1ª edición. FLACSO. Mexico D. F.: Miguel Ángel Porrúa Grupo Editorial.
- Pound, R. (1927). Sociology and Law. In W. F. Ogburn & A. Goldenweiser. (Eds.), *The Social Sciences and Their Interrelaciones* (pp. 319-328). Boston: Houghton Mifflin Company.
- Quant, S. A., Vitolins, M. S., DeWalt, K. M. & Gross, G. (1997). Meal patterns of older adults in rural communities: Life course analysis and implications for undernutrition. *Journal of Applied Gerontology*, 16, 152-71.
- Ramírez, N. (2015). *Bargaining women. Negotiating procreation in the home and the workplace. A sociolegal analysis. Preliminary findings*. Presentation at IGLP Harvard.
- Ramírez, Y. (Coord.). (2013). Diagnóstico de vendedores en la calle y propuesta de Política pública en la localidad de Suba (Bogotá). Convenio de asociación 038 de 2012 Suscrito entre la Alcaldía Local de Suba y la Corporación Mujeres y Economía. Bogotá, Colombia.
- Razeto Migliaro, L. (1993). Debate Comunicando acerca de la llamada economía popular. *Boletín de Informaciones Inter-organizaciones-CEDAL*, 24. Paris: CEDAL.
- Rencher, A. C. (2003). *Methods of multivariate analysis* (Vol. 492). John Wiley & Sons.
- Reed-Danahay, D. (2004). *Locating Bourdieu*. Bloomington: Indiana University Press.
- Roberts, K., Cavill, N., Hancock, C. & Rutter (2013). Social and Economic Inequalities in Diet and Physical Activity. *Report No 1*. London: Public Health England.
- Roig, A. (2008). El desarrollo como conflicto institucionalizado. *Sumario Realidad económica*, 237, 80-92.
- Roig, A. (2017). La economía política de lo popular como fuente de derechos sobre lo público. In Giraldo, C. (Ed.). *Economía popular desde abajo*. (pp. 23-43). Bogotá: Ediciones desde Abajo. Print.
- Rodrigo, M.J., Máiquez, M.L., Batista-Foguet, J.M., García, M., Rodríguez, G., Martín, U.C. &

- Martínez, A. (2006). Estilos de vida en la adolescencia y su relación con los contextos de desarrollo. *Cultura y Educación*, 18 (3-4), 381-395.
- Rosenlund, L. (2000). Cultural change in Norway: Cultural and economic dimensions. *International Journal of Contemporary Sociology*, 37(2), 245–275.
- Russell Bernard, H. (2011). *Research Methods in Anthropology: Qualitative and Quantitative Approaches*. Fifth Edition. Lanham: AltaMira Press.
- Sapiro, G. (1999). *La guerre des écrivains (1940–1953)*. Paris: Fayard.
- Savage, M., Warde, A., Le Roux, B., & Rouanet, H. (2008). Class and Culture in the United Kingdom. *The Journal Sociology*, 42 (6), 1049-1071.
- Scheper-Hughes, N. (1983). The Problem of Bias in Androcentric and Feminist Anthropology. *Women's Studies*, 10, 109-116.
- Schnarch, A. (2013). *Marketing para pymes. Un enfoque para Latinoamérica*. Pdf (ebook). Alfaomega.
- Secretariat of Culture, Recreation and Sports of Bogotá [SCRD]. (2016). *Encuesta bienal de culturas*. Available from: <http://www.culturarecreacionydeporte.gov.co/es/observatorio-de-culturas/encuesta-bienal-de-culturas> (Accessed, May 2016).
- Secretaria Distrital de Planeación de Bogotá [SDP] & DANE. (2011). *Encuesta Multipropósito para Bogotá Distrito Capital-EMB- 2011*. Available from: [https://formularios.dane.gov.co/Anda\\_4\\_1/index.php/catalog/189](https://formularios.dane.gov.co/Anda_4_1/index.php/catalog/189) (Accessed, April 2017).
- Secretaria Distrital de Planeación de Bogotá [SDP] & National University of Colombia [UNAL]. (2013). *Segregación socioeconómica en el espacio urbano de Bogotá*. Departamento de Estadística de la Universidad Nacional de Colombia. Bogotá D.C.

- Shane, S. (1997). Who is Publishing the Entrepreneurship Research? *Journal of Management*, 23(1), 83-95.
- Scheper-Hughes, N. (1983). Introduction: The Problem of bias in androcentric and feminist anthropology. *Women's Studies*, 10, 109-116.
- Shildrick, T., & MacDonald, R. (2013). Poverty talk: how people experiencing poverty deny their poverty and why they blame 'the poor'. *The Sociological Review*, 61(2), 285-303.
- Silbey, S. (1985). Ideals and Practices in the Study of Law. *Legal Studies Forum*, 9, 7-22.
- Silbey, S. & Sarat, A. (1987). Critical Traditions in Law and Society Research. *Law & Society Review*, 21, 165-174.
- Simmel, G. (1950). On Superordination and Subordination. In K. Wolff, *The Sociology of Georg Simmel* (pp. 181–89). Glencoe, Illinois: Free Press.
- Simmel, G. (1987). *Estudios sobre las formas de socialización*. Madrid: Alianza Editorial.
- Scott, J.W. (1990). Deconstructing equality-versus-difference, or, the uses of poststructuralist theory for feminism. In M. Hirsch & E. Fox Keller (Eds.), *Conflicts infeminism* (pp. 134-148). New York: Routledge.
- Spelman, E. V. (1988). *Inessential woman: Problems of exclusion in feminist thought*. Boston, MA: Beacon Press.
- Standing, G. (2002). *Beyond the New Paternalism: Basic Security as Equality*. London: Verso.
- Standing, G. (2011). *The Precariat: The New Dangerous Class*. London: Bloomsbury.
- Stern, A. (2016). *Raising the Floor: How a Universal Basic Income Can Renew Our Economy and Rebuild the American Dream*. Canada: PublicAffairs.
- Supiot, A. (2001). *Beyond Employment. Changes in Work and the Future of Labour Law in Europe*. Oxford University Press.

- Swartz, D. (1997). *Culture and Power: The Sociology of Pierre Bourdieu*. Chicago: University of Chicago Press.
- Sylvestre, M. E. (2007). *Policing Disorder and Criminalizing the Homeless in Montreal and Rio de Janeiro: A Critique of the Justifications of Repression in Law and Practice*. Unpublished S. J. D. (Dissertation). Harvard Law School, Cambridge, MA.
- Sylvestre, M. E. (2010b). Rethinking criminal responsibility for poor offenders: choice, monstrosity, and the logic of practice. *McGill Law Journal*, 55, 771-817.
- Sylvestre, M. E. (2010a). Disorder and public spaces in Montreal: Repression (and resistance) through law, politics and police discretion. *Urban Geography*, 31(6): 803–824.
- Sylvestre, M. E., Bellot, C., Couture Ménard, P. & Tremblay, C. (2011). Le droit est aussi une question de visibilité: l'occupation des espaces publics et les parcours judiciaires des personnes itinérantes à Montréal et à Ottawa. *Canadian Journal of Law and Society*, 26 (3), 531-561.
- Sylvestre, M. E. (2014). Crime and Social Classes. In D. Brock, A. Glasbeek & C. Murdocca (Eds.), *Criminalization, Representation and Regulation: An Introduction* (pp. 217-246). University of Toronto Press.
- Sylvestre, M. E., Damon, W., Blomley N. & Bellot, C. (2015). Spatial Tactics in Criminal Courts and the Politics of legal Technicalities. *Antipode*, 47(5), 1346-1366.
- Tamanaha, B. (2000). A non-essentialist version of legal pluralism. *Journal of Law and Society*, 27 (2), 296-321.
- Teubner, G. (1997). Legal Pluralism in World Society. In G. Teubner (Ed.), *Global Law without a State* (pp.3-28). Dartmouth, Aldershot: Ashgate Publishing Company.

- Thomson, S., Ansoms, A. & Murison, J. (Eds.). (2013). *Emotional and Ethical Challenges for Field Research in Africa. The Story behind the Findings*. Houndmills: Palgrave Macmillan.
- Tiscornia, S. (Ed.). (2004). *Burocracias y violencia: estudios de antropología jurídica*. Chapter 2. 1° ed. Buenos Aires: Antropofagia. Available from: <http://www.antropojuridica.com.ar/wp-content/uploads/2012/02/BurocraciasyViolencia.pdf>
- Valverde M. 2008. The ethic of diversity: Local law and the negotiation of urban norms. *Law and Social Inquiry*, 33(4): 895–923.
- Valverde, M. (2009). Jurisdiction and Scale: Legal “Technicalities” as Resources for Theory. *Social Legal Studies*, 18(2), 139-157.
- Vargas Falla, A. M., & Urinboyev, R. (2015). Everyday Forms of Resistance to the Law: An Ethnographic Study of Street Vendors in Bogotá. *Droit et Société*, 91(3), 623-638.
- Velloso, J. (2013). Beyond criminocentric dogmatism: Mapping institutional forms of punishment in contemporary societies. *Punishment & Society*, 15(2), 166-186.
- Vega Ruíz, M. L. (2008). New Trends in Latin American Labour Reforms: The Law, its Reform and its Impact in Practical Terms. In J. Berg, & D. Kucera (Eds.), *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World* (pp. 233-256). New York, NY: International Labour Organization.
- Vergara Figueroa. A. (2013). Oportunidades negadas: limitando a las mujeres negras a trabajos devaluados. *Sociedad y Economía*, 23 (fasc.N/A), 355 – 360.
- Villarroel, G. (1996). Democracia sin consenso: Los valores confrontados de la cultura política Venezolana. *Espacio Abierto*, 5(2), 224-248.
- Viveros. M. (2016). La interseccionalidad: Una aproximación situada a la dominación. *Debate Feminista*, 52, 1-17. doi:10.1016/j.df.2016.09.005

- Vosko, L. (2010). *Managing the margins: gender, citizenship, and the international regulation of precarious employment*. Oxford: Oxford University Press.
- Wacquant, L. (2009). *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Duke University Press.
- Wanderley, F. (2002). Avanços e desafios da Nova Sociologia Econômica: notas sobre os estudos sociológicos do mercado: uma introdução. *Sociedade e Estado*, 17 (1), 15-38.
- Warde, A. (2006). Cultural Capital and the Place of Sport. *Cultural Trends*, 15 (2/3), 107 –122.
- Warren, C. (1988). *Gender issues in field research*. Newbury Park, CA: Sage.
- Williams, L. (2002). Beyond labour law’s parochialism: a re-envisioning of the discourse of redistribution. In: J. Conaghan, M. Fischl & K. Klare (Eds.), *Labour Law in an era of globalization. Transformative practices and possibilities* (pp. 93-117). Oxford: Oxford University Press.
- Wilkinson, C. (2008). Positioning security and securing one’s position: the researcher’s role in investigating security in Kyrgyzstan. In C. R. L.Wall & P. P. Mollinga (Eds.), *Field work in difficult environments: discussing the divergence between theory and practice* (pp.43-67). Berlin, Germany: Lit Verlag.
- Wilson, W. & Chaddha A. (2009). The role of theory in ethnographic research. *Ethnography* 10(4), 549-564. Version published available from <http://nrs.harvard.edu/urn-3:HUL.InstRepos:4778477>
- Wood, E. J. (2006). The Ethical Challenges of Field Research in Conflict Zones. *Special issue: Political Ethnography I*, 29, 373–386. doi 10.1007/s11133-006-9027-8
- Weber, M. (1954). *On Law in Economy and Society*. Ed. by Max Rheinstein, A Clarion Simon and Schuster.
- Webster’s New Universal Unabridged Dictionary. (2003). Edition. Barnes & Noble Incorporation.

Zaman, S. (2008). Native among the Natives Physician Anthropologist Doing Hospital  
Ethnography at Home. *Journal of Contemporary Ethnography*, 37(2), 135-154. doi:  
10.1177/0891241607312495

8. Annex (ethics approval)



uOttawa

UNIVERSITY OF OTTAWA

APPLICATION FORM FOR ETHICS APPROVAL

Researchers applying for ethics approval are expected to have read the Tri-Council Policy Statement (1998) as it sets out the ethical guidelines for conducting research with human participants. At the end of this application your signature attests to the fact that you have read this document. When completing this application form, be sure to respond to all items.

1. RESEARCH PROJECT REGISTRATION

1.1 Project title: Poverty, informality and vulnerable workers: the case of street vendors in Bogotá-Colombia

1.2a Anticipated project dates Start date: 2012-08-01 Completion date: 2013-08-01

1.2b Is there a pending deadline by which ethics approval is required? Yes No

Deadline date: 2012-06-01

Please provide reasons:



I want to have enough time to plan my trip to Colombia and start my fieldwork in August.

1.3 Principal investigator. [If this is a 4th year, Master's or Doctoral project, indicate your supervisor's name and contact information in Section 1.4]

Name:

Professor Ph.D. M.D. Miss Ms. Mrs. Mr. Other

Department: Graduate Studies in Law Faculty: Law

Address:

Telephone no.: Ext.: Fax no.:

E-mail:



### 1.7 Funding information

Received  Pending  Not required

Name of funding agency: IDRC \_\_\_\_\_

U of O RE No. or Cost Centre or Funding Agency Reference No.: \_\_\_\_\_

Have you applied for preliminary authorization of release of funds (1b approval)?  Yes  No



File No.: \_\_\_\_\_

## 2. RESEARCH PROJECT DESCRIPTION

### 2.1 Purpose: Describe the project and its objectives. Please include the research questions. (1 page)

Lawyers have not actively taken part in the discussions around the most vulnerable workers in the informal economy, because it has been commonly understood (especially by economists who dominate the academic debate in the area), that informality refers either to unregulated economic activity or to a series of activities where rules are simply unenforceable. Not all scholars agree. Although rules tend to be naturalized in such a way that they feel absent, where relations of power exist, there are always formal legal rules (formally adopted by a public authority and enforced through sanctions), and informal legal rules (accepted by a group of people and enforced unofficially by its members) that structure the relation between the parties, and in so doing, they play a key role in the different arrangements between individuals. (Kennedy 1998)

Thus, in some sense the informal sector is highly regulated. Furthermore, both formal and informal rules reinforce different forms of structural violence against vulnerable workers, while at the same time, they reinforce their agency. Rules that criminalize different activities of the poor and regulate the use of public space, for example, play as much a role in constraining the lives and the choices of vulnerable workers, as do history, culture, and political-economic structures. At the same time, however, some of the rules that facilitate the access of the poor to justice and that grant different types of social benefits, play a role in helping them take an active role in administering their own lives, resisting marginalization and escaping poverty. As most of the discussion around informality revolves around employment regulation, in my analysis, employment rules will have a protagonic role, but will not be observed in isolation from the rest of the regulatory scheme.

To understand better from a bottom-up perspective how the informal sector is regulated, I want to conduct an ethnographic study of street vendors in Bogotá-Colombia. I became interested in street vendors because they generally lack what Bourdieu called the cultural, economic and symbolic capital necessary to succeed in the working-class world, and because they represent a significant share of the urban informal economy in developing countries.

Thus, the objectives of this study are: (1) to document the different normative systems (both formal and informal) that structure the relationships around informal workers such as street vendors. As street vendors are fundamentally poor workers and my emphasis will be on employment regulation around the working poor, both formal and informal employment arrangements will receive special attention. (2) To analyze the interplay between the different normative systems that structure the relations between the parties. Who do they benefit? Which rules are enforced? Do they discriminate against weaker parties? (3) To suggest from a bottom-up perspective new differentiated minimum standards of protection for poor workers such as street vendors in the informal sector.

Drawing on ethnographic fieldwork I will answer the following questions: Which types of different formal and informal normative systems reinforce different forms of structural violence against vendors, and which types reinforce their agency? What role does race, age, gender, ethnicity and/or socio-economic status play in the way street vendors experience both formal and informal law? What kind of new differentiated minimum standards of protection are needed to improve the conditions of the working poor?

## 2.2 Context: Situate the project in the scholarly literature and provide the rationale for the study. (1-2 pages)

I'm interested in poverty and vulnerable workers who are part of the informal sector in developing countries such as Colombia. Therefore, my main interest is not to contribute to the literature on street vending, but to broader debates around poverty, informality and precarious employment that can gain from in depth analysis of the experience of a group of particularly precarious workers. Anyhow, I should briefly mention that the literature on street vendors is extensive, but it mainly focuses on health and safety concerns (Diaz-Lopez 2011, Muyanja 2011, Choudhury 2011, among many others) and on topics such as the negative effects of specific vending regulation for black (Austin 1993), women (Muiruri 2010) and indigenous populations (Swanson 2007). There are also a few ethnographies (Duneier 1999, Eidse 2011), and some critical papers around street vending in Bogotá (Rocha 2006, Donovan 2008, Hunt 2009). However, whenever they refer to regulatory schemes, scholars seem interested in the negative effects of specific formal regulations that specifically target vendors. None of them is interested in a broader analysis of how both formal and informal law affect for good and bad their daily activities, on how vendors (as the rest of the most vulnerable workers) don't exist for formal employment law, or on how their agency is particularly limited by different structural constraints.

There are three main broader debates from which my project draws and intends to build on, are: 1) the interplay of different normative systems that structure the relations among the working poor, 2) the discussion around informality and employment regulation for precarious workers, and 3) the theoretical debate that recreates the tension between structure (cultural, economic, social and legal constrains) and agency (individual responsibility).

1) INTERPLAY OF DIFFERENT SYSTEMS: Despite the primacy of employment law in regulatory discussions around informality, if we approach the informal sector with a legal realist mindset, we can expect to find a complex interplay of both formal and informal legal rules that are part of different normative systems. (Kotiswaran 2008) Tax law, police bylaws, property rights, social security regulations etc, are just examples of the multitude of formal legal rules that interact with informal social rules such as employment and space related practices, to create reality.

It is in the midst of such a plurality of normative systems that I believe poor workers find themselves bargaining routinely and reorienting their actions. Limiting the regulatory discussions around informality to employment law, could dangerously simplify a legal reality that is much more complex and could lead scholars and other activists to erroneous solutions. It is only in light of a more complex understanding of how poor workers experience and situate themselves within the complexity of competing normative systems, that we can realistically test the implications of existing formal rules and think about new standards of protection to improve the conditions of the working poor.

Furthermore, any suggestions to improve such conditions should take into consideration that different groups of informal workers such as street vendors are always highly internally differentiated, which means that the interplay between different normative systems also affects

them differentially. Describing how gender, age, race, ethnicity and/or socioeconomic status interrelate and play a role in the way street vendors experience both formal and informal law, is a key element that should be considered before suggesting policies.

2) INFORMALITY AND EMPLOYMENT REGULATION: The discussion around informality and employment regulation for precarious workers in developing countries has been mostly monopolized by both neoclassical and interventionist scholars (most of them economists), who blame one another for the growing numbers of informal workers. The common question they have is: why is informality so high (and growing) across the developing world?

According to neoclassical scholars, employment regulation is to a large extent responsible for aspects of poor labour market performance, and it is regressive as it protects high skilled workers and pushes low skilled to informality and/or unemployment. (Gruber 1997, Kugler 2003, Heckman and Pagés 2003, Albrecht 2008, Sánchez 2009, Bernal 2009, Mondragón-Vélez 2010, among many others) Most interventionists, however, disagree. They don't believe that unfairness can only be remedied with greater unfairness, and argue that employers should be forced to respect minimum standards. They argue that the State has to intervene to put an end to social stratification and unequal arrangements that have historically benefited dominant groups in society, and that social justice will just not simply materialize if it's not incentivized by regulation and by the periodic transference of power to the groups that are more vulnerable. (Berg, Janine and Kucera 2008, Berg, Daza 2008, Eyraud and Saget 2008, Felipe and McCombie 2008, Vega 2008, Benach and Muntaner 2010 among others)

Both interventionist and neoclassical scholars, therefore, focus their observations on employment regulation and argue that it affects for good or bad the lives of the most vulnerable workers. However, not only they miss that formal employment law is only part of the complex array of different normative systems that inform the arrangements of the working poor, but also that within informality some arrangements (which correspond to the most precarious ones) are simply invisible to employment law.

Leah Vosko makes that very clear. She focuses her observations on developed countries and uses the concept of precarious employment more than that of informality, but her results are clearly extendible to developing countries. According to Vosko, contemporary regulation responses see the problem of precarious employment as a deviation from the standard employment relationship (SER). To minimize deviation, both national and international regulatory organizations have tried to extend as much as possible the benefits of the SER to non-standard forms of employment, but in doing so, they only covered those which slightly deviated from the SER, and not the rest. For instance, they regulated permanent part-time employment but excluded temporary, seasonal and casual part-time jobs. They regulated fixed-term employment but excluded temporary agency work, and they regulated self-employed dependent workers but excluded self-employed workers who depend on many clients (as many street vendors do). (Vosko 2011)

The point then is that formal employment law is not likely to protect those most on the margins, and those most on the margins are the most in need. Such a conclusion should be surprising for both neoclassical and interventionist scholars who thought that employment law affected the lives of the most vulnerable. It doesn't. Those really at the margins are affected by criminal and tax law, but they just don't exist for formal employment law. However, the fact that vulnerable workers might not be covered by formal employment regulation doesn't mean that their working arrangements are not informed by other formal and informal rules. It only actually reinforces the importance of analyzing formal employment law as part of other competing normative systems.

3) TENSION BETWEEN STRUCTURE AND AGENCY: This takes me to the third broader and more theoretical debate from which my project draws and builds on: the tension between structure and agency. Different social scientists and legal scholars have adopted different positions regarding the tension between structure and agency (Bourdieu 1980, Kennedy 1997, Silbey and Ewick 1998, Ortner 1996 and 2005). Every model can be subjected to different criticisms, but from my point of view, Pierre Bourdieu is the author that better mediates the tension. According to Bourdieu, there are "structuring structures" or means for ordering and understanding the social world, which are humanly constructed, historical, and as such arbitrary in the sense that they do not reflect directly social realities. However, structures are not arbitrary in their social consequences. They differentiate and legitimate inegalitarian and hierarchical arrangements and therefore serve as instruments of domination.

There are two key parts of Bourdieu's argument from which my project particularly draws from. The first one has to do with his insistence in that structures (law being part of them) are not arbitrary in their social consequences but differentiate and legitimate inegalitarian and hierarchical arrangements. Such a conclusion must not sound at all surprising after arguing that the formal employment regulatory framework is not likely to protect those most on the margins, and those most on the margins are the most in need.

The second key argument refers to Bourdieu's insistence in that external structures are first mediated by the particular trajectory of the subject in the social structure to produce action. As a result, the chances the actor possesses by virtue of its capital determine the scope of agency. Other authors such as Ortner that reflect in depth about agency don't emphasize such an element, (Ortner 1996 and 2005) which I think is essential to understand why the lives of vulnerable individuals feel particularly constrained. In the case of street vendors, for instance, their lives are not only constrained by legal structures (such as criminal law and police bylaws), but by many other structures (patriarchalism, classism, racism, etc) that limit their choices and the scope of their agency. That doesn't mean, however, that they are passive victims. They create informal mechanisms through which they regulate their daily encounters, including their employment arrangements. However, as structures are not arbitrary in their social consequences, and the informal rules they create are informed by those structures, it is highly probable that they are based in patriarchal, capitalist, hierarchical and class-based contents that in its turn legitimate inegalitarian arrangements.

In other words, in the case of street vendors, informal rules might end up protecting the strongest members of a determinate community (men, young, healthy) and not the weakest ones. If that is so, it is quite clear that we need to suggest new formal and differentiated minimum standards of protection. I address Bourdieu's approach because it shakes the foundation of the rational choice model, and also because it opens the space to think about our co-responsibility in the misfortune of those most in need.

**2.3 Methodology/Procedures: Describe all methods and procedures that will be used to obtain data and answer the research questions. (1-2 pages)**

I propose to conduct a 1 year single sited ethnographic study of a group of street vendors in Bogotá-Colombia. My approach is mainly inductive, which means that my existing research questions are only approximate notions of what I want to learn, as I'm particularly interested in all the specific questions that will emerge in the field. That's why I will formally present my thesis proposal in Canada, only six months after I start conducting my observations in Colombia. I will then go back and conclude my observations. If my proposal is adjusted in any way after my first six months in the field, then I will submit the changes to the Ethics Committee for their approval.

The study (as a whole) will be conducted in three phases:

Phase 1 – Prior to fieldwork, I will conduct a literature review and legal analysis of the different formal normative systems that can influence the arrangements between a group of poor workers such as street vendors. To do so, I will rely basically on public documents such as laws, bylaws, administrative decrees and rulings from different Colombian courts. Public documents will also be consulted to find written evidence of specific public policies designed in the past year to regulate street vending and address vendor's basic needs. That is not expected to be easy, as many different public institutions might have taken part in the regulation of public space and vending without coordinating efforts between them.

Phase 2 – I will collect population statistics available of street vendors in Bogotá from different public archival sources that keep track of the number of street vendors in the city (city hall, special police units, public institutions specialized in public space, among others). As the population varies daily due to massive internal displacement (5.2 million citizens so far both for economic reasons and as a consequence of the internal armed conflict), high rates of unemployment and underemployment, increasing police surveillance, among other factors, I don't intend to use the information to draw representative samples, but just to give me a general idea of the type of information kept in public records, of the different mappings that have been made of the areas that concentrate more vendors, and of general available figures that can give me clues about population characteristics such as gender, socio-economic status, age, etc. I will also collect available aggregated data from the national census specific to Bogotá. The census does not include figures on street vendors, but it can help me contextualize my study. Data collected will include information on informality rates, poverty, displacement, unemployment and underemployment, differentiated (when available) by sex, race, age, ethnicity and socio-economic status.

Phase 3 – I plan to draw on a convenience sample of a group of 10-30 street vendors that agree to be observed and would allow me to participate in their legal activities. Vendors have been violently mistreated in many different ways throughout their lives, and therefore I don't expect that it will be easy to earn their trust and get them to accept my daily presence. Furthermore, as a middle class, educated woman, I'm aware that violating class and sex barriers will be a slow and difficult process. So far, I have two possible ways to be introduced to a group of vendors: 1) through one or more of their associations, 2) through personal contacts. For instance, I befriended a group of vendors close to my former University in Bogotá (Los Andes University), or I could also get to meet them through other precarious workers that I know - such as women that work in housekeeping activities - whose relatives vend in the street.

Participant observation will be used to smoothly introduce myself, build rapport, let them get used to my outsider presence, and give them time to find out if they accept my company. My goal is that they agree to let me help them by selling the legal items they acquire and returning the money I make every day in a similar way as Duneier did when he wrote *Sidewalk* (Duneier 2000). While doing so, I plan to tape-record our daily activities, and write field notes every night.

Because of time constraints, my plan is to work with only one group of vendors for a long time, but I will make my best to be accepted in one of the big groups located in downtown Bogotá (I even plan to live close to one of the most crowded spots). Big groups are usually highly differentiated, and that will hopefully allow me to be particularly attentive to the way in which law affects differentially the life of street vendors.

The validity of the data collected will depend largely on how honest participants are about their thoughts and actions. Staying in the field for a long time, will not only lower their reactivity but will

also give me the intuitive understanding needed to speak comfortably about the meaning of my observations.

#### **2.4 Data analysis: Describe how the data will be analyzed. (1 page)**

Legal documents in the first phase will be analysed through classic legal methods to construct a critical understanding of the different formal normative systems that can influence the arrangements between a group of poor workers such as street vendors in Colombia.

Statistical information gathered in the second phase, will be used to contextualize the qualitative data obtained during my year of fieldwork. Qualitative data in the third phase will mainly consist of transcripts of the daily routine of street vendors and field notes. As I already said, I plan to have a tape recorder running all the time (if they allow me to do so), so that I can use quotations in my analysis. A tape recorder will allow me to get the exact words right, which is very important, especially because as Duneier would argue "different meanings found among people of different social positions can be easily misunderstood and misinterpreted." (Duneier 2000, 339)

Field notes are of the outmost importance not only because they are permanent records that will allow me to remember vital episodes, but because they will also allow me to trace the way my different ideas and thoughts develop through time. I will start analysing the qualitative and statistical data available during my fieldwork, so that I can discuss different ideas with the group of street vendors, not only to let them weigh my intentions, but also to hear and incorporate their evaluation of my ideas in my final arguments.

#### **2.5 Describe the anticipated contribution of the research. (1 page)**

This research will diverge from and add to previous studies which limit themselves to address informality by analyzing the effects of employment regulation over poor workers. By documenting the complex interplay of different formal and informal normative systems that structure the relationships around informal workers, and incorporating observations on how law affects different groups of informal workers differentially, this research has the potential to reassess the centrality of employment law (as we know it) in debates around informality, and to point out new differentiated minimum standards of protection for the working poor.

By using anthropological research methods such as participant observation in law, it will shed light over phenomena that scholars are still just beginning to comprehend, and most importantly, by gathering rich data on the experiences of a group of vulnerable workers, it will illuminate new necessities and possibilities for legal change.

#### **2.6 References: Include author, year, title, journal, page numbers (1-2 pages)**

- Austin, Regina. 1993. "An Honest Living": Street Vendors, Municipal Regulation, and the Black Public Sphere. *The Yale Law Journal*. 103(8): 2119-2131
- Benach, Joan and Muntaner, Carles. 2010. Empleo, trabajo y desigualdades en salud: una vision global." Spain: Icaria.
- Bernal, Raquel. 2009. The Informal Labor Market in Colombia: identification and characterization. *Desarrollo y Sociedad*. 63(1): 145-208
- Bourdieu, Pierre. 1990. *The Logic of Practice*. Stanford: Stanford University Press.
- Bourdieu, Pierre. 1998. *Practical Reason: On the Theory of Action*. California: Stanford University Press.

- Bourgois, Philippe. 2003. *In Search of Respect: Selling Crack in El Barrio*. New York: Cambridge University Press.
- Daza Pérez, Jose Luis. 2008. "Legal Determinants of Labour Informality." In, *In Defence of Labour Market Institutions: Cultivating Justice in the Developing World*, ed. Janine Berg, and David Kucera, 218-233. New York, NY: International Labor Organization.
- Duneier, Mitchell. 2000. *Sidewalk*. New York: Farrar, Straus and Giroux.
- Gunadi, Aloysius. 2008. Vulnerability of urban informal sector: street vendors in Yogyakarta, Indonesia. *Yogyakarta University Jl.* 43: 1-14
- Kennedy, Duncan. 1997. *A Critique of Adjudication [fin de siècle]*. Harvard: Harvard University Press.
- Klein, Naomi. 2008. *The Shock doctrine: the rise of disaster of capitalism.* Picador.
- Kotiswaran, Prabha. 2011. *Dangerous Sex, Invisible Labour: Sex Work and the Law in India*. New Jersey: Princeton University Press.
- Mondragón-Vélez, Camilo, Peña, Ximena and Wills, Daniel. 2010. Labor Market Rigidities and Informality in Colombia. " *Documentos CEDE*:1-32
- Nader, Laura. 1972. Urban Anthropologist Perspectives Gained from Studying Up. In *Reinventing Anthropology*, ed. Dell Hymes, 284-311. New York: Pantheon.
- Ortner, Sherry. 1996. "Making Gender: Toward a Feminist, Minority, Postcolonial, Subaltern, etc. Theory of Practice." In *Making Gender: The politics and erotics of culture*. Beacon Press.
- Parra, Manuel. 2002. "La Salud de las Mujeres Trabajadoras en América Latina." In, *El Trabajo de las Mujeres: Comprender para Transformar*, ed. Karen Messing, 69-128. Madrid, Sp: Los Libros de la Catarata.
- Pine, Adrienne. 2008. *Working Hard, Drinking Hard: On Violence and Survival in Honduras*. California: University of California Press.
- Silbey, Susan and Patricia Ewick. 1998. *The Common Place of Law*. Chicago: University of Chicago Press.
- Sylvestre, Marie-Eve. 2007. Policing Disorder and Criminalizing the Homeless in Montreal and Rio de Janeiro: A Critique of the Justifications for Repression in Law and Practice.
- Vosko, Leah. 2011. *Managing the margins: gender, citizenship, and the international regulation of precarious employment*. Oxford University Press.

### 3. RECRUITMENT OF PARTICIPANTS

#### 3.1 Who is being recruited? Describe the specific inclusion criteria for participants to be involved in the study.

I plan to draw on a convenience sample of a group of 10-30 street vendors that agree to be observed and would allow me to participate in their activities. The only inclusion criteria is that their principal economic activity is to sell in the streets of Bogotá. That means that the group can be internally highly differentiated (might include women, children, elderly citizens and members of black and indigenous communities). The recruitment process will be conducted in Spanish, which is my native language.

#### 3.2 Indicate the number of participants in the study.

10-30

#### 3.3 What is the rationale for the intended number of participants?

It is a number small enough to get to know them closely during my year of fieldwork, but large

enough to be internally differentiated.

**3.4 In some cases, the number of interested participants who meet the inclusion criteria exceeds the desired number of participants.**

Will all eligible individuals who volunteer be included in the study?

Yes  No

If no, please describe how you will make the selection (e.g., first come/first served) and how participants will be informed of this.



Street vendors tend to stay in their usual vending spots and are not likely to move to participate in such a study. I will stay with the first group of vendors that allow me to observe them and participate in their activities.

**3.5 In some studies, there are additional scientific criteria which require the exclusion of potential participants (e.g., medical condition, certain prescription medication). Does this apply to your study?**

Yes  No

If yes, please explain the exclusion criteria and the screening process.



**3.6 Source of participants - Check all that apply:**

Column A

- School Boards
- Correctional Services
- Agencies
- Mailing Lists
- Businesses, Industries, Professions
- Hospitals, Long Term Care Facilities or other Health Care settings
- Other - Please specify: \_\_\_\_\_

Column B

- uOttawa undergrad or graduate classes
- uOttawa Psychology ISPR
- Other uOttawa sources (e.g. Health Services Clinic, Pride Centre) - Please specify: \_\_\_\_\_

Indicate the specific names and locations of any sources checked (excluding Psychology ISPR):

I have two possible ways to be introduced to a group of vendors, but I cannot be sure of which one of them is going to work. Therefore, I cannot indicate the specific names and locations of the source of participants. Unfortunately, none of the sources can be contacted before going to the field. Vendors organizations, for instance, don't have web pages, offices, telephones or other facilities through which I could contact them before being in Bogotá.

**3.7 Who will be recruiting participants?**

Laura Porras will recruit the participants.

**3.8 Are there any supervisory or trust-based relationships between persons conducting recruitment and the participants (e.g., professor-student, relative, friend, doctor-patient, therapist-client)?**

Yes  No

If yes, describe the relationships and the steps that will be taken to ensure that there is no coercion.



**3.9 Describe how participants will be recruited. Please note that if participating organizations are being asked to distribute a recruitment invitation to potential participants, the researcher's contact information must appear on the recruitment invitation so that potential participants can contact the researcher directly.**

Please append copies of all recruitment posters, advertisements, telephone scripts, letters of information, etc. that will be used for recruitment purposes.

As stated in 2.3, I have two possible ways to be introduced to a group of vendors: 1) through one or more of their associations, 2) through personal contacts. There are thousands of street vendors in Bogotá, and many of them have associated in the past for different reasons. However, their associations are constantly changing and they disappear as easily as they appear. I will only be able to learn about them and approach them once I begin my fieldwork. I could also approach street vendors through personal contacts, such as other precarious workers that I know whose relatives vend in the street, or through former vendors that I knew close to the University where I studied in Bogotá.

In any case, I will be the only one approaching potential participants in person, explaining the nature of my research project and specifying potential risks and benefits. I will then give the participants two or three days to decide if they would like me to observe them and participate in their activities or not. At the end of those two or three days, I will look for potential participants in their usual vending spots, and if they decided they want to participate, I will kindly ask them to provide verbal consent. They will be reassured though that at any time they are free to withdraw, and that if they do so, I will not use any data related to them. I append a copy of the verbal recruitment and verbal consent script both in English and Spanish.

**3.10 Is organizational or governmental permission needed to conduct research with the participants (e.g., school boards, employers, correctional services)?**

Yes  No

If yes, describe from whom permission is required and how this permission will be obtained. Include copies of all permissions.



**3.11 Is research being conducted in another country?**

Yes  No



Please specify:

Research will be conducted in Bogotá-Colombia.

Is local ethical clearance needed to carry out the research?

Yes  No

If no, explain the circumstances why ethical clearance is not required.



In Colombia ethical clearance is required for any kind of clinical experimentation (Resolución 8430, 1993 of the Ministry of Health). No ethical clearance is required for ethnographical research that involves human subjects.

If yes, include copies of all approvals or explain how such approvals will be obtained



#### 4. PARTICIPATION

**4.1 Describe what participants will be asked to do. Include how often participants will be asked to participate and how long each research activity will last.** Please append any questionnaires, surveys, interview guides, focus group guides etc.

My goal is to observe street vendors and participate regularly in their legal activities by using a participant-observation approach. With their previous authorization, I will help them sell legal items and then return the money I make every day. During one year approximately, I will tape-record our activities, and write field notes. Participants will not be asked to do anything different from their regular daily activities. In fact, I actually hope they forget about my daily presence, as the accuracy of my observations depends also on their spontaneity.

**4.2 Provide the following details regarding the time and location of the data collection:**

a) As relates to the specific participant population, describe when data collection will occur (e.g., interviews with school children will take place outside of class time; focus group sessions with professionals will take place during working hours).

Participant observation will take place approximately for one year in the streets of downtown Bogotá, at daytime and during the week. I will interrupt the observation sometimes for a few weeks, to put my thoughts together, rest and let them rest of my presence.

b) As relates to the specific participant population, describe the location of data collection (e.g., interviews with school children will take place in the library of John Smith Elementary School, located in Orleans, Ontario; focus group sessions will take place in a conference room in the John Smith office building located in Orleans, Ontario; interviews will take place in a coffee shop in Gatineau, Québec).

Participant observation will take place in the streets of downtown Bogotá.

**4.3 Will scientific equipment involving direct or indirect physical contact be used (e.g., electrodes, sensory devices, probes)?**

Yes  No

If yes, provide a description of the equipment and how it will be used.



**4.4 Does the research involve any invasive procedures whereby a scientific instrument, such as an esophageal probe, will be inserted into the body?**

Yes  No

If yes, who will be performing the procedure? Please provide appropriate clearance from the Office of Risk Management.



**4.5 Will audio recording be used in the study?**

Yes  No

If yes, which research activity(s) will be audio recorded?



With previous authorization from street vendors, I will tape-record our daily activities in the field (see verbal consent script attached). Drawing from the methodology Duneier used when he wrote Sidewalk (Duneier 1999), I will tape record the interactions of street vendors with by passers from whom I will not ask previous consent . Bogotá is a big city, and downtown Bogotá has a floating population of more than 1700.000 people within approximately 2.2 km<sup>2</sup>. Street vendors have hundreds, sometimes thousands of daily interactions with by passers, making it impossible to ask each one of them for their consent. There is also no way in which I can realistically write field notes while also selling legal items in the street (I will only write field notes at night around general thoughts). Tape recording, therefore, will allow me to recollect data around the dynamics of the relationship of street vendors with by passers, during what I'm sure will be long and extenuating working days.

**4.6 Will video recording or photography be used in the study?**

Yes  No

If yes, which research activity(s) will be video recorded or photographed? If video recordings or photographs will be used in future presentations, for conference purposes, etc. please ensure that participants are aware of this and that permission is obtained and documented in the consent form.



With previous authorization of participants, I plan to take some photographs targeting vendors in their daily working activities. In the verbal consent script attached, I will ask for their general consent to take photographs, but as consent is always open to renegotiation and revision, once specific photographs are taken, I will ask again for their consent to use specific photographs in presentations, conferences, publications or any other related academic purpose.

**4.7 Will participants be compensated?**

Yes  No

If yes, provide details. Please note that since research participation is voluntary, participants are free to withdraw at any time without negative consequences. The Research Ethics Board requests that after a study has begun any participant who chooses to withdraw should still receive the compensation that had been offered. If for some reason participants will not be compensated after they have withdrawn from the study, please explain



I will not compensate participants with money, but I will work for them for free.

## 5. ASSESSMENT OF RISKS

### 5.1 Indicate if the participants might experience any of the following:

Risk of physical harm (e.g., falling, muscle pain)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Physical discomfort (e.g., tiredness, weakness, nausea)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Risk of psychological or emotional harm (e.g., trauma)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Psychological or emotional discomfort (e.g., anxiety, stress, loss of confidence, regret for disclosing personal information)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Legal repercussions for participating in the study (e.g., possibility of being sued, charged with criminal activity)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Social repercussions (e.g., possibility of marginalization, being negatively judged by peers or employer)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Economic inconveniences (e.g., expenses incurred for participation, loss of income during time of participation)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other inconveniences (e.g., long travel to research site, time consumed, disruption of family routines)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### 5.2 If you answered yes to any of the items in section 5.1, please complete (a) and (b) below.

(a) Describe the risks, discomforts or inconveniences.

There are two risks that participants might experience: 1) they might regret disclosing personal information or personal insights about their lives which can cause emotional discomfort, 2) there is the chance that the police or other public officials might ask me to provide them with information related to the illegal activities that vendors might perform (such as selling pirate movies or CD's). If I disclose the information, participants could be charged with illegal activities.

(b) Specify the measures taken to mitigate such risks, discomforts or inconveniences. Please include names and contact information of appropriate resources to which participants can be directed if needed.

To mitigate the first risk, in case the participant previously consented to have his/her identity revealed, any personal insights that may cause emotional discomfort will simply not be used for academic purposes or revealed in any other setting. In any case, all participants will be informed that they can choose to remain anonymous during the course of the project, in which case any identifying information provided or discussed will be quoted. Furthermore, I will always emphasize that participants can get out of the project at any time, and if they do so, I will not be able to use any data related to them.

As for the second risk, my commitment is to participants, and I don't have to, and will not disclose any information that could be used to charge them with illegal activities. The only case in Canada where a student was threatened with a charge of contempt for refusing to share confidential research information with a court (Russel Ogden v. Simon Fraser University), was won by the student. Furthermore, according to point 5.1 of the 2010 Tri-Council Policy Statement of Ethical Conduct for Research Involving Humans, whenever researchers are put in a position where they may experience tension between the ethical duty of confidentiality and disclosure to third parties, "researchers shall maintain their promise of confidentiality to participants within the extent permitted by ethical principles and/or law. This may involve resisting requests for access, such as opposing court applications seeking disclosure."

In all cases I will brief participants about the possible risks of participation, and be sensitive about any possible discomfort.

Finally, I believe its important to state here that I've worked in the past with different groups of citizens that are vulnerable in different ways (direct and indirect victims of the internal armed conflict, victims of different types of structural violence and victims of domestic violence). I worked interviewing victims of domestic violence and writing about their experiences for one year, and more recently, I worked for almost 4 years reconstructing massacres with the Historical Memory Group of Colombia. I want to continue working with particularly vulnerable citizens, but I want to focus now on poverty and poor working conditions. I believe I'm theoretically and also emotionally well prepared for the task.

## 6. BENEFITS

### 6.1 Describe the benefits of the research to the participants.

In the medium and long term, participants will benefit if my work can influence positive changes in the lives of precarious workers. In the short term they can benefit by letting me help them for free.

### 6.2 Describe the benefits of the research to society.

When writing about poverty and precarious employment in developing countries, the obvious long-term goal is to contribute to a more progressive understanding of the phenomenon. When assuming a bottom-up approach one also assumes the challenge of thinking from another angle, and of suggesting new minimum standards of protection for those who don't appear in the world of formal employment regulation.

## 7. PRIVACY OF PARTICIPANTS

Privacy concerns are strongest in regard to information that identifies a specific research participant. Collecting anonymous data is the most robust way of safeguarding the identity of research participants. Data which could enable the identification of participants, however, requires additional safeguards, such as removing identifiable information, using pseudonyms, or a code when working with the data and when disseminating research results. Particular attention is needed to ensure that participants in small communities or groups will be protected from inadvertent identification through a combination of identifiers such as date of birth, place of residence or unique personal characteristics.

### 7.1 Will any information be collected which would permit specific research participants to be identified through identifiers such as their name, address, social insurance number, personal health number, date of birth, place of residence, unique personal characteristic, etc.?

Yes  No

If yes, what identifiers will be collected?

I plan to spend approximately one year with the group of participants. That means I will have access to the type of information one usually knows when being with a group of people for a long time (place of residence, birthday, close relatives and friends, etc.)

### 7.2 Please describe how the identity of the individuals will be safeguarded. If using pseudonyms or codes to remove identifiers, please describe who will have access to codes or pseudonyms to link data to participant identities.

If the participant chooses to remain anonymous, any identifying information provided or discussed will not be quoted. In this case, participants will be provided with pseudonyms. Only the researcher will have access to pseudonyms that link data to participant identities. The data collected will never be kept in the same spot of documents that link pseudonyms with personal identifiers.

### 7.3 Are there any conditions under which the protection of the identity of participants cannot or will not be guaranteed (e.g., participant chooses to be identified, members of a focus group)?

Yes  No

If yes, please explain how this will be addressed and how participants will be informed of this.



When participants consent to have their identities revealed, their real names and identifiers may be used. Identifying information will be removed and pseudonyms will be used only if participants choose to remain anonymous. See attached verbal consent script.

**7.4 When presenting the results of the research, will research participants be quoted?**

- Yes     No

If yes, describe how identifying information will be removed or altered ensuring that quotes do not reveal individuals' identities. In the case where quotes will reveal individuals' identities, please explain the reasons and include this information in the consent form.



Participants who consent to have their identities revealed will be quoted. Identifying information will be removed and pseudonyms will be used by the researcher when quoting if participants choose to remain anonymous. (See attached verbal consent script)

**7.5 If research participants will be quoted, will they be given the opportunity to review their transcripts?**

- Yes     No     Participants will not be quoted

If yes, please explain how research participants will have access to their transcripts. If sending transcripts via email, please explain the security measures being taken (e.g., encryption, password protection of documents). If no security measures are being contemplated, please inform research participants of the possible security risk in the consent form.



Participants will be able to access transcripts upon request. If they ask me to, I will personally provide them with a printed copy of the transcripts.

**8. CONFIDENTIALITY OF DATA**

The duty of confidentiality includes obligations to protect the data from unauthorized access, use, disclosure, modification, loss or theft. Researchers must provide details to the Research Ethics Board regarding their proposed measures for safeguarding information, for the full life cycle of information - that is, its collection, use, dissemination, retention and disposal. Physical safeguards include use of locked filing cabinets and location of computers containing research data away from public areas. Administrative safeguards include development and enforcement of organizational rules about who has access to personal information about research participants. Technical safeguards include use of computer passwords, firewall, anti-virus, encryption and other measures that protect data from unauthorized access, loss or modification.

*Draft 2<sup>nd</sup> Edition of the Tri-Council Policy Statement: Ethics Conduct for Research Involving Humans - Interagency Advisory Panel on Research Ethics - December 2008, p. 44.*

**8.1 Who will conduct the data collection?**

Laura Porras will conduct the data collection.

**8.2 Who will have access to the data?**

- Principal Investigator
- Thesis/Project Supervisor
- Co-investigator
- Research Assistant
- Others (Please specify) Transcriber

Any additional individuals who may have access to the data, who have not signed this form, such as research assistants, translators, interpreters, etc. must sign a confidentiality agreement.

I will make sure they sign a confidentiality agreement.

**8.3 Describe the physical (e.g., locked office) and technical (e.g., encryption) safeguards that will be used to securely store all sources of data, such as written records, electronic data, audio/video recordings, questionnaires, etc. during the course of the study.**

All data collected will be confidential and securely stored in a locked office inside the house of Laura Porras in Bogotá. Paper and audio files will be stored in a locked filing cabinet, while electronic files will be stored as a password protected file on the researcher's computer throughout the course of the study. A copy of the data will remain in campus, securely stored in the office of the researcher's supervisor, professor Marie-Eve Sylvestre.

**8.4 Indicate how long data will be conserved and the starting time of the conservation period (e.g., following publication, completion of project). It is recommended that all data (excluding clinical trial data) be conserved for a minimum of 5 years. Clinical trial data must be stored for at least 25 years.**

Paper and audio files which may possibly contain identifiers will be kept as a password protected file on the researchers computer and destroyed 25 years after the researchers doctoral thesis is submitted. Transcriptions will not include personal identifiers where participants do not wish to have their identity revealed.

**8.5 Describe how and where the data will be securely stored during the conservation period.**

All data collected will be confidential and securely stored in a locked filing cabinet and/or as a password protected file on the researchers computer in her house in Bogotá. A copy of the data will also remain on campus in the office of professor Marie-Eve Sylvestre.

**8.6 Describe the methods of disposal for all types of data following the conservation period (e.g., shredding, secure deletion).**

Audio and electronic files will be destroyed by way of secure deletion twenty-five years from the project completion date. All paper files will be shredded at this time.

## **9. FREE AND INFORMED CONSENT**

Free and informed consent means that individuals agree to participate in research voluntarily and that each participant understands as fully as possible the purpose of the research, what is required of him/her, and the potential risks and benefits. When the participant population is comprised of both Francophones and Anglophones, the University of Ottawa Research Ethics Board requires that consent forms be provided in both French and English regardless of the language of the study, in order to ensure the greatest degree of understanding of what the research entails.

**9.1 Describe the procedures that will be followed to obtain informed consent from the participant or legal guardian. Attach all consent documents, including information sheets and scripts.**

Verbal informed consent will be obtained from all participants. Potential participants will be verbally informed of the objectives and methodology of the project, and will decide freely if they want to be part of the study or not. Potential participants will be able to keep a copy of the verbal recruitment and consent scripts, which include a cell phone number where they can reach me in case they have any questions. See verbal recruitment script and verbal consent script attached.

**9.2 If written consent is not appropriate or cannot be obtained, describe why this is the case and how free and informed consent will be obtained and documented.**

Vendors have been violently mistreated in many different ways throughout their lives and generally distrust strangers around them. It is highly probable that they associate any kind of paperwork with trouble (the kind of trouble police gets them in when imposing fines, or tax

officials gets them in when urging them to sign declarations, etc.) Furthermore, many can be illiterate. Getting them to sign a consent document at the beginning of my fieldwork can be interpreted as violent mistreatment more than careful acknowledgment of their rights.

I will read both the recruitment and verbal informed consent script to potential participants. Following this, I will give them a few days to decide, and if they agree to participate, I will ask them to provide their verbal consent. All the process will be documented in detail on my field notes and their verbal consent will be audio recorded.

**9.3 Who will be obtaining consent from the participants?**

Laura Porras will be obtaining informed consent from the participants.

**9.4 Are there any supervisory or trust-based relationships between persons obtaining consent and the participants (e.g., professor-student, patient-doctor, relative, friend)?**

Yes  No

If yes, please describe and explain the measures taken to ensure that participants do not feel pressure to participate or perceive they may be penalized for choosing not to participate.



**9.5 Does the project involve participants under the age of 18?**

Yes  No



Please specify group:

Teenage vendors, or children of vendors that accompany them to work.

If yes, consent from the parent or guardian is normally required. In addition, participants under the age of 18 should also be given the opportunity to agree to their involvement in the study. This is done with an age-appropriate assent text. Please attach a copy of the consent form and the assent form.

If an exception to this requirement is being sought, please explain.



It is possible that vendors take their children to work. In the oral recruitment script I emphasize that vendors are free to choose if they authorize me to observe and casually interact with their children when they take them to work, or not. If they do, they will be asked to provide oral consent. I will also talk to the children to obtain their oral assent. If I ever feel a child is uncomfortable, I will abstain from interacting and observing him or her, even if I have the consent of their parents to do so.

In the case of teenagers that have the ability to understand what the study is about, I will be particularly cautious to emphasize that they are free to participate and to get out of the project at any time, that their consent is always open to renegotiation and revision, and that if they ever decide to get out of the project I will not use their data. Asking the parents of teenagers who work in the street for consent, can be misjudged as intrusive and even threatening. Parents are difficult to find as they usually live in areas where access is difficult, and where what Bourgois called the "class apartheid" is particularly strong. Even if I'm able to trace their location and get to them, parents are likely to feel threaten and to reprimand their teenagers for disclosing their information. I don't want to further disrupt their family relations.

**9.6 Could participants feel pressure to participate or perceive that they may be penalized for choosing not to participate in the study?**

Yes  No

If yes, please describe and explain the measures taken to ensure that participants do not feel pressure to participate or perceive they may be penalized for choosing not to participate.



**9.7 Partial Disclosure/Deception: In certain research contexts, incomplete disclosure of relevant information or an element of deception is necessary for the successful conduct of the research. Will any of the procedures in this study include only partial disclosure of information to participants or an element of deception?**

Yes  No

If yes, provide a rationale for the partial disclosure or element of deception. Include a description of the procedures for debriefing the participants and giving them an opportunity to consent to having their data remain in the study. If debriefing is not a viable option, please explain. If a participant's data cannot be removed from the study even when requested by the participant, please set out the conditions which make it impossible (e.g., part of a focus group)



## 10. SIGNATURES

**I/we the undersigned, certify that:**

- (a) I/we have read the Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans (1998);
- (b) I/we have reviewed the application and are in agreement with the protocol as submitted;
- (c) I/we will not commence with recruitment and data collection for the proposed research project until ethics approval has been granted;
- (d) I/we will advise the Research Ethics Board of any revisions to the research arising before or after ethical approval is obtained;
- (e) I/we have the responsibility to disclose to the Research Ethics Board real, perceived or potential conflicts of interest;
- (f) I/we will not start the project, if funded by an external sponsor, until the contract/agreement has been approved by the appropriate university, hospital or research institute official.

\_\_\_\_\_  
Signature of the Principal Investigator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of the Thesis/Project Supervisor  
(if applicable)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of the Co-investigator

\_\_\_\_\_  
Date

*Remarks*

## Verbal recruitment script

Right now I'm a student, and will continue to be one for 3 more years. For the past two years I studied in Canada. I've always been interested in learning more about how workers like you struggle on a daily basis to cover your basic needs, and how law is used by different institutions or individuals to improve or worsen your situation. I also believe that the best way to learn about your experience is to accompany you in your work. My goal is to witness the difficulties you encounter on your daily activities, so that I can suggest some alternatives to improve the quality of your lives.

What I would ask for you is to let me observe you and help you sell legal items. The money I make will be returned to you at the end of the day. You are free to decide if you want me to come or not, and as your consent is always open to renegotiation and revision, I will stop coming if you ask me to. In that case, I will not be able to use any of the information I collected from you. I'm not part of any governmental institution and my observations will only be used for academic purposes. I will discuss my ideas with you during the process, so that you can tell me what you think and ask me to omit information that might be harmful for you in any way.

There are two possible risks associated with my project: 1) you might regret disclosing personal information, 2) I might be asked by the police or other public officials to provide information related to illegal activities such as selling pirate movies or CD's. To mitigate the first risk, I assure you that any personal insights that may cause emotional discomfort will simply not be used for academic purposes or revealed in any other setting. If you prefer, you can choose to remain anonymous during the course of the project. All the information I collect will be securely stored throughout the course of the study and after. To mitigate the second risk, I assure you that my commitment is to the participants of the project, and that legally I don't have to, and will not disclose any information that could be used to charge you with illegal activities.

I will ask you for your consent, and you can freely choose to:

- Audio-record our daily activities.
- Take photographs.
- Reveal your identity, real name and other identifying information (alternatively you can choose to be kept anonymous)
- Reveal your identity and other identifying information when quoted. (Alternatively I can remove identifying information and use aliases when quoting you.)
- Observe and casually interact with your children when you bring them to work.
- Use the information collected for presentations, conferences, publications and my thesis.

Finally, I want to make clear that:

- You will not receive any payment for your participation in the study.
- Your participation is totally voluntary, and you can withdraw at any time without suffering any negative consequences. In that case, your information will not be used.
- The information collected will be securely kept in my house.
- Only my supervisor and me will have access to the information collected.
- You will be allowed to comment on my findings and ask me to remove any information that might harm you in any way.

- You can call my professors in Canada or the Ethic Office of the University of Ottawa if you have any questions or complaints. I will give you their numbers and will provide you with money to do so.

If you have any questions, please contact me in the following cell phone number: XX

In two or three days I will look for you in your regular vending spot, to ask you if you agree to participate in my project.

I look forward to be able to work with you,

Laura Porras.

## Verbal consent script

Laura Porras informed me that to try to influence better conditions for poor workers, she wants to learn about how law affects my daily life for good and/or bad. I agreed that she could help me sell legal items on the street, and that she will do that for free, returning all the money she makes at the end of the day. I will not be asked to do anything different to my usual daily activities, but she will observe me and participate in them.

She informed me of two possible risks: 1) I might regret disclosing personal information, 2) she might be asked by the police or other public officials to provide information related to illegal activities such as selling pirate movies or CD's. Laura assured me that to mitigate the first risk, any personal insights that may cause emotional discomfort will simply not be used for academic purposes or revealed in any other setting. If I prefer, I know I can choose to remain anonymous during the course of the project. As for the second risk, she assured me that her commitment is to the participants of the project, and that legally she doesn't have to and will not disclose any information that could be used to sue me or charge me with illegal activities.

In the following chart, I indicate the specific activities for which I give my consent, and those for which I don't.

Activity	Yes	No
Audio-record our daily activities.		
Take photographs.		
Reveal my identity, real name and other identifying information.		can refer to my experiences but my identity should be kept anonymous.
Have my identity and other identifying information revealed when quoted.		I prefer that identifying information is removed, and that aliases are used when quoting me.
Observe and casually interact with my children when I bring them to work.		
Use the information collected for presentations, conferences, publications and her thesis.		

I further acknowledge that:

- I will receive no payment for my participation in the study.
- My participation is totally voluntary, and I can withdraw from the study at any time without suffering any negative consequences. In that case, my information will not be used.
- The information collected will be securely kept in the house of the researcher, and she and her supervisor will be the only ones having access to it.
- I will be allowed to comment on her findings and ask her to remove any information that might harm me in any way.

- I can call her professors in Canada or the Ethic Office of the University of Ottawa if I have any questions or complaints. I have their numbers, and she already provided me with the money to do so.

I hereby give my consent to participate in the project of Laura Porras.

Name of the person and date



Laura Porras

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**Feedback - Ethics File #04-12-06**7 mensajes

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14 de mayo de 2012, 8:57

Dear Mrs. Porras Santanilla and Professor Sylvestre,

Your application for ethics approval for the research project entitled "**POVERTY, INFORMALITY, AND VULNERABLE WORKERS: THE CASE OF STREET VENDORS IN BOGOTA-COLUMBIA** (Ethics file #04-12-06) was examined by the Social Sciences and Humanities Research Ethics Board and the members of the REB wish to express their appreciation for your detailed and thorough submission.

Before issuing your Category 1A (approval) certificate, a few technical details need to be addressed.

Section 2.3: As mentioned, should any changes arise following the thesis proposal, a request for modification must be submitted to the Ethics Office.

Section 5: While the REB appreciates the researcher's commitment to the participants, they would like to ensure that the researcher has considered Colombian laws and regulations given that both the TCPS-2 and the Ogden case are Canada-specific. In the same manner, the consent form states that it is your legal right to withhold information (as a researcher), however, please explain if this is also true within Colombian law. In any instance, the REB would like for you to explicitly state your stance and the possible ramifications in your consent form.

Section 7.5: The researcher has indicated that transcripts may be provided upon request. Please explain which transcripts, given that audio-recording will be continuous (daily) and, most often, somewhat anonymous (since the recorder will simply be on all the time). As such, the REB wondered if it is feasible for the researcher to provide participants with such an opportunity. Please explain.

As soon as I have the information above on file, we will prepare and send your ethics approval certificate.

Should you have any questions, please do not hesitate to contact me.

Best regards,

Kim

Protocol Officer for Ethics in Research

For Barbara Graves, Chair of the Social Sciences and Humanities REB



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**Feedback - Ethics File #04-12-06**

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Laura Porras  
Para: Kim Thompson

18 de mayo de 2012, 12:26

Dear Kim: Thank you very much for your answer. I'm glad you found the application sufficiently detailed and readable. Regarding your thoughtful concerns, I would say the following:

About Section 2.3: After I submit my thesis proposal, I will mention any changes and submit a request for modification to the Ethics Office.

About Section 5: Colombia's Constitution states that professional secrets are inviolable (article 74). Such guarantee has been mainly read in relation to journalism, because it was written after article 73 which states that "journalism will enjoy such protection as necessary to guarantee its freedom and professional independence." However, the Constitutional Court has extended the inviolability of professional secrets to other professional areas such as medicine and accounting, and in general to any profession or activity that depends on peoples trust and respect for their intimacy. In fact, for the Constitutional Court of Colombia keeping the professional secret is not only a right but a duty: "professional secret imposes a duty over professionals whose activity makes them depositary of the trust of people that provide them with data or facts about their private life to keep information away from others." (Constitutional Court of Colombia. Ruling C-538/1997)

There are no rulings about researchers or journalists that were coerced to disclose information about their sources. However, there are few but serious scandals directly related with journalists covering the internal armed conflict. One of the most renowned cases is about a journalist that was asked by the military to inform them about the location of the guerrilla camp where he conducted an interview with an important leader. He refused to disclose the information arguing that the Constitution protected him. He was never forced to disclose the information and there was no lawsuit. (For more information about those cases, [http://www.flip.org.co/alert\\_display/0/408.html](http://www.flip.org.co/alert_display/0/408.html) )

My project doesn't touch such sensitive issues, but in any case, as indicated in the verbal recruitment script, I will inform all participants of the risks associated with the project, and more specifically I will make sure that they understand that legally I don't have to, and will not disclose any information that could be used to charge them with illegal activities. As a researcher who depends on peoples trust and respect for their intimacy to do her job, I am protected by the inviolability of the professional secret.

About Section 7.5: My explanation was not sufficiently detailed. As you said, the audio-recording will be continuous, and as such I don't plan to have transcriptions of our daily encounters. My goal is to be able to have audio-records and transcripts of particularly interesting encounters related to my thesis objective when they occur (they might rarely occur). In any case, I didn't even plan to show participants those, but just the transcripts of the quotes that I will use in my theses and research presentations and conferences. However, I will show those only upon request.



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Bureau d'éthique et d'intégrité de la recherche

University of Ottawa  
Office of Research Ethics and Integrity

## Ethics Approval Notice

### Social Science and Humanities REB

#### Principal Investigator / Supervisor / Co-investigator(s) / Student(s)

<u>First Name</u>	<u>Last Name</u>	<u>Affiliation</u>	<u>Role</u>
Marie-Ève	Sylvestre	Law / Civil Law	Supervisor
Laura	Porras	Law / Law	Student Researcher

**File Number:** 04-12-06

**Type of Project:** PhD Thesis

**Title:** Poverty, Informality and Vulnerable Workers: the Case of Street Vendors in Bogota-Colombia

<b>Approval Date (mm/dd/yyyy)</b>	<b>Expiry Date (mm/dd/yyyy)</b>	<b>Approval Type</b>
05/22/2012	05/21/2013	Ia

(Ia: Approval, Ib: Approval for initial stage only)

#### Special Conditions / Comments:

N/A



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Bureau d'éthique et d'intégrité de la recherche

University of Ottawa  
Office of Research Ethics and Integrity

This is to confirm that the University of Ottawa Research Ethics Board identified above, which operates in accordance with the Tri-Council Policy Statement and other applicable laws and regulations in Ontario, has examined and approved the application for ethical approval for the above named research project as of the Ethics Approval Date indicated for the period above and subject to the conditions listed the section above entitled "Special Conditions / Comments".

During the course of the study the protocol may not be modified without prior written approval from the REB except when necessary to remove subjects from immediate endangerment or when the modification(s) pertain to only administrative or logistical components of the study (e.g. change of telephone number). Investigators must also promptly alert the REB of any changes which increase the risk to participant(s), any changes which considerably affect the conduct of the project, all unanticipated and harmful events that occur, and new information that may negatively affect the conduct of the project and safety of the participant(s). Modifications to the project, information/consent documentation, and/or recruitment documentation, should be submitted to this office for approval using the "Modification to research project" form available at: [http://www.rges.uottawa.ca/ethics/application\\_dwn.asp](http://www.rges.uottawa.ca/ethics/application_dwn.asp)

Please submit an annual status report to the Protocol Officer four weeks before the above-referenced expiry date to either close the file or request a renewal of ethics approval. This document can be found at: [http://www.rges.uottawa.ca/ethics/application\\_dwn.asp](http://www.rges.uottawa.ca/ethics/application_dwn.asp)

If you have any questions, please do not hesitate to contact the Ethics Office

Protocol Officer for Ethics in Research  
For Barbara Graves, Chair of the Social Sciences and Humanities REB



# Request for REB Approval of Modification to Research Project

This form is to be submitted to seek approval of modifications to previously approved protocols. Revised procedures should not be used until approval has been received. Take note that certain changes may have to undergo minimal risk or full REB review.

REB File #:04-12-06	Initial date of approval (mm-dd-yy):05-22-12May 22nd, 2012
Title of the research project:"Poverty, Informality and Vulnerable Workers: the Case of Street Vendors in Bogota-Colombia"	

Name of Principal Investigator (or Supervisor): Marie-Eve Sylvestre	
Faculty: Droit Civil	Department/School: Law
Phone 1:	Phone 2:
Fax:	Email:
Name of Co-Investigator (or Student):	
Faculty: Graduate Studies	Department/School: Law
Phone 1:	Phone 2:
Fax:	Email:
Other Investigators: (Indicate the names of other co-investigators, students and/or supervisors, and their affiliation.)	
Preferred language of correspondence: <input type="checkbox"/> French <input checked="" type="checkbox"/> English	

NOTE: Answer all of the following questions.

1. Check the modifications you wish to make to the research project.	
<input type="checkbox"/> Participant recruitment process <input checked="" type="checkbox"/> Participant sample / population <input type="checkbox"/> Consent forms / Information sheets <input type="checkbox"/> Research instruments (e.g. questionnaires, etc.) <input checked="" type="checkbox"/> Research design or methodology	<input type="checkbox"/> Data confidentiality / Security arrangements <input type="checkbox"/> Location of study <input type="checkbox"/> Changes to research team <input type="checkbox"/> Other (Please specify)
(i) If you checked any of the above, describe the nature of each modification requested and explain why the modification is necessary and how it differs from the previously approved procedures.	
<p>My initial goal was to conduct an ethnographic study only with street vendors in Bogota, who are part of a bigger group of vulnerable workers in Colombia. However, after the first 9 months of fieldwork, I learned that most of the individuals that work under particularly precarious conditions identify with a category that has not yet been dealt with. They call themselves rebuscadores. In Spanish, buscar means to look for something. Re-buscador is a made up word which suggests that someone is looking all the time for something (for a way to survive). Therefore, I want to extend my ethnographic study to be able to conduct fieldwork not only with street vendors, but with other "rebuscadores" such as recyclers, vendors of small businesses located in legal and illegal settlements, and other precarious self-employed workers who invent different activities to provide themselves with enough money to survive on a daily basis. Participant observation will still be the chosen methodology. The number of participants will depend on access, but I expect that it will not exceed the initially suggested and approved number of 30 individuals in total. Verbal consent script and verbal recruitment scripts will slightly be modified to include rebuscadores in general and not just street vendors. I submit a copy of the modified documents.</p>	

Please submit one copy of this form as well as all modified documents (e.g. questionnaire, consent form, etc.) and highlight the sections that are revised or added. Please do not staple documents.

2. Have there been any unexpected problems or adverse events related to the participation of human beings in your project?  Yes  No

(i) If you answered YES to this question, provide a description of the problems.

*I request ethics approval of the modifications / revisions described above. All modified documents and procedures are appended hereto for REB review and approval.*

SIGNATURE:  
(Principal Investigator or Supervisor)

DATE:

SIGNATURE:  
(Co-investigator or Student, if applicable)

DATE: 20/12/2013

**Complete and submit to:**

Office of Research Ethics and Integrity  
Tabaret Hall  
550 Cumberland, room 154  
Email : [ethics@uottawa.ca](mailto:ethics@uottawa.ca)  
Phone: (613) 562-5387  
Fax: (613) 562-5338

**Notice of Collection of Personal Information :** Your personal information is collected under the authority of the *University of Ottawa Act* and is intended to be used for the purpose of and those consistent with the administration and the evaluation of the eligibility of your project for ethics approval. If you have any questions regarding this collection of personal information, please contact us by telephone at (613) 562-5387 or by email at [ethics@uOttawa.ca](mailto:ethics@uOttawa.ca).



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**Request for modification - #04-12-06**

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Ethics &lt;ethics@uottawa.ca&gt;

15 de enero de 2014, 13:48

Dear Mrs. Porras Santanilla,

Thank you for submitting a request for modification to your research project entitled: "Poverty, Informality and Vulnerable Workers: the Case of Street Vendors in Bogota-Colombia", file # 04-12-06.

Before submitting the request for review, please provide additional information regarding the new sample population being studied; for example, where the rebuscadores are located and will be recruited/observed, elaborate on the legal/illegal settlements you mention, etc. We generally need more information on the population at hand and how they will be studied.

If you have any questions or comments, please do not hesitate to contact me,

Best regards,

Mélanie Rioux

Ethics Coordinator

Office of Research Ethics and Integrity

University of Ottawa

Tabaret 154

613-562-5800

ethics@uottawa.ca




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## Request for modification - #04-12-06

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Laura Porras

18 de enero de 2014, 11:09

Para: Ethics <ethics@uottawa.ca>

Dear:

Thank for your email and for taking care of my request. I hope the weather is getting better, as my Canadian friends tell me that it has been a very hard winter!

As for the additional information you required, let me start by restating that in Spanish, *buscar* means to look for something. *Rebuscador* is a made up word which suggests that someone is looking all the time for something (for a way to survive). *Rebuscador* is not a category which has been dealt with in scholarly literature, but it has had some type of exposure in Colombia's public media. For instance, there's a TV show which traced the lives of some *rebuscadores* who work as vendors in public buses. The show – which might be useful to give you a better idea - can be watched following the link: <https://www.youtube.com/watch?v=3gzlv7CMukc>.

Rebuscadores usually come from poor families of dispersed origins, have low educational status, and live (not necessarily work) in stigmatized districts of the urban periphery. The whole family lives on a daily basis working to achieve what they call *el diario* (daily income needed to cover life's basic necessities). It's common to see how they buy two expensive tablespoons of sugar for their daily needs, instead of a cheaper bag of sugar for at least two weeks. Rent many times is also paid on a daily or weekly basis. They know exactly how much money they need to produce per day, in order to survive.

As they need to comply with a basic daily income, they cannot afford the unemployment gaps between temporary or part-time jobs typical of the globalized era. The family is simply unable to cover them for long, so they have to *re-buscarsela* (find quickly something to live from and survive). In Colombia we don't have welfare, so that excludes the possibility of using it to bypass unemployment gaps. Additionally, the only non-contributive social protection mechanism is the subsidized health-care system. The rest are social insurance schemes where beneficiaries are requested to contribute financially. As vulnerable self-employed workers are very rarely (if not ever) able to contribute, their social security rights are severely restricted because they don't have any real access to social pension, unemployment or disability benefits. In short, they don't have established ways of coping and recovering when something goes wrong.

Women are a majority. They cook street food in their houses, they become street vendors, they take care of some neighbor's child, and if opportunity arises, they take care of someone's house for a couple of days. If business is not so good, they might take a part-time job as a waitress, change from selling on the street to selling on a bus, change from selling vegetables to pirated DVDs, or they will try to learn beauty tricks to work as a mobile freelance hairdresser. Women bear a disproportionate amount of work as they confront the challenge of the triple burden: they are expected to do most of the care work for children and elderly relatives, and they are expected to provide a daily income. Labour and work could take up to 14 hours a day. They almost never rest. Consequently, life expectancy is not very high (20 or less you have children, 40 you raise your grandchildren, and if you make it to your 50s you are usually very sick).

According to my initial calculations, rebuscadores can represent up to 30% of Colombia's workforce. They are everywhere. The principal characteristic is that they labour excessively and they might take several jobs at the same time, partly to earn more money, partly for insurance or risk management. It is easy for me to observe rebuscadores just by staying with the two groups of street vendors I befriended, and asking them to make some contacts with family members and friends who don't sell on the street but who comply with the basic characteristic of a rebuscador. My initial queries suggest that I could get in touch with around 20 additional rebuscadores.

As I said before, I working basically with two groups of street vendors. One group lives and works in what I translated as "illegal settlement" or what we call in Spanish "urbanización pirata." It basically means, that the settlers (or in this case their parents) invaded the territory where they work and live, and therefore they don't have property titles. In Bogotá they are still common, even though the last public administrations have made a big effort to "legalize" or to find a way (when possible) to grant settlers property titles. The second group of vendors which I befriended, works in a "legal settlement" or a place where inhabitants properly purchased their

properties and have legal titles. It is worthwhile to observe rebuscadores that work in both "legal" and "illegal" settlements, because their characterization might vary in interesting ways that I plan to analyze in my thesis.

I hope I have answered most of your questions. If you need any more information, please don't hesitate to ask.

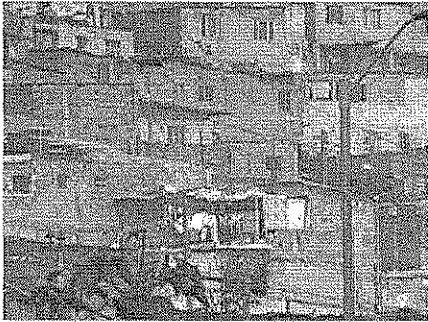
Finally, I'm attaching some photographs of the places and the people I'm working with so that you can have a better idea. The first two were taken in the "illegal settlement" and the second in the "legal" but poor neighborhood where I work.

Thanks again for your interest. I hope you have a great day,

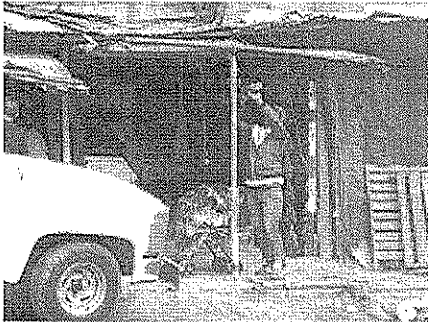
Laura

[El texto citado está oculto]

**3 archivos adjuntos**



**1.jpg**  
97K



**2.png**  
2534K



**3.png**  
1795K



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**Request for modification - #04-12-06**

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Ethics &lt;ethics@uottawa.ca&gt;

22 de enero de 2014, 10:23

Dear Mrs. Porras Santanilla and Professor Sylvestre,

Thank you for submitting a request for modification for your research project entitled `` **Poverty, Informality and Vulnerable Workers: the Case of Street Vendors in Bogota-Colombia** `` (Ethics file # 04-12-06). The Chair of the Social Sciences and Humanities REB has reviewed your file and approved the following modifications:

1. Participant sample: A new category of participants named rebuscadores will be recruited to participate in the project. Data collection methods have not changed and recruitment and consent scripts have been modified accordingly.

The modification is covered under your renewed ethics certificate, attached. The renewed certificate is **valid from January 22<sup>nd</sup>, 2014 to May 21<sup>st</sup>, 2014**. Renewals must follow the initial project approval dates. If your study is still ongoing in May 2014, please submit an Annual Report at least a week before the expiry date in order to renew the certificate for another year.

If you have any questions or comments, please do not hesitate to contact me,

Best regards,

Mélanie Rioux

Ethics Coordinator

Office of Research Ethics and Integrity

University of Ottawa

Tabaret 154

613-562-5800

ethics@uottawa.ca

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 04-12-06 Renewal SYLVESTRE\_PORRAS SANTANILLA.pdf  
48K



Université d'Ottawa  
Bureau d'éthique et d'intégrité de la recherche

University of Ottawa  
Office of Research Ethics and Integrity

## Ethics Approval Notice

### Social Science and Humanities REB

#### Principal Investigator / Supervisor / Co-investigator(s) / Student(s)

<u>First Name</u>	<u>Last Name</u>	<u>Affiliation</u>	<u>Role</u>
Marie-Ève	Sylvestre	Law / Civil Law	Supervisor
Laura	Porras Santanilla	Law / Law	Student Researcher

**File Number:** 04-12-06

**Type of Project:** PhD Thesis

**Title:** Poverty, Informality and Vulnerable Workers: the Case of Street Vendors in Bogota-Colombia

<u>Renewal Date (mm/dd/yyyy)</u>	<u>Expiry Date (mm/dd/yyyy)</u>	<u>Approval Type</u>
01/22/2014	05/21/2014	Ia

(Ia: Approval, Ib: Approval for initial stage only)

**Special Conditions / Comments:**

N/A



Université d'Ottawa  
Bureau d'éthique et d'intégrité de la recherche

University of Ottawa  
Office of Research Ethics and Integrity

This is to confirm that the University of Ottawa Research Ethics Board identified above, which operates in accordance with the Tri-Council Policy Statement and other applicable laws and regulations in Ontario, has examined and approved the application for ethical approval for the above named research project as of the Ethics Approval Date indicated for the period above and subject to the conditions listed the section above entitled "Special Conditions / Comments".

During the course of the study the protocol may not be modified without prior written approval from the REB except when necessary to remove participants from immediate endangerment or when the modification(s) pertain to only administrative or logistical components of the study (e.g. change of telephone number). Investigators must also promptly alert the REB of any changes which increase the risk to participant(s), any changes which considerably affect the conduct of the project, all unanticipated and harmful events that occur, and new information that may negatively affect the conduct of the project and safety of the participant(s). Modifications to the project, information/consent documentation, and/or recruitment documentation, should be submitted to this office for approval using the "Modification to research project" form available at: <http://www.research.uottawa.ca/ethics/forms.html>.

Please submit an annual status report to the Protocol Officer four weeks before the above-referenced expiry date to either close the file or request a renewal of ethics approval. This document can be found at: <http://www.research.uottawa.ca/ethics/forms.html>.

If you have any questions, please do not hesitate to contact the Ethics Office [ethics@uOttawa.ca](mailto:ethics@uOttawa.ca).



**FINAL REPORT  
Research project**

As stipulated in Article 6.14 of the Tri-Council Policy Statement (TCPS 2), researchers must provide a final report for projects that have been approved by the Research Ethics Board (REB). The REB must therefore receive the information requested in this form in order to close all REB-approved files.

<b>Name of Principal Investigator (or Supervisor):</b> (Note: If this is a student project, indicate your supervisor's name)	
<b>Address</b> (Include building name and room number):	<b>Department/School:</b>
	<b>Faculty:</b>
	<b>E-mail:</b>
	<b>Phone:</b>   <b>Fax:</b>

<b>Co-investigators and students (4<sup>th</sup> year, Master's or Doctoral levels)</b>	
<b>Name:</b>	<b>Department/School:</b>
<b>Address:</b>	<b>Faculty:</b>
	<b>E-mail:</b>
	<b>Phone:</b>   <b>Fax:</b>
	<b>Name:</b>
<b>Address:</b>	<b>Faculty:</b>
	<b>E-mail:</b>
	<b>Phone:</b>   <b>Fax:</b>
	<b>Have any team members left or been added to the research team?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  If yes, please provide their names, their role in the project and their contact information (for a new member of the research team).

<b>Preferred language of correspondence:</b> <input type="checkbox"/> French <input type="checkbox"/> English
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<b>Ethics File number:</b>
<b>Title of the research project:</b>
<b>Initial date of approval:</b>
<b>Date of renewal(s) (if applicable):</b>
<b>Did you receive funding?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>If yes, name of funding agency:</b>   <b>U of O RE #:</b>
<b>1. Date of study termination</b>

2. Have there been any unanticipated issues / events involving participants in your project (legal, physical, psychological, social or other)?  
 Yes  No

If YES, please complete the Unanticipated Issues/Adverse Events report.

3. Have there been any modifications to the following research components that have not yet been approved by the REB?

a) Research tools, documents (e.g., recruitment text, consent form, etc.), design or methodology	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
b) Projected number of participants	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
c) Confidentiality of the data	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
d) Persons with access to the data	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
e) Location of the stored data	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
f) Duration of the data conservation period	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If you have answered YES to any of these questions, a request for Modification to Research Project form must be completed and submitted to the Ethics Office.

N.B.: During the course of the study, any modifications to the protocol may not be initiated without prior approval from the REB.

If you answered NO, your file will be closed.

SIGNATURE:

DATE:

NAME:

SIGNATURE:

DATE:

NAME:

SIGNATURE:

DATE:

NAME:

**Submit to:**

Office of Research Ethics and Integrity  
 550 Cumberland (Tabaret Hall), Room 154  
 Email: [ethics@uottawa.ca](mailto:ethics@uottawa.ca)  
 Phone: (613) 562-5387 / Fax: (613) 562-5338

**Notice of Collection of Personal Information :** Your personal information is collected under the authority of the *University of Ottawa Act* and is intended to be used for the purpose of and those consistent with the administration and the evaluation of the eligibility of your project for ethics approval. If you have any questions regarding this collection of personal information, please contact us by telephone at (613) 562-5387 or by email at [ethics@uOttawa.ca](mailto:ethics@uOttawa.ca).



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**Ethics file closed - #04-12-06**

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Ethics <ethics@uottawa.ca>

1 de junio de 2017, 11:49

Hello Laura and Marie-Ève,

Thank you for submitting this report. I now confirm that your file has been closed in compliance with TCPS 2 guidelines.

All the best,

Mélanie

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**From:** Marie-Eve Sylvestre  
**Sent:** June-01-17 12:18 PM  
**To:** Laura Porras; Ethics  
**Subject:** RE: Ethics file closed - #04-12-06

[El texto citado está oculto]