



# The social uses of the law at a Soweto garbage dump: Reclaiming the law and the state in the informal economy

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## Abstract

The informal economy is typically understood as being outside the law. However, this article develops the concept ‘social uses of the law’ to interrogate how informal workers understand, engage and deploy the law, facilitating the development of more nuanced theorizations of both the informal economy and the law. The article explores how a legal victory over the Johannesburg Council by reclaimers of reusable and recyclable materials at the Marie Louise landfill in Soweto, South Africa shaped their subjectivities and became bound up in struggles between reclaimers at the dump. Engaging with critical legal theory, the author argues that in a social world where most people do not read, understand, or cite court rulings, the ‘social uses of the law’ can be of greater import than the actual judgement. This does not, however, render the state absent, as the assertion that the court sanctioned particular claims and rights is central to the reclaimers’ social uses of the law. Through the social uses of the law, these reclaimers force us to consider how and why the law, one of the cornerstones of state formation, cannot be separated from the informal ways it is understood and deployed. The article concludes by sketching a research agenda that can assist in developing a more relational understanding of the law and the informal economy.

## Keywords

Critical legal theory, legal mobilization, social uses of the law, waste pickers

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## Introduction

Being outside of the law is central to the very definition of the informal economy. Although competing theories differ on whether and how the informal economy should be brought into relation with the law (Chen, 2012), they generally frame the informal economy and the law as discrete units that can be made to interact (or not). This positivist approach hinders our ability to understand both the law and the informal economy. Instead, in this article I work within a Marxian ontology that sees the relation as the fundamental unit of analysis in order to begin to explore how the informal economy and the law ‘inneract’ (Ollman, 1976: 16, 18) and are formed, transformed and given meaning in relation to each other.

In order to do so I develop the concept ‘social uses of the law’ to analyse how a legal victory over the Johannesburg Council by reclaimers of reusable and recyclable materials at the Marie Louise landfill in Soweto, South Africa shaped their subjectivities and became bound up in struggles between reclaimers at the dump. While the court simply ruled that the municipality could not evict the reclaimers without proper notice, the reclaimers infused the ruling with new meaning that far exceeded the judgement and used it to establish a claim to own the space of the dump and the right to regulate the entrance of newcomers. Crucially, ground level municipal representatives also adopted this understanding of the law. Engaging with critical legal theory, I argue that in a social world where most people do not read, understand, or cite court rulings, the ‘social uses of the law’ can be of greater import than the actual judgement. Yet the state is not absent from this process, as the assertion that the court sanctioned particular claims and rights is central to the social uses of the law. Through the social uses of the law reclaimers reshape both the law and their relationship with the state, and force us to think through how the law, one of the cornerstones of state formation, cannot be separated from the informal ways it is understood and deployed. While this article develops the concept social uses of the law through thick engagement with one particular example, it concludes by drawing out broader implications and sketching a research agenda into the social uses of the law that can assist in developing a more relational understanding of the law and the informal economy.

The remainder of the article is in three sections. In the first, I argue that conceptualizations of the relationship of the informal economy to the law are central to differing theorizations of the informal economy, and that these theorizations share a limited focus on how informal actors and activities are framed and affected by the law and regulation. I conclude the section by elaborating the need for a more relational understanding of the law and the informal economy rooted in a Marxist ontology that rejects seeing the law and the informal economy as isolated units of analysis that simply impact on each other. In the second section, I develop the concept ‘social uses of the law’ by drawing on ethnographic analysis of how reclaimers at the Marie Louise landfill deployed their own understandings of the court victory as they organized against new arrivals. In the concluding section, I explore how the social uses of the law can assist in developing more relational understandings of the law and the informal economy.

## Theorizing the relationship of the informal economy to the law

The relationship to the law is central to the very conceptualization of the informal economy. According to Meagher, '[t]he informal economy refers to income generating activities that operate outside the regulatory framework of the state' (Meagher, 2013: 2). The official definition adopted by the 2002 International Labour Conference (ILC) also pivots around the law, highlighting the centrality of both its adoption and implementation. According to the ILC the informal economy is:

... all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. These activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice. (International Labour Organization, 2002: 53)

There are, however, different perspectives regarding why informal economic activities arise and persist outside of legal and regulatory frameworks, and whether and how this should be addressed. Drawing on Chen (2012), it is possible to differentiate three dominant schools of thought. First, dualists believe the growth in the informal economy is fuelled by two disjunctures – a disjuncture between increases in urban population and industrial employment, as well as a disjuncture between skills possessed and those required in modern industry. For dualists, the law and regulation have little to do with the rise of the informal economy. Accordingly, they focus more on provision of support services than legal reform, although some oppose legislation to support wages and benefits for workers on neoclassical grounds. Second, legalists such as De Soto (1990) argue that entrepreneurs are pushed into the informal economy by a hostile legal system and burdensome regulatory requirements. They therefore advocate legal reform to deregulate business requirements, although of course De Soto famously advocates formalizing and legalizing the property rights of the poor. Third, structuralists who believe that informalization is rooted in capitalists' drive to lower labour costs (resulting in exploitation of informal workers and the undermining of unionized formal workers) support extension of legislation and regulation to cover informal workers and producers (Chen, 2012: 5–6).

Despite their different understandings of the role that can and should be played by the law with respect to the informal economy, these approaches share three assumptions. First, they assume that the informal economy and the law should be seen as discrete. Second, as noted above, they assume that the informal economy functions outside the law. Third, they presume that legislation and regulations are developed and implemented (or not) by the state.

Yet, many informal worker groups and their support organizations implicitly provide the basis for a more relational understanding in which rather than being completely outside legislative and regulatory frameworks, the informal economy is indirectly and adversely incorporated (Chen et al., 2014; Roever, 2014; Sankaran and Madhav, 2013). Contrary to the legalists, they believe that existing laws can be used to advance the interests of informal actors who must simultaneously struggle for the adoption and

implementation of legislation and regulation to proactively support informal actors. Crucially, they also creatively find ways to expand the meaning of the law to meet their needs and advance their struggles.

As critical legal theorists and legal anthropologists establish, the law cannot be taken as straightforward and mechanistic, nor can the state be presumed to be all-powerful when it comes to the law. Aside from notable exceptions (such as Shireen Ally's [2011] *From Servants to Workers*, which argues that extension of labour laws and regulations to domestic workers in post-apartheid South Africa demobilized workers, undermined the union, and had little effect on their labour conditions), few studies of the relationship of informal workers to the law employ more nuanced understandings that challenge these assumptions.

While Ally's book focuses on the unintended/unforeseen political effects of legislation on worker organizations, here I explore how the law is understood and deployed by informal workers in order to develop more relational understandings of both the law and the informal economy and connections between the state and informal workers. My understanding of relationality is rooted in Marxist ontology in which 'elements, things, structures, and systems do not exist outside of or prior to the processes, flows, and relations that create, sustain, or undermine them' (Harvey, 1996: 48) and 'the relation is the irreducible minimum for all units' (Ollman, 1976: 16). Rejecting seeing factors of analysis as isolated and independent, Marx develops the concept of 'mutual interaction' to understand how the different parts of an organic whole relate to one another. As Ollman usefully notes, for Marx 'interaction is, properly speaking, *inneraction* (it is "inner connections" which he claims to study)' (Ollman, 1976: 16–17). Accordingly, in the following section I explore inneractions between the law and the informal economy by exploring how informal reclaimers at the Marie Louise landfill in Soweto, Johannesburg infused a court ruling with new meaning, which became central to how they understood themselves and their ongoing struggles with the state and each other at the dump.

## **Theorizing the social uses of the law at a Soweto garbage dump**

Marie Louise is one of four functioning landfills owned by the Johannesburg Council's Pikitup waste management utility. Located in Dobsonville, Soweto, it was opened in 1993 by the Roodepoort City Council, one of the apartheid local councils later merged to form the Johannesburg Council. Although the landfill permit explicitly forbade salvaging, reclaimers began working there informally in 1994. Elsewhere (Samson, 2015), I provide detailed analysis of how reclaimers fought to gain access to the site, organized a committee to represent themselves, eventually secured an oral agreement with landfill management in 2000 allowing them to informally reclaim materials at the dump, and used this agreement to take the municipality and Pikitup to court when in 2002 Pikitup attempted to evict them with seven and a half weeks' notice and grant a contract to a formal recycling company. As most reclaimers cannot afford to go to court, it was crucial that they obtained support from the Legal Resources Centre, a progressive non-governmental organization, which appointed George Bizos as their advocate. One of South Africa's leading advocates, Bizos had represented Mandela and other struggle

luminaries during apartheid. As elaborated below, his representation of the reclaimers assumed important significance.

On 11 April 2003 the judge ruled that: even though it was made orally the 2000 agreement was valid; the notice period was insufficient, as in the context of high structural unemployment it was unreasonable to expect the reclaimers to find alternative employment in under two months; and the notice had not, therefore, served to terminate the agreement. The judge's ruling also spoke to the ways the state framed and engaged the reclaimers as political subjects. He lambasted the city and Pikitup for referring to the reclaimers as 'scavengers', which he said 'reflects contempt for the plight of the respondents', and explicitly stated that he hoped that in the future the Council and Pikitup would 'be less abrasive and that the dignity of the respondents will be respected'.<sup>1</sup> The judgement therefore established the need for the state to engage the reclaimers as legitimate and respected actors in the public sphere in future engagements.<sup>2</sup>

In terms of the court ruling, if Pikitup wanted to proceed with granting a tender and evicting the reclaimers it simply needed to give the reclaimers a reasonable warning period and preferably engage them in a more dignified manner. Yet Pikitup did not appeal the ruling and abandoned the tendering process, a situation that remained unchanged at the time of writing this article in 2015. Explaining this decision, one Pikitup manager noted that the city and Pikitup did not take the case or the granting of a new contract forward 'because we knew George Bizos was going to wipe the floor with us. There is the humanity part of taking on George Bizos and waste pickers. Then we'd be seen as the big bully ... we didn't want to deal with that' (Pikitup Marketing Manager, February 2011, interview).

The obvious result of the court ruling was that the reclaimers remained on the landfill. In terms of understanding the role of the law it is crucial to note that, as illustrated by the quote above, the reasons they did so stretched beyond the actual ruling into the terrain of social, historical and political considerations. In addition, my ethnographic study conducted in 2009–2011 revealed that the court victory was a constant, active presence that continued to shape daily life on the dump. In order to explore the ongoing effects of taking legal action for the reclaimers and the ways the court ruling became articulated into their identities and daily politics, I draw on and expand the 'legal mobilization' framework developed by critical legal theorist McCann (1994) to analyse the role of legal strategies in broader struggles for social transformation.

McCann forwards that the motivations and effects of legal strategies are multiple and that indirect effects are often more important than direct ones. Within McCann's cultural approach, interpretations of, and meanings given to the law acquire particular significance. McCann argues that in their litigation strategies activists take action based on rights that have not yet been formally recognized and give 'inherited legal conventions radical new meanings and purposes quite at odds with constructions favoured by most judges, government administrators, and employers' (McCann, 1994: 284). As the legal mobilization approach is grounded in a 'cultural interpretation of the law' which sees law 'as a constitutive element of social life' (McCann, 1994: 282), the indirect effects of legal mobilization include changes in consciousness, identities and ideology.

McCann focuses specifically on people's definition of legal rights and changes in consciousness related to attempting to have their interpretations of the law and legal

rights endorsed by the court. He does, however, note that people draw on their understanding of the law as they negotiate and transform social relationships among themselves (McCann, 1994: 6, 8). His approach therefore creates important openings to explore how engaging with the law, memories of this process, and meanings attributed to it contribute to broader transformations in the identities people develop, how they understand themselves, how they relate to each other, and the power relations they forge. In the remainder of this article, I develop and employ the concept 'social uses of the law' to explore how memories and understandings of the case shaped the identities of, and power relations between, different actors at Marie Louise, and how they were deployed in contestations over space, time and resources.

### **Developing a new collective identity**

In keeping with McCann's legal mobilization framework, it is important to note how simply coming together to take forward the court case helped to solidify a collective identity for the original reclaimers. This process started when they mobilized to win the 2000 agreement and was strengthened as they went through the court process. A key factor related not to anything that happened in court, but to the fact that George Bizos was their advocate. When first faced with the eviction order the reclaimers sought assistance from their political representatives. The local ANC councillor refused to assist, saying that no one was supposed to work at the dump. When the reclaimers approached the parliamentary office, they were met with disdain. According to the reclaimers, 'that guy really humiliated us. We thought he was going to help us, but then he said, why are you fighting for rubbish?' (Group interview 3, 22 July 2009). After having been completely disregarded by those officially charged with representing their interests, the appointment of Bizos had a tremendous impact on the reclaimers as they felt it validated both them and their struggle. One elaborated, 'it made a huge difference. A huge difference! I mean, Mr. Bizos used to represent prominent leaders here and activists. So we felt very honoured and people were respecting us' (Group interview 3, 22 July 2009). Having Bizos as their advocate helped transform both the way the reclaimers saw themselves and how they were seen in the communities where they lived. The inclusion of a specific call in the ruling for the municipality and Pikitup to engage them in a dignified manner solidified this transformation and lent it formal authority.

The support of Bizos also facilitated the reclaimers associating themselves and their struggle with the struggle against apartheid. The original reclaimers frequently referred to the fact that they had fought for the dump and linked this to the fight for national liberation. One observed they likely would not have considered going to court, let alone been able to win the case during the apartheid era and that the establishment of liberal political rights had been important as 'we won it because we felt we had rights'. However, she proceeded to emphasize that 'actually, Mandela's release did not bring that much of a difference. We are the ones who made changes for ourselves by fighting against Pikitup when they said we must leave the dump. The difference we made was that we fought for ourselves' (Group interview 52, 27 February 2010).

Many reclaimers argued that they were advancing the struggle for liberation and transformation by creating their own jobs, as poor South Africans were continuously exhorted to do by the ANC government. Rather than being passive recipients of freedom,

the reclaimers saw themselves as actively involved in the struggle for their own liberation and that of the country. Fighting for the dump on the ground and through the courts transformed the original reclaimers into freedom fighters and linked them to the broader struggle by black South Africans to overturn apartheid and democratize the country. It also emboldened them to develop a much more expansive understanding of the meaning of the court victory, because as the liberators of the dump they saw themselves as its rightful owner.

## **Owning the dump**

Virtually no one at the dump (original reclaimers, new reclaimers, and even Pikitup management) had read copies of the court judgement or seemed aware that it simply established the need for the reclaimers to receive adequate warning before the agreement could be terminated. Within this gap reclaimers were able to forge their own common sense understanding at the dump that the court ruling meant they could not be removed from the dump and that they 'owned' it. In order to understand how they established this claim it is useful to draw on David Harvey's concept of 'geographical lore' (Harvey, 2001).

Harvey argues that all groups have a 'geographical lore' that captures their understanding of how they can shape use-values in the places where they operate. Building on Lefebvre's insight that in addition to being 'a tool of thought and of action' space is 'a means of control, and hence of domination, of power' (Lefebvre, 1974: 26), Harvey emphasizes that 'geographical lore' can be drawn on to establish alternative social geographies and to dominate other social groups (Harvey, 2001: 108–9).

Although Harvey focuses only on use-values, the concept of geographical lore can help analyse people's understanding of how they produce all forms of value within a particular place. I argue that as the case took on mythological status in the oral history of the Marie Louise dump it became part of the geographical lore of the original reclaimers and was deployed to create claims to the space of the dump and the recyclables within it which exceeded the rights established in the court ruling.

Reclaimers consistently (and erroneously) reported that the court had ruled they could not be removed from the dump. According to the original reclaimers, they had discovered the dump, they had liberated it, and so they were its rightful owners. For the original reclaimers 'owning the dump' established several important principles. First, it meant they had a right to work there indefinitely and to even be redeployed if the dump were closed (Interview with Reclaimer 36, 13 October 2010). This was despite the fact that the judge had noted explicitly that he was not ruling on whether the agreement was valid in perpetuity.

Second, and most importantly, they understood 'owning the dump' to mean they had the right to control all processes related to reclaiming at Marie Louise. Of critical importance was that Pikitup management at the dump shared this interpretation of the outcome of the legal process. As the legal owner of the dump which held responsibility for the disposal of waste on the site, Pikitup did not think the reclaimers 'owned the dump' in its entirety. However, it accepted and even advocated a kind of dual management/ownership of the space and the materials within it. The reclaimers were completely uninterested in the actual garbage and its disposal and Pikitup landfill managers expressed disinterest in

recycling, which they reported the court had established as the domain of the reclaimers. As the Pikitup Landfill Manager explained:

We don't actually own any recycling activities as Pikitup ourselves. But we allow reclamation to take place through reclaimers, informal reclaimers that are doing reclamation at the landfill sites. But they would formulate committees themselves – amongst themselves – per landfill site to basically organize who would be buying from them whatever they've reclaimed at the facilities. Then you would find companies like Consol, Mondi and many others that I may not necessarily know – would be buyers at each and every landfill site, as organized by reclaimers themselves. We don't want to take ownership of that reclamation activity. We leave it to reclaimers to basically govern and manage, but in conjunction with the management of the facility (Interview with Pikitup Landfill Manager, 18 May 2010).

McCann notes that indirect benefits can be derived even if victories in the courtroom are neither consistent nor decisive (McCann, 1994: 285). In her writing on South African public interest litigation, Dugard (2015) takes this argument one step further and argues that mobilization around litigation can lead to positive indirect effects even when the case is unsuccessful in court. This analysis of Marie Louise establishes a different point, which is that even when activists win in court the meaning they attribute to the victory, and the ways in which they mobilize it, may have little to do with what the court actually ruled. The 'social uses of the law' can, therefore, be of much greater import than the judgement itself, the precise contents of which may be irrelevant to struggles on the ground.

In the case of Marie Louise, the reclaimers infused the court victory with new meaning that exceeded the words and intent of the judgement and established their ownership of the dump and their right to control the initial stages of the production of value out of waste at Marie Louise. At first their primary interest was in deploying this understanding to secure autonomy from Pikitup in their daily affairs. Once this was accomplished, they used their supposed ownership of the dump to exert power and control over newer reclaimers entering the space.

Like the theorists of 'the common' who homogenize the multitude and focus only on its positive transformative potential (Hardt and Negri, 2004), scholars such as McCann (1994) and Dugard (2015) implicitly assume that activists develop and utilize understandings of the law only to advance progressive causes against powerful opponents such as the state and employers. However, it is profoundly problematic to romanticize movements of the poor and assume that they only pursue progressive goals. It is also problematic to homogenize groups represented in court cases and assume there are no power relations between them. Neither of these assumptions was true at Marie Louise, and when increasing numbers of new reclaimers arrived at the dump the original reclaimers utilized their ownership claims to the space of the dump and the recyclables within it to secure their advantage over newcomers.

### **Deploying supposed state sanction to control reclaiming at the dump**

When the original reclaimers went to court there were people reclaiming at Marie Louise who were not included in the list of 140 claimants. These additional reclaimers

had not been recognized as part of the agreement and worked after 4 p.m. The lawyers advised that it would not be strategic to include them among the claimants as those who were registered under the agreement had a stronger claim. However, it is important to note that the claimants accepted their presence at the dump. Reclaimers working in the 4 p.m. shift were considered part of the broader community of reclaimers and when registered reclaimers left the dump people from the second shift replaced them. Some of the second shift reclaimers even contributed funds towards the court case and according to one of the leaders from the time of the court case, when they took up the case they saw themselves as fighting on behalf of all of the reclaimers who worked at the dump, not just those officially listed as claimants. They did not contemplate how they would respond to the arrival of large numbers of newcomers, as due to the stigma attached to working at the dump they did not consider this a possibility (Interview with Reclaimer 4, 18 August 2009).

However, as socioeconomic conditions worsened in the country and the Southern African region, increasing numbers of people came to the dump seeking work. Although many people were repulsed by the idea of working with waste, the dump became an attractive income generating option as there was seemingly no need to pass a job interview or be hired, and foreigners did not require a work permit. As the dump became increasingly crowded, competition over the recyclables amplified dramatically. The original reclaimers began to fear they would lose control over the production of value out of waste at Marie Louise and that their incomes would decrease. Anxious to retain their privileged access to the valuable materials at the dump, they drew on their geographical lore to try to educate the newcomers about the court case, assert their claim to the space of the dump, and refuse them access.

However, people who came after the court case explained that as they had no other options they just kept coming back every day until the registered reclaimers tired of chasing them. Unable to rely on physical control of the space to keep new competitors for the recyclable materials out of the dump, the original reclaimers added the dimension of time to their repertoire of social control. As noted above, a shift system pre-dated the court case. In their struggle to maintain dominance at Marie Louise, the original reclaimers seized upon this system to bolster their control of the dump and the resources within it by creating a new, third shift starting at 6 p.m. for the newcomers. This ensured that the newcomers did not compromise the income of either of the groups who had been working at the dump prior to the court case (Interview with Reclaimer 54, 7 February 2010).

The shift system played a central role in governing the production of value as well as social and political life at Marie Louise. By creating a strict temporal boundary that regulated access to the physical space of the dump and the recyclables within it, the shift system afforded the original reclaimers in the morning shift a tremendous advantage in the struggles over resources between reclaimers. The existence of a shift system at the dump was striking, given that it was an informal workplace with no formal employer or management. Although the committee representing the morning shift reclaimers played a central role in allocating reclaimers to shifts, it had no official authority to do so. It quickly became evident that the geographical lore developed by the original reclaimers as part of their social use of the law was central to their ability to develop and enforce a shift system in an informal context in which there was no official 'boss'.

Some newer reclaimers noted that, especially when they first arrived, they ‘were also amazed that people can own garbage’ (Group interview 18, 14 September 2009). But, like everyone else at the dump, they accepted that the original reclaimers ‘owned the dump’ and had the right to regulate reclaiming activities, with their struggle and the presumed court sanction granting equal importance in establishing this claim. One newcomer echoed the words of many others when he explained as if it were fact that ‘they do own it because they fought for the dump and they won the case in court’ (Group interview 11, 26 August 2009). Newcomers frequently explained that a key reason why they accepted the shift system was because the court had said that the original reclaimers ‘owned’ Marie Louise and they were just visitors who needed to obey the rules of their hosts. As one elaborated, ‘if I am a visitor somewhere my rights are limited to a certain point. I can’t have the same rights as someone coming from there. If it is your place and I need water I must ask someone, even a child for the water’ (Interview with Reclaimer 52, 23 December 2009).

The generalized acceptance among both new and old reclaimers and Pikitup management that the original reclaimers ‘owned’ the dump adds fresh insights to McCann’s argument that legal knowledge ‘contributes to “common sense” expectations and understandings through which citizens routinely negotiate relations with each other’ (McCann, 1994: 283). The case of Marie Louise shows that in a social world where most people do not read or cite court rulings and legislation these common sense understandings are not necessarily based on factual legal knowledge, and that claims that state institutions sanctioned a particular understanding of a legal process can be sufficient to grant legitimacy to this interpretation.

## Conclusion

In this article I developed the concept ‘social uses of the law’ to capture how a court victory was understood, infused with new meaning, and deployed in the daily life and ongoing struggles of people who were themselves transformed through the victory and the process of achieving it. Focusing on the social uses of the law allows us to move beyond dichotomous framings of the law and the informal economy and facilitates interrogation of how they are inner-related and mutually constituted. It also critiques and presents an alternative to overly structuralist understandings of the relationship between the law and the informal economy by emphasizing the role of informal (and formal) actors, as well as the production of meaning and identities in these processes.

The social uses of the law makes clear that the law cannot be separated from the informal ways it is understood, deployed and given effect. But this does not mean that the state is irrelevant. Supposed state sanction was central to the potency and social power of the reclaimers’ deployment of their interpretation of the court victory. The social uses of the law therefore provides a way to explore how the state is invoked in everyday life.

Although in this article I developed the concept ‘social uses of the law’ through detailed interrogation of how a court victory helped workers to develop new collective identities and was given meaning and deployed at one particular dump, its relevance should not be confined to this one space. Informal worker organizations around the world are turning to the courts (Ruiz-Restrepo, 2008; cf. Samson, 2016; Sankaran and

Madhav, 2013). Comparative research on the social uses of the law in different sectors of the informal economy and different contexts can provide a useful lens through which to deepen our understanding of how informal workers and the law are inner-related and how they shape and give meaning to one another, leading to richer conceptualizations of both the law and the informal economy. Research on the social uses of the law by other popular movements can also shed light on how engaging the state through legal processes and giving meaning to the outcomes of these legal processes is central to their struggles and transforms the nature of the law itself. Such research can also contribute to the challenging of dichotomous understandings of political and civil society (Chatterjee, 2004) gaining increasing traction in analysis of post-colonial polities.

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### Notes

1. *Pikitup, Johannesburg (Pty) Ltd and City of Johannesburg vs Motale, Matilda and 138 others*, Case 14615/02, 2003.
2. See Samson (2015) for full discussion of the history of Marie Louise up to the point of the judgement in 2003.

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## Author biography

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## Resumé

L'économie informelle est généralement perçue comme une activité hors-la-loi. Dans cet article, j'introduis le concept de « l'usage social de la loi » pour examiner comment les travailleurs informels comprennent, respectent et appliquent la loi et développer des concepts plus nuancés sur l'économie informelle et la loi. Mon argumentation repose sur l'analyse des répercussions subjectives de la victoire judiciaire de récupérateurs de matériaux réutilisables et recyclables contre le Conseil municipal de Johannesburg, dans l'affaire de la décharge Marie Louise à Soweto en Afrique du Sud. Adoptant une approche théorique critique du droit, je défends l'idée selon laquelle les « usages sociaux de la loi » peuvent jouer un rôle plus important que le jugement lui-même dans un milieu social où la plupart des personnes ne savent pas lire, comprendre ou citer les arrêts des tribunaux. Cependant, cela ne signifie pas que l'État est absent, car les recours ou les

droits sanctionnés par les tribunaux constituent un élément central des usages sociaux de la loi. Il s'agit alors de comprendre comment et pourquoi il est impossible de séparer la loi, une des pierres angulaires de la construction de l'État, des modes informels de comprendre et d'appliquer le droit. En conclusion, cet article propose des axes de recherches susceptibles d'approfondir la compréhension des relations entre la loi et l'économie informelle.

**Mots-clés**

récupérateurs de déchets, usages sociaux de la loi, mobilisation juridique, théorie juridique critique

**Resumen**

La economía informal es normalmente entendida como fuera de la ley. Sin embargo, en este artículo, desarrollo el concepto de 'usos sociales de la ley' para interrogar cómo los trabajadores informales comprender, participar y desplegar la ley, facilitando el desarrollo de las teorizaciones más matizadas, tanto de la economía informal y de la ley. Construyo este argumento mediante la exploración de cómo una victoria legal sobre el Consejo de Johannesburgo por los recuperadores de materiales reutilizables y reciclables en el vertedero de Marie Louise, en Soweto, Sudáfrica, forma sus subjetividades. Argumento que el compromiso con la teoría jurídica crítica en un mundo social donde la mayoría de la gente no lee, no entiende, o no cita resoluciones judiciales, los "usos sociales de la ley" pueden ser de mayor importancia que la propia sentencia. Esto no significa, sin embargo, que el estado esté ausente, ya que la afirmación de que los tribunales sancionan reivindicaciones y derechos particulares es fundamental para los usos sociales de la ley. Los usos sociales de la ley de los recicladores nos obligan a considerar cómo y por qué la ley, una de las piedras angulares de la formación del Estado, no se puede separar de las maneras informales que las entiende y despliega. El artículo concluye esbozando una agenda de investigación que puede ayudar en el desarrollo de una comprensión más relacional de la ley y de la economía informal.

**Palabras clave**

recicladores, usos sociales de la ley, movilización legal, teoría jurídica crítica