

The London School of Economics and Political Science

‘Rethinking Precarity’

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Declaration

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Abstract

In this thesis, I think with precarity about the international regulation of labour. In doing so, I suggest that thinking with precarity requires us to critically think about precarity, which is otherwise presupposed as a lens that is readily available for application. Adopting a combination of critical discourse analysis and a 'Third World Approaches to International Law' theoretical lens, I show how the ILO has discursively produced a construct of 'standard work' that is historically and spatially contingent, which continues to normatively orient regulatory responses to precarity. By analysing the theoretical assumptions that have been taken for granted within the international legal discourse of the ILO, and in showing how its regulatory responses to precarity obscure the differentiated raced and gendered dynamics of precarity within the global South, I show how precarity has come to constitute a mode of governance in itself.

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INTRODUCTION

A. Research Project

In this research project, I seek to critically examine the concept of ‘precarity’ or ‘precarious work’ in the international legal discourse. Precarious work has been broadly conceptualized as involving instability (such as jobs ‘with a short time horizon or for which the risk of job loss is high’), insecurity, lack of legal protection, social and economic vulnerability, or a combination of these factors.¹ More specifically, I am interested in how the ILO has discursively legitimised the construct of ‘precarious work’ as ‘atypical’, anomalous, or *exceptional*, rather than normal, within the conditions of capitalism. This interest is anchored in a growing body of critical literature demonstrating the existence of precarious work as a *longstanding* feature in the history of capitalism, albeit as a phenomenon which is differentially produced for different groups of workers along various axes such as race, class, gender and citizenship.

To position precarious work as exceptional is to imply that the situation is remediable through legal regulation (supported by collective bargaining measures to pass or implement such regulation), and, therefore, merely requires a *reversion* to the *norm* of standard employment (characterised by permanent full-time jobs), or measures that approximate this norm premised on a range of labour rights and social protection. In response, I wish to explore the ways in which the ILO could be engaging in incremental efforts to address precarity through international legal measures, without asking more fundamental questions about the ongoing systemic logics that are producing precarization in differentiated forms.

More specifically, this dissertation proposes to think *with precarity* about the international regulation of labour. To fruitfully carry out such an analysis, I suggest that thinking with precarity requires us to critically think *about* precarity,² which is otherwise

¹ Rodgers, G. & Rodgers, J. (1989). *Precarious jobs in labour market regulation: The growth of atypical employment in Western Europe*. Geneva: International Institute for Labour Studies & Université libre de Bruxelles.

² I draw on this idea of ‘thinking with precarity’ from Mallett, R. W. (2020). Seeing the ‘changing nature of work’ through a precarity lens. *Global Labour Journal*, 11(3), 271-290.

presupposed as a lens that is readily available for application in our analysis. As such, I seek to historicize the concept of precarity and its related assumptions that similarly underpin international legal discourse. In doing so, I call into question the temporal validity of the underlying discourse of precarity as largely arising from the recent decades of neoliberalism, globalization and flexibilization, and more closely interrogate the spatial assumptions of extending this specific temporality to redescribe labour relations across the globe. I intend to draw attention to how international law sustains precarity while formally disavowing it and reflect on how precarity itself has become a mode of governance.

B. Significance of Study

The word ‘work’ is rooted in the ancient Indo-European word ‘*werg*’, which means ‘to do’.³ Consequently, it is etymologically related to energy, synergy, allergy (‘oppositional work’), lethargy (‘without work’), organ (a tool, as in ‘working with something’) and liturgy (‘public work’).⁴ From these various relations, a sense emerges that the concept of work is associated with action or activity, productivity, an ongoing process, dynamism. Perhaps, it would not be hyperbole to associate work with creation itself, and the making of the social world as we know it. Indeed, work has always been a way of life, constituting a fundamental feature of the human experience. The founding fathers of political economy⁵ and sociology⁶ understood that the division of labour was central to the mode of functioning of societies. The ‘social form of work’ – the ways in which it is organised – is perceived to be essential to the extent to which people can freely create their life worlds, thereby offering us insight into ‘the forces of oppression and freedom’.⁷

Today, within industrialized countries, the phenomenon of *precarious* work is described as a more recent late 20th century phenomenon that is increasingly afflicting its workers. It involves a dimension of social and economic vulnerability, with the worker being exposed to employment instability, a lack of legal and union protection, and access to social security benefits. A typology of precarious work involves a range of various categories of work, such

³ Budd, J. (2011). *The Thought of Work*. Cornell University Press.

⁴ *Ibid.*, p. 1.

⁵ See Smith, A. (1869). *An Inquiry into the Nature and Causes of the Wealth of Nations (Vol. 1)*. Oxford: Clarendon Press. The first chapter is entitled ‘Of the Division of Labour’.

⁶ Durkheim, E. (2013). *Durkheim: The Division of Labour in Society*. Palgrave Macmillan.

⁷ Ferguson, S. (2020). *Women and Work: Feminism, Labour and Social Reproduction*. Pluto Press.

as permanent full-time work, temporary work, part-time work, homeworking and other forms of outwork and self-employment. Such work could take the form of bilateral employment relations with an employer or be provided through intermediary agencies or online service platforms. It is also increasingly mediated contractually through a range of different legal statuses such as part-time permanent contracts, part-time temporary contracts, fixed-term project or task-based contracts, or zero-hours contracts that are subject to a casual, on-demand basis.

The subjects of precarity vary as widely as the range of forms of precarious work. They include call-center workers,⁸ creative workers, Uber drivers, migrant domestic workers, football players, seafarers, academics, care workers, performing artists and hospitality staff.⁹ As a phenomenon, first located within the rise in demand for ‘flexible’ and ‘atypical’ forms of work within labour markets in the West, precarity has come to be associated with ‘neoliberal restructuring’, ‘globalization’, ‘flexicurity’ (a peculiar sounding combination of flexibility and security), austerity arising from the global Financial Crisis in the late 2000s, and the subsequent rise of the gig economy, platform-work and crowd-work.¹⁰ In more critical accounts, the processes of neoliberal restructuring are described as having given rise to ‘advanced marginality’¹¹ and ‘wasted lives’¹² – the ‘outcasts of modernity’.¹³

Within emerging and developing countries, the phenomenon of ‘informality’ has, in recent years, been redescribed within international legal discourse in terms of ‘precarity’. Women are described as being ‘more exposed’ to informal and precarious employment within most low and lower-middle income countries, and as more often being ‘found in the most vulnerable situations’.¹⁴ This takes place against the larger context of more than 60 per cent of the world’s employed population, comprising of about 2 billion people globally, working

⁸ Casas-Cortés, M. (2014). A genealogy of precarity: A toolbox for rearticulating fragmented social realities in and out of the workplace. *Rethinking Marxism: A Journal of Economics, Culture and Society*, 26(2), 206-226.

⁹ See Chapter II, pp. 16-17.

¹⁰ See Countouris, N. (2019). *Defining and regulating work relations for the future of work*. International Labour Office, Geneva, for detailed references regarding these various concepts at p. 6.

¹¹ Wacquant, L. (2008). *Urban outcasts: A comparative sociology of advanced marginality*. Polity.

¹² Bauman, Z. (2004). *Wasted Lives – the outcasts of modernity*. Polity.

¹³ *Ibid.*

¹⁴ Zbyszewska, A., & Maximo, F. (2023). Rethinking the Labour-Environment (Land) Nexus: Beyond Coloniality, Towards New Epistemologies for Labour Law. *International Journal of Comparative Labour Law and Industrial Relations*, 39(3/4), 293-313.

within the informal economy.¹⁵ This majority is collectively described as ‘lacking social protection, rights at work and decent working conditions’, which are, as it happens, the legal markers of precarity. More broadly, informality has been used as a category to describe and situate a wide range of occupations – from the thousands of catadores reclaiming recyclables from garbage dumps on the outskirts of Rio de Janeiro,¹⁶ to domestic workers, piece-rate workers in sweatshops, and casual labourers in construction.¹⁷ In more critical accounts, they are described in terms of superfluity,¹⁸ disposability,¹⁹ and as being subject to systemic logics of ‘cannibalism’.²⁰

As will be detailed in Chapter II, precarity marks the loss of aspirations for a ‘good life’, in the form of stable, regular jobs and related social security benefits conferred by a redistributive welfare state. Precarity within the workplace has been framed as an ‘emerging social determinant of health’ due to the deleterious effects of precarious employment on the health of workers, including higher incidents of work-place related injury²¹ and poorer psychological states arising from precarity resulting in poorer job attitudes, mental health problems and disrupted identity.²² More provocatively, the angry *precariat* is described as a dangerous class that is responsible for the rise of extremist far-right nationalist parties across the globe.²³ As will be detailed in Chapter III, precarity has been pathologized as aberrant within the labour market, and constitutes an ‘unacceptable form of work’. It has a human rights dimension, with precarious workers described as being more vulnerable and susceptible to abuse or exploitation. It is seen to affect major developmental and economic priorities globally, positioned as part of the wreckage of structural problems including inequality,²⁴ and as an obstacle to decent work initiatives that seek to end poverty.

¹⁵ Bonnet, F., Vanek, J., & Chen, M. (2019). *Women and men in the informal economy: A statistical brief*. International Labour Office, Geneva.

¹⁶ Millar, K. M. (2014). The precarious present: Wageless labor and disrupted life in Rio de Janeiro, Brazil. *Cultural anthropology*, 29(1), 32-53.

¹⁷ Women in Informal Employment: Globalizing and Organizing (WIEGO). (n.d.). *Occupational Groups in the Informal Economy*. <https://www.wiego.org/informal-economy/occupational-groups>

¹⁸ Davis, M. (2006). *Planet of Slums*. Verso Books.

¹⁹ Wright, M. (2013). *Disposable women and other myths of global capitalism*. Routledge.

²⁰ Fraser, N. (2022). *Cannibal Capitalism*. Verso Books.

²¹ Quinlan, M., et al. (2001). The Global Expansion of Precarious Employment, Work Disorganization, and Consequences for Occupational Health: Placing the debate in a comparative historical context. *International Journal of Health Services*, 31(3), 507-536.

²² Allan, B. A., et al. (2021). Precarious work in the 21st century: A psychological perspective. *Journal of Vocational Behavior*, 126, 103491.

²³ Standing, G. (2011). *The precariat: The new dangerous class*. Bloomsbury academic.

²⁴ Perrone, N. M., & Schneiderman, D. (2020). International economic law’s wreckage: depoliticization, inequality, precarity. *Leiden Journal of International Law*, 33, 557.

Debates pertaining to regulatory responses to the precarious nature of work are usually positioned in relation to the dichotomous axes of flexibility (a more positively coded description of atypical work for both employers and employees alike) and security (for workers in need of labour rights and social protections from insecure work, which is pejoratively coded as precarious work). The process of flexibilization has been largely described within the dominant discourse of precarity as being situated within changes in employment relations (casualization and contractualization of employment), changes in the modes of production due to a shift from manufacturing to services within the industrialised North, globalization involving processes of outsourcing, offshoring and subcontracting, and neoliberal deregulation of labour markets globally. While these terms of ‘flexibility vs. security’ certainly form part of the debate – as will be detailed in Chapters II and III introducing the idea of precarity and the international legal discourse of precarity respectively – I propose that they do not conclude the debate.

In this study, I seek to move beyond the usual terms of this debate of flexibility, juxtaposed against security, and engage in efforts to critically develop our understanding of an international legal discourse of precarity. On the one hand, I hope to develop the usefulness of precarity as a lens in shedding light on the inadequacy of solutions proposed by the ILO pertaining to informality, that proposes formalization as a solution, for precarity is largely found within the formal sector and is increasingly described as involving a process of ‘informalisation’.²⁵ Nonetheless, I hope to show that the concept of precarity employed within international law is premised on certain spatio-temporal assumptions and reifies an idea of precarity as a *legal* status. These assumptions frame our understanding of what it means to be precarious in juridified terms, and potentially obscures other systemic logics of precarization that produce differentiation along various axes such as race, gender, and the global North-South divide (which I further problematize). Consequently, I move from the question of what precarity *is* to what precarity *does*.²⁶ While I foreground the gender dimension in showing the relevance of debates regarding legal status, I point to how this leaves out gendered logics of precarization. Overall, this study seeks to shed light on the constitutive role of international law in producing precarity, and how precarity functions as a mode of governance. In doing so,

²⁵ See Chapter IV.

²⁶ Millar, K. M. (2017). Toward a critical politics of precarity. *Sociology compass*, 11(6), e12483.

I contribute to the expansion of our understanding of precarization processes, and to open up critical questions of what a more adequate conceptualization of precarity could look like.

C. Theory and Method

Methodologically speaking, while I have been influenced by reflexive or critical discourse analysis ('CDA') as a mode of thinking, my methodology shifts through the thesis. Before explaining more precisely what I mean by this, let me briefly detail the methodologies that have influenced my writing of this thesis.

A key influence on my way of thought in the realm of method involves CDA. CDA has an 'explicit political agenda' in that it seeks to expose the ideological effects of discourse in producing and reproducing unequal power relations'.²⁷ In doing so, CDA scholars propose that discourses 'simultaneously make the world understandable by ordering it and organise the world socio-politically through this ordering capacity'.²⁸ The specificity of legal discourse derives from the ways in which it 'formalizes and naturalises' institutions within society pertaining to the government, welfare, institutions such as, for example, immigration agencies, and the family.²⁹ Additionally, the realm of work falls within this domain.³⁰ As the 'main medium of socialisation', discourse is characterised by both an explicit and implicit dimension.³¹ However, I am more interested in the implicit elements of discourse, which forms the basis for shared knowledge (and praxis) and is a 'key mechanism of the invisible reproduction of the socio-political order', since assumptions or biases are usually 'naturalised within this taken-for-granted shared knowledge'.³² Methodologically, I am interested in how the questions that we ask ourselves of and from the text, shape the ways in which we perceive discourse. This points to the importance of theory in circumscribing our methods of thinking about discourse, with scholars of CDA pointing to the importance of 'interdisciplinary work'

²⁷ Jones, P. E. (2004). Discourse and the Materialist Conception of History: Critical Comments on Critical Discourse Analysis. *Historical Materialism*, 12(1), 97-125.

²⁸ Alejandro, A. (2021). Reflexive discourse analysis: A methodology for the practice of reflexivity. *European Journal of International Relations*, 27(1), 150-174.

²⁹ Cheng, L., & Machin, D. (2023). The law and critical discourse studies. *Critical Discourse Studies*, 20(3), 243-255.

³⁰ Klare, K. E. (1981). Public/private distinction in labor law. *U. Pa. L. Rev.*, 130, 1358.

³¹ *Ibid.*

³² *Ibid.*

to ‘gain a proper understanding of how language functions in constituting and transmitting knowledge in organising social institutions’.³³

In doing so, I am influenced by the material dimensions of discourse,³⁴ and the theoretical approach that international law plays an important constitutive role in relation to political economy.³⁵ Indeed, critical international legal scholars have called for an engagement with international law, and its norms and institutions, ‘neither from themselves nor from the so-called general development of the human mind, but rather [from] their roots in the material conditions of life’.³⁶ I am thus influenced by the idea that within the ‘materialist conception of history, the *ultimately* determining element in history is the production and reproduction of life’.³⁷ I connect this understanding of the ways in which history is materially shaped to the historicity of our present moment. Flowing from this interest, I started out this project by choosing to focus on international labour law because of its attention to the world of work and the sophisticated complexity of its collective bargaining mechanisms, which appeared to me to be more closely related to the material conditions of life than, for example, international human rights.³⁸ In this vein, scholars have suggested that ‘labour rights redress pressing structural and historical material inequality that characterises the wage-labour relations’ and caution against the convergence of the complexity of labour law with the normative idealised setting of human rights ‘premised on the fiction of the equality of all human beings’.³⁹ While I was persuaded by this view, I nonetheless have not proceeded to operate with the presumption that to attend to labour law on its own terms automatically results in improvements to the material conditions of life. Indeed, in this study, I seek to underscore the ways in which labour law itself has carried its own histories of material exclusions pertaining to axes like race, gender, and citizenship.

³³ Mogashoa, T. (2014). Understanding critical discourse analysis in qualitative research. *International Journal of Humanities Social Sciences and Education*, 1(7), 104-113.

³⁴ See Marks, S. (2003). *The riddle of all constitutions: International law, democracy, and the critique of ideology*. Oxford University Press, for an illuminating account of the relationship between discourse and materiality, and on the function of ideology critique.

³⁵ Kennedy, D. (2013). Law and the Political Economy of the World. *Leiden Journal of International Law*, 26(1), 7-48.

³⁶ Eslava, L., & Pahuja, S. (2011). Between resistance and reform: TWAIL and the universality of international law. *Trade L. & Dev.*, 3, 103 [Eslava & Pahuja], citing Marx at p. 123.

³⁷ See Holdren, N., & Tucker, E. (2020). Marxist theories of Law past and present: A meditation occasioned by the 25th anniversary of Law, labor, and ideology. *Law & Social Inquiry*, 45(4), 1142-1169, citing Engels at p. 1144.

³⁸ *Ibid.*, for an insightful account of the relationship between law and materiality, that transcends orthodox economic approaches to materialism.

³⁹ See Kumar, V. (2014). Rethinking the Convergence of Human Rights and Labour Rights in International Law: Depoliticisation and Excess. In Zumbansen, P. & Buchanan, R. (Eds.) *Law in Transition: Human Rights, Development and Transitional Justice* (pp. 127-139). Bloomsbury Publishing.

To be clear, however, I do not purport to conduct a quantitative discourse analysis in this study—which would involve the assembly of a large corpus of international legal materials pertaining to precarity, selected on the basis of specific criteria pertaining to the research study, and then forming conclusions based on that data. Part of the problem with such an approach for this research study is that it presupposes the availability of criteria based on which this data can be assessed, in relation to the concept of precarity. However, as I have alluded to earlier, my research has shown that precarity itself is a relatively unproblematised category and mode of ordering within the international legal sphere (on the basis of which empirical assessments and legal regulations are being made); my aim is rather to subject precarity *as a lens* to closer scrutiny within this study. Accordingly, I instead conduct a qualitative discourse analysis which involves the selection of key materials within international legal discourse, and to subject the assumptions found within these materials to closer scrutiny. In doing so, I hope to problematise the category of precarity in a reflexive way, so as to ‘better understand our object of scrutiny’, ‘avoid biases that obscure categories’ socially constructed nature’ and to undo ‘the illusion that categories ... have “coherent, unifying meanings”, across contexts and cultures’.⁴⁰ In doing so, I wish to challenge some preconceptions embedded in the language of precarity, while nonetheless taking seriously the lived experiences and concerns of those who have drawn attention to the phenomenon of precarity.

As such, CDA is of interest to me as a method because it provides an important way in to situate the *significance* of discourse of international institutions as a fruitful object of analysis for research. However, my main objective in this dissertation is to explore the *implicit* and *material* dimensions of discourse in my analysis, of the ideologies contained within the discourse, instead of a classic discourse analysis revolving around and presupposing the terms employed within the discourse itself. As such, while Chapter III works with and presupposes the concept of precarity, Chapter IV (on relationality) both deconstructs and uses precarity as a tool to expose assumptions found within related discourses, and thereafter foregrounds critical literatures to illuminate the ideologies concealed within the legal construct of the status of precarity. Chapter V intentionally moves beyond the frames of reference of these discussions to ask what the concept of precarity itself presupposes through the lens of gender. Instead of a discourse analysis approach, it moves towards a more theoretical and conceptual analysis

⁴⁰ Alejandro, A. (2021). How to problematise categories: building the methodological toolbox for linguistic reflexivity. *International Journal of Qualitative Methods*, 20, 16094069211055572.

pertaining to the earlier chapters. Specifically, it shifts the terms of the discussion to foreground the relationship between gender and precarious work. In doing so, it seeks to intentionally (and productively) disorient the reader by offering a vantage point for re-reading the earlier materials through a different frame of reference, thereby gradually illuminating the biases hidden within them. It then proceeds to excavate this re-reading itself to point to further biases that could be contained with the gender lens itself. Chapter VI elaborates on this approach of creating distance from the precise terms of the institutional discourse by providing alternative frames of reference through which one could rethink the function of precarity within international labour governance.

In theoretical terms, my research aims to make a contribution to critical international legal scholarship. I take the term ‘critical international legal scholarship’ to refer to a growing body of international legal scholarship that adopts a critical epistemological standpoint of reflexivity in ‘thinking about’ international law.⁴¹ Such an approach can be contrasted to what has been described as the more traditional approach of ‘doing law’,⁴² which usually involves critical thinking about what the law is or should be, but does not usually go further to theoretically examine what the law does. Specifically, as I will now explain, I am most interested in the ‘Third World Approaches to International Law’ (‘TWAIL’) lens (broadly understood).

While it is widely acknowledged that there is ‘no single theoretical approach which unites TWAIL’, what I am more interested in is precisely this approach of sharing ‘both a sensibility, and a political orientation’.⁴³ It seeks to excavate ‘historical and conceptual distortions’ within the international legal sphere, and highlights the ‘political, cultural and economic biases’ that are ‘embedded within the international legal project’.⁴⁴ In doing so, it demonstrates how ‘uncomplicated understandings of international law’ may ‘at best reduce, or at worst completely negate, whatever political or emancipatory potential might exist in calls for the international’.⁴⁵ Accordingly, this is an approach that is ‘not so much a method’, as a ‘political grouping or strategic engagement with international law, shaped by a commonality of

⁴¹ See Bianchi, A. (2016). Different Ways of Thinking About International Law. In Bianchi, A. (Ed.). *International Law Theories: An Inquiry into Different Ways of Thinking* (pp. 1-20). Oxford University Press, for a concise account of the fundamental distinction between ‘doing law’ and ‘thinking about law’.

⁴² *Ibid.*

⁴³ Eslava & Pahuja, at p. 103.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

concerns'.⁴⁶ These concerns involve an attunement of international legal scholarship to 'those sites and subjects that have traditionally been positioned as the "others of international law"'.⁴⁷

What does the term 'others' refer to? Despite the reference to the 'Third World' within the term TWAIL, I take this term (as other TWAIL scholars have suggested) to refer to a theoretical approach that broadly encompasses a range of concerns involving those who are spatially located within the global South (which is usually assumed to describe dimensions of race, but evidently also involves other dimensions such as gender and class). Indeed, TWAIL scholarship is distinctive in holding space for a wide variety of theoretical and methodological approaches (including feminism, Marxism and discourse analysis) within the critical international legal sphere, without being confined to narrowly defined 'traditional' postcolonial scholarship.⁴⁸ Additionally, as this thesis also hopes to show, the concerns of the 'Third World' should no longer be 'confined to the Third World',⁴⁹ with increasing convergence being observed across both developed and developing countries (involving inequality and precarization, for example). While it is acknowledged that each country has 'its own unique circumstances and history', TWAIL provides 'important analytic tools to grasp how international law might further injustice not only in the Third World but also globally'.⁵⁰ The construction of a 'Third World cosmopolitanism'⁵¹ therefore also involves attention to a more universal subject of 'humanity', insofar as our shared humanity continues to be an orienting normative liberal ideal. Nonetheless, as I will draw attention to in this study, such a universality requires us to draw attention to the differentiated ways in which humanity is rendered in divided ways, with a more inclusive account of solidarity therefore requiring attention to the multiplicity of these divisions.

In relating the theoretical concerns of TWAIL to the method of critical discourse analysis, I am interested in the ways in which international law has 'historically developed by fashioning concepts and discourses that excluded a non-European worldview', or by 'existentially enclose[ing] the non-Western world into a European schema', and then 'blam[ing] unwilling

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ See Anghie, A. (2023). Rethinking International Law: A TWAIL Retrospective. *European Journal of International Law*, 34(1), 7-112, for an incisive account of the wide variety of theoretical approaches that are inclusively considered to be part of the TWAIL umbrella.

⁴⁹ *Ibid.*, at p. 104.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

elements for being backward, ignorant or without vision'.⁵² I am interested in the ways in which international legal discourse manages complex interactions through the creation of particular categories that are treated as 'neutral and objective in resolving issues'.⁵³ As the principles of discourse analysis reminds us, these categories themselves should be treated as political and contested. TWAIL scholars have argued that such epistemes form 'the foundation of international legal discourse', in creating and defining subjects, with 'bias' within international not only enabled through the 'formal content of the law', but also through 'the operation of the categories that the law and the legal process create'.⁵⁴

In doing so, I am influenced by the work of critical international legal scholars regarding the constitutive role of law in international political economy. International law has been described as making an important contribution to 'understanding and transforming centre-periphery patterns of dynamic inequality in global political economic life'.⁵⁵ The 'core elements of both economic and political activity', which has been described as including capital and labour, as well as 'public or private power and right' – are recognisably *legal* institutions.⁵⁶ In doing so, scholars have shown how 'law is the link binding centres and peripheries to one another and structuring their interaction' and as 'the vernacular through which power and wealth justify their exercise and shroud their authority'.⁵⁷ Accordingly, scholars of international law and political economy have contended for an analysis of international law 'as a terrain for political and economic struggle rather than as a normative or technical substitute for political choice, itself indifferent to natural flows of economic activity'.⁵⁸ Having said that, I do not perceive this relationship between law and political economy as one-directional, which would leave out of account questions of agency in the production of law itself as a mutable discourse. For the purposes of this research study, I leave the relationality of the inter-constitution of political economy and law as an open question (which is perhaps better understood through the specificity of empirical studies that pay close attention to spatiality and

⁵² Ngugi, J. (2002). Making new wine for old wineskins: can the reform of international law emancipate the Third World in the age of globalization. *UC Davis J. Int'l L. & Pol'y*, 8, 73; Gathii, J. T. (1998). International law and eurocentricity. *Eur. J. Int'l L.*, 9, 184.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Kennedy, D. (2013). Law and the Political Economy of the World. *Leiden Journal of International Law*, 26(1), 7-48.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.* See also Deakin, S., et al. (2017). Legal institutionalism: Capitalism and the constitutive role of law. *Journal of Comparative Economics*, 45(1), 188-200.

⁵⁸ *Ibid.*

subjectivity). My research study offers insight into the following questions, even if these questions are not explicitly foregrounded within my analysis. Specifically, I am interested in the ways in which law constitutes and frames our understanding of phenomena, subjectivity and materiality, which includes attention to its unstated assumptions, discursive framing, and the materiality of who are left invisible within its regulatory responses. In doing so, I adopt a broader understanding of law beyond strictly institutionalist and economic terms.

Lastly, I would like to draw attention to the blurred boundaries between theoretical approaches, method and research questions, that have oriented my own research study. Feminist scholars have long argued that ‘feminist methods are means to feminist ends’, in that ‘asking the woman question, feminist practical reasoning, and consciousness-raising’ are all methods that ‘arise from and sustain feminist practice’.⁵⁹ Feminist methods are also ‘ends in themselves’, with methods providing feminists ‘a way of doing law that expresses who they are and who they wish to become’.⁶⁰ Flowing from this understanding of the interrelation between theory, method and subjectivity of the researcher, my research questions and orientations are themselves reflective of the praxis that I wish to engage in. Perhaps all that I have come to expect from myself as a researcher is to adopt a sincere orientation in centering a more inclusive understanding of the universality of the subjects that constitute the phenomena that I study.

D. Institutional Discourse and Literature

In conducting this research study, I seek to critically analyse the ILO’s institutional discourse on precarity. To facilitate this analysis, I draw on three bodies of literature comprising of legal literature on precarity, the conceptualisation of precarity, and critical perspectives on precarious work.

⁵⁹ Bartlett, K. T. (1990). Feminist Legal Methods. *Harvard Law Review*, 103(4), 829–888.

⁶⁰ *Ibid.*

(1) ILO's Institutional Discourse on Precarity

The object of my analysis in my study comprises of the institutional discourse of the International Labour Organisation (ILO).⁶¹ I have chosen to focus on the discourse of the ILO because it has been designated within the framework of international law as providing a specialized institutionalised arena to discuss issues of work. As such, it is a key body that has been tasked with regulating precarious work and the working conditions of precarious workers. The work of the ILO can be found in statements, commentaries, treaty materials, and reports by the ILO. Preliminarily, I wish to clarify that I certainly do not mean to equate international law with the work of the ILO alone. Instead, I make the more limited claim that the work of the ILO forms an important part of the international legal order in relation to the international regulation of labour. While I will not be examining international human rights law in as much detail as it deserves (due to considerations of time and space, and due to the intended scope of this thesis focusing on the workings of the ILO), I will explore the rights-based turn to core labour rights within international labour regulation by the ILO and further integrate analysis pertaining to the relevance and limitations of international human rights law in the international regulation of labour and attend to its role in regulating migrants.

The institutional discourse of the ILO can be broadly characterized in three ways. The *first* pertains to discursive efforts within the international legal sphere to *conceptualize* precarity, which underpin the basis of the ILO's own reliance on the concept of precarity as the basis of international regulatory efforts. Specifically, I seek to show that the concept of precarity is a *legal* artefact that is being juxtaposed to the norm of 'standard work' that is itself partly derived from international labour standards. Additionally, this concept itself is largely underpinned by the dominant discourse of neoliberalism and globalization as having resulted in the recent rise of pejoratively coded precarious work, even though employer representatives contest such a position by pointing to the necessity of flexibility. This powerful narrative appears to underpin international regulatory efforts to respond to precarity, and largely formed the basis of criticisms of the ineffectiveness of the response of the ILO. In response, the ILO has sought to re-invent itself in various forms to respond to precarity, which is a concept that

⁶¹ Pahuja, S. (2021). Methodology: Writing about how we do research. In Deplano, R. & Tsagourias, N. *Research Methods in International Law: A Handbook* (pp. 60-77). Edward Elgar Publishing.

is increasingly now being redescribed as ‘informal work’ or the more neutrally coded ‘non-standard work’.

The *second* international legal characterization of the *subject* of precarity points to a more differentiated description of precarity along the axes of race, gender and citizenship. While this differentiation is acknowledged within the international regulatory sphere on the descriptive level, it does not appear to substantively incorporate these dimensions into its responses to precarity. The *third* characterization pertains to international legal responses to precarity, which largely involves regulatory struggles over the extension of labour rights and social protections found within ‘standard work’ to other ‘atypical’ contexts.

(2) *Legal Literature on Precarity*

This body of literature is broadly characterised as follows. The *first* pertains to scholarly legal literatures analysing the ILO’s discourse on the precarious employment, which I will draw on, where applicable, to provide depth to my analysis of its institutional discourse.

The *second* involves a more critical body of literature that foregrounds the ineffectiveness of the ILO as an institutional organization, and the role of other more powerful international financial institutions as having been a critical part of the production of precarity during the neoliberal era. In response to such critical scholarship focusing on the ILO as an ineffective or weak organization, I intend to point to its discursive role in *producing* an understanding of what constitutes ‘standard work’ and ‘precarious’ work, and the material effects of the discursive measures as set out in proposed regulatory responses. I further seek to problematize the assumptions inherent within its conceptualization of precarity (or the associated concepts of informal work or non-standard work) and tacit assumptions reinforced by underlying narratives of precarity. Accordingly, I will draw on a *third* body of literature which highlights (either explicitly or implicitly) the role of international law in producing precarity and/or problematizes the relationship between international law and precarity (instead of presupposing the role of international law as merely responding to precarity).

Here, I wish to clarify that I certainly do not suggest that the role of the ILO in relation to the construction and/or production of precarity outweighs the role of other international institutions. Indeed, in Chapter III on ‘International Law and Precarity’, I will draw attention

to some important scholarly work that has examined the centrality of the role of other international institutions in relation to the production of precarity, and in forming part of the larger context in determining international law's position on precarity. However, I do suggest that a more critical perspective towards the ILO itself within international legal scholarship has been relatively under-explored. In doing so, I align myself with a small but growing body of scholarship that has a similar orientation in critically analysing international labour regulation.⁶² Specifically, I seek to make a contribution through my focus on the subject of precarity, which is in itself a relatively neglected topic in the field of critical international legal scholarship. For example, it has been noted that 'precarious labour both in the global North and the global South' has been the focus of contemporary Marxist political economic analysis 'without having had an appreciable effect on Marxist international legal scholarship'.⁶³

In order to help me theoretically situate the significance of international law's responses to and its relationship with precarity, I draw on the next two bodies of literature.

(3) *Conceptualisation of Precarity*

This second body of literature pertains to literatures that conceptualize precarity and analyse the implications of precarity for our social world. I am interested in this literature because it analytically demarcates the boundaries of precarity as a concept. While this is a useful exercise to enable its analysis as a sociological phenomenon available for empirical study, I am more interested in the discursive dimensions of this conceptualization, and how it frames our understanding of what it means to be precarious, and why we find ourselves in precarity. Furthermore, I locate the dominant discourse of the narrative of precarity within this body of literature, which characterizes precarious work as arising out of contemporary changes in the field of work. While there are theorists of precarity who are exceptional in drawing

⁶² Sinclair, G. F. (2018). A 'civilizing task': the International Labour Organization, social reform, and the genealogy of development. *Journal of the History of International Law/Revue d'histoire du droit international*, 20(2), 145-197; Hammoudi, A. (2022). International order and racial capitalism: The standardization of 'free labour' exploitation in international law. *Leiden Journal of International Law*, 35(4), 779-799; Rittich, K. (2022). In the middle of things: the political economy of labour beyond the market. *European Law Open*, 1(4), 781-807; Alessandrini, D., et al. (2022). The Dream of Formality: Racialization Otherwise and International Economic Law. *Journal of International Economic Law*, 25(2), 207-223.

⁶³ Tzouvala, N. (2022). International Law and (the Critique of) Political Economy. *The South Atlantic Quarterly*, 121(2), 297-320.

attention to the deeper history of precarity,⁶⁴ they do not appear to go further to reflect on the implications of this history for the work that the concept of precarity does in the world.

For the most part, precarity is described within the dominant discourse as an aberration that is of recent origin, while some highlight the distinctiveness of precarity today by pointing to recent socio-economic transformations. Additionally, some of the more sociologically attuned literatures within this discourse describes how precarity is differentially produced along various axes such as gender, citizenship and race. However, much of this body of literature appears to miss going further to ask deeper questions of how and why a narrative of precarity that generally emanates from the shared temporality of neoliberalism has resulted in differentiations along such axes. Unfortunately, description and causation of differentiation appear to be conflated.

Indeed, prominent sociologist Arne Kalleberg, who had played a key role in popularizing the concept of precarity, highlighted nearly a decade after his initial seminal work that ‘our ability to understand the phenomenon has remained limited’ because (amongst other things) ‘much of the literature has made surprisingly little reference to the existence of longstanding inequalities based on class, gender, or race’.⁶⁵ He further highlights how scholars appear to have ‘forgotten that access to the “standard work arrangement” was largely restricted to Whites and to men’, and concludes that ‘the precarization of work itself is sure to have disparate effects, reflecting the divergent labour market positions that workers have historically held’.⁶⁶ Accordingly, he foregrounds how ‘much attention has been devoted to the onset of precarious work among once-privileged groups’, which has resulted in ‘the relations among gender, race and precarity... remain[ing] shrouded in ambiguity’.⁶⁷ In response to this gap, he calls for more attention to be paid to ‘the way in which social inequalities impinge on the reconfiguration of employment systems’.⁶⁸

⁶⁴ Castel, R. (Ed.). (2017). *From manual workers to wage laborers: Transformation of the social question*. Routledge; Lorey, I. (2015). *State of insecurity: Government of the precarious*. Verso Books.

⁶⁵ Kalleberg, A. L., & Vallas, S. P. (2017). Probing precarious work: Theory, research, and politics. In Kalleberg, A. L., & Vallas, S. P. (Eds.). *Precarious work (Vol. 31)* (pp. 1-30). Emerald Publishing Limited, at p. 6.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

(4) *Critical Perspectives on Precarious Work*

Following from these limitations of the dominant discourse of precarity, I connect the discourse of the ILO on precarious work to a rich body of literature within a wide range of critical writings pertaining in substance, if not in form, to the concepts of precarity and precarious work. This body of work comprises a wide range of literatures, from a range of disciplines such as labour history, critical geography, critical politics, anthropology, social theory and sociology. I have chosen this range of literatures because, where possible, I seek to combine a theoretical analysis of precarity with an attention to temporality (history) and spatiality (the global South). By no means is this study meant to be an exhaustive selection of such literatures, but it is meant to be a step in the right direction.

The literatures that have been selected usually share a common (explicit or implicit) attunement to critical theoretical approaches (with a focus on Marxist, Postcolonial and Feminist theoretical approaches). Broadly speaking, these literatures adopt critical perspectives on the dominant discourse of precarity and seek to redescribe the narrative of precarity (whether explicitly or implicitly). Whilst these critical literatures do not negate the concept of precarious work as a feature of modern life, they are significant for their challenge to assumptions within mainstream accounts about the nature of precarious work and about its history, scope and implications. For example, Marxist approaches draw attention to how the phenomenon of precarity has a long history, with *all* workers being precarious. Postcolonial approaches point to the endemic nature of precarity within the global South, where ‘standard work’ had never been the norm. Feminist approaches point to how women’s work has not even been valued as work, let alone been put into pejorative relation with the ideal of ‘standard work’, such that women’s work has always been precarious.

Drawing on this literature, I critically re-describe the work of the ILO in its formulations of precarity, whilst foregrounding the *international legal dimension* of precarity that may have been neglected in these critical literatures. Additionally, I seek to reflect on the implications of these narratives for the conceptualisation of precarity, and gesture to the material impact of such a conceptualisation within the international legal sphere. To clarify, I do not seek to provide a historiography of the ILO in relation to its treatment of the concept of precarious work. This study is pitched at a theoretical and conceptual level and is intended to be read in a more critical register.

E. Chapter Outline

In this section, I set out a proposed roadmap to the chapters in this dissertation.

Chapter II: The Idea of Precarity

In this chapter, I examine the dominant discourse underpinning the concept of precarity and tell the story of how we (in the English-speaking world) came to talk about precarity in the 21st century. In doing so, I hope to provide a broad map of the key issues that will be discussed in this dissertation. First starting with the etymology of the word ‘precarity’ within the English language, which has been derived from the term ‘precariousness’, I draw on the work of philosopher and political theorist Judith Butler to provide an important conceptual distinction between an ontological condition of precariousness, and the politically induced condition of differentiated precarity. I proceed to connect her work to analyses of precarity as a labour condition and ask how this development came about, and trace the rise of precarity as a concept within scholarly literature and European social movements.

Having understood some of the reasons underlying the rise of precarity as a concept, I set out a brief overview of how the concept of precarity has been understood within various academic fields, including the scientific literature (psychology and public health) and social scientific literature (including sociology, anthropology, cultural studies, industrial relations and international relations). This section aims to provide a sense of the diversity of ways in which precarity has been conceptualised within a range of disciplines, and the vibrant burgeoning nature of this area of scholarship. I then proceed to investigate more specific dimensions of how the concept of precarity has been addressed in the literature, both as a ubiquitous yet differentiated phenomenon that is observed within the world, and as an analytical construct. Lastly, I draw attention to a dominant discourse underlying the production of precarity and detail a range of factors that are understood to causally give rise to precarity, largely rooted in neoliberal flexibilization from the 1970s onwards and larger systemic changes in production systems that were accelerated through the twin processes of globalisation and financialization.

Chapter III: International Law and Precarity

In this chapter, I shift focus to the international legal arena to examine what law has had to say about precarity, with a specific look at the ILO. In examining the ILO's institutional discourse, I seek to excavate the definitions, features, significance, causes of and proposed solutions to precarious work as described by the ILO. This is an exercise oriented towards grasping how the concept of precarious work has been understood within international legal discourse, the significance of this concept, and how international law proposes to respond to precarity. Thereafter, I aim to draw out and problematise the implicit theoretical assumptions contained within this discourse, and to understand international law's own relationship with precarious work. It is written as a prelude to a conceptual analysis of what precarious work has been understood as and the problems encountered because of such an understanding, thereby inviting an examination of the consequences of such an epistemic framing by international law.

The chapter proceeds in three parts. The first section 'The Problem of Precarity' deals with efforts to define and conceptualise precarious work within the ILO's institutional discourse. Whilst there is a broad range of materials referencing 'precarious work', I will only draw on a smaller set of materials attempting to define and demarcate the boundaries of precarious work as an analytical construct. I examine how international law conceptualizes precarity as involving a range of legal elements including time (such as part-time or casual work), status of employment (including permanent, temporary or informal work), earnings (largely related to low insecure wages), regulatory protections including social security benefits, immigration status, social location and context, and the more controversial subjective element of precarity. In doing so, I show how precarity is posed in antithetical opposition to the norm of 'standard work'. The second section 'Situating the Subjects of Precarity' offers an account of how the international legal sphere understands the material reality of precarious work and its wider significance, in terms of the perceived subjects of precarity. Specifically, I draw attention to the conflation between precarious employment and informal employment (predominantly found within the global South), with the concept of precarity being used to justify transitions from informality to formality. The last section 'Responding to Precarity' pertains to international legal responses to precarity, regarding its perceived significance of precarity as a problem, contestation over appropriate regulatory responses, and related criticisms within existing scholarship.

Chapter IV: The Relationality of Precarity

In this chapter, I seek to more closely examine three assumptions within the international legal discourse, regarding the portrayal of precarious work as a deviation from ‘standard work’ as a norm (what I characterize as the ‘exceptional nature of precarity’), the extension of the conceptualisation of precarious work to encompass informal work within the global South (what I call the ‘expansive concept of precarity’), and the relationship between international law and precarity.

In the first section, I address the first assumption of the *exceptional* nature of precarity. I deconstruct the term ‘standard work’, by pointing to wide-ranging exclusions from the norm of ‘standard work’ (both within the global North and South), and the ways in which the historic norm of ‘standard work’ itself was built on unequal relations, thereby calling into question the depoliticised portrayal of ‘standard work’ as an independent construct. In doing so, I seek to foreground these exclusions from the dominant discourse of precarity as involving a reversal of the historic normality of ‘standard work’, due to flexibilization, as undermining this larger narrative of precarity itself as being partial. More specifically, I seek to foreground the historic contingency of international labour frameworks in creating an idea of normality regarding ‘standard work’.

In the second section, I address the second assumption within the expansive concept of precarity; that the conceptualisation of precarious work, conceived as a deviation from the norm of ‘standard work’, can be extended towards analysing and remedying informal employment within developing countries where ‘standard work’ had never been the norm. I problematize how informality is redescribed as precarity within the international legal arena and analyze the conceptual slippage between these two concepts with a view to their material (and not only discursive) implications. Firstly, I connect the discourse on precarity to a more long-standing discourse on informality within the ILO. Instead of a concern with the precarious, unstable nature of work within the global South, concerns about informality arose out of a rather different set of concerns regarding productive employment and unemployment. Thereafter, I proceed to problematize the contemporary governance strategy of the ILO of formalisation being proposed as a solution to informality. I draw on critical literatures to bring to light how processes of precarization are being obscured within formalization agendas for the global South.

In response to the third assumption regarding law's unproblematic relationship with precarity, the last section seeks to reinscribe precarious work within a relational/causational context of the underlying process of informalisation. Framed in this light, I hope to unsettle some of the assumptions within international legal discourse that the precarious nature of work within the global South is largely due to informality and a lack of compliance with the law, which I suggest is an incomplete explanation that occludes deeper systemic logics at play in the production of precarity globally.

Chapter V: Gendering Precarity

This chapter turns to the analysis of precarity through the lens of gender. In the first part, I draw on a range of feminist literatures to understand how and why precarity is significant through the lens of gender. This body of literature illuminates how precarious work is, in some respects, a gendered phenomenon, with women's working conditions always having been precarious. Indeed, the fact that the very notion of 'flexibilization' is associated with the 'feminization' of working conditions captures this gendered reality. This section will comprise of three parts: the gendered nature of precarious employment, the significance of gendered unwaged work in relation to precarious waged work, and the question of which women are more affected by precarious employment. Rather than broadly generalizing about gender-specific effects across broad temporal and spatial scales, I have the more modest ambition of providing analytical categories and illustrations to illuminate the various ways in which women may be shown to be differently affected by precarity. In doing so, I seek to further clarify the underlying theoretical contestation regarding the relative significance of these claims within different strands of feminism.

In the second part, I excavate the relationship between international law, precarity and gender. Specifically, I highlight the historic role of international law in producing precarity as a gendered phenomenon within the international legal construct of 'standard work', and the ways in which it has excluded women's work from its definitions of what is considered to be 'work'. This points to the underlying narrative of precarity as being juxtaposed to the normality of 'standard' work, as being a gendered narrative. Nonetheless, I track the ILO's increasing recognition of women's work as being of value, through its increased attention to care work (including unpaid care work and paid domestic work) which appears to reflect the potential

mutability of gender relations. I connect this section to the earlier theoretical section (regarding the gendered nature of precarious work) and proceed to ask questions about which women are left less protected by the ILO's attention to care work.

Chapter VI: Retelling the Tale of Precarity

This chapter develops the focus on precarity to tell a much larger story about the *international* regulation of 'free labour'. What this chapter offers is a different framing of the international regulation of labour, by clarifying the epistemic implications of the discourse of the ILO for the international legal order. It seeks to do so by providing a broader theoretical analysis of the function of international labour regulation, to help us comprehend more critically the role that international law plays through the means of this body of law.

In this first section, I tell the story of how a key purpose of international law had been the shaping and production of a *global* workforce that met the demands of capitalist enterprise. While there are many possible angles to such a story, I focus specifically on the role of international law in producing an epistemic framing of what work counts as 'labour', and the conditions within which such labour could be perceived as 'free'. I unsettle these dichotomous concepts of 'unfree' and 'free' labour and proceed to offer an alternative account of the relationality of precarity. I foreground certain dimensions of the systemic logics of precarization as a process that is omitted from the conventional narrative of precarity as 'flexibilization' and related regulatory responses underpinned by this narrative.

In the last section, I seek to reflect on the theoretical implications of this story by offering an alternative framing that problematizes the relationship between law and precarity. In doing so, I foreground the systemic logics of precarization that have been invisibilized in the international legal discourse of precarity. This helps us see the presupposed regulatory role of international law as merely responding to precarity in a different way. Specifically, I suggest that precarity is not just a problem to be solved through the international regulation of labour, but a mode of governance in itself.

Chapter VII: Conclusion

I tie the threads of my dissertation together, regarding the relationship between precarity and international law, and restate my significant original contribution to knowledge. I show how I have raised an alternative perspective to critical scholarship focusing on the ILO as an ineffective or weak organization, by pointing to its discursive role in producing an understanding of what constitutes ‘standard work’ and ‘precarious’ work, and the material effects of these discursive measures as set out in proposed regulatory responses. I further show how I have problematized the assumptions inherent within the international legal discourse on precarity, what has been obscured within its responses to precarity, and how precarity has come to constitute a mode of governance in itself.

THE IDEA OF PRECARIETY

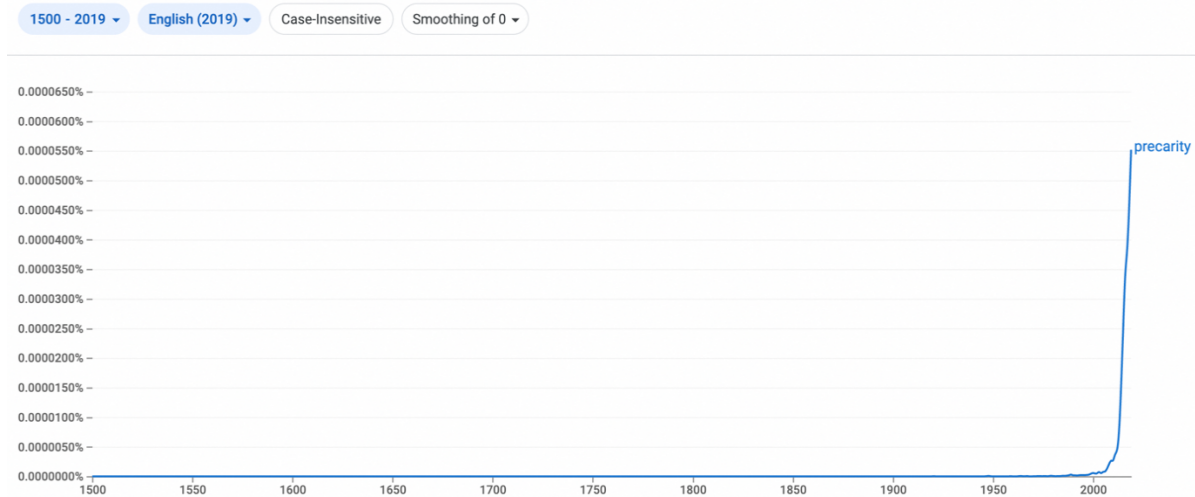


Figure 1

This chapter tells the story of how we (in the English-speaking world) came to talk about precarity in the 21st century. As this diagram taken from the Ngram Viewer by Google Books⁶⁹ in Figure 1 shows, it appears that there has been an upsurge of interest in talking about ‘precarity’ occurring only in the last decade or so. Starting with an understanding of precarity as a word in the English language, the chapter proceeds to explore the rise of precarity as a significant concept within the social sciences, and the subsequent development and refinement of the concept of precarity in recent decades.

A. Inventing Precarity

(1) *Precarity and Precariousness*

Precarity is defined in the Oxford English Dictionary (OED) as ‘precariousness or instability’ and is noted to be used especially in the context of ‘a state of persistent uncertainty or insecurity with regard to employment, income and living standards.’⁷⁰ Its etymology is noted as ‘probably’ after the French term ‘precarité’ (1823), and is a word therefore used in the

⁶⁹ According to Google Books, the selection of English (2019) as the corpus refers to ‘books predominantly in the English language published in any country’.

⁷⁰ Dictionary, O. E. (2009). *Oxford English Dictionary*. Oxford University Press.

pejorative sense to describe flux/risk and threats of impermanence (as reflected in terms such as instability, uncertainty or insecurity) to our means of earning a living, our earnings, and the standards of our living. Examples are hence given in the OED of precarity being described by the *Catholic Worker* in 1952 as ‘an essential element of poverty’ and more recently of Ali Madanipour’s observation in his book *Cities in Time* released in 2017 that the ‘ultimate expression’ of precarity is that of homelessness.

The word precarity is in fact a derivation from the word ‘precarious’ which has existed in the English language for some time now. The modern meaning of the word ‘precarious’⁷¹ is to describe physical instability, in that something is unsound or unsafe (such as a rickety bridge or a precariously balanced chair) or may be at risk of falling or collapse (such as a car precariously balanced on a precipice, or a person balanced in a precarious way and almost toppling over).⁷² Another popular usage of the term today pertains to dependence on ‘chance or circumstance, uncertainty, the liability to fail, exposure to risk, hazardousness, insecurity and instability.’ A range of examples of precariousness are given in the OED, ranging from Empires (1700)⁷³ to the ‘Exercise of our Established Religion’ (1687), the health of Queen Elizabeth-class battleships (1914), the state of life of one with infirm health (1838) and that of a fisherman who thereby ‘becomes hardy, resolute and self-reliant’ (1894). One might think of the examples pertaining to this second usage as metaphors deriving from the sense of physical instability.⁷⁴ However, the word ‘precarious’ has rather different origins.



Figure 2

⁷¹ Gilliver, P. (n.d.). Precarious. *Oxford English Dictionary*. <https://public.oed.com/blog/word-stories-precious/>

⁷² Dictionary, O. E. (2009). *Oxford English Dictionary*. Oxford University Press.

⁷³ *Ibid.* The year in which the term ‘precarious’ was used in this specific sense, as reflected in the OED, has been indicated in brackets.

⁷⁴ *Ibid.*

The etymology of ‘precarious’ dates back much earlier than precarity and has been placed in the common Latin root ‘precarius’ (given as a favour, or suppliant) or ‘prex’ (prayer).⁷⁵ Early usage of the term in the 1600s referred to a right being held ‘by the favour of’ and ‘at the pleasure’ of another person, with this right therefore being ‘vulnerable to the will or decision of others.’ This usage appears to be in line with the Latin root of prayer, in that it describes the conditions of someone who has to earnestly request and obtain through prayer or favour, instead of being entitled to something. Precariousness in this sense is hence situated within implicit relations of dependence and subjugation. Indeed, Samuel Johnson in his publication of one of the most influential English dictionaries of his time, described ‘precarious’ in the following terms: “[n]o word is more unskilfully used than this with its derivatives. It is used for uncertain in all senses; but it only means uncertain, as dependent on others.”⁷⁶ However, the usage of the word ‘precarious’ in this specific sense is now considered rare, except insofar as it is used to describe tenancies.⁷⁷ Consequently, in the definitions of ‘precarious’ in its modern context, there appears to be a divorcing of insecurity and instability from its relational and causal context (a context inscribed within the etymology of ‘precarious’), and a movement towards a more neutral descriptive sense of an ahistorical state of being precarious.

As Comparative Studies scholar Philip Armstrong highlights, these divergent etymological associations for the words ‘precarity’ and ‘precarious’ result in a few conceptual challenges.⁷⁸ Firstly, the modern concept of precarity emerged from the common sense of precarious as being dependent on chance or caprice, and therefore resulting in associations of risk, uncertainty and transience. However, precarity is not simply situated within conditions of risk and chance, for it is ‘inscribed in a relation of dependency, a dependency actively produced by that very relation’.⁷⁹ The second would be that precarity does not suggest interiority, such as the internal psychology or circumstances of a solitary individual. Instead, ‘relationality – an essential relation of dependency – is at the heart of precarity’.⁸⁰ Flowing from this idea of precarity being an effect of dependency and relationality, questions arise of whether and if so

⁷⁵ *Ibid.*

⁷⁶ Johnson, S. (1877). *A Dictionary of the English Language: In which the Words are Deduced from Their Originals; and Illustrated in Their Different Significations by Examples from the Best Writers. To which are Prefixed, a History of the Language, and an English Grammar.* Reeves and Turner.

⁷⁷ Gilliver, P. (n.d.). Precarious. *Oxford English Dictionary*. <https://public.oed.com/blog/word-stories-precarius/>

⁷⁸ Armstrong, P. (2015). Precarity’s Prayers. *Minnesota Review*, 5, 180.

⁷⁹ *Ibid.*, at p. 181.

⁸⁰ *Ibid.*, at p. 181.

how precarity may be experienced on an individual or collective level. The third challenge is that relations of dependence result in the possibility that what has been offered or given, in response to a request or entreaty, may very well be revoked or withdrawn at the will of another. Consequently, Armstrong suggests that precarity necessitates an examination of the power relations underlying these relations of dependence, and the logics at play of ‘debt, obligation, responsibility and liability’⁸¹ in justifying the dynamics of such relations.

Having put the term ‘precarious’ into relation with ‘precarity’, the question remains of whether there is a meaningful *conceptual* distinction to be made between ‘precarity’ and ‘precariousness.’ The writings in the new millennium of the philosopher and political theorist Judith Butler, which are seen as a ‘cornerstone’ for the growing body of literature on precarity,⁸² are of relevance here.⁸³ In their writings, Butler first conceptualises the ontological condition of ‘precariousness’. They designate it as ‘a more or less existential conception’⁸⁴ arising as a result of being born into a body that was vulnerable,⁸⁵ therefore susceptible to injury, violence and death. In other words, precariousness is the price of mortal life. Thereafter, Butler seeks to distinguish the concept of ‘precarity’ from the aforementioned ontological dimension of precariousness. They define precarity as ‘the *politically induced* condition in which certain populations suffer from failing social and economic networks... becoming *differentially* exposed to injury, violence and death’ [italicised for emphasis].⁸⁶ In doing so, Butler highlights that the distinct nature of precarity ‘only makes sense’⁸⁷ if we have the ability to identify bodily dependency and needs, vulnerability to injury and destruction, and ‘forms of social trust’ that enable us to live as being ‘clearly political issues’. In doing so, they make the argument that *precarity* is largely ‘dependent upon’ the ways in which economic and social relationships are organised, the extent to which sustaining infrastructures are present, and the nature of social and political institutions.

⁸¹ *Ibid.* at p. 183.

⁸² Kasmir, S. (2018). Precarity. *The Cambridge Encyclopedia of Anthropology*. <https://www.anthroencyclopedia.com/entry/precarity>

⁸³ See generally: Carver, T., & Chambers, S. A. (Eds.). (2008). *Judith Butler's precarious politics: critical encounters*. Routledge; Puar, J. (Ed.). (2012). Precarity Talk: A Virtual Roundtable with Lauren Berlant, Judith Butler, Bojana Cvejić, Isabell Lorey, Jasbir Puar, and Ana Vujanović. *TDR/The Drama Review*, 56(4), 163-177; Watson, J. (2012). Butler's biopolitics: Precarious community. *Theory & Event*, 15(2).

⁸⁴ Butler, J. (2016). *Frames of War: When is life grievable?* Verso Books, at p. 3.

⁸⁵ Butler, J. (2004). *Precarious Life: The Powers of Mourning and Violence*. London: Verso [Butler].

⁸⁶ Butler, J. (2009). Performativity, Precarity and Sexual Politics. *AIBR. Revista de Antropología Iberoamericana*, 4(3), at p. 25.

⁸⁷ Butler, J. (2012). Precarious life, vulnerability, and the ethics of cohabitation. *The Journal of Speculative Philosophy*, 26(2), 134-151.

In examining this differential distribution of corporeal vulnerability, Butler turns to the question of global violence and the differential infliction of violence on bodies. They share their preoccupation with questions about ‘who counts as human’, ‘whose lives count as lives’, and ‘what makes for a grievable life’.⁸⁸ This allocation of grievability therefore produces ‘exclusionary conceptions of who is normatively human’: which subjects are entitled to a ‘livable life and a grievable death’?⁸⁹ They further contend that corporeal vulnerability cannot be willed away, and ask us to think about ‘what politics might be implied by staying with the thought of corporeal vulnerability itself’.⁹⁰ A denial of this vulnerability would otherwise risk resulting in an ‘institutionalised *fantasy* of mastery’ (italicized for emphasis), that would encourage the use of violence and war.⁹¹

Accordingly, by placing emphasis on unequal distribution, Butler moves beyond a purely ontological understanding of *precariousness* universally bound up within the human condition, towards a more political understanding of *precarity*. In *Frames of War*, they clarify that a reference to ontology does not refer to a description of ‘fundamental structures of being’ that are distinct from socio-political organisation⁹² (as in the discipline of philosophy). Instead, they retain a Foucauldian lens in conceptualising the ontology of precarity as having developed historically within a socio-political context ‘in order to maximize precariousness for some and minimize precariousness for others’.⁹³ In *Precarious Life*, Butler further argues that articulating the existential claim of precariousness in its specificity results in this claim ceasing to be existential. Furthermore, since this claim ‘must be articulated’ with specificity, it was never existential to begin with. They therefore contend that precarity is ‘indissociable’ from the dimension of politics that is concerned with the ‘organisation and protection of bodily needs’.⁹⁴ Consequently, precarity ‘exposes our sociality’ and ‘the fragile and necessary dimensions of our interdependency’.⁹⁵

⁸⁸ Butler, at p. 20.

⁸⁹ *Ibid.*, at Preface xv.

⁹⁰ *Ibid.*, at p. 29.

⁹¹ *Ibid.* at p. 29.

⁹² Butler, J. (2016). *Frames of war: When is life grievable?* Verso Books, at p. 23.

⁹³ *Ibid.*

⁹⁴ Butler, at p. 148.

⁹⁵ *Ibid.*

Political theorist Kathleen Millar suggests that Butler's theorising has since inspired two broad areas of scholarship in relation to precarity.⁹⁶ The first line of thought is seen to bridge 'the notion of ontological precariousness with an analysis of precarity as a labo[u]r condition',⁹⁷ with theories of precarity being grounded in the analysis of political economy and particular relations of work that result in insecurity and instability for the worker.⁹⁸ Some of this scholarship seeks to further illuminate how these material conditions 'constitute affect, subjectivity, psychological interiority, and lived experience'.⁹⁹ Seen in this light, precarity can be described as 'both a socio-economic condition and an ontological experience',¹⁰⁰ which captures the inextricable relationship between precarious labour and precarious life. The second line of thought entails precarity being associated in synonymous terms with vulnerability or insecurity. For instance, anthropologist Anna Tsing defines precarity as 'life without the promise of stability'.¹⁰¹ Whilst these studies draw attention to the instabilities within our present conditions, Millar suggests that this line of thought runs the 'risk of losing precarity's analytical purchase',¹⁰² which she suggests is rooted in the earlier mentioned analysis of specific labour regimes. Conflating precarity with precariousness, insecurity, or vulnerability would result in us being likely to 'turn up precarity everywhere we look'.¹⁰³

(2) *The Rise of Precarity*

Flowing from the aforementioned first use of precarity, wherein the idea of ontological precariousness was bridged with analyses of precarity as a labour condition, the question arises of how the latter, precarity being singularly analysed as a labour condition, came about in the first place. Political economist Joseph Choonara suggests that the answer to this question (regarding the roots of precarity as a concept pertaining to labour conditions) lies within French sociological discourse in the 1970s, thereafter percolating through Italian autonomist networks, and subsequently resurfacing in the writings of thinkers within the English-speaking world

⁹⁶ Millar, K. M. (2017). Toward a critical politics of precarity. *Sociology compass*, 11(6), e12483 [Millar].

⁹⁷ *Ibid.*, p. 5.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Tsing, A. L. (2015). *The mushroom at the end of the world: On the possibility of life in capitalist ruins*. Princeton University Press, at p. 2.

¹⁰² Millar, p. 4.

¹⁰³ *Ibid.*, p. 5.

such as Arne Kalleberg and Guy Standing.¹⁰⁴ The following section will focus on the rise of precarity within English discourse, to provide some contextual explanation for the N-gram chart at the beginning of this chapter indicating an upsurge in interest in the concept of precarity within the last decade.

In 2008, Kalleberg gave his presidential address to the American Sociological Association¹⁰⁵ titled 'Precarious Work, Insecure Workers: Employment Relations in Transition'.¹⁰⁶ Subsequently released in the *American Sociological Review* as a scholarly article, this continues to be Kalleberg's most-cited article and remains a hugely influential conceptualization of precarious employment. Whilst he acknowledged that precarious work was 'not necessarily new or novel' to the current era, noting that it has occurred since paid work became the main means of 'sustenance',¹⁰⁷ Kalleberg drew attention in this presidential address to the rise in and 'obviousness' of precarious work since the 1970s. He detailed the far-reaching consequences of such insecurity, and therefore asserted that it was important that we understood the 'new workplace arrangements' that were giving rise to precarity. His address largely concentrated on employment (either in the form of paid work if one was a worker, or profit if one was self-employed), whilst acknowledging that this was a 'limited view' by giving the example of household activities as being one of many unpaid activities that created value. Furthermore, since Kalleberg's address focused largely on 'industrial countries, particularly the United States', he sought to foreground the dimensions of precarity within the 'formal economy'.¹⁰⁸

Briefly, Kalleberg's popular definition of 'precarious work' is as follows: 'employment that is uncertain, unpredictable and risky from the point of view of the worker'.¹⁰⁹ In addition,

¹⁰⁴ Choonara, J. (2020). The Precarious Concept of Precarity. *Review of Radical Political Economics*, 52(3), 427-446; For an examination of the specific way in which this term has been conceptualised in France since the 1970s, see: Barbier, J.C. (2002). A survey of the use of the term *précarité* in French economics and sociology. *Documents de travail CEE, No. 19*. See also: Bourdieu, P. 1999. *Job insecurity is everywhere now. In acts of resistance: Against the tyranny of the market*. New York: New Press.

¹⁰⁵ Kalleberg served as President of the American Sociological Association from 2007 to 2008.

¹⁰⁶ Kalleberg, A. L. (2009). Precarious work, insecure workers: Employment relations in transition. *American sociological review*, 74(1), 1-22 [Kalleberg].

¹⁰⁷ *Ibid.*, p. 2.

¹⁰⁸ Kalleberg, p. 2.

¹⁰⁹ *Ibid.*

he further relied on a work by Guy Standing,¹¹⁰ to define (in a footnote) ‘employment precarity’ in the following terms:

result[ing] when people lose their jobs or fear losing their jobs, when they lack alternative employment opportunities in the labour market, and when workers experience diminished opportunities to obtain and maintain particular skills. Other aspects of employment precarity are either determinants or consequences of these basic forms of uncertainty, including income precarity, work insecurity (unsafe work), and representation precarity (unavailability of collective voice).

Kalleberg highlights the ‘distinctiveness’ of precarious work today, which is explicitly drawn in contrast to the pre-World War II period. In drawing this distinction, he acknowledges that the interim period (or interregnum period, as he calls it) of the postwar period till the mid-1970s was ‘unusual’ due to its ‘sustained growth and stability’, thereby implying that precarious work was less of an issue during that period.¹¹¹ He also briefly acknowledges that precarious work is ‘not necessarily new or novel to the current era’ for it ‘has existed since the launch of paid employment as a primary source of sustenance’ and cites in a footnote the work of classical social thinkers Karl Marx, Max Weber and Émile Durkheim as seeking to ‘explain the consequences of the precarity created by the rapid social change associated with the emergence of the market economy in the 19th century’.¹¹² To demonstrate this distinctiveness of precarious work, he provides an empirical account of the growth of precarious work in the United States since the 1970s and sets out a number of contemporary developments (such as the rise of the services industry, globalization, and improvements in technology and communications) explaining the growth of precarity.¹¹³

Following Kalleberg’s address, the earlier mentioned Guy Standing (an ex-official of the International Labour Organisation (‘ILO’)) published *The Precariat: The New Dangerous Class* in 2011.¹¹⁴ Today, Standing’s book is widely acknowledged as being hugely influential in expanding understandings of precarity, and there is a growing body of literature referring to the ‘precariat’.¹¹⁵ In his book, he sought to explain what the precariat is, why this group is

¹¹⁰ This definition was derived from Standing, G. (1999). *Global Labour Flexibility: Seeking Distributive Justice*. Palgrave, and the work of Guy Standing will be elaborated upon in the next paragraphs.

¹¹¹ Kalleberg, pp. 4-5.

¹¹² *Ibid.*

¹¹³ These reasons will be further explored below in Section B(3) ‘The Production of Precarity’.

¹¹⁴ Standing, G. (2011). *The Precariat: The New Dangerous Class*. Bloomsbury Academic [Standing], at p. 8.

¹¹⁵ Lewis, H., et al. (2015). Hyper-precarious lives: Migrants, work and forced labour in the Global North. *Progress in Human Geography*, 39(5), 580-600; Allvin, M., et al. (2011). *Work without boundaries:*

growing, who is entering it, why we should be concerned about its growth, and what the consequences of this development are. Standing described the people subject to precarity as ‘a new group in the world’ and as ‘a class-in-the-making’: the ‘precariat’.¹¹⁶ The neologism ‘precariat’ has been described to be a combination of the terms ‘precarious’ and ‘proletariat’, with the latter a nod to Marxist understandings of the wretched conditions of working class existence. However, the precariat was deliberately distinguished from the what he defined as working class.¹¹⁷ He characterised the latter as having ‘long-term, stable, fixed-hour jobs with established routes of advancement’, ‘subject to unionisation and collective agreements’ and having job titles and local employers in a familiar setting.¹¹⁸ However, many within the precariat would not know who their employer was or how many fellow employees they had, and would not enjoy the familiar trappings of the middle-class such as a stable or predictable salary and related benefits. Standing further claimed that the status of ‘informal’ that would be used by development economists and anthropologists, to describe ‘more and more people, not just in developing countries’ was not a ‘helpful way’ of describing them and would not enable them to see ‘a common way of living and working’.¹¹⁹ He thereafter asserted that ‘being defined as having a *precarious* existence’¹²⁰ would provide some form of recognition to them. As such, a key significance of Standing’s thought in furthering the concept of precarity was in the definition of a new class, as populated by those within precarious work,¹²¹ and the idea that ‘precarity’ instead of informality¹²² would be more politically salient in forming a common identity for this class.

Consequently, one account of the reasons underlying the rise of precarity as a concept within English discourse in the last decade (2011-2021) could be the now widely cited and influential conceptualisations of precarious work and the *precariat* by Kalleberg and Standing respectively. Indeed, this account is substantiated by the timing of the release of the article by Kalleberg in 2008 and the book by Standing in 2011, just before the emergence of scholarly

Psychological perspectives on the new working life. Wiley-Blackwell; Gest, J. (2016). *The new minority: White working class politics in an age of immigration and inequality*. Oxford University Press.

¹¹⁶ Standing, at p. 7.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, at p. 6.

¹¹⁹ *Ibid.*, at p. 6.

¹²⁰ *Ibid.* at p. 7.

¹²¹ Standing’s ideas regarding the creation of a new class will be elaborated upon in the section below on ‘Conceptualising Precarity’.

¹²² The concept of informality will be briefly expanded upon in the section below titled ‘Demarcating the Concept of Precarity’, and in greater detail in Chapter IV.

interest in precarity as a key concern in the last decade. The N-gram chart set out at the start of this chapter shows that there was a small uptick in interest in precarity after 2008, when Kalleberg gave his presidential address. However, it was only from 2011-2012 that the graph is seen to sharply increase exponentially. As such, it could even be argued that it was in fact the work of Guy Standing that greatly popularised the concept of the precariat, and the understanding of precarity that flowed from that.

Nonetheless, some scholars have suggested that this account depicting the rise of precarity within English discourse can only really be completed by understanding the historical and political context within which the work of Kalleberg and Standing was published. Kalleberg himself has noted that ‘the analytical use of “precarious work” carries with it the baggage of a European social movement’.¹²³ As several scholars have noted, the trending of precarity was underpinned by the pre-existing social movements within Europe against unemployment and social exclusion.¹²⁴ Indeed, the precariat had ‘already named itself’¹²⁵ before Standing released his book in 2011. The neologism ‘precariat’ had previously been adopted by French labour activists in the 1980s, Italian trade unionists and Spanish social movements in the 1990s and global justice movement advocates in the early 2000s.¹²⁶ It may also be connected to mobilisation efforts for irregular migrants in the mid-1990s, such that the connections to migration and self-agency can also be perceived as part of this understanding and political use of the concept.¹²⁷

Subsequently, in perhaps the most popularly known event, the Milano May Day Parade in 2001 resulted in the rise of precarious youth marching in opposition to unions that were perceived as being unresponsive to the defense of their rights.¹²⁸ Taking the form of

¹²³ Kalleberg, A. L., & Hewison, K. (2013). Precarious work and the challenge for Asia. *American Behavioral Scientist*, 57(3), 271-288, at p. 273.

¹²⁴ Casas-Cortés, M. (2014). A genealogy of precarity: A toolbox for rearticulating fragmented social realities in and out of the workplace. *Rethinking Marxism: A Journal of Economics, Culture and Society*, 26(2), 206-226; Armano, E., et al. (Eds.). (2017). *Mapping Precariousness, Labour Insecurity and Uncertain Livelihoods: Subjectivities and Resistance*. Taylor & Francis.

¹²⁵ Foti, A. (2017). *General Theory of the Precariat: Great Recession, Revolution, Reaction*. Institute of Network Cultures, at p. 15.

¹²⁶ Cole, A. (2017). Precarious politics: Anzaldúa’s reparative reworking. *Women’s Studies Quarterly*, 45(3/4), 77-93, at p. 78.

¹²⁷ See, for example, Schierup, C. U., & Jørgensen, M. B. (2016). An introduction to the special issue. Politics of precarity: Migrant conditions, struggles and experiences. *Critical Sociology*, 42(7-8), 947-958.

¹²⁸ Foti, A. (2017). The Precariat for itself: Euro May Day and precarious workers’ movements. In Armano, et al. (Eds.). *Mapping Precariousness, Labour Insecurity and Uncertain Livelihoods: Subjectivities and Resistance* (pp. 149-156). Taylor & Francis, at p. 151.

EuroMayDay, this anarchist-influenced precarity movement spread quickly, ‘becoming increasingly queer and eco-active, concerned with LGBT rights and climate justice’,¹²⁹ and gaining influence within 18 European cities by 2005.¹³⁰ The image of San Precario¹³¹, a newly created subversive icon by activists, was held out as the patron saint of the precarious.¹³² The concerns that were raised about the lack of stable and secure jobs, unaffordable housing and inadequate social welfare provisions, were thereafter accentuated in the wake of the Global Financial Crisis in 2007-08. These concerns now took the form of uprisings against the austerity measures imposed by European governments in response to the financial crisis. Accordingly, on this account, the rise of precarity needs to be properly understood in its historical context, as a concept that was taken up by European social movements for the purposes of political mobilisation.

(3) *The Study of Precarity*

Having understood the reasons underlying the rise of precarity as a concept, this section provides an overview of the exponential increase in the study of precarity in the last decade within various academic fields, and thereafter seeks to ground this increased interest by scholars in an understanding of precarity as a phenomenon in the real world.

The phenomenon of precarity has been examined within an extensive range of academic fields, which will be outlined below.¹³³ This has resulted in a proliferation of numerous perspectives grappling with precarity, as influenced by the respective disciplinary commitments of each academic field, mapping the contours of precarity and highlighting the significance of this concept.

¹²⁹ *Ibid.*

¹³⁰ See also Casas-Cortés, M. (2014). A genealogy of precarity: A toolbox for rearticulating fragmented social realities in and out of the workplace. *Rethinking Marxism: A Journal of Economics, Culture and Society*, 26(2), 206-226.

¹³¹ Mattoni, A., & Doerr, N. (2007). Images within the precarity movement in Italy. *Feminist review*, 87(1), 130-135.

¹³² Vanni Accarigi, I., & Tarì, M. (2005). The life and deeds of San Precario, patron saint of precarious workers and lives. *Fibreculture Journal* <https://five.fibreculturejournal.org/fcj-023-on-the-life-and-deeds-of-san-precario-patron-saint-of-precarious-workers-and-lives/>; van Der Linden, M. (2014). San Precario: A new inspiration for labor historians. *Labor: Studies in Working-Class History of the Americas*, 11(1), 9-21.

¹³³ The suggested literature is meant to be indicative, and not exhaustive.

From a scientific perspective, two major fields capturing the effects of precarity on health are that of psychology and public health studies. Within psychology, scholars have suggested a framework for studying precarious work in all of its inter-related dimensions (and not merely specific aspects such as job insecurity, workplace harassment and discrimination, and temporary work).¹³⁴ Studies have shown that the psychological states arising from precarity are found to result in poorer job attitudes, mental health problems and disrupted identity.¹³⁵ Whilst precarious work is recognised as a multi-dimensional construct with several objective characteristics (such as short-term contracts or low wages), some psychologists have also started to separate ‘objective’ precarious work from the subjective experience of work precarity.¹³⁶ This subjective experience is seen, for example, to be an individual state of powerlessness in relation to the uncertainty and unpredictability of work and the recognition of this dimension within the field of psychology offers the opportunity to people to report their own experiences of such insecure job conditions.

Similarly, within the broader field of public health (within which workplace psychology is also encompassed), an increasing number of studies have drawn attention to the deleterious effects of precarious employment on the health of workers.¹³⁷ A number of mechanisms affecting workers’ health have been identified,¹³⁸ and some studies have noted that the ‘incidence of work-place related injury’ within newly industrialising countries is similar to that in advanced industrial societies during their ‘initial phase of rapid industrialisation’.¹³⁹ Consequently, this growing body of scientific literature has resulted in precarity within the workplace even being framed as an ‘emerging social determinant of health’.¹⁴⁰

¹³⁴ Allan, B. A., et al. (2021). Precarious work in the 21st century: A psychological perspective. *Journal of Vocational Behavior*, 126, 103491.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*; Witte, H. D. (1999). Job insecurity and psychological well-being: Review of the literature and exploration of some unresolved issues. *European Journal of work and Organizational psychology*, 8(2), 155-177.

¹³⁷ Lewchuk, W., et al. (2003). From job strain to employment strain: Health effects of precarious employment. *Just Labour* 3, 23; Giraudo, M., et al. (2016). Occupational injuries in times of labour market flexibility: the different stories of employment-secure and precarious workers. *BMC Public Health*, 16(1), 150.

¹³⁸ Quinlan, M., et al. (2001). The Global Expansion of Precarious Employment, Work Disorganization, and Consequences for Occupational Health: Placing the debate in a comparative historical context. *International Journal of Health Services*, 31(3), 507-536.

¹³⁹ *Ibid.*

¹⁴⁰ Benach, J., et al. (2014). Precarious employment: understanding an emerging social determinant of health. *Annual review of public health*, 35, 229; Schneider, D., & Harknett, K. (2019). Consequences of routine work-schedule instability for worker health and well-being. *American Sociological Review*, 84(1), 82-114.

Within the social sciences, there is a burgeoning literature on precarity, and it is being studied within and across several major disciplines.¹⁴¹ The following writings focus on the specific disciplinary focus of each academic field; a broader understanding of the political economy underlying precarity that has been the subject of intense debate across these fields will be examined in the section below ‘The Production of Precarity’.

Sociologists, presumably responding to Kalleberg’s call (which I earlier touched on) to fill the theoretical vacuum in understanding the mechanisms generating the growth of precarious work, have since generated numerous studies applying sociological analysis to a wide range of dimensions pertaining to precarity.¹⁴² These dimensions¹⁴³ include the organisational contexts of employment relationships (including the growth of temporary work¹⁴⁴ and outsourcing¹⁴⁵) and the future of these relations,¹⁴⁶ the globalised nature of precarity,¹⁴⁷ the ways in which precarious work is experienced and its differential impact across various social classes and groups,¹⁴⁸ the consequences of precarious work for non-work relations, including social relations within the family and personal well-being,¹⁴⁹ and the forms and mechanisms of worker agency being exercised in response to precarity at both the

¹⁴¹ The perspective of scholars of geography and history will be integrated in Sections B(1) and (2) titled ‘The Phenomenon of Precarious Work’ and ‘Demarcating the Concept of Precarity’ respectively. The perspective of legal scholars on precarity will be examined in the next chapter.

¹⁴² For an overview of these responses, see generally Kalleberg, A. L., & Vallas, S. P. (2017). Probing precarious work: Theory, research, and politics. In Kalleberg, A. L., & Vallas, S. P. (Eds.) *Precarious work (Vol. 31)* (pp. 1-30). Emerald Publishing Limited [Kalleberg & Vallas]. A particular piece of scholarship that stands out for its integration of various dimensions of precarity in its analysis is Allison, A. (2014). *Precarious Japan*. Duke University Press.

¹⁴³ Some of these dimensions will be further elaborated upon in Section B below.

¹⁴⁴ This had previously already been a topic of research within sociology, albeit not framed in the discourse of precarity (see Kalleberg & Vallas). While subsequent studies continued building on this line of scholarship, many started employing the lens of precarity as well. See, for example: Elcioglu, E. F. (2010). Producing precarity: The temporary staffing agency in the labor market. *Qualitative Sociology*, 33(2), 117-136.

¹⁴⁵ Lair, C. D. (2012). Outsourcing and the contracting of responsibility. *Sociological Inquiry*, 82(4), 557-577; Arnold, D., & Pickles, J. (2011). Global work, surplus labor, and the precarious economies of the border. *Antipode*, 43(5), 1598-1624.

¹⁴⁶ See generally, Kalleberg & Vallas.

¹⁴⁷ Schierup, C. U., & Jørgensen, M. B. (2016). An introduction to the special issue. Politics of precarity: Migrant conditions, struggles and experiences. *Critical Sociology*, 42(7-8), 947-958; Craig, G., et al. (Eds.). (2015). *Vulnerability, exploitation and migrants: insecure work in a globalised economy*. Springer.

¹⁴⁸ Kalleberg, A. L. (2011). *Good jobs, bad jobs: The rise of polarized and precarious employment systems in the United States, 1970s-2000s*. Russell Sage Foundation; Kalleberg & Vallas at pp. 13-18.

¹⁴⁹ Wilson, S., & Ebert, N. (2013). Precarious work: Economic, sociological and political perspectives. *The Economic and Labour Relations Review*, 24(3), 263-278; Motakef, M. (2019). Recognition and precarity of life arrangement: towards an enlarged understanding of precarious working and living conditions. *Distinktion: Journal of Social Theory*, 20(2), 156-172.

individual and collective level.¹⁵⁰ This work is, in turn, underpinned by two broad strands of thought generally framing sociological approaches towards precarity. The first is that of major sociological theorists such as Ulrich Beck, Zygmunt Bauman, Richard Sennett and Robert Castel who have foregrounded precarity in their conceptualisations of modernity,¹⁵¹ resulting in the development of the view by some theorists that precarious work constitutes a ‘new type of regime that implicitly exercises social and political control over a widening swath of the labour force’.¹⁵² The second is that of economic sociologists who have empirically explored the forces accounting for the accelerated growth of precarious work since the 1990s.¹⁵³

Scholars of the human condition, anthropologists pay close attention to the fragility of life within the contemporary moment and seeks to understand how people comprehend and live with precarity. Within this field especially, scholars draw on the work of Judith Butler and seek to understand precarity in its broader ontological sense, not merely as a social condition.¹⁵⁴ Scholar Simon During draws attention to this ontological dimension most clearly by describing the ‘double condition’ of precarity, as being simultaneously a social condition (resulting in insecurity and potentially poverty) and ‘an ‘anthropological or existential condition’ wherein people are ‘unable to fully ground themselves in the world’ thereby being left vulnerable to anxiety and risk. As a result of this broader understanding of precarity, ethnographic research has been conducted on diverse issues ranging from the kidnapping of a friend within post-invasion Iraq,¹⁵⁵ to the reconfiguration of care within the Chilean credit economy wherein poor families rely on debt to buy themselves time and future possibilities,¹⁵⁶ to life being

¹⁵⁰ Thornley, C., et al. (Eds.). (2010). *Globalization and precarious forms of production and employment: Challenges for workers and unions*. Edward Elgar Publishing.

¹⁵¹ Beck, U. (1992). From industrial society to the risk society: Questions of survival, social structure and ecological enlightenment. *Theory, culture & society*, 9(1), 97-123; Adam, B., et al. (Eds.). (2000). *The risk society and beyond: critical issues for social theory*. Sage; Bauman, Z. (2013). *Liquid modernity*. John Wiley & Sons; Castel, R. (2017). *From manual workers to wage laborers: Transformation of the social question*. Routledge. See generally Kalleberg & Vallas, at pp. 3-6. See also Chapter 2 of Choonara, J. (2019). *Insecurity, Precarious Work and Labour Markets: Challenging the Orthodoxy*. Palgrave Macmillan, for a critical account of this literature.

¹⁵² Kalleberg & Vallas, at p. 4.

¹⁵³ *Ibid.*, at p. 5.

¹⁵⁴ Stewart, K. (2012). Precarity's forms. *Cultural Anthropology*, 27(3), 518-525; Muehlebach, A. (2013). On precariousness and the ethical imagination: the year 2012 in sociocultural anthropology. *American Anthropologist*, 115(2), 297-311. See also Han, C. (2018). Precarity, precariousness, and vulnerability. *Annual Review of Anthropology*, 47, 331, exploring the tension between asserting the commonality of ontological precarity, and ‘the impulse to describe’ the varieties of vulnerabilities experienced by living beings; During, S. (2015). From the Subaltern to the Precariat. *boundary 2*, 42(2), 57-84.

¹⁵⁵ Al-Mohammad, H. (2012). A kidnapping in Basra: The struggles and precariousness of life in postinvasion Iraq. *Cultural Anthropology*, 27(4), 597-614.

¹⁵⁶ Han, C. (2011). Symptoms of another life: time, possibility, and domestic relations in Chile's credit economy. *Cultural Anthropology*, 26(1), 7-32.

experienced by the unemployed and homeless in Romania as one of endless boredom and a wait for death.¹⁵⁷

Cultural studies scholars examine the production of culture arising out of and in response to precarity, and similarly to the field of anthropology also seek to understand precarity in its broader ontological sense.¹⁵⁸ In one memorable study, ‘millennihilism’ – a play on the words ‘millennial’ (commonly referring to the generation born between 1981 and 1996) and ‘nihilism’ (the experience of nothingness, as depicted in philosophy and deriving from the Latin root of ‘nihil’ or ‘nothing’) – is depicted as a form of cultural critique that has arisen in response to an ‘overheating planet, dim political future, crushing economy, and the ever-present avocado toast problem’.¹⁵⁹ Millennihilism takes the specific form of internet ‘gallows humour’, with memes being ‘central to this iteration of nihilism’. Beyond concerns over the ‘security of avocado toast’ (a jab at privileged millennials mocked by older generations as being obsessed with overpriced avocado toast sold in artisanal organic-produce-only cafés), this cultural critique is understood as arising out of the spread of conditions of precarity to hitherto privileged sections of the working class.

Within industrial relations, attention is drawn to the specific nature of precarious work, and the way in which precarity is seen to arise from the nature of the labour contract and that of labour process.¹⁶⁰ In this regard, the general concept of employment relations (representing the dynamic social, economic, psychological and political linkages between individual workers and employers) has been examined more closely.¹⁶¹ Its significance is grounded in it being the main means by which workers obtain rights and benefits associated with work, and labour law

¹⁵⁷ O'Neill, B. (2014). Cast aside: Boredom, downward mobility, and homelessness in post-communist Bucharest. *Cultural Anthropology*, 29(1), 8-31.

¹⁵⁸ Leung, W. F., & Cossu, A. (2019). Digital entrepreneurship in Taiwan and Thailand: Embracing precarity as a personal response to political and economic change. *International Journal of Cultural Studies*, 22(2), 264-280; Malin, B. J., & Chandler, C. (2017). Free to work anxiously: Splintering precarity among drivers for Uber and Lyft. *Communication, Culture & Critique*, 10(2), 382-400; Wilson, J. A., & Yochim, E. C. (2017). *Mothering through precarity*. Duke University Press.

¹⁵⁹ Silvestri, L. E. (2021). Precarity, nihilism, and grace. *International Journal of Cultural Studies*, 24(2), 360-377.

¹⁶⁰ Important contributions to the labour process debate and the organisation of work were initiated by Braverman in the mid-1970s. See: Braverman, H. (1974) *Labor and Monopoly Capital*. Free Press: New York; Spencer, D. A. (2000). Braverman and the contribution of labour process analysis to the critique of capitalist production-Twenty-five years on. *Work, Employment and Society*, 14(2), 223-243; Knights, D., & Willmott, H. (Eds.). (2016) *Labour process theory*. Springer; Gandini, A. (2019). Labour process theory and the gig economy. *Human Relations*, 72(6), 1039-1056.

¹⁶¹ Sociologist Kalleberg has similarly drawn attention to this dimension of employment relations.

and social security. However, employment relations are seen to be complicated by the difference in relative power of employers and employees in controlling tasks, negotiating the conditions of employment and terminating a job. This relational imbalance in bargaining power between employer and employee has been brought to bear on discussions of how precarious workers can successfully negotiate the terms of their working conditions. Industrial relations scholars have therefore sought to explore the possibilities arising out of unionisation of and/or collective bargaining by precarious workers, rather than individual negotiations between a precarious worker and his employer.¹⁶²

Flowing from this politicised understanding of employment relations as understood within the industrial relations field, scholars of politics have also sought to explore the politics of precarity at various scales and from diverse perspectives. Three particular perspectives appear to be prominent. Firstly, on a conceptual level, much work has been done to identify or imagine precarious workers as ‘a new kind of political subject’ with their own forms of collective bargaining tools, although the ‘newness’ of this political subject has been contested.¹⁶³ Secondly, on a global level, the class politics involved in the changing landscape of labour organizing amongst workers in precarious jobs has been subject to scrutiny, with attention paid to both the micro-politics of forging solidarity across various divisions, and the shaping of that micro-politics by its broader historical contexts and regulatory structures.¹⁶⁴ Lastly, in the realm of political theory, scholars are grappling with the implications of precarity for democracy, including in particular the sites and social conditions within which precarity can be contested in an enactment of emancipatory politics.¹⁶⁵

¹⁶² Doellgast, V., et al. (Eds.). (2018). *Reconstructing solidarity: Labour unions, precarious work, and the politics of institutional change in Europe*. Oxford University Press; O’Brady, S. (2021). Fighting precarious work with institutional power: Union inclusion and its limits across spheres of action. *British Journal of Industrial Relations*, 59(4), 1084-1107; Hardy, J. A. (2017). (Re) conceptualising precarity: institutions, structure and agency. *Employee Relations*, 39(3), 263-273; Paret, M. (2016). Politics of Solidarity and Agency in an Age of Precarity. *Global Labour Journal*, 7(2), 174-188.

¹⁶³ Gill, R., & Pratt, A. (2008). Precarity and cultural work in the social factory? Immaterial labour, precariousness and cultural work. *Theory, Culture & Society*, 25(7-8), 1-30.

¹⁶⁴ Chun, J. J., & Agarwala, R. (2016). Global labour politics in informal and precarious jobs. In Edgell, S., Gottfried, H. & Granter, E. *The Sage Handbook of the Sociology of Work and Employment* (pp. 634-650). Sage Publishing; Johnson, M. (Ed.). (2016). *Precariat: labour, work and politics*. Routledge; Shukaitis, S. (2013). Recomposing precarity: Notes on the laboured politics of class composition. *Ephemera theory & politics in organization*, 13(3), 641-658.

¹⁶⁵ Millar, K. M. (2017). Toward a critical politics of precarity. *Sociology Compass*, 11(6), e12483; Apostolidis, P. (2018). *The fight for time: migrant day laborers and the politics of precarity*. Oxford University Press; Schaap, A., et al. (2020). The politics of precarity. *Contemporary Political Theory*, 21, 42.

Looking at state politics played out on a global scale, international relations (IR) scholars Ritu Vij, Elisa Wynne-Hughes and Tahseen Kazi drew attention in 2018 to how the discipline ‘curiously, has yet to offer a sustained engagement with ongoing debates’ despite the ‘ubiquity’ of the concepts of precarity and precarization in the humanities and social sciences.¹⁶⁶ Consequently, they have asked whether precarity offers a ‘vital intervention’ speaking to modes of inclusion and inclusion of ‘embodied subjects in the modern international, that problematise otherwise settled notions of relationality’ within a predominantly state-centric IR. Whilst the study of precarity is hence relatively new in this field, these three IR scholars have set out a framework for attending to precarity on the basis of their disciplinary concerns. Specifically, they suggest rethinking rethinking the ‘master-concept’ within IR of sovereignty, and how one might conceive of solidarity. The questions they posed regarding sovereignty include whether the discourse of precarity disrupts IR’s conflation of sovereignty with state sovereignty as the ‘locus of power and authority within bounded territorial space’, and whether precarity illuminates alternative sites of sovereignty (such as capital and subjects) that are otherwise obscured within IR’s ‘statist’ conceptions of sovereignty. Rethinking international political solidarities involves considerations of whether precarity is merely confined to labour activism within the current neoliberal era,¹⁶⁷ or whether it implies solidarities that transcend the work sphere, and which may be conceived on various ethical grounds (such as humanitarianism or cosmopolitanism). The authors suggest that such discussions lead to questions of how a politics of precarity may be practiced, where such a politics may be located, and how such a politics may be occluded within work relations.

Against this highly varied range of literature and perspectives across so many fields of science and social science that have arisen to understand precarity, this thesis seeks to focus on the precarious nature of work, as an aspect of labour conditions within capitalism. The term ‘precarity’ will henceforth be used interchangeably with ‘precarious work’. In the following sections, I seek to investigate more specifically some key issues about precarity and how they are addressed in the literature: who are affected by precarity and the consequences flowing from this, what the nature of precarious work is (as understood analytically), and how precarity is understood as being produced.

¹⁶⁶ Vij, R., et al. (Eds.). (2021). *Precarity and international relations*. Palgrave Macmillan.

¹⁶⁷ *Ibid*, at p. 5; The idea of neoliberalism will be touched upon in Section B(3) ‘The Production of Precarity’.

B. Conceptualising Precarity

(1) *The Phenomenon of Precarious Work*

Scholars from various fields have developed ways and means of measuring and analysing precarious employment in empirical terms, across a range of different sectors and occupations. Whilst initially studied as a contemporary phenomenon within the Euro-American sphere, precarious work is increasingly acknowledged to be geographically dispersed. Yet, scholars have highlighted that precarity is not a homogenous, universalising construct, and its differential spread could be plotted against various axes such as gender, race, age and citizenship. The following section seeks to describe precarity in the terms just described, by elaborating on *who are affected by precarity* and *the consequences flowing from this* as understood within the literature. Flowing from this material reality, the next section further proceeds to elaborate on the efforts of scholars to demarcate the concept of precarious work analytically.

As elaborated upon earlier in the section ‘The Rise of Precarity’, precarity was initially formulated due to the securitization and increase in contingency of waged work in advanced industrial economies (including North America and Europe). Within this context, precarity is frequently contrasted to what have been termed as ‘Fordist and Keynesian orders’¹⁶⁸ that preceded this phenomenon of precarity. Precarity and precarious work hence are depicted as ‘irregular phenomena’ when set against the norm of a ‘standard employment relation’. This employment relation refers to a ‘normative labour market scenario’¹⁶⁹ that is characterised by employment security, social security benefits provided through a redistributive or welfare state, and the ability of workers to collectively bargain and shape these conditions. Precarity is hence commonly marked out in ‘within advanced capitalist nations’ in terms of such a loss of aspirations for a good life¹⁷⁰ in the form of stable, regular jobs, and the related benefits of a welfare state.¹⁷¹

¹⁶⁸ The meaning of ‘Fordist and Keynesian orders’ will be further explored in Section B(3) titled ‘The Production of Precarity’.

¹⁶⁹ Hussain, M. (2018). Contesting, (Re)producing or Surviving Precarity? Debates on Precarious Work and Informal Labour Reexamined. *International Critical Thought*, 8(1), 105-126.

¹⁷⁰ Berlant, L. (2011). *Cruel Optimism*. Duke University Press.

¹⁷¹ Kalleberg, A. L. (2011). *Good jobs, bad jobs: The rise of polarized and precarious employment systems in the United States, 1970s to 2000s*. New York, NY: Russell Sage Foundation.

Replacing these aspirations, Standing describes the growth of the precariat consisting of people who lack the seven forms of labour-related security that had been part of the industrial citizenship agenda within advanced industrial nations after the Second World War:¹⁷² *labour market security* (sufficient opportunities to earn an income, which is seen to be ‘epitomised by a government commitment to full employment’), *employment security* (protection against arbitrary dismissal, regulations pertaining to termination), *job security* (‘ability to retain a niche in employment’ with ‘barriers to skills dilution’ and ‘opportunities for upward mobility in terms of status and income’), *work security* (health and safety regulations, including limits on working time), *skill reproduction security* (‘opportunity to gain skills’ and ‘employment training’), *income security* (‘assurance of an adequate stable income’, protected through minimum wage legislation, social security and ‘progressive taxation to reduce inequality and supplement low incomes’) and *representation security* (‘collective voice in the labour market’ through trade unions and the right to strike).¹⁷³

The contemporary literature has since developed a broader understanding of precarious workers as being more geographically dispersed¹⁷⁴ and employed in a wide range of occupations. The precariously employed currently engage in diverse work across various industries like extracting palm oil from Malaysian plantations,¹⁷⁵ driving taxis in South China¹⁷⁶ or tuk tuks in Cambodia,¹⁷⁷ foraging for Matsuke (‘the most valuable mushroom on earth’) in abandoned industrial forests in Oregon,¹⁷⁸ building the city in wealthy cities across the world like Qatar¹⁷⁹ and Singapore,¹⁸⁰ professionally playing basketball in Ukraine¹⁸¹ or

¹⁷² Standing, at p. 12.

¹⁷³ *Ibid.*, p. 11.

¹⁷⁴ Ettliger, N. (2007). Precarity unbound. *Alternatives*, 32(3), 319-340.

¹⁷⁵ Pye, O., et al. (2012). Precarious lives: Transnational biographies of migrant oil palm workers. *Asia Pacific Viewpoint*, 53(3), 330-342; Pye, O. (2017). A plantation precariat: Fragmentation and organizing potential in the palm oil global production network. *Development and Change*, 48(5), 942-964.

¹⁷⁶ Choi, S. Y. (2018). Masculinity and precarity: male migrant taxi drivers in South China. *Work, Employment and Society*, 32(3), 493-508.

¹⁷⁷ Jack, M. (2020). The socio-spatial installed base: Ride-hailing applications, parking associations, and precarity in tuk tuk driving in Phnom Penh, Cambodia. *The Information Society*, 36(5), 252-265.

¹⁷⁸ Tsing, A. L. (2015). *The mushroom at the end of the world: On the possibility of life in capitalist ruins*. Princeton University Press.

¹⁷⁹ Deshingkar, P., et al. (2019). Producing ideal Bangladeshi migrants for precarious construction work in Qatar. *Journal of Ethnic and Migration Studies*, 45(14), 2723-2738.

¹⁸⁰ Hamid, W., & Tutt, D. (2019). “Thrown away like a banana leaf”: precarity of labour and precarity of place for Tamil migrant construction workers in Singapore. *Construction Management and Economics*, 37(9), 513-536; Baey, G., & Yeoh, B. S. (2018). “The lottery of my life”: Migration trajectories and the production of precarity among Bangladeshi migrant workers in Singapore’s construction industry. *Asian and Pacific Migration Journal*, 27(3), 249-272.

¹⁸¹ Purdy, L. G., Kohe, G. Z., & Paulauskas, R. (2023). Professional sports work in times of geopolitical crises: experiences in men’s basketball in Ukraine. *Managing Sport and Leisure*, 28(4), 344-359.

football in England,¹⁸² seafaring out at open sea,¹⁸³ reclaiming recyclables from garbage dumps on the outskirts of the Brazilian city Rio de Janeiro,¹⁸⁴ engaging in intellectual work as academics in New Zealand,¹⁸⁵ drayage trucking and working in warehouses in the United States,¹⁸⁶ welcoming tourists in resorts or cruise ships in Seychelles or the Caribbean Aruba,¹⁸⁷ performing and creating art in Wales,¹⁸⁸ sweeping streets in Iran,¹⁸⁹ providing care in the home (including childcare, eldercare and housecleaning)¹⁹⁰ in countries ranging from South Africa¹⁹¹ to Spain,¹⁹² manufacturing cars in India,¹⁹³ creatively working in the film and television industry in Australia,¹⁹⁴ and mining mercury in Camargo, Peñamiller in the state of Querétaro, Mexico.¹⁹⁵ In other words, precarious work is pervasive and ubiquitous in our modern world of work today.

More recently, the global pandemic of coronavirus disease that was first identified in December 2019 (also known as the ‘Covid-19 pandemic’) has shone light on the essential nature of the work that many of those in precarious employment perform for the functioning

¹⁸² Campbell, P. (2020). *Education, Retirement and Career Transitions for ‘Black’ Ex-Professional Footballers: From being idolised to stacking shelves*. Emerald Group Publishing; Roderick, M. (2006). A very precarious profession: Uncertainty in the working lives of professional footballers. *Work, employment and society*, 20(2), 245-265.

¹⁸³ See also: Dacanay, J., & Walters, D. (2011). Protecting precarious workers in the global maritime industry: a case of regulatory failure? *Policy and practice in health and safety*, 9(2), 47-68.

¹⁸⁴ Millar, K. M. (2014). The precarious present: Wageless labor and disrupted life in Rio de Janeiro, Brazil. *Cultural Anthropology*, 29(1), 32-53.

¹⁸⁵ Stringer, R., et al. (2018). ‘My entire career has been fixed term’: Gender and precarious academic employment at a New Zealand university. *New Zealand Sociology*, 33(2), 169-201.

¹⁸⁶ Jaffee, D., & Bensman, D. (2016). Draying and picking: Precarious work and labor action in the logistics sector. *WorkingUSA*, 19(1), 57-79.

¹⁸⁷ Lee, D., et al. (2015). The political economy of precarious work in the tourism industry in small island developing states. *Review of International Political Economy*, 22(1), 194-223.

¹⁸⁸ Mahon, M., et al. (2018). Artists as workers in the rural; precarious livelihoods, sustaining rural futures. *Journal of Rural Studies*, 63, 271.

¹⁸⁹ Hashemi, M. (2020). Dignity in the Time of Precarity. *International Journal of Middle East Studies*, 52(2), 345-348.

¹⁹⁰ McKay, D. (2016). *An archipelago of care: Filipino migrants and global networks*. Indiana University Press.

¹⁹¹ Barchiesi, F. (2011). *Precarious liberation: Workers, the state, and contested social citizenship in postapartheid South Africa*. SUNY Press.

¹⁹² Peterson, E. (2007). The invisible carers: Framing domestic work (ers) in gender equality policies in Spain. *European Journal of Women’s Studies*, 14(3), 265-280.

¹⁹³ Barnes, T. (2018). *Making cars in the New India: Industry, precarity and informality*. Cambridge University Press; Duvisac, S. (2019). Reconstituting the industrial worker: Precarity in the Indian auto sector. *Critical Sociology*, 45(4-5), 533-548.

¹⁹⁴ Nelligan, P. (2015). No Guarantees: Preparing for long-term precarious employment in the Australian film and television industry. *Social Alternatives*, 34(4), 22.

¹⁹⁵ de León-Martínez, L. D., et al. (2021). Analysis of urinary metabolites of polycyclic aromatic hydrocarbons in precarious workers of highly exposed occupational scenarios in Mexico. *Environ Sci Pol Res Int.*, 28(18), 1-12.

of our societies today. Management scholars Crane and Matten claim that Covid-19 has ‘clearly illustrated who should be regarded as the most ‘essential’ stakeholders of business’, and refer to ‘frontline workers in healthcare, food service, delivery and public transportation’ as having been ‘widely recognised as critical for delivering healthcare and keeping the economy going during the pandemic’.¹⁹⁶ Indeed, the United Kingdom’s leading independent human resources publication Personnel Today notes that ‘there is already a re-evaluation of precarious work in the public discourse’.¹⁹⁷ This is evidenced, for instance, in the Clap for Carers campaign in the UK, which involved a public display of clapping during the pandemic to show appreciation for first responders and essential workers,¹⁹⁸ that also became a popular practice in many other countries during the start of the Covid-19 pandemic.¹⁹⁹ This solidarity has been perceived as shared appreciation for the value of otherwise precarious care work.²⁰⁰ Criticisms have been raised that despite being generously applauded, precarious workers have also often been at higher risk of being exposed to Covid-19 and/or not having necessary personal protective equipment,²⁰¹ and remain ‘poorly paid and economically vulnerable’.²⁰² Indeed, it has been predicted that Covid-19 will ‘exacerbate inequalities’ and lead to ‘continued growth in precarious work even amongst ostensibly “essential workers”’.²⁰³

A different way of locating the presence and growth of precarious work, aside from the geographic sense in the physical world, has been identified by paying attention to the ways in which it is mediated via the virtual world. Numerous scholars have turned their attention to the birth of the gig economy, although the novelty of this phenomenon has been the subject of

¹⁹⁶ Crane, A., & Matten, D. (2020). COVID-19 and the future of CSR research. *Journal of Management Studies*, 58(1), 280-284.

¹⁹⁷ McBride, J. & Smith, A. (May 29, 2020). *From ‘forgotten’ to ‘key’ workers: protecting the precariously employed*. Personnel Today. <https://www.personneltoday.com/hr/from-forgotten-to-key-workers-protecting-the-precariously-employed/>

¹⁹⁸ On the contestation of what constitutes ‘essential work’ from a feminist perspective, see: Stevano, S., Ali, R., & Jamieson, M. (2020). Essential for what? A global social reproduction view on the re-organisation of work during the COVID-19 pandemic. *Canadian Journal of Development Studies/Revue canadienne d’études du développement*, 42(1-2), 178-199.

¹⁹⁹ Wood, H., & Skeggs, B. (2020). Clap for carers? From care gratitude to care justice. *European Journal of Cultural Studies*, 23(4), 641-647.

²⁰⁰ *Ibid.*

²⁰¹ Lancet, T. (2020). The plight of essential workers during the COVID-19 pandemic. *The Lancet*, 395, 1587.

²⁰² Lowrey, A. (May 13, 2020). Don’t blame Econ 101 for the Plight of Essential workers. *The Atlantic*. <https://www.theatlantic.com/ideas/archive/2020/05/why-are-americas-most-essential-workers-so-poorly-treated/611575/>; Loustaunau, L., et al. (2021). No Choice but to Be Essential: Expanding Dimensions of Precarity During COVID-19. *Sociological Perspectives*, 64(5), 857-875.

²⁰³ *Ibid.*; See also: Cook, M. L., et al. (2020). Global labour studies in the pandemic: notes for an emerging agenda. *Global Labour Journal*, 11(2), 74-88.

fierce debate.²⁰⁴ Gig work is understood broadly to take two forms. The first entails ‘work-on-demand’ provided through mobile applications (or apps) wherein customers are connected with gig workers via online platforms, for the provision of services such as food delivery (Deliveroo), transport (Uber, Lyft) or homesharing (Airbnb), while the second involves ‘crowdwork’ whereby gig employees provide services through virtual platforms such as Amazon or Fiverr.²⁰⁵ Both forms of gig work involve online platforms electronically mediating employment relations by linking workers virtually to customers and processing payment. Numerous scholars across various disciplines have sought to understand²⁰⁶ and theorise²⁰⁷ the rise of the gig economy. Particular attention has been paid to the implications of the gig economy for employment relations²⁰⁸ and for workers.²⁰⁹ In particular, scholars are divided on whether the short-term nature of the contracts obtained via the gig economy entails precarious work. Some conclude that the gig economy entails ‘ultra-precarious and commodified digitally-enabled forms of labour’,²¹⁰ such that it represents a ‘new frontier of precarious

²⁰⁴ Stanford, J. (2017). The resurgence of gig work: Historical and theoretical perspectives. *The Economic and Labour Relations Review*, 28(3), 382-401; Edgell, S., & Granter, E. (2019). *The sociology of work: Continuity and change in paid and unpaid work*. Sage; Healy, J., et al. (2017). Should we take the gig economy seriously? *Labour & Industry: a journal of the social and economic relations of work*, 27(3), 232-248.

²⁰⁵ Kenney, M., et al. (2020). Employment, work and value creation in the era of digital platforms. In Poutanen, S., et al. (Eds.). *Digital Work and the Platform Economy: Understanding Tasks, Skills and Capabilities in the New Era* (pp. 1-23). Routledge.

²⁰⁶ Vallas, S., & Schor, J. B. (2020). What do platforms do? Understanding the gig economy. *Annual Review of Sociology*, 46(1), 273-294; Kaine, S., & Josseland, E. (2019). The organisation and experience of work in the gig economy. *Journal of Industrial Relations*, 61(4), 479-501; Woodcock, J., & Graham, M. (2019). *The gig economy*. London: Polity Press; De Ruyter, A. et al. (2018). Gig work and the fourth industrial revolution. *Journal of International Affairs*, 72(1), 37-50.

²⁰⁷ Flanagan, F. (2019). Theorising the gig economy and home-based service work. *Journal of Industrial Relations*, 61(1), 57-78; Graham, M., & Anwar, M. (2019). The global gig economy: Towards a planetary labour market? *First Monday*, 24(4); Koutsimpogiorgos, N., et al. (2020). Conceptualizing the Gig Economy and Its Regulatory Problems. *Policy & Internet*, 12(4), 525-545; Gandini, A. (2019). Labour process theory and the gig economy. *Human Relations*, 72(6), 1039-1056.

²⁰⁸ Flanagan, F. (2017). Symposium on work in the ‘gig’ economy: Introduction. *The Economic and Labour Relations Review*, 28(3), 378-381; Nickell, D., et al. (2019). The increasing casualization of the gig economy: Insecure forms of work, precarious employment relationships, and the algorithmic management of labor. *Psychosociological Issues in Human Resource Management*, 7(1), 60-65; Montgomery, T., & Baglioni, S. (2020). Defining the gig economy: platform capitalism and the reinvention of precarious work. *International Journal of Sociology and Social Policy*, 41(9/10), 1012-1025.

²⁰⁹ Prassl, J. (2018). *Humans as a service: The promise and perils of work in the gig economy*. Oxford University Press; Lewchuk, W. (2017). Precarious jobs: Where are they, and how do they affect well-being? *The Economic and Labour Relations Review*, 28(3), 402-419.

²¹⁰ Veen, A., et al. (2020). Platform-capital’s ‘App-etite’ for control: A labour process analysis of food-delivery work in Australia. *Work, Employment and Society*, 34(3), 388-406.

work'²¹¹ while others contend that such claims are overblown and oversimplified due to the heterogeneity of experiences constituting a 'defining feature of platform work'.²¹²

Despite the ubiquitous nature of precarious work (including essential work and possibly gig work), scholars highlight that precarity is not universally distributed equally amongst workers of the world. Standing has claimed that the youth 'make up the core of the precariat'²¹³ although there are groaners (a term he uses to describe 'those who welcome precariat jobs') and grinners ('those obliged to take [precariat jobs] in the absence of alternatives') in the demographic groups of both the youth and the elderly.²¹⁴ He also highlights that women have taken a 'disproportionate share of precarious jobs'.²¹⁵ This builds on his conclusions in an earlier article written in 2009, where he describes the 'feminisation of labour' as a result of the changing nature of employment with atypical non-standard or irregular employment that had previously been thought to be the hallmark of women's 'secondary' employment becoming widespread for both sexes.²¹⁶ Such feminised work includes informal activities, sub-contracting and home-based work.²¹⁷ In this vein, feminist political economist and political scientist Vosko has further drawn attention to the gendered rise of temporary work in Canada and placed this development in an international context.²¹⁸

Migrants appear to be the most commonly singled out group as being vulnerable to precarity. There are numerous studies drawing attention to how restrictions pertaining to immigration (involving considerations pertaining to the legality of immigration status or restrictions placed on the terms and conditions of employment) exacerbate the precarity of migrants.²¹⁹ Employers are seen as having increased bargaining power due to their ability to

²¹¹ Tassinari, A., & Maccarrone, V. (2020). Riders on the storm: Workplace solidarity among gig economy couriers in Italy and the UK. *Work, Employment and Society*, 34(1), 35-54, at p. 36.

²¹² Howcroft, D., & Bergvall-Kåreborn, B. (2019). A typology of crowdwork platforms. *Work, Employment and Society*, 33(1), 21-38; Vallas, S., & Schor, J. B. (2020). What do platforms do? Understanding the gig economy. *Annual Review of Sociology*, 46, 273.

²¹³ Standing, at p. 77.

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ Standing, G. (1999). Global feminization through flexible labor: A theme revisited. *World development*, 27(3), 583-602. On the precarious work of women, see further chapter V 'Gendering Precarity'.

²¹⁷ *Ibid.*

²¹⁸ Vosko, L. F. (2016). *Temporary work*. University of Toronto Press. See also: Vosko, L., et al. (Eds.) (2009). *Gender and the contours of precarious employment*. Routledge.

²¹⁹ Hodge, E. (2019). Making Precarious: the construction of precarity in refugee and migrant discourse. *Borders in Globalization Review*, 1(1), 83-90; Apostolidis, P. (2018). *The fight for time: migrant day laborers and the politics of precarity*. Oxford University Press; Paret, M. & Gleeson, S. (2016). *Precarity*

simultaneously terminate employment and revoke the conditional terms of their citizenship in that country.²²⁰ Refugees and asylum seekers are also acknowledged as being precarious,²²¹ with some being subject to forced labour as a result of their status.²²² These social conditions have led some scholars to conclude that migrants are subject not merely to precarity, but to ‘hyper-precarity’²²³ or ‘permanent precarity.’²²⁴ Adding further complexity, scholars have also examined the intersectional dimensions of precarity by bringing to focus the ways in which precarity manifests across multiple axes such as gender, race and citizenship.²²⁵

(2) *Demarcating the Concept of Precarious Work*

In demarcating the concept of precarious work analytically, there have been a variety of approaches adopted by scholars towards the issue, and a range of concerns that have been variously emphasized. Whilst it would be impossible to exhaustively capture the nuances of these rich debates, some of the key shared concerns of scholars are set out below.

The concept of precariousness has been substantially debated and refined.²²⁶ Preliminarily, it should be noted that precarity has also been associated with a range of other

and agency through a migration lens. *Citizenship Studies*, 20(3–4), 277–294; Ross, A. (2008). The new geography of work: Power to the precarious? *Theory, Culture & Society*, 25(708), 31–49; Banki, S. (2013). Precarity of place: A complement to the growing precariat literature. *Global Discourse*, 3(3–4), 450–463; Strauss, K. (2018). Labour geography 1: Towards a geography of precarity? *Progress in Human Geography*, 42(4), 622–630.

²²⁰ Schierup, C. U., et al. (Eds.). (2015). *Migration, precarity, and global governance: Challenges and opportunities for labour*. Oxford University Press.

²²¹ Eder, M., & Özkul, D. (2016). Editors’ introduction: precarious lives and Syrian refugees in Turkey. *New Perspectives on Turkey*, 54, 1.

²²² Waite, L., et al. (2015). Precarious lives: Refugees and asylum seekers’ resistance within unfree labouring. *ACME: An International Journal for Critical Geographies*, 14(2), 479–491.

²²³ Lewis, H., et al. (2015). Hyper-precarious lives: Migrants, work and forced labour in the Global North. *Progress in Human Geography*, 39(5), 580–600; Zou, M. (2015). The legal construction of hyper-dependence and hyper-precarity in migrant work relations. *International Journal of Comparative Labour Law and Industrial Relations*, 31(2), 141–162.

²²⁴ Larmer, M. (2017). Permanent precarity: capital and labour in the Central African copperbelt. *Labor History*, 58(2), 170–184.

²²⁵ Coppola, M., et al. (2007). Women, migration and precarity. *feminist review*, 87(1), 94–103; Vosko, L. (2010). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press; Alberti, G., et al. (2013). Organising migrants as workers or as migrant workers? Intersectionality, trade unions and precarious work. *The International Journal of Human Resource Management*, 24(22), 4132–4148; Strauss, K. (2020). Labour geography III: Precarity, racial capitalisms and infrastructure. *Progress in Human Geography*, 44(6), 1212–1224.

²²⁶ Arnold, D., & Bongiovi, J. R. (2013). Precarious, informalizing, and flexible work: Transforming concepts and understandings. *American Behavioral Scientist*, 57(3), 289–308; Campbell, I., & Price, R. (2016). Precarious work and precarious workers: Towards an improved conceptualisation. *The Economic and Labour Relations Review*, 27(3), 314–332; Han, C. (2018). Precarity, precariousness, and

terms and definitions for different categories of labour. As such, beyond precarious work or employment and precarity, other terms used within global labour studies to describe trends in employment over the last two to three decades have included ‘informalization, casualization, contractualization, flexibilization, non-standard, irregular and contingent employment’.²²⁷ However, despite these overall broad characterisations, it is widely noted that there is ‘no singular experience with precarious work’, but a ‘differential vulnerability’ arising from precarious work that is ‘context specific and segmented’ based on a range of markers such as gender, race, ethnicity and citizenship. Beyond this broad understanding of the varied dynamics of precarity, some of the most common approaches to conceptualising precarity are now explored.

Sociologist Maribel Casa-Cortés asks, “what do the call-center worker, researcher, and migrant nanny have in common?”²²⁸ As a starting point, while not a necessary condition for precarity, precarious workers are typically characterised by their atypical or casual work arrangements.²²⁹ This basically takes the form of non-standard employment relations, including temporary work, part-time work, agency work, seasonal or short-term contract and contingent work,²³⁰ and is increasingly recognised as possibly extending to self-employment as well.²³¹ As a result of these arrangements, those in precarious jobs regularly face temporal precarity with their unpredictable and variable working hours, income instability, termination of employment due to businesses adjusting to shifting market demands, lack of additional benefits such as social security, regular violation of labour regulations and lack of worker representation.²³² This uncertainty, instability and insecurity in the world of work usually

vulnerability. *Annual Review of Anthropology*, 47, 331; Alberti, G., et al. (2018). In, against and beyond precarity: Work in insecure times. *Work, Employment and Society*, 32(3), 447-457.

²²⁷ Arnold, D., & Bongiovi, J. R. (2013). Precarious, informalizing, and flexible work: Transforming concepts and understandings. *American Behavioral Scientist*, 57(3), 289-308 [Arnold & Bongiovi] at pp. 289-290.

²²⁸ Casas-Cortés, M. (2014). A genealogy of precarity: A toolbox for rearticulating fragmented social realities in and out of the workplace. *Rethinking Marxism: A Journal of Economics, Culture and Society*, 26(2), 206-226, at p. 214.

²²⁹ See Arnold & Bongiovi, at p. 296.

²³⁰ *Ibid.*

²³¹ See Fudge, J. (2006). Self-Employment, Women and Precarious Work: The Scope of Labour Protection. In Fudge, J., & Owens, R. (Eds.). *Precarious work, women, and the new economy: The challenge to legal norms* (pp. 201-222). Bloomsbury Publishing.

²³² Standing; Apostolidis, P. (2018). *The fight for time: Migrant day laborers and the politics of precarity*. Oxford University Press; De Stefano, V. (2015). The rise of the just-in-time workforce: On-demand work, crowdwork, and labor protection in the gig-economy. *Comp. Lab. L. & Pol'y J.*, 37, 471; Muntaner, C. (2018). Digital platforms, gig economy, precarious employment, and the invisible hand of social class. *International Journal of Health Services*, 48(4), 597-600.

entails ‘employees bear[ing] the risks of work, as opposed to businesses or the government.’²³³ Such employment practices have been labelled a regime of ‘contingent control’, as distinguished by an increase in flexibility, employer power and cost savings, while workers are subject to greater task routinization and moulded into a more ‘pliant workforce’.²³⁴ Within this form of analysis, precarious work can hence be construed as a condition, such that it could even be characterised as a new typology of employment.²³⁵

Beyond insecurity in employment status, precariousness in employment has been conceived as a multi-dimensional concept involving low levels of regulatory protection, low wages, and low levels of employee control regarding wages, hours and working conditions.²³⁶ However, this multi-dimensional model has been noted to pose some difficulties in the analysis of precise forms of precarious work within industries structured by high levels of precarity, and it is seen to be less suited to understanding differences among individual workers.²³⁷ The latter is seen to be subject to ‘fundamental theoretical disputes’ involving the conceptualisation of ‘social action, human agency, choice and subjectivity’.²³⁸ As a result, the criticism has been raised of how scholars refer to precarious work and precarious workers interchangeably, whilst sidestepping the conceptual difficulties of ‘accommodating wide variation in individual experiences of precarious work’ and its related causal complexities.²³⁹ Instead, in order to avoid a ‘uniform conclusion from precarious employment to the lives of precarious workers’, scholars have argued for an emphasis to be placed on subjective perceptions.²⁴⁰ Accordingly, this point of view foregrounds the problems involved in purely analysing precarity as an objective condition, and introduces the element of subjectivity in the experiences of precarious workers. Yet another counter-perspective cautions against associating the diversity of individual experiences of precarity with ‘subjective’ differences in personal characteristics. Instead, it points to the ways in which individual agency is embedded within and shaped by

²³³ Hewison, K. (2015). Precarious work. In Edgell, S., Gottfried, H., & Granter, E. (Eds.). *The SAGE handbook of the sociology of work and employment* (pp. 1-72). London: Sage; Kalleberg, A. L., & Hewison, K. (2013). Precarious work and the challenge for Asia. *American Behavioral Scientist*, 57(3), 271-288.

²³⁴ Ikeler, P. (2019). Precarity’s prospect: Contingent control and union renewal in the retail sector. *Critical Sociology*, 45(4-5), 501-516.

²³⁵ Vosko, L. F., et al. (2003). Precarious jobs: A new typology of employment. *Perspectives on labour and income*, 15(4), 39-49.

²³⁶ Vosko, L. F., et al. (Eds.). (2009). *Gender and the contours of precarious employment*. Routledge.

²³⁷ Campbell, I., & Price, R. (2016). Precarious work and precarious workers: Towards an improved conceptualisation. *The Economic and Labour Relations Review*, 27(3), 314-332, at p. 316.

²³⁸ *Ibid.*, at p. 317.

²³⁹ *Ibid.*

²⁴⁰ Motakef, M. (2019). Recognition and precarity of life arrangement: towards an enlarged understanding of precarious working and living conditions. *Distinktion: Journal of Social Theory*, 20(2), 156-172, at p. 157.

institutions and social relations.²⁴¹ Seen in this light, the employment relationship is viewed as a ‘central social structure in capitalist societies’, with ‘causal powers’ to shape the experiences of workers, and of their experiences of precarity.²⁴²

Precarity could also be understood on class-based terms, or more specifically, as the class of the precariat. Guy Standing, whose work contributed to the rise of precarity as a concept within the social sciences discourse (as detailed in Section A(2)), has theorised how the precariat is a distinctive socio-economic group, marked in Weberian terms as an ‘ideal type’. Standing argues that a new vocabulary ‘reflecting class relations in the global market system of the 21st century’ is needed, since the globalisation era has fragmented the global class structure. He thereafter identifies seven such fragments of the current class structure: the *elites* (‘absurdly rich global citizens lording it over the universe with their billions of dollars’), the *salariat* (workers in stable, full-time employment, with ‘pensions, paid holidays and enterprise benefits’, ‘concentrated in large corporations, government agencies and public administration’), *proficians* (professional technicians with marketable skills that enable the earning of high incomes on contract as consultants, characterised by their desire for mobility and not having an ‘impulse’ for long-term, full-time employment), the *working class* (a ‘shrinking core’ of manual industrial labour employees, for whom welfare states and labour regulation systems had been built) and the aforementioned growing *precariat*, an army of unemployed and socially ill misfits.²⁴³ However, Standing’s definition of the precariat as a class has been highly contested, for its definitional and theoretical problems,²⁴⁴ for temporally characterising the precariat as new,²⁴⁵ for its spatial limitation of the concept of the precariat to

²⁴¹ Campbell, I., & Price, R. (2016). Precarious work and precarious workers: Towards an improved conceptualisation. *The Economic and Labour Relations Review*, 27(3), 314-332, at p. 317.

²⁴² *Ibid.*, at p. 318.

²⁴³ Standing, at pp. 7-8.

²⁴⁴ Frase, P. (2013). The precariat: a class or a condition? *New Labor Forum*, 22(2), 11-14; Wright, E. O. (2016). Is the precariat a class? *Global Labour Journal*, 7(2), 123-135; Breman, J. (2013). A Bogus Concept? [Review of: G. Standing (2011) The precariat: the new dangerous class]. *New left review*, 84, 130. See also Standing’s response to Breman, at Standing, G. (2014). Why the precariat is not a “bogus concept”. *Open Democracy*. <https://www.opendemocracy.net/en/why-precariat-is-not-bogus-concept/>.

²⁴⁵ Betti, E. (2018). Historicizing Precarious Work: Forty Years of Research in the Social Sciences and Humanities. *International Review of Social History*, 63(2), 273-319; Breman, J., & Van der Linden, M. (2014). Informalizing the economy: The return of the social question at a global level. *Development and change*, 45(5), 920-940; Neilson, B., & Rossiter, N. (2008). Precarity as a political concept, or, Fordism as exception. *Theory, culture & society*, 25(7-8), 51-72; Seymour, R. (2012). We are all precarious - On the concept of the ‘precariat’ and its misuses. <https://www.patreon.com/posts/we-are-all-on-of-37918050> (Originally available on the now defunct *New left project*).

the North,²⁴⁶ and for questions of agency and the strategies of social change underpinning Standing's description of the precariat as a separate class of its own.²⁴⁷

Lastly, whilst precarity has most commonly been understood as a condition (describing the state of affairs within employment relations),²⁴⁸ or more controversially in class-based terms, there are some interesting suggestions in the literature about how precarity could be conceptualised as a process. One indication is found in Guy Standing's book itself, where he describes the class of the precariat in terms of 'precariatization'.²⁴⁹ He understands this term as a process and condition wherein one is 'subject to pressures and experiences that lead to a precariat existence' without a secure sense of identity and development achieved through work.²⁵⁰ He argues for instance that the dependency relationship arising out of long-term employment could result in the feeling that one has lost control if the superior is displeased and he therefore runs the risk of losing his job. In this sense, precariatization is understood as the subjective experience of becoming and feeling precarious, even in the absence of more objective conditions that may categorise one's work as 'precarious'. Scholars have also used the term 'precarization' in more recent theoretical work, describing the ongoing trends of casualisation and contractualisation, thereby foregrounding the active dynamics involved in this process.²⁵¹ Development studies scholar Mallett has further suggested that understanding precarity as a 'process-focussed concept' rather than 'end-state descriptor' would enable 'thinking with precarity' to be a valuable exercise, and illustrated the advantages of such an approach in his critical analysis of the World Bank's World Development Report 2019 on digital labour in the 'changing nature of work'.²⁵²

²⁴⁶ Munck, R. (2013). The Precariat: a view from the South. *Third World Quarterly*, 34(5), 747-762; Mosoetsa, S., et al. (2016). Precarious labor, south and north: An introduction. *International Labor and Working-Class History*, 89, 5; Scully, B. (2016). Precarity north and south: A southern critique of Guy Standing. *Global Labour Journal*, 7(2), 160-173.

²⁴⁷ Paret, M. (2016). Politics of Solidarity and Agency in an Age of Precarity. *Global Labour Journal*, 7(2), 174-188; Lazar, S., & Sanchez, A. (2019). Understanding labour politics in an age of precarity. *Dialectical Anthropology*, 43(1), 3-14; Wright, E. O. (2016). Is the precariat a class? *Global Labour Journal*, 7(2), 123-135.

²⁴⁸ Walsh, P. (2019). Precarity. *ELT Journal*, 73(4), 459-462.

²⁴⁹ Standing, at pp. 17-20.

²⁵⁰ *Ibid.*, at pp. 19 to 20.

²⁵¹ Kalleberg & Vallas; Alberti, G., et al. (2018). In, against and beyond precarity: Work in insecure times. *Work, Employment and Society*, 32(3), 447-457.

²⁵² Mallett, R. W. (2020). Seeing the 'Changing Nature of Work' through a Precarity Lens. *Global Labour Journal*, 11(3), 271-290.

A different emphasis in the conceptualisation of precarity involves understanding the overlap or differences between related concepts, such as informalizing and informal work. In this area of scholarship, sociologists Dennis Arnold and Joseph Bongiovi's article is widely influential and seen as instructive in clarifying these differences conceptually.²⁵³ In discussing these differences, Arnold and Bongiovi start with an understanding of the informal economy and its 'ambiguous relationship' with development and the formal economy. They draw attention to how a binary distinction has been drawn between the informal sector (defined as all forms of employment 'without labour or social protection') and the formal sector, and how this approach only 'tells us what work relations and economies are not, that is, formal'.²⁵⁴ They further discuss how the growth of informal employment has been explained through a 'lack of institutionalized labour protection', 'economic expansion without a balanced distribution of wealth', and what they call 'the forced integration of the population into capitalist social relations' involving immense rural-urban migration patterns, thereby producing an increasingly informal sector.²⁵⁵

In contrast to the informal economy, they draw attention to how the concept of informalisation has been used to describe how the formal economy is undergoing changes. The increasing *casualization* (replacement of full-time, permanent workers with part-time or temporary workers) and *contractualization* (the replacement of permanent workers with fixed-duration contract workers, where the terms of employment are specified more clearly than the broad process of casualization) of jobs that had originally been within the formal sector, has now resulted in an increasingly blurred distinction between the binary concepts of an informal and formal sector, and in the increased production of precarity.²⁵⁶ In contrast, the concept of precarity (and related terms such as precarious work) is described as having a 'a new phase of capitalism that is qualitatively different from previous eras', instead of a return of pre-Fordist capitalism, and is seen to be associated with European social movements and theorists.²⁵⁷ As such, Arnold and Bongiovi comment how identifying a precarious politics beyond advanced industrialised countries, and theorising around it, remains 'a largely unanswered challenge'.²⁵⁸

²⁵³ Arnold & Bongiovi, at p. 294.

²⁵⁴ *Ibid.*, at p. 291.

²⁵⁵ *Ibid.*, at p. 293.

²⁵⁶ *Ibid.*, at pp. 295-298.

²⁵⁷ *Ibid.* Fordism as a concept will be further explored in the next section 'The Production of Precarity'.

²⁵⁸ *Ibid.*, at p. 203.

Further exploring this line of thought, development sociology scholar Mushahid Hussain has queried whether precarious work can be construed as a ‘universally abstract category’ in deciphering informalisation trends globally, and he asks how we might be able to arrive at a more historicized understanding of ‘precarious work’.²⁵⁹ Anthropologist Clara Han adds to this understanding of precarity as a ‘bounded historical condition’, by examining how informal work should be understood as a concept with earlier origins instituting a ‘geographical hierarchy’ of development, and gestures to how the global spread of precarity today may be used to unsettle such an understanding of developmental hierarchies.²⁶⁰ Geographers Rosario and Rigg ask whether the ‘concept of precarity can be “exported” from one regional and developmental context to another and retain its empirical resonances and explanatory traction’.²⁶¹ In contrast to these views, development studies scholar Karin Astrid Siegmann argues that the notions of informal work and precarious work should be brought together under the conceptual umbrella of work-related insecurities,²⁶² while scholars of sociology Carl-Ulrik Schierup and Martin Bak Jørgensen bring together narratives of precarity that transcend the binary division between ‘North and South’.²⁶³

(3) *The Production of Precarity*

Beyond having cognisance of the phenomenon of precarity, and definitional boundaries of precarity as a concept, a holistic understanding of the conceptualisation of precarity requires knowing the causes underlying the production of precarity. Despite the difficulties involved in establishing causation in any narrative, there is a dominant discourse clearly acknowledged within the literature as characterising the forces producing precarity. Presented as a series of intersecting reasons that converge to produce ‘precarious work’ as understood contemporarily, these reasons are variously emphasized in the scholarly literature but generally understood to collectively form part of the bigger picture (or, as referred to earlier, what I termed the ‘dominant discourse’). While there is a growing scholarly literature seeking to broaden the

²⁵⁹ Hussain, M. (2018). Contesting, (Re) producing or Surviving Precarity? Debates on Precarious Work and Informal Labor Reexamined. *International Critical Thought*, 8(1), 105-126, at p. 108.

²⁶⁰ Han, C. (2018). Precarity, precariousness, and vulnerability. *Annual Review of Anthropology*, 47, 331-343.

²⁶¹ Cruz-Del Rosario, T., & Rigg, J. (2019). Living in an age of precarity in 21st century Asia. *Journal of Contemporary Asia*, 49(4), 517-527, at p. 520.

²⁶² Siegmann, K. A., & Schiphorst, F. (2016). Understanding the globalizing precariat: From informal sector to precarious work. *Progress in Development Studies*, 16(2), 111-123.

²⁶³ Schierup, C. U., & Jørgensen, M. B. (2016). An introduction to the special issue. Politics of precarity: Migrant conditions, struggles and experiences. *Critical Sociology*, 42(7-8), 947-958, at p. 955.

scope of precarious work geographically and temporally (as detailed in the earlier section) and by implication the underlying reasons related to the same, this narrative has yet to gain traction in forming part of the mainstream understanding of precarity. Accordingly, focus is placed on only detailing the dominant discourse below.

a. Changes in Employment Relations

One key driver of precarity (or precarization) is that of a change in employment relations, which is marked by the increasing casualization and contractualization of employment. Casualization refers to both the explicit shift of employees from regular (permanent, often full-time) to casual (temporary) categories (most commonly associated with precarious work) and the implicit casualization involved through the ‘gradual weakening of the conditions that characterize regular employment [the SER] so that regular employment takes on the character of casual, in all but name’.²⁶⁴ Contractualization is characterised as a key trend ‘facilitating broader informalization of labour’, with the terms of employment being ‘defined more specifically through contractual means’ (such as the frequent use of fixed-duration contracts for agency workers or zero-hour contracts wherein the minimum number of hours for which employment is guaranteed by the employer is not specified) compared to the general overall trend of casualization.²⁶⁵ Standing has defined this as a ‘global trend towards the individualization of labour contracts’, such that employment relationships are redefined from being incomplete contracts (due to the ability of workers to readjust the terms of their work through collective bargaining) to strict contracts that ‘impose penalties for abrogation of the terms of the labour agreement’.²⁶⁶

These changes in employment relations are perceived to be accelerating through the introduction of new technologies (termed ‘platform capitalism’²⁶⁷) and the consequent rise of the gig economy), thereby facilitating the increasing casualization and contractualization of employment. Whilst the framework of the ‘sharing economy’ has resulted in an increase in the

²⁶⁴ Standing, at p. 24; see also Arnold & Bongiovi, at pp. 296-298.

²⁶⁵ *Ibid.*

²⁶⁶ Standing, G. (2008). Economic insecurity and global casualisation: threat or promise? *Social Indicators Research*, 88, 15; See also Standing at p. 37.

²⁶⁷ Schor, J. B., et al. (2020). Dependence and precarity in the platform economy. *Theory and Society*, 49, 833; Montgomery, T., & Baglioni, S. (2021). Defining the gig economy: platform capitalism and the reinvention of precarious work. *International Journal of Sociology and Social Policy*, 41(9/10), 1012-1025; Srnicek, N. (2017). *Platform capitalism*. John Wiley & Sons.

number of on-demand companies matching labour supply and demand through the creation of online platforms (such as Amazon Mechanical Turk, TaskRabbit and Uber/Lyft), these platforms have been perceived as forums for the circumvention of employment regulation through their informal operation within traditionally regulated markets.²⁶⁸ Against the backdrop of ongoing debates surrounding whether platform work through the gig economy is a new form of precarious work (as gestured to in the section above ‘The Phenomenon of Precarity’), a substantial number of scholars have disputed the legal characterisation of such gig workers as self-employed workers instead of precarious workers that should receive social and labour protection.²⁶⁹

b. Changes in the Mode of Production

Platform capitalism is, in turn, enabled through the development and spread of information-based systems and technologies at the close of the century. This advancement of technology has greatly decreased the need of capital for labour and ‘accelerated the mobility of capital and the management of global commodity chains’.²⁷⁰ Vastly increasing the speed of communication across and within borders, this ‘digital revolution’²⁷¹ has in turn enabled an extensive shift from manufacturing to services (including tourism, hospitality, retail and trade, tradesmanship, accounting and computer services) which is largely an information-based economy. In the industrialized world, the service sector accounts by far for the largest proportion of employment and job creation in recent decades. Yet, the services sector is also widely known to be one of the most precarious sectors within the economy today.

²⁶⁸ Aloisi, A. (2015). Commoditized workers: Case study research on labor law issues arising from a set of on-demand/gig economy platforms. *Comp. Lab. L. & Pol’y J.*, 37, 653; De Stefano, V. (2015). The rise of the just-in-time workforce: On-demand work, crowdwork, and labor protection in the gig-economy. *Comp. Lab. L. & Pol’y J.*, 37, 471.

²⁶⁹ Dukes, R. (2020). Regulating gigs. *Modern Law Review*, 83(1), 217-228; Stewart, A., & Stanford, J. (2017). Regulating work in the gig economy: What are the options? *The Economic and Labour Relations Review*, 28(3), 420-437; Todolí-Signes, A. (2017). The ‘gig economy’: employee, self-employed or the need for a special employment regulation? *Transfer: European Review of Labour and Research*, 23(2), 193-205; Cherry, M. A., & Aloisi, A. (2016). Dependent contractors in the gig economy: a comparative approach. *Am. UL Rev.*, 66, 635; Koutsimpogiorgos, N., Van Slageren, J., Herrmann, A. M., & Frenken, K. (2020). Conceptualizing the Gig Economy and Its Regulatory Problems. *Policy & Internet*, 12(4), 525-545; See also developments in some jurisdictions countering this trend: Kenner, J. (2019). Uber drivers are workers: the expanding scope of the worker concept in the UK’s gig economy. In Kenner, J., Florczak, I. & Otto, M. *Precarious Work: The Challenge for Labour Law in Europe* (pp. 197-221). Edward Elgar Publishing.

²⁷⁰ Kalleberg & Vallas, at p. 5.

²⁷¹ *Ibid.*

Previously, the manufacturing sector – a legacy of the Industrial Revolution within advanced industrialised countries – had predominated and accounted for most of the jobs within those countries. Moreover, even within the manufacturing sector, changes in the mode of production have been observed to have had an impact on the production of precarity. Prior to the 1970s, the mode of production pioneered by Ford’s Model-T car in Detroit during the early 20th century,²⁷² which Antonio Gramsci used the term ‘Fordism’ to capture,²⁷³ was prevalent within Western Europe and Northern America. Fordism was characterized by moving assembly lines, repetitive work, and Taylorist methods of scientifically measuring work tasks to improve efficiency. This mode of production is significant because its mass production of standardized goods for a national market, supported by broader Keynesian state management of the national economy, resulted in relatively stable and secure life-long jobs.²⁷⁴ Indeed, it is precisely this mode of production that enabled the rise of the ‘standard employment relationship’ as a norm during what has been described as the Golden Age of Capitalism.²⁷⁵ However, the 1970s has since been characterized as marking the start of a transition to post-Fordism, with the mass-production systems of Fordism shifting to a new strategy of ‘flexible accumulation’.²⁷⁶ This new era of post-Fordism has been characterized by an increased emphasis on flexible specialization,²⁷⁷ decentralised on-demand production,²⁷⁸ an increase in sub-contracting and ‘outsourcing’ to countries overseas,²⁷⁹ the decline of unions, and an increase in flexi-time, part-time and temporary workers.²⁸⁰

²⁷² Cf. Williams, K., et al. (1992). Ford versus ‘Fordism’: The Beginning of Mass Production? *Work, Employment and Society*, 6(4), 517-555, for a counter-perspective.

²⁷³ Foster, B. (1988). The fetish of Fordism. *Monthly Review*, 39(10), 14-34; Cf. Settis, B. (2019). Rethinking Fordism. In Antonini, F., et al. *Revisiting Gramsci’s Notebooks* (pp. 376-387). Brill.

²⁷⁴ Watson, D. (2019). Fordism: A review essay. *Labor History*, 60(2), 144-159.

²⁷⁵ Kitschelt, H. (Ed.). (1999). *Continuity and change in contemporary capitalism*. Cambridge University Press.

²⁷⁶ Harvey, D. (1989). From Fordism to flexible accumulation. In Harvey, D. *The Condition of Postmodernity: An Inquiry into the Conditions of Cultural Change* (pp. 141-172). Wiley-Blackwell; Amin, A. (Ed.). (2011). *Post-Fordism: a reader*. John Wiley & Sons.

²⁷⁷ Paul, H., & Jonathan, Z. (1991). Flexible specialization versus post-Fordism: theory, evidence and policy implications. *Economy and society*, 20(1), 1-56. See also an alternative approach of regulation theory, in Jessop, B. (1995). The regulation approach, governance and post-Fordism: alternative perspectives on economic and political change? *Economy and society*, 24(3), 307-333.

²⁷⁸ Thornley, C. (2010). Legitimising precarious employment: aspects of the Post-Fordism and lean production debates. In Thornley, C., et al. (Eds.): *Globalisation and Precarious Forms of Production and Employment: Challenges for Workers and Unions*. Edward Elgar.

²⁷⁹ This factor will be detailed in the next section, and Chapters III(C) and Chapter V(B).

²⁸⁰ Lipietz, A. (2001). The fortunes and misfortunes of post-Fordism. In Albritton, R., Itoh, M., Westra, R. & Zuege, A. *Phases of capitalist development: Booms, Crises and Globalizations* (pp. 17-36). Palgrave Macmillan.

c. *Globalisation: outsourcing, offshoring and subcontracting*

Yet, Fordist regimes of accumulation still persist for they have largely been relocated within the global South. This relocation has been characterized as an increased externalization of labour or production within global supply chains,²⁸¹ resulting in an extensive reorganisation of work and production.²⁸² The production process was hence described as having fragmented due to the offshoring of production overseas to locations with cheaper labour costs, and the resulting outsourcing of jobs associated with that production to these locations. Broadly characterised as arising from globalisation (entailing the worldwide integration of the global economy, and resulting in increased competition between enterprises), deindustrialisation within several industrialised countries resulted in millions of workers from the US losing their jobs to plant closures or relocations overseas since the 1970s, while European cities are described as having lost on average between 30% and 80% of their manufacturing jobs in the 1980s and 1990s.²⁸³ Scholars have claimed that this outsourcing trend was accelerated through the broad financialization of several leading multi-national corporations, and the economy in general.²⁸⁴ This financialisation is underpinned by the ‘shareholder conception of the firm’, wherein there is a reduction in the value placed on other stakeholders such as workers and management compared to the shareholder, therefore exposing employees to ‘recurrent bouts of outsourcing and downsizing, even by highly profitable firms’.²⁸⁵

Against the backdrop of these developments, social activist Naomi Klein excoriated the use of export processing zones (EPZs) and subcontracting in her popular book ‘No Logo’ (first published in 2000). She detailed the ways in which EPZs, initially endorsed by the United Nations Economic and Social Council in a resolution in 1964 to promote trade with developing countries,²⁸⁶ were economic zones where there were no import or export duties, or income or property taxes, on goods passing through the area. She asserted that ‘supposedly law-abiding’ big-brand multi-national corporations attracted to the tax-free prospects of manufacturing

²⁸¹ See, for example, Standing, describing the ‘emergence of Chindia’ in Chapter 2 ‘Why the Precariat is Growing’.

²⁸² Webster, E, et al. (2009). *Grounding Globalization: Labour in the Age of Insecurity*. Oxford: Blackwell.

²⁸³ Kletzer, L. G. (2008). 10. Trade and Job Loss in US Manufacturing, 1979-1994. In Feenstra, R. (Ed.). *The Impact of International Trade on Wages* (pp. 349-396). The University of Chicago Press; Clark, G., Moonen, T., & Nunley, J. (2018). *The Story of Your City: Europe and Its Urban Development, 1970 to 2020*. European Investment Bank. <https://www.eib.org/en/essays/the-story-of-your-city>.

²⁸⁴ Kalleberg, p. 5.

²⁸⁵ *Ibid.*

²⁸⁶ Klein, N. (2009). *No logo*. Vintage Books Canada, at p. 205.

goods in these EPZs ‘regress[ed] to nineteenth-century levels of exploitation’ through the mechanics of subcontracting.²⁸⁷ In addition, Klein argued that the claims of (manufacturing) job flight from the US or Europe to Asia and Latin America (especially in EPZs) were misperceptions because they were not ‘our’ jobs at all. Instead, the new employment that was being outsourced to these developing countries took the different form of ‘temporary and short-term employment’ (i.e. precarious employment, instead of the SER that the manufacturing industry was usually associated with).²⁸⁸

d. Flexibility in the labour markets vs Neoliberal deregulation of labour markets

However, the abovementioned conditions giving rise to precarity were not always construed in pejorative terms. They have also been more positively coded in narratives that prioritise job creation through development and economic growth. Such job creation could be enabled through the rise of flexibility as a key mode of transforming production from mass production to flexible specialisation.²⁸⁹ Against the backdrop of millions of jobs being relocated overseas, the concept of ‘labour market flexibility’ was introduced to reduce labour costs and prevent financial capital in the form of production (jobs) and investment being transferred overseas.²⁹⁰ Furthermore, the strict employment structures of Fordist regimes are described as having given rise to struggle by some workers themselves who sought more flexibility (largely in the temporal dimension).²⁹¹

Four dimensions of flexibility are pertinent: wage flexibility, involving an increased responsiveness to changes in demand for labour (‘particularly downwards’); employment flexibility involving an increased ease and reduced costs for firms to change their employment levels (i.e. hiring and firing became easier, resulting in employment security and protection decreasing); job flexibility involving the ability of corporations to move employees around within the firm and changing job structures with minimal resistance or cost; and skill flexibility involving the ability to easily adjust workers’ skills.²⁹² In particular, wage flexibility and employment flexibility can be seen to have a direct correlation with indicators of

²⁸⁷ *Ibid.* at 212.

²⁸⁸ *Ibid.* at pp. 212-218.

²⁸⁹ Piore, M. & Sabel, C. (1984). *The Second Industrial Divide: Possibilities for Prosperity*. New York: Basic Books; Burrows, R., et al. (Eds.). (1992). *Fordism and flexibility: Divisions and change*. Springer.

²⁹⁰ *Ibid.*

²⁹¹ Chiapello, È., & Boltanski, L. (2018). *The new spirit of capitalism*. Verso Books.

²⁹² Standing, at p. 7.

precariousness. Indeed, the ‘strategic use of contingent work’ is described as being ‘typically attributed to the search for competitiveness through flexibility and greater market responsiveness’.²⁹³

In contrast to the discourse of flexibility, there appears to be broad and popular consensus within most scholars of precarity that the historical origins of precarity are rooted in a neoliberal discourse’ of flexibility and casualization of labour markets that was integral to the phenomenon of globalisation.²⁹⁴ In the section titled ‘Globalisation’s child’,²⁹⁵ Standing describes the historical origins of the precariat. He starts with a brief explanation of the now well-known turn to neoliberalism in social and economic thought in the 1970s, which thereafter found favour in political leaders like Margaret Thatcher and Ronald Reagan in the 1980s. In essence, the neoliberal claim entails a reduction of the role of the state (including the rolling back of securities built up since the Second World War for the industrial working class and the bureaucratic public sector) and the free flow of investment, employment and income globally to ‘where conditions were most welcoming’.²⁹⁶ Standing argues that these neoliberal claims of flexibility resulted in millions of people from both affluent and emerging market economies entering the precariat.²⁹⁷ David Harvey has further articulated how the capitalist crisis in the 1970s (involving the Oil Crisis and stagflation) enabled the rise of neoliberalism, whose primary goal was to flexibilize labour markets and ‘restore the conditions for profitable growth’.²⁹⁸ In other words, flexibility and precarity are two sides of the same coin, with the discourse of precarity being inextricably linked to the prior discourse of flexibility.

In sum, the nature of the changes within the world of work as detailed above have since been widely characterized as resulting in the rise of precarious employment today.

²⁹³ Wilson, S., & Ebert, N. (2013). Precarious work: Economic, sociological and political perspectives. *The Economic and Labour Relations Review*, 24(3), 263-278.

²⁹⁴ Springveld, N. (2017). Neoliberalism, precarity, and precariousness. *Framework*, 30(2), 25-39.

²⁹⁵ Standing. at pp. 7-8.

²⁹⁶ *Ibid.* at p. 6.

²⁹⁷ *Ibid.*

²⁹⁸ Harvey, D. (2005). *The new imperialism*. Oxford University Press.

Conclusion

Taking stock of this debate briefly, there appears to be an incongruity between existing explanations of the processes that have produced or are producing precarity, which appear largely to be confined to analyses emerging from advanced industrialised countries in the North, and the phenomenon of precarity itself which is located globally (and predominantly in the South). One needs to recall Kalleberg's argument that it is precisely the process of insecuritisation in the global north that makes 'precarity' a distinctive and useful analytical concept. As a result, questions remain of whether the concept of precarity and its explanatory power can be resonant within a different spatial context.

Having explored the significance and conceptualisation of precarity, similar discussions were happening in the international legal sphere. Efforts to deal with the consequences of precarity were also taken up in the legal arena, which brought with it a substantial legal discourse on the prospects and limits for international law's capacity to deal with precarity. We now turn to the next chapter to understand how the international institutional and legal sphere has responded to precarity.

INTERNATIONAL LAW AND PRECARITY

Flowing from the earlier chapter regarding the idea of precarity, this chapter shifts our focus to the international legal arena to see what it has had to say about precarity.²⁹⁹ Since the international institutional architecture has held out the International Labour Organisation ('ILO') as the key international organisation assigned to the specialised task of improving global labour conditions and securing labour rights,³⁰⁰ this intended institutional hierarchy will be taken seriously based on the principles of critical discourse analysis. However, in doing so, it is not presupposed that the ILO is the only institution that has an influence on responses to and/or the production of precarity within the international legal sphere. Indeed, the last section of this chapter will briefly examine the position of other key international institutions pertaining to precarity, with a view to providing broader context to the relationship between international law and precarity. However, for the purposes of manageably limiting the scope of this thesis, and to explore what I have suggested in the earlier chapter as a relatively neglected area, it is the discourse of the ILO that will form the main object of analysis in this dissertation.

In examining the international legal discourse, I seek to excavate the definitions, features, significance, causes of and proposed solutions to precarious work as described by the ILO. By doing so, I hope that this exercise serves as a springboard for me to discern how the concept of precarious work has been understood within the international legal sphere, the significance of this concept, and how international law proposes to respond to precarity. Thereafter, I aim to draw out and problematise the implicit theoretical assumptions contained within this discourse, and to understand international law's own relationship with precarious work. It is written as a prelude to a conceptual analysis of what precarious work has been understood as and the problems encountered because of such an understanding, thereby inviting an examination of the consequences of such an epistemic framing by international law.

This chapter proceeds in three parts. The first section 'The Problem of Precarity' deals with contestation over the significance of the term 'precarity', and details usage of the term

²⁹⁹ As such, the terms 'precarity' and 'precarious work' will be used interchangeably within this chapter.

³⁰⁰ For example, the ILO has been described 'as the lead United Nations (UN) agency promoting productive employment and decent work'.

together with efforts to define and conceptualise precarious work within the ILO's institutional discourse. The second section 'Situating the Subjects of Precarity' offers an account of how the international legal sphere understands the material reality of precarious work and its wider significance, and problematises some assumptions regarding this perception. The last section 'Responding to Precarity' pertains to international legal responses to precarity, and related criticisms of such efforts within existing scholarship.

A. The Problem of Precarity

At first glance, there appears to be widespread consensus within the international arena that there is an urgent need to protect the labour rights of those in precarious employment. This has been explicitly referenced in Target 8.8 of the 2030 United Nations Sustainable Development Goals (SDGs), in relation to Goal 8 of promoting 'sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'.³⁰¹ Specifically, Target 8.8 sets out the goal to 'protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment'.³⁰²

However, there is dissonance amongst representatives of differing interests in the context of the ILO (a tripartite institution comprising of representatives of states, employers and workers). Pointedly, Peter Rossman, a worker representative of Uniting Food, Farm and Hotel Workers World-Wide (IUF), asks in the *International Journal of Labour Research* administered by the ILO: 'how elastic is the concept of precarious work?'³⁰³ He goes on to criticise the concept for being elastic enough to allow the Employer spokesperson at a dialogue forum organised by the ILO in 2011 to commence his presentation by stating that work mediated through private employment agencies were 'neither precarious nor atypical'.³⁰⁴ Rossman's response was that union representatives would strongly reject the contention that agency work was not precarious, for to the contrary such work was 'precarious by nature', and they would 'probe the meaning' of what constituted typical or atypical work since the 'rapid expansion

³⁰¹ UN Statistics Division. (2020). *SDG Indicators Metadata repository*. <https://unstats.un.org/sdgs/metadata/>

³⁰² *Ibid.*

³⁰³ Rossman, P. (2013). Establishing rights in the disposable job regime. *International Journal of Labour Research*, 5(1), 23-40 [Rossman].

³⁰⁴ *Ibid.* at p. 24

and invasive presence’ of agency work through most economic sectors has ‘overturned received notions of what is “typical”’.³⁰⁵

For employer representatives, they frequently dispute the usage of the term ‘precarity’ (or its various permutations) itself, which they appear to perceive as an ideologically loaded term.³⁰⁶ Indeed, the Worker Vice-Chairperson during the Conclusions of the Meeting of Experts on Non-Standard Employment has drawn attention to this disparity in orientations with the ‘trade union movement [being] strongly concerned about the increase of precarious work’ while ‘employers tended to focus on flexibility’.³⁰⁷ Nonetheless, despite this opposition, the ILO’s Committee of Experts, government³⁰⁸ and worker delegates continue to liberally make reference to the term ‘precarious employment’ (or its permutations) during the annual International Labour Conference.³⁰⁹ For example, in 2023, workers’ representatives during the International Labour Conference³¹⁰ referred to the ILO’s agenda in its Centenary Declaration for the Future of Work of 2019 for the adequate protection of all workers, and reaffirmed the need for a commitment to ‘all workers’, ‘regardless of their contractual arrangements or type of employment’.³¹¹ In doing so, they specifically reiterated that ‘this must include all workers: migrant workers, precarious workers and workers in the informal economy, including self-employed workers’.³¹²

Moving beyond contestation of the usage of the term itself in-principle, let us now move to an exploration of how the term ‘precarious work’ (or its various permutations, such as precarious employment, precarity or precarization) has actually been used and conceptualised within the ILO’s institutional discourse.

Preliminarily, it should be noted that there have been numerous passing references to the precarious situation of workers for a wide range of reasons within the ILO’s discourse. For

³⁰⁵ *Ibid.*

³⁰⁶ International Labour Office, Governing Body. (12-27 March 2015). *GB. 323/POL/3 Conclusions of the Meeting of Experts on Non-Standard Forms of Employment*. ILO: Geneva.

³⁰⁷ *Ibid.*

³⁰⁸ As an illustrative example, see International Labour Conference. (2023). *Record of Proceedings: World of Work Summit*. ILC.111/Record No. 8B. ILO: Geneva, at pp. 59 and 69.

³⁰⁹ *Ibid.* As an illustrative example, see *ibid.*, at pp. 21, 24, 28, 30, 43, 67, 73, 74, 81, 86, 89, 94, 96, 102, 104.

³¹⁰ The ILC is the ILO’s highest decision-making body, which meets annually, *inter alia*, to establish and adopt international labour standards, and to discuss relevant issues of interest pertaining to their mandate.

³¹¹ International Labour Conference. (2023). *Record of Proceedings: World of Work Summit*. ILC.111/Record No. 8B. ILO: Geneva, at p. 20.

³¹² *Ibid.*

instance, as early as 1921, the International Labour Review ('ILR') referred to the 'precarious situation of unemployed persons' in its discussion of social legislation in the Republic of Austria.³¹³ In the wake of the First World War and the Depression of 1920-21 (just before the commencement of the Roaring Twenties), the International Federation of Christian Wood Workers raised its concerns of the 'precarious situation of the working class', and expressed its fear that the promises set out in Part XIII of the Versailles Peace Treaty regarding the improvement of the conditions of the working class were rapidly receding from realisation.³¹⁴ Macroeconomic conditions, such as the 'abrupt fluctuations in the purchasing power of Soviet currency', were seen as responsible for 'making the life of the worker very precarious'.³¹⁵ In discussions of land reform in Czechoslovakia, comparisons were made between the new small landowner and his fellow-worker in industry, with the former being characterised as 'more precarious' because 'he could not work without capital', and would not be able to find a new employer after a financial disaster because 'he [was] his own employer'.³¹⁶ Italy was characterised as a country where 'the multiplicity of types of exploitation necessarily result[ed] in wide differences between the various agricultural contracts', with the disparity between demand and supply (presumably in the labour market) placing workers, including day labourers, 'in a precarious position' which therefore led to 'continual unrest' amongst them.³¹⁷ Widespread unemployment during the Great Depression led to women's employment itself being called into question, because of 'its tendency to aggravate the already precarious state of the labour market'.³¹⁸ Accordingly, early international legal understandings of precarity (and of precarious workers) in the 1920s included the precarity of the working class as a whole, the plight of small landowners (arguably not even perceived as workers today), exploitation of day workers within the agricultural sector, and macroeconomic conditions (including unemployment).

³¹³ Lederer, M. (1921). Social Legislation in the Republic of Austria. *International Labour Review* 2(2), 3-29 at 7.

³¹⁴ ILO. (1922). Industrial Relations [notes]. *International Labour Review* 6(6), 925-945 at 929.

³¹⁵ ILO. (1924). Wages and Currency Reform in Soviet Russia [notes]. *International Labour Review*, 19(5), 800-824, at p. 803.

³¹⁶ ILO. (1925). Social aspects of land reform in Czechoslovakia. *International Labour Review*, 12(2), 225-244, at p. 233.

³¹⁷ ILO. (1927). Collective Labour Agreements in Italian Agriculture: II. *International Labour Review*, 15(1), 51-77.

³¹⁸ Vallentin, A. (1932). The Employment of Women since the War. *International Labour Review*, 25(4), 480-498.

However, despite the multitude of references to the precarious position of workers as early as the 1920s, there does not appear to have been any attempt to conceptualise exactly why and what made the position of these workers precarious. Much later in the century, the first attempt to articulate why employment was precarious appears to be found within an article published in the ILR, titled ‘Precarious Employment in Sicily’.³¹⁹ Written by a Professor of Economics in the University of Rome, the suggestion was made that precarious employment was a type of employment of workers that had ‘no guarantee of stability either of their job or of their income and hence... no definite prospects of improvement’.³²⁰ He draws an interesting distinction between wage earners and non-wage earners, by claiming that the basis of precarity for the two depended on different characteristics. He contends that the ‘lack of stable labour contracts’ or ‘no contracts at all’ resulted in wage earners having to ‘change their masters’ or otherwise always being in danger of losing their job even whilst remaining ‘with the same master’,³²¹ whilst non-wage earners such as peasants owning small plots of land or small artisanal traders being ‘precariously employed’ due to their low and unstable income. Characterising Sicily as a backward economy, Sylos-Labini thereafter problematised the otherwise clear-cut distinction between employed and unemployed persons in advanced countries as being inapplicable in Sicily. He thus suggested that the concept of precarious employment, instead, would be more useful. However, Sylos-Labini’s proposals do not seem to have gained wider popularity within the ILO at the time. Instead, the key phenomenon that the ILO thereafter examined remained unemployment, and precarious employment did not become a key part of its research agenda.

Subsequently, in the 1980s, the ILO raised concerns in an inquiry about the ‘particularly disadvantaged or precarious ... situation’ of categories of workers that were excluded from the scope of protection measures, and the ‘acute problems faced by women and migrant workers’.³²² Subsequently, the inquiry’s findings resulted in calls for ILO standards pertaining

³¹⁹ Sylos-Labini, P. (1964). Precarious Employment in Sicily. *International Labour Review*, 89(3), 268 - 285.

³²⁰ *Ibid.*

³²¹ See Deakin, S. F., & Wilkinson, F. (2005). *The law of the labour market: Industrialization, employment and legal evolution*. Oxford University Press, for an account of how the contract of employment in English law has evolved more recently than widely thought, with the master-servant model of employment of the 19th century (which Sylos-Labini is presumably referring to here) having been displaced by the modern contract of employment due to 20th century social legislation and collective bargaining. See also Countouris, N. (2019). *Defining and regulating work relations for the future of work*. International Labour Office, Geneva, for an overview of the process through which the contract of employment, specifically taking the form of the contract of employment model, became the ‘cornerstone of the edifice of labour law’.

³²² International Labour Conference. (1984). *ILC 70 – Report VII Evaluation of the International Programme for the Improvement of Working Conditions and Environment*. ILO: Geneva, at p. 12 [ILC 1984]; see also

to ‘certain types of economic activity in which normal measures for social protection are particularly difficult to apply ...temporary or casual work, seasonal work, subcontracted work and home work’.³²³ Even in this early stage, it can be seen that the ILO was grappling with regulatory responses regarding those who did not fall within conventional conceptions of work, and that it juxtaposes a variety of forms of work to what it presupposes as an ideal form of work to which ‘normal measures’ for social protection would apply.

The first point of origin of attempts to systematically conceptualise precarious employment appears to be in the 1989 monograph ‘Precarious Jobs in Labour Market Regulation: the Growth of Atypical Employment in Western Europe’ (‘Rodgers’ report’).³²⁴ In this book, Gerry Rodgers (a development economist at the ILO) and Janine Rodgers defined precarious work as:

go[ing] beyond the form of employment to look at the range of factors that contribute to whether a particular form of employment exposes the worker to employment instability, a lack of legal and union protection, and social and economic vulnerability.³²⁵

The Rodgers’ report has elaborated on this definition as containing four key dimensions of precariousness. These include *temporal* precariousness, involving uncertainty regarding the continuity of employment and/or the ‘continuing availability’ of work; an *organisational* dimension relating to the extent to which workers have individual and collective control over ‘working conditions, wages or the pace of work’; an *economic* ‘more ambiguous’ aspect relating to (low) wages and salary progression, with jobs being regarded as more precarious through their association with ‘poverty and insecure social insertion’; and finally a *social* dimension relating to the extent to which workers are protected through law, collective organisation or customary norms against ‘practices such as unfair dismissal, discrimination, and unacceptable working conditions’, and that they have ‘access to social security benefits such as health and occupational safety, pensions, and unemployment insurance’.³²⁶ This

Vosko, L. ‘Precarious Employment and the Problem of SER-Centrism: Regulating for ‘Decent Work’ in Lee, S., & McCann, D. (Eds.). (2011). *Regulating for decent work: new directions in labour market regulation*. Springer, citing this instance, at p. 62.

³²³ ILC 1984 at p. 103.

³²⁴ Rodgers, G., & Rodgers, J. (1989). *Precarious jobs in labour market regulation: The growth of atypical employment in Western Europe*. Geneva: International Institute for Labour Studies and Université libre de Bruxelles [Rodgers].

³²⁵ *Ibid.*

³²⁶ *Ibid.*

sociological definition of employment precariousness has since been widely relied upon and influential in empirical studies of precarious work within various disciplines.³²⁷

Such a definition of precarity is one that is described as set in opposition to the norm of the ‘standard employment relationship’ [SER]. The SER has been described as a ‘normative model throughout the 20th century’, comprising of a full-time continuous employment relationship between a worker and a single employer, where the work is carried out on the employer’s premises ‘under the supervisory control of the employer’s management’, with such work usually being carried out within a sector that has trade union representation, with such a relationship conferring benefits and access to social security that ‘complete the social wage’.³²⁸ It has also been described as work that is ‘properly regulated’ with workers ‘enjoying full legal protection’.³²⁹ Consequently, these four dimensions of precariousness are implicitly derived from the absence of typical elements within the SER. Accordingly, one of the authors (Gerry Rodgers) provides a typology of different patterns of ‘atypical’ work when defining precarious work, with a focus on the following four categories: temporary work, part-time work, homeworking and other forms of outwork, and self-employment and related activities.³³⁰ Relying on this conceptualization (and typology), the various writers in the Rodgers’ report analyzed the growth of various forms of ‘atypical’ work from the 1970s to 1980s, in several major European countries such as the United Kingdom, France, Italy, the Netherlands, West Germany and Belgium. Significantly, the Rodgers’ report’s definition has also been deemed instructive in reports by the ILO and other international institutions.³³¹

³²⁷ See, for example, Strauss, K. (2018). Labour geography 1: Towards a geography of precarity? *Progress in Human Geography*, 42(4), 622-630; Benach, J., et al. (2014). Precarious employment: understanding an emerging social determinant of health. *Annual review of public health*, 35, 229; Kountouris, N. (2012). The legal determinants of precariousness in personal work relations: A European perspective. *Comp. Lab. L. & Pol’y J.*, 34, 21.

³²⁸ Tilly, C., & Tilly, C. (2006). *Work under capitalism*. Routledge; Fudge, J., & Owens, R. (Eds.). (2006). *Precarious work, women, and the new economy: The challenge to legal norms*. Bloomsbury Publishing.

³²⁹ International Labour Conference. (Mar. 16, 2015). *ILC323 - Conclusion of the Meeting of Experts on Non-Standard Forms of Employment*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_354090.pdf, at p. 9.

³³⁰ See Part II ‘Patterns and trends’ in ‘Precarious Work in Western Europe: The state of the debate’, Chapter 1 of Rodgers.

³³¹ For example, see De Grip, A., et al. (1997). Atypical Employment in the European Union. *International Labour Review*, 136(1), 49-71; McCann, D., & Fudge, J. (2017). Unacceptable Forms of Work: A Multidimensional Model. *International Labour Review*, 156(2), 147-184; Koukiadaki, A., & Katsaroumpas, I. (2017). *Temporary Contracts, Precarious Employment, Employees’ Fundamental Rights and EU Employment Law*. European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596823/IPOL_STU\(2017\)596823_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596823/IPOL_STU(2017)596823_EN.pdf)

Following this report, it is worth noting at this juncture that there are numerous examples evidencing that the term precarity (or precarious work, and its permutations) has since been largely assumed as a term of expression within the ILO's institutional discourse. The term has been liberally used without engaged efforts to precisely define what is meant by usage of this term (aside from a few instances, as will be explored later). For example, numerous examples abound in the discourse of how the Committee of Experts on the Application of Conventions and Recommendations ('CEACR')³³² generally makes reference to precarious work, such as the ways in which 'many of the jobs on offer are precarious, temporary, offer low wages and do not provide opportunities for development',³³³ or simply noting the Trade Union Movement's observations denouncing 'the precarious conditions of workers in the agricultural sector'³³⁴ or the 'increasingly precarious working conditions' of the Haitians,³³⁵ without seeking a further definition. While the introduction of Rodgers' report into the institutional discourse and/or the larger context of the rise of precarity as a popular discourse in recent decades (as set out in Chapter II) can potentially explain this general incorporation of the term 'precarious work' (or similar permutations), charting the precise rise in the popular usage of this term within the ILO's extensive institutional discourse in the recent decades (which would entail a more comprehensive quantitative discourse analysis) lies outside the scope of the chapter.

For the purposes of the qualitative discourse analysis that follows in this section, I have selected four key institutional reports as the broad basis of my analysis. While the term 'precarious work' has been generally used and referred to within the broader institutional discourse (with the presumptions that this entails, which I will explore in the course of this dissertation), I have selected this smaller range of key materials because of their significance and because they seek to explicitly define and conceptualise precarity in an extended way (possibly since they are more research and/or advocacy oriented). Based on the conceptualisation set out in these reports, where relevant, I have supplemented this analysis

³³² The Committee of Experts is an 'independent body composed of 20 high-level national and international legal experts, who are charged with examining the application of ILO Conventions, Protocols and Recommendations by ILO Member States'. See: <https://www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/applying-and-promoting-international-labour-standards/committee-experts-application-conventions-and-recommendations-ceacr>

³³³ International Labour Conference. (2021). *ILC 109 - Application of International Labour Standards 2021: Addendum to the 2020 Report of the CEACR, Report III/Addendum (Part A)*. ILO: Geneva, at p. 800.

³³⁴ *Ibid.*

³³⁵ *Ibid.*

with further examples from the institutional discourse to provide more depth. However, it will not be feasible to provide in this sub-section an exhaustive account of the varied nuances within the ILO's wide-ranging and extensive discourse regarding the various elements of precarity.

The significance of these four reports is now briefly detailed. The first two reports that I have selected are key reports released pursuant to the ILO's agenda, while the next two reports are by the workers' representatives within the ILO, who extensively engaged with the concept of precarity in the wake of the Financial Crisis (which also tracks the rise of precarity as a concept, as set out in Chapter II). The *first* is a report released in 2016 by the International Labour Office ('Secretariat'),³³⁶ the Secretariat of the ILO, which has a central part of its mandate being the improvement of knowledge and understanding regarding various pertinent issues for the ILO. This particular report was released following the ILO's Tripartite Meeting of Experts on Non-Standard Forms of Employment ('NSE') in February 2015, and pursuant to the request made to the Secretariat to support the efforts of the ILO in devising policy solutions to address decent work deficits associated with NSE.³³⁷ The *second* was released as part of efforts to 'develop a shared understanding of what constitutes unacceptable forms of work', pursuant to the ILO's identification of protection from such forms of work as critical in 2013 and requiring priority action during 2014-25.³³⁸ This report takes on further significance because the ILO has made the question of what makes forms of work socially unacceptable, and the related question posed of what modes of regulation can eliminate unacceptable forms of work, as a 'central strand of its global policy agenda on its 2019 centenary'.³³⁹ The *third* is a report released by the Bureau for Workers' Activities, which is the main representative body of the ILO, in the wake of the Financial Crisis in 2012 ['ACTRAV Report'].³⁴⁰ Finally, the *fourth* is an official publication of the ILO which was published under the auspices of GURN in 2009 during the Financial Crisis itself ['GURN Report']³⁴¹. The GURN is described as a cooperating project of the International Trade Union Confederation ('ITUC'), the Trade Union

³³⁶ ILO. (2016). *Non-standard employment around the world: Understanding challenges. Shaping Prospects*. International Labour Office, Geneva [NSE Report].

³³⁷ See p. v, Preface of NSE Report.

³³⁸ Fudge, J. & McCann, D. (2015). *Unacceptable Forms of Work: A Global and Comparative Study*. International Labour Office, Geneva [UFW Report].

³³⁹ *Ibid.*

³⁴⁰ Bureau for Workers' Activities (ACTRAV). (2012). *From precarious work to decent work. Policies and regulations to combat precarious employment*. ILO: Geneva [ACTRAV Report].

³⁴¹ Evans, J., & Gibb, E. (2009). *Moving from precarious employment to decent work*. Global Union Research Network, ILO: Geneva [GURN Report].

Advisory Committee to the OECD ('TUAC), the ILO's International Institute for Labour Studies ('IILS') and ACTRAV.

Within this range of key materials within the institutional arena of the ILO, a lack of consensus on the 'scope and substance' of the concept of precarious work appears to remain.³⁴² Similar to the tenor of debates over the conceptualisation of precarity set out in Chapter II(B)(2), key materials seeking to explicitly define and demarcate the boundaries of precarious employment appear to agree that there is 'no single, universally accepted definition of what constitutes precarious work'.³⁴³ Instead, it is recognised as a term that has 'different expressions in different times'.³⁴⁴ Rodgers suggested that the definition of precarious work 'remains vague and multi-faceted'³⁴⁵ and common definitions of precariousness remain 'elusive' today.³⁴⁶ Indeed, it is worth noting that even Rodgers' definition contained the explicit caveat that 'the boundaries around the concept are inevitably to some extent arbitrary' and that it was 'some combination of these factors which identifies precarious jobs'.³⁴⁷

However, the diversity of concepts and definitions has also been portrayed as logical given the variations within labour markets, 'political/economic compromises within a range of industrial relations contexts', the range of context-specific ways and/or allied concepts for referring to jobs of unacceptable quality (such as contingent, atypical or non-standard work), and analytical approaches available for examining this issue.³⁴⁸ Nonetheless, it has been suggested that it remains possible to build a 'common understanding'³⁴⁹ for analytical³⁵⁰ and/or political purposes,³⁵¹ and that the myriad of concepts and definitions should not point to the impossibility of conceptualising precarity in a manner where it has 'explanatory power that reaches across national borders and economies'.³⁵²

³⁴² UFW Report, at p. 16.

³⁴³ Countouris, N. (2010). *Strengthening the protection of precarious workers: The concept of precarious work*. Ginebra, Suiza: International Trading Centre.

³⁴⁴ GURN Report, at p. 5.

³⁴⁵ See Rodgers, at p. 20.

³⁴⁶ GURN Report, at p. 5.

³⁴⁷ See Rodgers, at p. 20.

³⁴⁸ GURN Report, at p. 16.

³⁴⁹ *Ibid.*

³⁵⁰ UFW report; ACTRAV Report, at p. 27.

³⁵¹ ACTRAV report, p. 26; GURN report, at p. 16.

³⁵² GURN Report, at p. 16.

Indeed, a review of these key materials defining precarious work reveals that there are some common elements that surface across this range of materials and that these elements overlap substantially (although though not identically) with the earlier Rodgers' definition and, in fact, with each other. One report argues in this vein that what is needed is a 'broad classification', and 'not a strict taxonomy', since 'forms of precarious work intersect and combine'.³⁵³ These elements are now set out in turn.

The first element relates to time. By far the most common form of locating precarity, part-time work (which may be done on a permanent or temporary basis) and temporary work (which may be done on a full-time or part-time, seasonal and/or casual basis) are singled out as being potentially precarious.³⁵⁴ The ILO's broader institutional discourse frequently makes reference to this context when making reference to precarious employment.³⁵⁵ Such work is also commonly characterised as a deviation from the norm of a full-time job,³⁵⁶ and as atypical or non-standard employment. This element is identical to that of Rodgers' idea of *temporal* precariousness, involving uncertainty regarding the continuity of employment and/or the 'continuing availability' of work, and in fact overlaps substantially with the next element. However, unlike the insecurities associated with non-standard employment,³⁵⁷ too many hours are not usually mentioned as a source of concern, for an emphasis appears to only be placed on too few hours, constantly changing hours and/or the continuity of employment.

Within this element, one point of focus is usually on temporary employment, whereby workers are engaged for a specific period of time, including fixed-term, project- or task-based contracts, and seasonal or casual work, including day labour. Temporary employment may take the form of written or oral *fixed-term contracts* characterised by a pre-defined or predictable term. The ILO observes that in the majority of countries, fixed-term contracts are 'regulated by specific legal provisions' regarding the maximum length of the contract, the number of times that it may be subject to renewals, and valid reasons justifying their usage in that particular context.³⁵⁸ Here, in the ILO's General Survey concerning working-time instruments (an instrument prepared by the CEACR and submitted to the ILC in 2018) [ILO's Working Time

³⁵³ Rossman, at p. 25.

³⁵⁴ ACTRAV Report, at p. 6.

³⁵⁵ See, for example, Index of Tables and Figures in ACTRAV Report.

³⁵⁶ I will further elaborate on this norm in Section C below.

³⁵⁷ See element 3 mentioned within the analytical framework for identifying decent work deficits in non-standard employment in the NSE Report.

³⁵⁸ NSE Report, at pp. 2-3.

General Survey], the CEACR has noted concerns about how fixed-term contracts could be ‘used deliberately’ to circumvent the exercise of trade union rights, through ‘repeated renewals’ of such contracts over the course of several years. Alternatively, temporary employment could take the form of a contract to perform a *particular project or task*, therefore ending with the completion of that specific task. Otherwise, temporary employment could also be found in the form of *casual work*, which is the engagement of workers on a short-term, seasonal or intermittent basis, wherein the amount of time is specified (whether in hours, days or weeks) in exchange for a wage set by the terms of this agreement.³⁵⁹

Nonetheless, the CEACR has broadly noted the critical importance of working time ‘for enterprises’, with hours of work and the organisation of such hours being important determinants of productivity, along with the profitability and sustainability of such enterprises.³⁶⁰ It notes the International Organisation of Employers’ observations that there can be a range of situations in which rules can be developed for organizing working time, such as the ‘efficient use of machinery and other means of production’, the ‘availability of worker expertise’ in responding to the demands of ‘markets and customers’ and ‘minimization of labour costs’.³⁶¹ Elsewhere, the increasing importance of varying working-time arrangements ‘as a means of adapting staffing to changing business needs’ has been acknowledged.³⁶²

Another usual point of focus is that of part-time employment, which could be on a permanent or temporary contractual basis. Part-time employment refers to the number of hours of work being fewer than those of comparable full-time workers.³⁶³ Many countries have specific legal thresholds defining part-time versus full-time work, therefore ‘distinguishing part-time work in legal terms’.³⁶⁴ For comparative statistical purposes, part-time work is usually considered as working for pay for fewer than 35 hours per week, a figure presumably derived from the norms instituted within full-time work under the SER.³⁶⁵ Within this scenario,

³⁵⁹ *Ibid.*

³⁶⁰ International Labour Conference. (2018). *ILC 107 - General Survey concerning working time instruments, Report III (Part B)*. ILO: Geneva. <https://www.ilo.org/resource/conference-paper/ilc/107/general-survey-concerning-working-time-instruments-ensuring-decent-working-1> at p. 201.

³⁶¹ *Ibid.*

³⁶² NSE report, p. 264.

³⁶³ *Ibid.*, at p. 3.

³⁶⁴ *Ibid.*

³⁶⁵ International Labour Conference. (2018). *ILC 107 - General Survey concerning working time instruments, Report III (Part B)*. ILO: Geneva. <https://www.ilo.org/resource/conference-paper/ilc/107/general-survey-concerning-working-time-instruments-ensuring-decent-working-1> at p. 201.

there may be some instances where working arrangements involve very short or no predictable fixed hours, wherein the employer may not be obliged to provide a specific number of hours of work (also known as a zero-hours contract).³⁶⁶

Of course, part-time work is viewed in more ambiguous terms within the institutional discourse, and it is not simply presupposed that all part-time work is precarious and/or is being used for illegitimate purposes. In the ILO's Working Time General Survey, the CEACR offered a framing of part-time as being used by employers for three different reasons.³⁶⁷ The first two strategies are portrayed in more neutral terms. The first is as a strategy of recruitment and retention which was 'based on workers' preferences' themselves. The second is to create more 'optimal staffing and operational flexibility' within the work force to adapt to the varying demands for labour on a daily, weekly or seasonal basis. It is only the third strategy that is portrayed in more pejorative terms, where it describes the creation of a 'secondary, less remunerated and more precarious pool of workers, through the generation of low-paid, low-skilled jobs' which may occur through the 'circumvent[ion of] regulations or collective agreements that protect the wages and other working conditions of full-time workers'. Separately, the CEACR also notes that legislators could use part-time work 'as an instrument of employment policy in the fight against unemployment'.³⁶⁸

The second element relates to status of employment, which refers to forms of employment, including paid full-time permanent or temporary work, paid part-time permanent or temporary, informal work, undeclared work, or self-employment.³⁶⁹ This also appears to be one of the most common ways in which precarious employment is referred to within the ILO's institutional discourse.³⁷⁰ Whilst Rodgers' definition has been praised for its inclusion of social and economic vulnerability, it is reiterated that the typology that they eventually provided of different patterns of atypical work nevertheless revolved around categorisation through status in the form of temporary work, part-time work, homeworking and other forms of outwork, and self-employment and related activities. Indeed, an earlier mode of measuring precarity for statistical purposes (proposed after the Rodgers' report was released) was also based on such a

³⁶⁶ *Ibid.*

³⁶⁷ *Ibid.*, at p. 9.

³⁶⁸ *Ibid.*

³⁶⁹ GURN Report, at p. 9; ACTRAV report, at p. 6; UFW report, at p. 17; NSE Report, at pp. 2-3.

³⁷⁰ However, as qualified above, a more extensive quantitative discourse analysis would be needed to confirm this statement.

method. The Resolution concerning the International Classification of Status in Employment (ICSE) adopted by the 15th International Conference of Labour Statisticians³⁷¹ also defined precarious employment on the following narrowed terms of status:

Workers in precarious employment can either: (a) be workers whose contract of employment leads to the classification of the incumbent as belonging to the groups of “casual workers” (cf. item (e)), “short-term workers” (cf. item (f)) or “seasonal workers” (cf. item (g)); or (b) be workers whose contract of employment will allow the employing enterprise or person to terminate the contract at short notice and/or at will, the specific circumstances to be determined by national legislation and custom.

However, it is evident that greater variety has developed within the discourse beyond this narrow measure of precarity, such that the scope of the definition of precarious work has been expanded. For example, more recently, it has been stated that ‘there is no official statistical measure of precarious work’³⁷² and that the benefits of a multi-dimensional approach ‘outweigh the difficulty in devising precise statistical measures’.³⁷³

Indeed, it has been emphasized how employment status cannot be used as a ‘proxy for precariousness’.³⁷⁴ It provides the important insight that literature related to precarious employment largely revolved around the framing and definition of ‘barriers of inclusion and exclusion’ as to the types of work and workers, and that there is an intuitive appeal to reduce the concept to employment status (such as those on temporary contracts, or workers hired through private employment agencies).³⁷⁵ However, it problematises this approach by highlighting that precarious work may be found within virtually every employment status category, citing the range of ‘permanent full-time, permanent part-time, temporary part-time, temporary full-time and self-employment’.³⁷⁶ Amongst others, it gives the example of how a highly paid worker on a temporary contract could have a high risk of being terminated (i.e. no job security) whilst a low-paid worker could be in a long-term and relatively secure employment relationship due to seniority rights.³⁷⁷ It also highlights how workers in full-time

³⁷¹ International Conference of Labour Statisticians. (1993). *Resolution concerning the International Classification of Status in Employment*. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087562.pdf

³⁷² UFW Report, at p. 19.

³⁷³ UFW Report, at p. 18. This multi-dimensional approach will be elaborated upon in the sixth element below.

³⁷⁴ GURN Report, at p. 20.

³⁷⁵ *Ibid.*, at p. 16.

³⁷⁶ *Ibid.*

³⁷⁷ *Ibid.*, at p. 20.

permanent jobs may be more precarious than other full-time or part-time temporary workers, or even part-time permanent workers, if we focus on specific dimensions of precarity such as ‘company uncertainty’ in the context of the indicator of uncertainty.³⁷⁸

Nonetheless, status is still employed as a frequent measure of precarity. The importance of this ‘initial legal classification’ flows from the range of consequences for the worker insofar as access or entitlements to regulatory protection are concerned.³⁷⁹ Consequently, the nature of the employment relationship (which in turn has an impact on employment status) can be analytically subsumed under this category of status. The complexity of the contractual relationship has been included in definitions of precarious employment,³⁸⁰ with both bilateral or triangular employment relationships are reported as potentially involving precarity.³⁸¹ Particularly, the presence of multiple possible employers, agency work and ‘other forms of outsourced, indirect, third party or triangular relationships’ that ‘obscure the relationship with the real employer’,³⁸² and bogus/disguised self-employment as ‘independent contractors’³⁸³ are given as indicators of precarious employment. Less commonly, the possibility of abusive apprenticeships, internships and training schemes has been mentioned.³⁸⁴ More unusually, one report also mentions the ‘transformation of employment contracts into commercial contracts’, giving the example of the creation of ‘cooperatives’ in the ‘Brazilian and Colombian sugar, palm oil and banana sectors.’³⁸⁵

The third element relates to earnings, which is not touched upon in much detail by most of the reports. However, where mentioned, the reports mostly agree that earnings constitute a potential indicator of precariousness due to their correlation with poverty. As Rodgers’ definition mentions, this economic aspect is more ambiguous. One report characterizes insufficient wages as being opposed to ‘stable and long-term’ wages,³⁸⁶ indicating an implicit norm orienting the SER and idealised projections of what a good, non-precarious job ought to look like. Another characterises earnings (albeit within the context of non-standard

³⁷⁸ Reference here is made to Figure 2.2D ‘Indicators of Precarious Wage Work by Form of Employment, Canada 2000 (Ages 25-54)’ by Vosko, as reproduced at p. 19 of the GURN Report.

³⁷⁹ UFW Report, at p. 19.

³⁸⁰ ACTRAV Report, at p. 6.

³⁸¹ GURN Report, at p. 17.

³⁸² Rossman, at p. 25.

³⁸³ Rossman, at p. 25; NSE Report, at p. 3.

³⁸⁴ Rossman, at p. 25.

³⁸⁵ *Ibid.*

³⁸⁶ GURN Report, at p. 18.

employment, indicating a ‘decent work deficit’) as ‘insecurity stemming from wages below the minimum living wage level’, indicating a substantive standard that needs to be met, or uncertainty regarding the chances of future earnings, indicating a relative standard based on temporality.³⁸⁷ One report emphasizes the context specific and multi-dimensional nature (‘including amount, frequency of payment, security of payment, and whether or not it is continuing) of this dimension.³⁸⁸

The fourth element refers to the regulatory protection that workers receive in the form of social benefits and statutory entitlements, whether through unions or the law.³⁸⁹ One report frames this dimension with explicit reference to the normative construct of the SER, by defining it as a ‘lack of access to social protection and benefits usually associated with full-time standard employment.’³⁹⁰ This element is, in turn, underpinned by the organizational dimension within Rogers’ framework, of workers having individual and collective control over their working conditions (as enabled through rights of collective bargaining and the right to association). The extent of precarity is therefore influenced by how which legal systems provide ‘mandatory norms’ that workers may rely on to introduce a measure of flexibility in the control that their employer otherwise exercises over their ‘schedules, working relations and income’.³⁹¹ Government representatives have pointed to how labour protections are ‘an essential element for social justice and the promotion of decent work’, and describe the growth of informality and specific forms of employment ‘such as temporary employment, work on digital platforms, telework and hybrid work’ as activities which lack adequate regulation ‘and, therefore, might have contributed to the precariousness of working conditions’.³⁹²

The fifth element refers to immigration status. Only one report draws attention to this marker, offering an emphasis on vulnerability that workers may face due to their migrant statuses.³⁹³ Such status is broadly defined to include refugees, irregular migrants, unregistered rural migrants, and migrants that are part of managed temporary migrant programmes. However, it does not go on to elaborate on the role that law might play in constructing such precariousness, and precisely how such precariousness arises.

³⁸⁷ NSE Report, at p. 19.

³⁸⁸ *Ibid.*

³⁸⁹ GURN Report, at p. 18.

³⁹⁰ ACTRAV Report, at p. 7.

³⁹¹ UFW Report, at p. 19; ACTRAV Report, at p. 20.

³⁹² International Labour Conference. (2023). Record of Proceedings, ILC.111/No.6B (Rev. 1). ILO: Geneva.

³⁹³ UFW Report, at pp. 18-19.

The sixth element relates to social location and context. This is an interesting element that was perhaps only briefly mentioned in Rodgers' definition of precarious work as being influenced by 'social and economic vulnerability' and was not present in any of the dimensions specified. This element integrates feminist political economist Leah Vosko's multi-dimensional approach to precarious employment, described as being 'the most comprehensive and inclusive approach'³⁹⁴ to describing precariousness, to shed light on broader social processes and relationships that 'influence who becomes a precarious worker and the nature of their work'. In this regard, in relation to all the earlier five elements, one report draws attention to how these 'legal markers' of precarious work are 'not definitive' because the *effectiveness* of any legal claims would depend upon the 'institutional, including legal framework, in which they are lodged' and the availability of assistance to pursue such claims.³⁹⁵ By doing so, this report draws attention to the processual dimension underlying the above elements, and therefore places an emphasis on this sixth element as influencing the production of precarity.

Social context is defined by Vosko as including 'occupation, industry and geography' whilst 'social relations' are defined as including 'gender, and legal and political categories, such as citizenship'.³⁹⁶ One report conflates these elements somewhat by briefly describing how precarity may be shaped by factors beyond employment status such as 'race, gender and occupation'. The UFW report provides the most extended engagement with this element, and fleshes out in more detail than Vosko's own definition of what social context and location respectively mean. It describes Vosko's contribution as being distinctive for emphasizing how the characteristics of workers 'interact[s] in specific labour and product markets to produce precarious work outcomes',³⁹⁷ and proceeds to detail that social context refers to how context (especially product markets and governance regimes) shape the positionality of various groups of workers within local labour markets in a manner that subjects them to an increased risk of precariousness.³⁹⁸ Sectors such as 'hospitality, construction, agriculture, retail, personal care

³⁹⁴ GURN Report, p. 17.

³⁹⁵ UFW Report, at p. 19. For reference, the definition by Vosko is set out in full: 'Precarious employment encompasses forms of work involving job insecurity, low income, limited social benefits and statutory entitlements, and high risks of ill-health. It is shaped by employment status (i.e., self-employment or paid employment, bilateral employment relationships or triangular employment relationships), form of employment (i.e., temporary or permanent, part-time or full-time), and dimensions of labour market insecurity, as well as social context and social location.'

³⁹⁶ *Ibid.*

³⁹⁷ UFW Report, at p. 20.

³⁹⁸ *Ibid.*

and cleaning’ are singled out as being associated with precarity, with forms of precarious work arrangement predominating in certain sectors (bogus self-employment is largely found with the construction, whilst seasonal and/or casual work is frequently found within agriculture and the hospitality industry).³⁹⁹ Subjects that work from different premises from that of their employer (such as homeworking) may be subject to increased precarity.⁴⁰⁰ The challenges of unions in representing small-medium enterprises is also mentioned, with the latter being less likely to offer higher wages, benefits and union representation.⁴⁰¹ Conversely, the broader social context is found to possibly ‘alleviate’ precarity related to work, as in the situation where a precarious worker receives social security benefits and unemployment benefits.

The UFW report proceeds to further explain that social location refers to the ‘demographic characteristics’ of workers that are disproportionately found in precarious work.⁴⁰² This aspect is found to be linked to ‘processes of marginalization that undermine social cohesion’, with markers of identity and status such as ‘sex, age, family status, youth, ethnicity, caste, race, immigration status, linguistic group and skill and ability levels’ being frequently identified as vulnerabilities.⁴⁰³ ‘Specific labour markets’ are seen to channel people into precarious work based on these markers.⁴⁰⁴ Examples given include women workers being disproportionately found in precarious work due to their care and household responsibilities, and migrant status being used as a ‘marker’ for disproportionately matching them to jobs that are ‘dirty, dangerous and demeaning’, and as a source of labour for specific industries (such as hospitality and agriculture) that are ‘dependent’ upon temporary migrant workers.⁴⁰⁵ To an extent, there appears to be an overlap here between the citizenship aspect of social location and the fifth element mentioned above of immigration status.

The last seventh element relates to the subjective element of precarity, which is perhaps the most controversial. This element appears to be derived from earlier mentioned American

³⁹⁹ *Ibid.*

⁴⁰⁰ See Vosko, L. (2006). Gender, Precarious Work and the International Labour Code: The Ghost in the ILO Closet. In Owens, R. & Fudge, J. *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (pp. 53-75). Hart Publishing, for an account of place as influencing precarity within the international legal sphere.

⁴⁰⁰ See Rossman, at p. 25.

⁴⁰¹ UFW Report, p. 20

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *Ibid.*

professor of sociology Kalleberg's definition of precariousness as 'employment that is uncertain, unpredictable and risky from the point of view of the worker.' Whilst this definition by Kalleberg has been cited with approval in one report,⁴⁰⁶ another report by the ILO on 'Employment Policies for Social Justice and a Fair Globalisation' has couched this subjective element using different language, by introducing an element of choice in perceptions of precarity.⁴⁰⁷ Whilst it defines precarious work as referring to 'atypical work that is involuntary', this definition has been criticised on the basis that it is not immediately clear how its examples provided of a temporary worker without any employment security or a part-time worker without any pro-rated benefits of a full-time job would involve such a subjective element of 'voluntariness'.⁴⁰⁸

Lastly, it should be noted that beyond the usage of the term 'precarious work' itself, it is noteworthy that what has been described as precarity within the dominant discourse (see Chapter II) has been a site of intense engagement within the ILO's institutional arena. Indeed, a wide range of terms have emerged to signal a larger concern with what one could recognise as precarity. As an illustrative example, in Report V on the scope of the employment relationship which was submitted to the 2003 International Labour Conference proceedings, it was noted that there was a 'proliferation of terms' used to refer to the various situations in which workers 'lacked adequate protection'.⁴⁰⁹ These 'frequently use[d]' expressions were noted to include terms such as:

atypical, precarious or flexible employment; new forms of employment; non-conventional forms of employment; contracting out, externalization, outsourcing, or temporary workers, but not in the traditional sense meaning persons who work for a limited time, but specifically those recruited through a temporary employment agency.⁴¹⁰

⁴⁰⁶ GURN Report, at p. 2.

⁴⁰⁷ International Labour Conference. (2010). *ILC99 - Employment Policies for Social Justice and a Fair Globalization*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_126682.pdf, at p. 35.

⁴⁰⁸ Contouris, N. (2019). *Defining and Regulating Work Relations for the future of Work*. International Labour Office, Geneva.

⁴⁰⁹ International Labour Conference. (2003). *ILC 91 - The Scope of the Employment Relationship*. ILO: Geneva. <https://webapps.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-v.pdf>

⁴¹⁰ See, for example, the NSE Report.

Indeed, in recent decades, the ILO has demonstrably shifted its focus in seeking to more adequately regulate working conditions by making reference to the more neutrally termed ‘non-standard employment.’⁴¹¹

Finally, for the purposes of clarification, it is important to mention that whilst precarious work is frequently conflated with allied concepts like atypical or non-standard employment (NSE), a flagship report by the ILO on NSE has clarified that standard employment may also be subject to precarious working conditions, in Section 1.3 titled ‘The distinction between non-standard and precarious employment and the need to address insecurities at work’.⁴¹² Preliminarily, this report’s understanding of the term ‘standard’ employment was that it should not be conflated with a job with good working conditions, but instead should be relied on as a benchmark to identify new contractual forms that have emerged which are a deviation from the principal characteristics of the SER. In this vein, it re-affirmed that both standard and non-standard jobs can be precarious (whilst, equally, non-standard jobs ‘are not necessarily precarious’) since precariousness ‘refers to the attributes of the job’ whilst non-standard ‘is about a contractual form’.⁴¹³ It provided the example of workers in standard jobs ending up ‘in a precarious situation’ due to poverty-level wages, uncertainty regarding the continuity of their jobs or the job resulting in the exposure of the worker to occupational hazards.⁴¹⁴ The report further added that a defining characteristic of precariousness was that ‘the worker bears the risks associated with the job’ rather than the business hiring the worker. Given that this terminology is borrowed from Kalleberg, these risks presumably refer to the insecurity and uncertainty that is associated with a job, and falls under both the subjective element of precarity, and employment status.

Additionally, a conceptual distinction has been made with vulnerability models as well. For example, one of the report notes that while ‘vulnerability models are analytically useful’, there is need for caution regarding the ‘potential for perverse policy outcomes’.⁴¹⁵ Specifically, vulnerability is seen to result in responses that target ‘directly (and perhaps exclusively)’ workers that are seen to be ‘in most need of protection’, which in itself is described as a model that has historical resonance with efforts to protect specific groups of vulnerable workers

⁴¹¹ This aspect will be touched upon in section C.

⁴¹² NSE Report, at pp. 18-20.

⁴¹³ NSE Report, at pp. 18-20.

⁴¹⁴ *Ibid.*

⁴¹⁵ UFW Report, at pp. 28-29.

(‘archetypically women and children’).⁴¹⁶ However, these strategies are described as not being ‘self-evidently the most effective for preventing or reducing unacceptable work’.⁴¹⁷ Instead, it is highlighted that vulnerability does not only point to the ‘characteristics of the individual worker’, but require attention ‘not to the workers themselves but to their circumstances in the working environment and other aspects of their lives’.⁴¹⁸

B. Situating the Subjects of Precarity

Moving beyond the question of demarcating the boundaries of a definition, a different question is now posed of *who* this definition can be seen to be applicable to. This question arises due to an understanding of precarity from the earlier chapter, wherein precarious work is situated within a distinct context of being portrayed as a deviation from societal norms of a ‘standard employment relationship’ (‘SER’), and a construct with the baggage of a European social movement. Put in another way, can the definition of precarious work be operationalised conceptually within a context that is different from its origin? Whilst this assumption has been subject to investigation within some of the social sciences literature (as indicated in the earlier chapter), a survey of international legal materials shows that there is a readiness to apply the lens of precarity to understand and remedy ‘unacceptable’ employment within other countries where the SER had never been the norm.

Furthering my above argument regarding slippage in using the term of precarity within a different context, the term ‘precarious employment’ appears to have been deployed at critical junctures to *justify* the transition from an informal to formal economy, and therefore decent work. This is despite the earlier origins of the informality debate within the ILO⁴¹⁹ and the much more complicated history underpinning informality involving (amongst others) a critique of low-productivity work.⁴²⁰ In its 2014 flagship report on ‘Transitioning from the informal to the formal economy’,⁴²¹ the ILO reported that “[t]he informal economy thrives in a context of

⁴¹⁶ *Ibid.*, at p. 29.

⁴¹⁷ *Ibid.*

⁴¹⁸ *Ibid.*

⁴¹⁹ See generally, Kanbur, R. (2021). Introduction: The long discourse on informality as reflected in selected articles of the International Labour Review. *International Labour Review, Centenary Collection*, 1, 1.

⁴²⁰ Benanav, A. (2019). The origins of informality: the ILO at the limit of the concept of unemployment. *Journal of Global History*, 14(1), 107 – 125.

⁴²¹ International Labour Conference. (2014). *ILC103 – Report V(I) Transitioning from the informal to the formal economy*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf.

high unemployment, underemployment, poverty, gender inequality and *precarious work*” [italicized for emphasis]. The ILO went on to state in that report that:

[t]he prevalence of informal employment in many parts of the world, and a pervasive trend towards higher levels of precarious and informal employment, which has worsened as a result of the global crisis ... prevents households and economic units trapped in the informal economy from increasing productivity and finding a route out of poverty. It is therefore necessary to facilitate transitions from the informal economy to the formal economy.

[underlined for emphasis]

In another significant report, there is an acknowledgement that while informal employment was the preferred term within less developed countries⁴²² and research on precarious work ‘has tended to focus on countries with advanced economies’, the scholarly literature has diversified its geographical focus to include other countries such as those from South and South-East Asian countries that had ‘different trajectories, cultural traditions, and levels of development’.⁴²³ The report then proceeds to use the theoretical understanding of precarious work as a broad global basis for ‘discerning the dimensions that make work unacceptable.’⁴²⁴ It further specifies that it is ‘precisely’ the features of ‘uncertainty, insecurity and instability associated with an increasing proportion of work’ that makes certain forms of work unacceptable.⁴²⁵

Elsewhere, precarious work is labelled as an international problem,⁴²⁶ whilst the ACTRAV Symposium, with its distinctly European account of the origins of precarious work (the familiar story of flexibility and the unravelling of regulations that had previously established the SER), was followed up by a symposium on Precarious Work in Beijing, China⁴²⁷ to understand the ‘global growing trend of precarious work’ and the All-China Federation of Trade Unions’ response to precarious work. The last example is taken from the International Labour Conference proceedings in 2019, where government or worker

⁴²² UFW Report, at p. 17.

⁴²³ *Ibid.*, at p. 21.

⁴²⁴ *Ibid.*, at p. 24.

⁴²⁵ *Ibid.*, at p. 17. See also: McCann, D. & Fudge, J. (2019). A Strategic Approach to Regulating Unacceptable Forms of Work. *Journal of Law and Society*. 46(2), 271-301.

⁴²⁶ Marin, E. (2013). Precarious work: An international problem. *International Journal of Labour Research*, 5(1), 153-168.

⁴²⁷ Bureau for Workers’ Activities (ACTRAV), All-China Federation of Trade Unions (ACTFU) and the ILO Country Office for China and Mongolia in Beijing (Dec. 10, 2011). *Beijing: Seminar on Precarious Work* (Press release). ILO: Geneva https://www.ilo.org/actrav/media-center/pr/WCMS_171881/lang--en/index.htm.

representatives from a diverse range of countries from Paraguay,⁴²⁸ Somalia,⁴²⁹ Mexico,⁴³⁰ Cuba,⁴³¹ India,⁴³² Argentina⁴³³ and Fiji⁴³⁴ to Honduras⁴³⁵ expressed concerns about precarious work within their countries.

With some preliminary cognisance of this potential dissonance in applying the lens of precarity outside of its original context ‘across national borders and economies’,⁴³⁶ let us now turn our attention to how international law perceives precarity, by focussing on the questions of where and for whom precarity is experienced, and the consequent significance of this.

(1) Temporal-Spatial Scales

This section focuses on the geographical dimensions of precarity, and the sectors of the economy within which precarity is usually experienced. One way in which precarious work manifests is evidenced through the overall structure of the global economy, and the nature of jobs created. As has been clarified earlier, precarious work is found in both the formal and informal economy, and in standard and non-standard work. As the CEACR convened by the ILO to investigate workers in situations needing protection observed, ‘a tendency which appears to be a common denominator in recent changes in employment relationships, irrespective of the specific factors at their origin, is a general increase in the precarious nature of employment and the decline of workers’ protection’.⁴³⁷ Against the backdrop of this overall trend of a global increase in precarious work, international law’s perception of precarious work is that it is predominantly found within the informal economy and in non-standard work. These two features of the global economy are now elaborated in turn.

⁴²⁸ International Labour Conference. (2019). *ILC108 – Transcript of the discussion of the Reports of the Director-General and the Chairperson of the Governing Body*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_726221.pdf, at p. 62.

⁴²⁹ *Ibid.*, at p. 78.

⁴³⁰ *Ibid.*, at p. 217.

⁴³¹ *Ibid.*, at p. 276.

⁴³² *Ibid.*, 5B, Part II/17.

⁴³³ *Ibid.*, 5B, Part II/77.

⁴³⁴ *Ibid.*, 5B, Part II/139.

⁴³⁵ *Ibid.*, 5B, Part II, at p. 152.

⁴³⁶ See GURN Report, p. 16.

⁴³⁷ International Labour Office, Governing Body. (May 15-19, 2000). *GB. 279/2 - Report of the Meeting of Experts on Workers in Situations Needing Protection*. ILO: Geneva. <https://www.ilo.org/public/english/standards/relm/gb/docs/gb279/pdf/gb-2.pdf>, at para 104.

Regarding the *informal economy*, this refers to a wide range of jobs and economic activities that do not have work-based social protection, ranging from street vending, home-based work in global and domestic value chains, waste-picking, and domestic work to short-term contracts. Informality is ‘often cast in terms of the weak relationship to the law’.⁴³⁸ The 2002 Resolution by the General Conference of the ILO concerning Decent Work and the Informal economy emphasises this lack of protection by the law.⁴³⁹ Informality hence encompasses ‘activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements’.⁴⁴⁰ This lack of formality may arise for a variety of reasons, such as the lack of inclusion within the formal ambit of the law, the lack of application or enforcement of the law, compliance with the law imposing excessive costs, or burdensome or inappropriate procedures.⁴⁴¹ In line with this understanding, the 17th International Conference of Labour Statisticians has defined informality in the following terms, with the overarching element of the lack of legal protection foregrounded in this definition even if the reasons for informality are varied:⁴⁴²

Employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.). The reasons may be the following: non-declaration of the jobs or the employees; casual jobs or jobs of a limited short duration; jobs with hours of work or wages below a specified threshold (e.g. for social security contributions); employment by unincorporated enterprises or by persons in households; jobs where the employee’s place of work is outside the premises of the employer’s enterprise (e.g. outworkers without employment contract); or jobs for which labour regulations are not applied, not enforced, or not complied with for any other reason...

Whilst informality exists in all countries at all levels of socio-economic development, it is more prevalent within developing countries than developed countries. It is estimated that two billion (comprising 61 per cent) of the global employed population earn their living within the

⁴³⁸ ILO. (2021). *The Regulatory Framework and the Informal Economy*. International Labour Office, Employment Policy Department, ILO: Geneva.

⁴³⁹ ILO. (2021). *The Regulatory Framework and the Informal Economy*. International Labour Office, Employment Policy Department, ILO: Geneva.

⁴⁴⁰ *Ibid.*

⁴⁴¹ *Ibid.*

⁴⁴² International Conference of Labour Statisticians. (2003). *Guidelines concerning a statistical definition of informal employment*. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087622.pdf

informal economy.⁴⁴³ Excluding agriculture, the level of informal employment falls globally and in each country income group but remains at one half of global employment. Informality is 90 per cent of employment in developing (low-income) countries, 67 per cent in emerging (upper-middle and lower-middle) countries and 18 per cent in developed (high income) countries.⁴⁴⁴ In addition, evidence from the World Bank and the ILO confirms that the vast majority of new jobs in the developing world in the new millennium have been created in the informal economy.⁴⁴⁵ These jobs are seen to be largely precarious in nature, given that the developing world is largely characterised by ‘seriously inadequate’ formal sector job creation and social safety nets.⁴⁴⁶

Scholars have also observed the practice of ‘informalisation of the formal economy’ within both developing and developed countries, wherein jobs that were formal, standard jobs have been replaced by informal and/or non-standard jobs.⁴⁴⁷ For example, while casual work is described as a ‘prominent feature of informal wage employment in low-income developing countries’, it has also emerged more recently in industrialized economies in jobs associated with the ‘on-demand’ or ‘gig’ economy. These trends along the lines of increasing informalisation are seen to contradict previous economic thinking, in line with the developmental agenda,⁴⁴⁸ projecting that the developing world would gradually see an increase in the size of its formal economy and the growth of wage employment.⁴⁴⁹ The ILO has further observed that the existing legal and regulatory frameworks tend to be ‘irrelevant for – or punitive towards’ the informally employed.⁴⁵⁰

⁴⁴³ ILO. (2018). *Women and Men in the Informal Economy: A Statistical Picture (3rd edn.)*. International Labour Office, Geneva.

⁴⁴⁴ ILO. (2019). *Interactions between Workers’ Organizations and Workers in the Informal Economy: A Compendium of Practice*. International Labour Office, Geneva.

⁴⁴⁵ ILO. (n.d.). *Decent Work and the Informal Economy*. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/publication/wcms_2_10442.pdf.

⁴⁴⁶ Aleksynska, M. & Berg, J. (2016). *Firms’ demand for temporary labour in developing countries: Necessity or strategy?* Conditions of Work and Employment Series No. 77, ILO: Geneva.

⁴⁴⁷ ILO. (2016). *Non-standard employment around the world: Understanding challenges. Shaping Prospects*. International Labour Office, Geneva, at p. 17.

⁴⁴⁸ ACTRAV describes the growth of wage employment in developing countries as ‘the hallmark of economic development’.

⁴⁴⁹ Bureau for Workers’ Activities (ACTRAV). (2011). *ACTRAV Symposium on Precarious Work (4-7 October, 2011)*. ILO: Geneva. https://www.ilo.org/actrav/events/WCMS_153972/lang-en/index.htm.

⁴⁵⁰ International Labour Office, Geneva. (2018). *Women and Men in the Informal Economy: A Statistical Picture (3rd edn.)*. Third Edition. International Labour Office, Geneva.

In the context of *non-standard work* (NSE), the ILO has observed a global increase in NSE in the last few decades, with an increase in the use of ‘atypical’ forms of employment relations, such as temporary contracts, fixed-term contracts, and the use of multi-party employment relations through private employment agencies.⁴⁵¹ However, this development is not perceived entirely in pejorative terms. For example, NSE is seen as having accommodated contemporary changes in conditions of production and having allowed workers to get more integrated into the labour market. Nonetheless, the fact remains that this growth of NSE has posed challenges for working conditions, including the rise of precarious work. There is also a much higher incidence of low wages (one key feature of precarity) within NSE. Indeed, this has led the ILO to comment that instead of the popular perception of job insecurity being compensated through higher wages, the former is co-related with low pay.⁴⁵² Moreover, the fact remains that the SER remains the most dominant form of employment only within industrialised countries, accounting for about 70 percent of jobs in Europe and the United States. This can be contrasted with emerging economies such as Brazil and Argentina, where most jobs created in the new millennium were formal jobs with indefinite contracts, while low-income countries have self-employment and casual waged employment as ‘the dominant forms of engagement’.

However, such a geographical understanding of precarious work as being predominantly found within developing countries, and furthermore mostly within the informal sector of the economy, could be further deepened by a temporal understanding of this geographical scale. Geographers have long understood that the spatial patterns that they study can usually only be explained in historical terms. However, there appears to be much less attention paid to the temporal scale of precarity within the international legal discourse, compared to the geographical scale of precarity. Instead, as preliminarily highlighted at the start of this section, the concept of precarity appears to be unproblematically applied as a lens to analyse developments within developing countries that never had the SER as a norm within their countries. Indeed, the focus of a large number of these studies is on the ahistorical observation

⁴⁵¹ ILO. (2017). *Regulating the use of temporary contracts by enterprises*. ILO, Research Brief. https://www.ilo.org/global/research/publications/what-works/WCMS_546843/lang-en/index.htm

⁴⁵² ILO. (2010). *Global Wage Report 2010–11: Wage policies in times of crisis*. International Labour Office, Geneva, at p. 46.

of the extent to which precarious work exists within countries, and the assumption that this is a problem that has to be remedied via regulation or through collective bargaining.⁴⁵³

Nonetheless, there are a few studies by workers' representatives that acknowledge the temporal scale of precarity. However, there is a slightly varied understanding within this discourse. One report acknowledges that precarious work as related to wage labour 'is not by any means a new challenge'.⁴⁵⁴ It speaks about how the 'adverse social and economic effects of unregulated markets', including precarious work, have historically been successfully reduced due to 'expanded social protection', collective bargaining and 'secure employment'.⁴⁵⁵ However, temporally, a 'great risk shift' is seen to have occurred in recent years with key social risks having been transferred to the individual from governments and employers, and policies 'giving a greater role to market forces within the workplace' resulting in the 'erosion of the SER'.⁴⁵⁶ While the geographical scale of this 'great risk shift' has not been explicitly specified, the conclusion sets out that the objective of the report is to ensure precarious work does not 'become the dominant feature of the relationship between workers and employers' in this century.⁴⁵⁷ Implicitly, the geographical scale of precarity envisaged within this report is hence confined to the European sphere, and considerations of precarious work within the rest of the world (and their temporal scale) are left out of account.

The second report includes a temporal understanding of the 'political economy of precarity' by acknowledging that precarious employment is an 'old phenomenon' that is 're-emerging'.⁴⁵⁸ It elaborates on how the labour movement has 'always had the implicit objective of making labour less precarious', by linking this to its attempts to 'de-commodify' labour. It claims that such efforts by organised labour were 'historically' successful since 'non precarious employment became the standard employment relationship.' While the assumption here is that the idealised norm is that of the SER, it does go on to acknowledge that the SER was not a matter of universality since it only covered men whilst women frequently held low-paying, part-time, casual jobs. However, this acknowledgement somehow does not seem to unsettle its earlier claims that organised labour had been 'historically' successful. Furthermore, this overall

⁴⁵³ The international legal response of regulation or collective bargaining will be further examined in Section B(2).

⁴⁵⁴ GURN Report, p. 5.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*, p. 11.

⁴⁵⁸ ACTRAV Report, at p. 19.

historical understanding of the dynamics of the labour market is not reflected in its conclusions and proposed solutions, such that this understanding appears to have been set out in the paper for historical accuracy, rather than a matter of ongoing relevance.⁴⁵⁹ Again, this report's understanding of precarious work, even whilst temporally specified, is confined to the European sphere.

Additionally, this report furthers the most far-reaching temporal and geographical understanding of precarity by claiming that economic insecurity 'has been and remains a dominant feature of predominantly informal economies'.⁴⁶⁰ However, it contends that the rise of temporary forms of employment is perceived as having resulted in this phenomenon reaching industrialised countries as well. This development has been associated with fears of dual labour markets being entrenched, wherein permanent status would only be given to core employees whilst a larger pool of precarious, dispensable workers would be maintained. In other words, precarity is perceived as a long-standing feature within developing countries with predominantly informal economies, although it is recognised that this feature is now newly spreading to industrialised countries. The assumption here then is that industrialised countries have been characterised by security, presumably in the form of formality and the SER, while developing countries have always been characterised by informality and insecurity.

(2) Who Are Subject to Precarity?

This section deals with the question of the occupational and demographic characteristics of those engaged in precarious work. Here, in line with the sixth dimension of precariousness, international law also pays attention to social location as a marker of precarity, and thereby having an impact on the global distribution of precarity. In other words, the conceptualisation of precarity as being influenced by social location is borne out in practice by statistics. Whilst precariousness is a possibility within any kind of employment and for any kind of working person (as highlighted in the aforementioned two sections), certain occupations and social groups are observed to be predisposed to precarity. This is not meant to be an exhaustive list, and indicative examples are set out below.

⁴⁵⁹ This issue will be further taken up in Section B of this chapter.

⁴⁶⁰ ACTRAV Report, at p. 8.

Regarding occupations, *firstly*, there are ‘dangerous jobs in which precariousness is the rule’ such that it is more common in certain industries (such as the manufacturing and energy sectors). The example has been given of the tragedy in Fukushima’s nuclear plant in March 2011, with the serious consequences of the health and safety problem within nuclear sites being borne by the disproportionate and intensive use of low-wage, contract labourers employed at that site.⁴⁶¹ *Secondly*, homeworking has been the subject of a number of studies,⁴⁶² being characterised as a precarious occupation of low quality compared to ‘the usual jobs in the industrial sector’⁴⁶³ and offering little protection under labour legislation. *Thirdly*, agricultural wage employment is described to be a sector where ‘decent work deficits’ are widespread, particularly, within plantation agriculture. This form of employment is described as being ‘of particular importance’ to poor households that lack the resources required to exit poverty through agricultural production⁴⁶⁴ or establish off-farm businesses. Rural workers are seen to be frequently excluded from coverage by labour legislation and social protection, either legally or in practice. Such an exclusion is seen to arise as a result of the workers’ employment status (being hired on a part-time, casual or seasonal basis) or because they belong to a vulnerable group (such as women or migrant workers).⁴⁶⁵

Precarious work is also seen to mainly affect certain groups due to their nationhood, race, vocational qualifications, gender, age or social origins. The institutional discourse draws attention to how a large concentration of migrants, women, or workers from impoverished sections of society may be found within precarious jobs.⁴⁶⁶ Young people are more commonly

⁴⁶¹ Marin, E. (2013). Precarious work: An international problem. *International Journal of Labour Research*, 5(1), 153-168.

⁴⁶² ILO. (2021). *The Regulatory Framework and the Informal Economy*. International Labour Office, Employment Policy Department, ILO: Geneva, at 4.b2; King-Dejardin, A. M. (Mar. 2021). *Homeworking in the Philippines. Bad job? Good job?* ILO Working Paper 25, ILO: Geneva.

https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_775013.pdf

⁴⁶³ Linhares, L. & Jorge, A. (2001). *Home Work in Brazil: New Contractual Arrangements*. Seed Working Paper, No. 7, ILO. http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_117725.pdf

⁴⁶⁴ Simultaneously, the emphasis of the importance of wage work for agricultural workers is emphasized particularly ‘in countries where prior structural constraints such as the unequal distribution of landholdings limit the potential of agricultural productivity growth to reduce poverty directly’. See Lavers, T., & Tighe, E. (2016). The role of decent work in ending poverty in the rural economy. In *World Employment and Social Outlook: Transforming jobs to end poverty*. International Labour Office, Geneva.

⁴⁶⁵ International Labour Conference. (2008). *ILC97 – Report IV Promotion of rural employment for poverty reduction*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_091721.pdf.

⁴⁶⁶ ILO. (2016). *Non-standard employment around the world: Understanding challenges. Shaping Prospects*. International Labour Office, Geneva, at p. 117.

found in temporary jobs, with three in four young people working within the informal economy (particularly in low and middle-income countries), and are more likely to be affected than older more experienced colleagues during recessions.⁴⁶⁷ Next, temporary migrant workers are described as ‘by definition, occupy[ing] precarious positions’, and being observed to ‘frequently change from one job to another and from one category to another’ such as ‘self-employment, contract work and salaried work’.⁴⁶⁸ Migrant workers are also found to be over-represented in sectors that traditionally have a high number of non-standard jobs (such as the construction industry or domestic work) as compared to native-born workers.

In addition, the gendered nature of precarious work is acknowledged, with the ILO commenting that there continues to be a ‘disproportionate concentration of women in part-time, informal and precarious work’ globally.⁴⁶⁹ Women are seen to remain concentrated in areas of informal work that are ‘invisible’, such as ‘domestic labour piece-rate homework’ and assistance in small family enterprises that all ‘offer precarious employment status.’⁴⁷⁰ The observation has also been made that women pay for their greater access to employment today with ‘compensation gaps in the form of less protection and job security.’⁴⁷¹ In addition, attention has been drawn to how the main constraint to women participating in the labour force is their provision of unpaid care services within the household.⁴⁷² For example, it is highlighted how in 2018, 42.4% of working-age women had responded that they were not looking for work or were not available to work due to their unpaid work obligations.⁴⁷³ Related to this constraint, it is suggested that the fact that women have a larger share of time being devoted to care activities even whilst employed leads them to accept more precarious employment (or involuntary part-time work) to enable them to balance their household responsibilities with that

⁴⁶⁷Marin, E. (2013). Precarious work: An international problem. *International Journal of Labour Research*, 5(1), 153-168.

⁴⁶⁸ International Labour Conference. (1999). *ILC87 - Report III (1B) Migrant Workers*. ILO: Geneva. <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/r3-1b.htm>, at p. 16.

⁴⁶⁹ Bureau for Workers' Activities (ACTRAV). (2011). *ACTRAV Symposium on Precarious Work (4-7 October, 2011)*. ILO: Geneva. https://www.ilo.org/actrav/events/WCMS_153972/lang-en/index.htm, at p.19.

⁴⁷⁰ ILO. (2009). *Women, gender and the informal economy: An assessment of ILO research and suggested ways forward*. International Labour Office, Geneva.

⁴⁷¹ ILO. (2019). *Women in the world of work. Pending Challenges for Achieving Effective Equality in Latin America and the Caribbean. Thematic Labour Overview*. Regional Office for Latin America and the Caribbean, ILO: Lima.

⁴⁷² Charmes, J. (2019). *The Unpaid Care Work and the Labour Market. An analysis of time use data based on the latest World Compilation of Time-use Surveys*. International Labour Office, Geneva.

⁴⁷³*Ibid.*

of paid employment. To compound the gender gap, while migrants are more likely to have vulnerable jobs than nationals, the probability for women has been observed to be higher.⁴⁷⁴

C. Responding to Precarity

In light of the above ways in which precarious work manifests in today's global economy, the question now arises of the international legal discourse's response to precarity. This starts with an understanding of international law's response to precarity as a problem, and how it grasps the significance of precarity. This is followed by the solutions suggested by international law in response to this problem.

(1) *Significance of Precarity*

Firstly, precarious work may be seen as being of great significance, in a pejorative sense, given its severe consequences for workers. Aside from the loss of protection and increase in employment insecurity, workers in precarious employment 'lose influence, individually and collectively', over their working conditions, the pace of work and wages. It 'shifts social risks' away from employers and governments and on to individual workers and their families – those who can least bear them: "[I]f the costs are too high for employers and the state, what makes us think the vulnerable workers themselves are any more capable of bearing these costs?"⁴⁷⁵ These costs could exponentially increase since temporary or agency contract workers are often exposed to hazardous work environments, stressful psychosocial working conditions, increased workload, and disproportionate travel time between multiple jobs at multiple sites.⁴⁷⁶ Furthermore, precarious work, with its resulting uncertainty regarding the future of employment and earnings, deprives people of the stability that is required to take long-term decisions and plan their lives.⁴⁷⁷ Unpredictable variations in daily and weekly working hours result in much less desirable work schedules. This also results in a range of family decisions being affected, from decisions about whether and when to start a family, to enrolling in higher education, or attending training courses.⁴⁷⁸ Moreover, the gendered nature of precarious

⁴⁷⁴ ILO. (2020). *The migrant pay gap: Understanding wage differences between migrants and nationals*. International Labour Office, Geneva.

⁴⁷⁵ ACTRAV Report, at p. 6.

⁴⁷⁶ Bureau for Workers' Activities (ACTRAV). (2011). *ACTRAV Symposium on Precarious Work (4-7 October, 2011)*. ILO: Geneva. https://www.ilo.org/actrav/events/WCMS_153972/lang-en/index.htm, at p.15.

⁴⁷⁷ *Ibid.* at, p. 14

⁴⁷⁸ ACTRAV Report, at p. 5.

employment is seen ‘a major contribution to the persistent pay gap between men and women’.⁴⁷⁹ Precarious work is also seen as acting as an ‘automatic destabiliser’⁴⁸⁰ in the context of the recession arising out of the Financial Crisis, with its prevalence having accelerated the employment effects of the recession. Lastly, precarious work is described as being a ‘trap’ for young workers, who are finding it increasingly difficult to move to more secure and better paid jobs since they have ‘no connection to the career ladder’.⁴⁸¹

Precarious work has been described within the international institutional sphere as affecting major developmental and economic priorities on a global scale. Precarious work is seen as resulting in ‘greater economic inequality, insecurity, and instability’.⁴⁸² In the wake of the 2007-8 financial crisis (Financial Crisis), there has been increasing widespread attention (both internationally and nationally) to the problem of inequality. Whilst the discussion in inequality and international law had historically been concerned with disparities between the North/South and the ‘quest for equal distribution among states’, recent decades are seen as having resulted in a rise in inequality within countries of both affluent and weaker economies.⁴⁸³ For instance, in the wake of the Financial Crisis, the ILO released a report in 2008 titled ‘Income Inequalities in the Age of Financial Globalisation’, and problematised the increasing backlash against globalisation as a result of the rise of income inequality. Precarious work is seen as having something to do with this,⁴⁸⁴ although the exact dynamics of this process is not clearly spelled out.

Moreover, the creation of insecurity via precarious work is deemed to lead to an increase in poverty as well. Poverty eradication has been a priority of international institutions, with the United Nations’ 2030 Agenda for Sustainable Development including the resolution to ‘end poverty and hunger everywhere’. This agenda entails the ‘creation of conditions for sustainable, inclusive and sustained economic growth’ and ‘shared prosperity and decent work for all’.⁴⁸⁵ In this regard, the ILO has asserted that a ‘pervasive trend toward higher levels of

⁴⁷⁹ *Ibid.*

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*, at p. 6.

⁴⁸² ILO. (2008). *World of Work Report 2008: Income Inequalities in the Age of Financial Globalization*. International Labour Office, Geneva.

⁴⁸³ *Ibid.*

⁴⁸⁴ Put in a different way, the ILO describes rising non-standard employment as being ‘a factor of income inequality’.

⁴⁸⁵ Transforming our world: the 2030 Agenda for Sustainable Development. G.A. Res. 70/1. U.N. Doc. A/RES/70/1 (Sept. 25, 2015).

precarious and informal employment’ has prevented households and economic units ‘trapped in the informal economy’ ‘from increasing productivity and finding a route out of poverty’.⁴⁸⁶ In doing so, the ILO here suggests that the rise of precarious work is effectively a barrier to poverty-reducing measures.

Precarious work has been widely described in pejorative terms within the ILO’s institutional discourse. The ILO has called for workers to be protected from unacceptable forms of work, with this agenda recognising that ‘an expanding segment of the global workforce is in insecure, unsafe and low-paid labour’.⁴⁸⁷ Precarious work has been specifically featured as a key discourse for discussion regarding ‘discourses of unacceptability’ in the global employment arena.⁴⁸⁸ Precarity is also perceived as antithetical in nature to the ILO’s decent work agenda in this last decade, such that a failure to eradicate (or, at the very least, reduce) it would result in the ILO’s project being severely undermined.⁴⁸⁹ The ILO developed the Decent Work Agenda in 1999 around four pillars, comprising of employment creation, rights at work, social protection, and social dialogue. This agenda has achieved high-level international endorsement, when it was included in the Millennium Development Goals (MDGs) under MDG 1, and later as part of the 2030 Agenda for Sustainable Development and the accompanying SDGs. If precarious work is the aberrant in the labour market that has been pathologized, decent work appears to be the remedy to imbue precarious work with just that: decency. One report even precisely signals this in its title: ‘From Precarious Work to Decent Work’.⁴⁹⁰

Indeed, the ILO has positioned the Decent Work Agenda as a response to the new circumstances of post-industrialized times, entailing a recognition of the growth in informal employment and of the broad changes in the standard employment relationship. This agenda

⁴⁸⁶ International Labour Conference. (2014). *ILC103 – Report V(I) Transitioning from the informal to the formal economy*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf.

⁴⁸⁷ See Fudge, J. & McCann, D. (2015). *Unacceptable Forms of Work: A Global and Comparative Study*. International Labour Office, Geneva https://www.ilo.org/wcmsp5/groups/public/---ed_protect/documents/publication/wcms_436165.pdf.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ This claim of precarious work being the opposite of decent work is made in a range of scholarship, including Marin, E. (2013). Precarious work: An international problem. *International Journal of Labour Research*, 5(1), 153-168, and Rittich, K. (2006). Rights, Risk and Reward: Governance Norms in the International Order and the Problem of Precarious Work. In Fudge, J. & Owens, R. (Eds.) *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (pp. 31-52). Hart Publishing.

⁴⁹⁰ Evans, J., & Gibb, E. (2009). *Moving from precarious employment to decent work*. Global Union Research Network, ILO: Geneva. https://www.ilo.org/public/libdoc/ilo/2009/109B09_296_engl.pdf.

has been characterized as importantly broadening the ILO's traditional constituencies through its focus on workers 'at the periphery of formal systems of labour and social protection'.⁴⁹¹ What is perhaps most significant about the ILO's Decent Work Agenda, against this backdrop, is that the objectives of the agenda are meant to hold for all workers – in both formal and informal economies, waged employment and self-employment, work outside the home and home work. This approach expands traditional legal conceptions of protection within the confines of a formal employment contract, even if it remains unclear how to enforce international labour standards in the informal sector. As Fudge observes, effective implementation of the Decent Work Agenda remains an open question. She recalls that labour standards have historically been dependent on the collective self-organisation of workers.⁴⁹² However, the increase in self-employment and informal work necessitates different logics of action and different organizational forms (from co-operatives to trade unions) in order for all workers to be adequately represented.

(2) *International Legal Solutions to Precarity*

In light of the significance of precarity as perceived within the international institutional arena, the question now arises of what the international legal response to precarity comprises of.

Whilst the normative model of employment is a 'relational concept capturing the interplay between social norms and governance mechanisms linking work organisation and the labour supply',⁴⁹³ it has been suggested that 'most nation states, especially liberal industrial democracies' came to organise their labour and social policies during the post-World War II period around the ideal type of the 'standard employment relationship'.⁴⁹⁴ Whilst the SER varies by country, the general characteristics of this employment norm is partly produced by international labour regulation.⁴⁹⁵ International labour regulation here refers to a range of legal

⁴⁹¹ Fudge, J. (2012). Blurring legal boundaries: Regulating for decent work. In Fudge, J., et al. (Eds.) (2012). *Challenging the legal boundaries of work regulation* (pp. 1-26). Bloomsbury Publishing, at p. 17.

⁴⁹² *Ibid.*, at p. 21.

⁴⁹³ Supiot, A. (2021). Labour is not a commodity: The content and meaning of work in the twenty-first century. *International Labour Review*, 160(1), 1-20; Vosko, L. (2006). Gender, Precarious Work and the International Labour Code: The Ghost in the ILO Closet. In Owens, R. & Fudge, J. (Eds.) *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (pp. 53-75). Hart Publishing. [Vosko].

⁴⁹⁴ Vosko, at p. 55.

⁴⁹⁵ *Ibid.*

instruments created by international institutions such as conventions, recommendations, guidelines, protocols and codes of conduct, with the standards thereby created collectively referred to as the international labour code (ILC). Despite the weakness of sanctions that are imposed for violations of ILO conventions (which have the status of treaties), the ILC is widely acclaimed for its creation of a set of norms and frameworks for nation states to ‘translate principles into substantive labour standards’.⁴⁹⁶

From the inception of the ILC (and the founding of the ILO) till the early post-World War II period, there were a series of treaties passed in succession that helped to cement the status and corresponding qualifying criteria for the SER. These treaties were passed to promote the norm of regular weekly hours,⁴⁹⁷ the institutionalisation of the bilateral employment relationship,⁴⁹⁸ establish the right to associate freely for both self-employed and wage earners (normalising collective bargaining for the former),⁴⁹⁹ and to ‘organise the provision of social benefits and entitlements’ around criteria such as employee status, the presence of a bilateral employment relationship and, though to a smaller extent, the continuity of service.⁵⁰⁰ This SER norm has been further interpreted in line with a ‘liberal equal treatment approach’.⁵⁰¹ This approach is exemplified by the Convention on Discrimination (Employment and Occupation) (No 111) (1958), aiming to contribute to the elimination of discrimination in the field of employment and occupation, which pushes for the repealing of legislation that permits discrimination and is oriented towards formal equality.

As political economist Leah Vosko has detailed in her studies of precarious work within the international legal sphere (particularly the ILO), the normative model of the SER and the liberal equal treatment approach have oriented legal instruments on precarious work. A ‘constellation’ of international labour standards aimed at reducing precarious work, have

⁴⁹⁶ *Ibid.*

⁴⁹⁷ ILO. (1919). Hours of Work (Industry) Convention (No. 1); ILO. (1924). The Utilisation of Spare Time Recommendation (No. 21).

⁴⁹⁸ ILO. (1934). Unemployment Provision Convention (No. 44); ILO. (1928). Minimum Wage-Fixing Machinery Convention (No. 26).

⁴⁹⁹ ILO. (1948). The Freedom of Association and Protection of the Right to Organise Convention (No. 87); ILO. (1949). The Right to Organise and Collective Bargaining Convention (No/ 98).

⁵⁰⁰ ILO. (1952). Social Security (Minimum Standards) Convention (No. 102); see also Vosko, L. (2011). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press.

⁵⁰¹ Vosko, at p. 57.

effectively sought to resuscitate the SER by addressing deviations from this norm on the basis of ‘time, place and status’.⁵⁰² These are now addressed in turn.

a. Time

*“Until a few decades ago, it used to be assumed that the vast majority, if not all workers, would automatically conform to the standard full-time working pattern, particularly in terms of their hours worked”.*⁵⁰³

A key instrument dealing with the temporal dimension of precarious work, is the Convention on Part-Time Work which ‘evolved over several decades’ and has been ‘the product of intense debate’.⁵⁰⁴ Its roots are described as being found in the Declaration on Equality of Opportunity and Treatment of Women Workers (1975) that called for measures ‘to ensure equality of treatment for women workers employed regularly on a part-time basis’, and a Resolution on Equal Opportunities for Men and Women in Employment (1985) that recognised ‘the need for national legislation to ensure that part-time, temporary, seasonal and casual workers, as well as home-based workers, contractual workers and domestic workers suffer no discrimination as regards to their terms and conditions of employment’.⁵⁰⁵

The Convention on Part-Time Work sought to extend social and labour protections to two groups: those who were unable to find full-time work (including the ‘unemployed, people with disabilities, and older workers’) and those who engaged in part-time work ‘due to family responsibilities’.⁵⁰⁶ Vosko describes the ‘common assumption around choice’, with this underlying conception of workers freely choosing part-time work thereby forming the ‘ideological backdrop of the instrument as a whole’.⁵⁰⁷ In contrast, legal scholar Jill Murray has in turn argued that the fundamental issue regarding part-time work for many workers is the ‘price that they have to pay for their need for flexible work’ instead of a willing choice to be flexible.⁵⁰⁸ However, there were early objections from employers and some member states (including Australia and the United Kingdom) to such a convention covering all part-time

⁵⁰² Vosko, at p. 59.

⁵⁰³ *Ibid.*

⁵⁰⁴ Vosko, at p. 59.

⁵⁰⁵ *Ibid.*, at p. 60.

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Ibid.*

⁵⁰⁸ Murray, J. (1999). Social justice for women? The ILO’s Convention on part-time work. *International Journal of Comparative Labour Law and Industrial Relations*, 15(1), 1-13, at p. 8.

workers, with a government representative from the United Kingdom stating that ‘what may be considered reasonable in the case of part-time workers employed for a large number of hours in relation to normal working time, may be unnecessary in cases where hours worked are minimal’.⁵⁰⁹ In light of these objections, the written proceedings eventually noted that ‘the Governing Body did not intend the conference to include, under the item on part-time work, such questions as temporary, casual or seasonal work’.

Accordingly, contrary to the perhaps misleadingly broad title of the Convention on Part-Time Work, the ambit of the convention that eventually passed in 1994 has been criticised for being too limited in its coverage of part-time work within the world since it ‘permits the exclusion of many, if not most, part-time workers’, including those engaged on a ‘temporary, seasonal and casual basis’.⁵¹⁰ This exclusion is partly derived from its definitional limitations (with the coverage of the Convention limited to those part-time workers for whom a ‘comparable’ full-time worker working in the same enterprise could be found), and partly found in its exclusion clause (Article 3.1) permitting states to ‘exclude wholly or partly from its scope particular categories of workers or of establishments’.⁵¹¹ This interpretation is confirmed by the CEACR in the ILO’s Working Time General Survey.⁵¹² The consequence of these limitations has meant that based on international legal standards, casual, seasonal and/or temporary workers can only have their rights enforced through other international labour standards such as conventions on freedom of association and discrimination, with ‘no provision for minimum standards’.⁵¹³ In the face of this gap, the CEACR has encouraged national-level measures whereby governments are ‘encourage[d]’ to consult with their social partners to ‘review periodically existing exclusions affecting part-time workers’, and has requested that these parties ‘examine the possibility of extending the scope of the legal provisions on part-time work’, without providing further guidance of how this could be done.⁵¹⁴

⁵⁰⁹ Vosko, at p. 61.

⁵¹⁰ Vosko, at p. 61.

⁵¹¹ *Ibid.*, at p. 60.

⁵¹² International Labour Conference. (2018). *ILC 107 - Report of the Committee of Experts on the Application of Conventions and Recommendations on General survey concerning working-time instruments: Ensuring decent work for the future*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618485.pdf, at p. 217.

⁵¹³ *Ibid.*, at p. 61.

⁵¹⁴ ILO’s Working Time Survey, p. 217.

In relation to the specific situation of ‘zero-hours contracts and other such forms of on-call work’, the CEACR has confirmed that ‘existing international labour standards do not directly address on-call work’ but has pointed to some provisions as being ‘relevant’.⁵¹⁵ As an example, it cites paragraph 12 of the Part-Time Work Recommendation 1994 (No. 182), which provides that the “number and scheduling of hours of work of part-time workers should be established taking into account the interests of the worker as well as the needs of the establishment” and that, as far as possible, “changes in the agreed work schedule and work beyond scheduled hours should be subject to restrictions and to prior notice”.⁵¹⁶ However, as set out earlier, this should be read in line with the broader context of the wide-ranging scope of exclusions to the Part-Time Work Convention for casual and/or temporary workers remaining in place, thereby detrimentally affecting the persuasive force of such guidelines.

b. Place

Conventions and Recommendations regarding Home Work have been passed to address the ‘persistence’ of work arrangements in ‘liberal industrialised countries’, and their ‘proliferation’ in ‘industrialising countries’, where the worker ‘performs a service or produces a product outside the employer’s premises’.⁵¹⁷ These treaties are described as the product of collective struggles on the part of people within the ILO Division on Women (FEMME) and the ILO Programme on Rural Women (UNIFEM), in collaboration with trade unions and emerging labour organisation, with an orientation towards the expansion of the ILC to cover home workers ‘in a meaningful way’.⁵¹⁸

The Convention Concerning Home Work (No 177) and the Recommendation Concerning Home Work (No 184) define home work as an employment relationship so long as the homeworker ‘does not have the degree of autonomy and of economic independence necessary to be considered an independent worker’.⁵¹⁹ In doing so, these instruments have been described as seeking to modify the SER norm of work on the employer’s premises by characterising home workers as ‘wage earners’, and in so doing redefine the meaning of wage

⁵¹⁵ *Ibid.*, at p. 264.

⁵¹⁶ *Ibid.*

⁵¹⁷ Vosko, at p. 63.

⁵¹⁸ *Ibid.*

⁵¹⁹ *Ibid.*

relationship when such work had ‘historically been characterised as piecework’.⁵²⁰ By doing so, the home is redefined as a location of paid work, with registration and labour inspection within the home thereby being encouraged, and the range of social and labour protections established under the SER being extended to home workers.⁵²¹ The Recommendation goes further by stating that home workers should receive compensation for any costs related to usage of ‘energy and water, communications and maintenance of machinery and equipment as well as time spent maintaining equipment and packing and unpacking goods’.⁵²²

This Convention is depicted as ‘innovative’ for addressing the possibility of triangular employment relationships.⁵²³ Whilst a bilateral employment relationship (a direct employment relationship between an employer and employee) is ‘retained at... the core of the employment norm’, accountability further up the subcontracting chain (through employment by a subcontractor, agent or middleman)’ is promoted through Article 8’s ‘allocation of employment-related responsibilities’ to those who purchase products of services as employers, the recognition of two or more employer-like entities and by drawing a linkage between employers and intermediaries.⁵²⁴ Furthermore, no exclusions are permitted under this Convention.

While these conventions have largely been viewed in a positive light, Vosko has cautioned that there is a risk that the legitimisation of the home as a place of wage earning ‘could contribute to the maintenance of a caregiving norm that encourages women’s confinement to the home’.⁵²⁵ Furthermore, by extending labour protection to home workers and legitimising such work, without prescribing minimum standards or discussing unpaid caregiving, it fails to ‘advance strategies for equalising caregiving responsibilities among men and women’ thereby entrenching the gendered nature of home work.⁵²⁶

⁵²⁰ *Ibid.*

⁵²¹ *Ibid.*

⁵²² ILO. (1996). Home Work Recommendation (No. 184).

⁵²³ Vosko, at p. 64.

⁵²⁴ Prügl, E. (1999). What is a worker? Gender, global restructuring, and the ILO convention on homework. In Meyer, M.K. & Prügl, E. *Gender politics in global governance* (pp. 197-209), Rowman & Littlefield Publishers; Vosko, at p. 64.

⁵²⁵ Vosko, at p. 65.

⁵²⁶ Vosko, at p. 71.

c. *Status*

Efforts addressing the question of status are described as ‘longstanding’ in the ILC, with such questions resting at the ‘foundations’ of the labour law framework itself.⁵²⁷ International labour regulation has since concerned itself with efforts to extend labour protections to workers ‘who are in fact employees but find themselves without the protection of the employment relationship’.⁵²⁸ This movement is described as dating to 1990, when the ‘promotion’ of self-employment had been ‘a central item of discussion’ at the annual international labour conference held under the auspices of the ILO.⁵²⁹ This conference resulted in a resolution calling for ‘freely chosen and productive forms of self-employment’ whilst guarding against ‘the growth of precarious and dependent forms of nominal self-employment stemming from attempts to bypass protective social legislation and to erode the employment security and earnings of affected workers’.⁵³⁰ However, discussions regarding self-employment ended after 1990 with this resolution due to the ‘strong resistance’ by employers in ‘setting limits on commercial activities’.⁵³¹

Subsequently, the passing of the Private Employment Agencies Convention (No 181) (adopted in 1997) (CCPEA)⁵³² has been described as the ‘weakest convention relevant to status’ and representing ‘a defeat for workers’ since it ‘legitimises triangular employment relationships without putting proper safeguards in place’⁵³³ and ‘consolidates an important normative shift away from the standard employment relationship towards a new model which embraces more “flexible” forms of employment’.⁵³⁴ However, legal scholar Anne Trebilock disputed a characterisation of the CCPEA as facilitating a shift away from a prevailing regulatory regime, by stating that ‘this statement attributed too much power to an international instrument which has attempted to grapple with the shifts that were recognized as having already occurred’. In doing so, she highlighted the underlying context of this legal instrument as having been underpinned by a global rise in the use of private employment agencies in the

⁵²⁷ Vosko, at p. 65.

⁵²⁸ ILO, 2004 as cited in Vosko, at p. 65.

⁵²⁹ ILO, 1990, as cited in Vosko, at p. 65.

⁵³⁰ Vosko, at p. 66.

⁵³¹ *Ibid.*

⁵³² ILO. (1997). Private Employment Agencies Convention (No. 181).

⁵³³ *Ibid.*

⁵³⁴ Vosko, L. F. (1997). Legitimizing the triangular employment relationship: emerging international labour standards from a comparative perspective. *Comp. Lab. L. & Pol’y J.*, 19, 43.

last decades.⁵³⁵ Other scholars point to the inherent difficulties of securing stable employment relationships in response to triangular employment relationships that largely relied on temporary or casual contracts.⁵³⁶

Due to its construction of an employment relationship between a worker and an intermediary (instead of seeking more direct accountability up the subcontracting chain, as in the Convention Concerning Home Work), the CCPEA has been described in ambivalent terms as being a ‘strategy with both merits and shortcomings’.⁵³⁷ In doing so, the CCPEA is criticised for its failure ‘to address squarely the importance of regulating’ employment relationships where responsibilities lies with more than one entity.⁵³⁸ Workers’ representatives have criticised the CCPEA for failing to introduce standards regulating private employment agencies and sub-contracting, and for not limiting recourse to private employment agencies, thereby opening up the possibility of agency work being excessively used by employers’.⁵³⁹

Finally, a failed draft Convention on Contract Labour gives an indication of the extent of disagreement and continuing stalemate on this controversial topic.⁵⁴⁰ Contract labour had been defined in that draft convention as ‘all situations in which work is performed for a person who is not the worker’s employer under labour law but in conditions of subordination and dependency that are close to an employment relationship under that law’. One of its key goals (as set out in Article 3) had been to eradicate disguised employment relationships by ensuring ‘that rights or obligations under labour or social security laws or regulations are not denied or avoided when contract labour is used’.⁵⁴¹ It had sought to do so by attempting to improve protections given to workers within triangular employment relationships through disregarding the nature of the underlying contract labour arrangement, and achieving better parity with those in the SER in terms of the level of protection.

⁵³⁵ Trebilcock, A. (1997). A Comment on Legitimising the Triangular Employment Relationship. *Comp. Lab. L. & Pol’y J.*, 19, 79.

⁵³⁶ Lobel, O. (2003). The Slipperiness of Stability: Contracting for Flexible and Triangular Employment Relationships in the New Economy. *Tex. Wesleyan L. Rev.*, 10, 109.

⁵³⁷ Vosko, at p. 67.

⁵³⁸ *Ibid.*

⁵³⁹ ACTRAV Report, at p. 37.

⁵⁴⁰ Vosko, at p. 68.

⁵⁴¹ Vosko, L. (1997). Legitimizing the triangular employment relationship: emerging international labour standards from a comparative perspective. *Comp. Lab. L. & Pol’y J.*, 19, 43.

Following the failure of the draft Convention on Contract Labour in 1998, the International Labour Office prepared a report in 2003 on ‘the Scope of the Employment Relationship’ focusing on ‘dependent workers in disguised, ambiguous and triangular relationships’.⁵⁴² Negotiations following up on this report at the International Labour Conference in 2003 continued to be deeply divided over the question of expanding the scope of the employment relationship,⁵⁴³ with the ILO ultimately being asked to pursue this issue of disguised employment relationships in its standard-setting activities and to develop guidelines for dealing with ‘objectively ambiguous situations’.⁵⁴⁴ This subsequently resulted in the Second Conference on the employment relationship being convened, with a draft Recommendation on the employment relationship published for discussion in 2006.⁵⁴⁵ This conference has been described as one where ‘the pressure to reach an agreement was high’, due to the ILO’s earlier failures.⁵⁴⁶ However, there was no consensus reached again – described as ‘a keyword to any successful action within the ILO’ – and this has now resulted in the employment relationship still being considered as a ‘no-go-area’.⁵⁴⁷

Overall, international labour standards have been criticised for having had ‘little impact on the expansion of precariousness’.⁵⁴⁸ This failure has been attributed to a few reasons, including the failure of the relevant international legal instruments to address specific aspects regarding the nature of precarious work, thereby limiting their usefulness, and their overall failure to ‘regulate and prohibit the abusive use of precarious contracts by employers’.⁵⁴⁹ In this regard, workers’ representatives argue that while most international labour standards provide universal coverage as a matter of principle, ‘there is no single international instrument (in particular, a treaty) addressing the specific nature of precarious work (and its related

⁵⁴² Vosko, at p. 68; Theron, J. (2005). Intermediary or employer? Labour brokers and the triangular employment relationship. *Industrial Law Journal*, 26, 618.

⁵⁴³ See Pennings, F., & Bosse, C. (Eds.). (2011). *The protection of working relationships: a comparative study*. Kluwer Law International BV, at pp. 17 to 20, for a detailed account of the proceedings and the disagreements raised by employers and workers.

⁵⁴⁴ Vosko, at p. 69.

⁵⁴⁵ International Labour Conference. (2006). *ILC95 – Report V(1) The employment relationship*. ILO: Geneva. https://www.ilo.org/public/libdoc/ilo/2005/105B09_8_engl.pdf. See also the replies in International Labour Conference. (2006). *ILC 95 - Report V (2A) The employment relationship*. ILO: Geneva. <https://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-v-2a.pdf>

⁵⁴⁶ See Pennings, F., & Bosse, C. (Eds.). (2011). *The protection of working relationships: a comparative study*. Kluwer Law International BV.

⁵⁴⁷ *Ibid.*, at pp. 21 to 27 for a detailed account of the Recommendation and the responses of workers and employees.

⁵⁴⁸ Demaret, L. (2013). ILO Standards and Precarious Work: Strengths, Weaknesses and Potential. *International Journal of Labour Research*, 5(1), 9-23 [Demaret].

⁵⁴⁹ Demaret, at p. 16.

dimension of temporary work)'.⁵⁵⁰ Indeed, all the abovementioned treaties do not mention the concepts of precarity or precariousness. In other words, in response to Vosko's suggestion set out at the start of this section that precarious work has been a central object of regulation for the ILO since its inception, the workers representatives' likely response would be that these had not on been regulated on the terms of precarity (as conceptualised today). Indeed, these international legal instruments that were oriented around the SER norm of full-time work explicitly exclude most precarious workers from their ambit.⁵⁵¹ Instead, these regulatory efforts were mainly conducted in the idiom of flexibility (as discussed in the earlier chapter). This language of flexibility is further affirmed in other contemporaneous scholarly literatures analysing these legal developments. As an illustrative example, Prügl notes, '[i]n the end, the Convention [Concerning Home Work] may have been significant, not so much for the legal changes it may have occasioned in ILO member states, but for having initiated a global debate about regulating flexible labour'.⁵⁵²

Consequently, alongside protection of the right to collective bargaining and freedom of association, the workers' representatives have recommended that there should be a campaign to adopt a new ILO Convention, with its content clearly delimiting the conditions for the hire of temporary and agency workers and placing substantive limits on the use of temporary contracts (through the numbers hired, or the amount of time that one could be on a temporary contract), establishing 'clear criteria for identifying when an employment relationship exists' and providing equal treatment with other workers generally in the context of non-standard employment.⁵⁵³ In another report, workers' representatives have similarly explicitly foregrounded 'the importance of law and regulation'⁵⁵⁴ as a bulwark against precarious employment.

⁵⁵⁰ *Ibid.*

⁵⁵¹ See, for example, the ILO. (1982). Termination of Employment Convention (No. 158), where Article 2 states that a member may exclude workers 'engaged under a contract of employment for a specified period of time or a specified task', 'workers serving a period of probation or a qualifying period of employment (determined in advance and of reasonable duration)' and 'workers engaged on a casual basis for a short period' from all or some of the provisions of the convention.

⁵⁵² Prügl, E. (1999). *The global construction of gender: Home-based work in the political economy of the 20th century*. Columbia University Press.

⁵⁵³ ACTRAV Report, at p. 37.

⁵⁵⁴ GURN Report, at p. 43.

Additionally, there is another (legal instrument) that has been identified as relevant to precarious employment, which is the Employment Policy Convention (No. 122)⁵⁵⁵ that had addressed the need for full, productive and freely chosen employment. However, this treaty was passed during the zenith of the Golden Age of Capitalism wherein the SER was instituted based on a consensus on Keynesian macroeconomic policy. The superseding of this consensus thereafter resulted in the subject of employment policy being put back on the table again.⁵⁵⁶ In response, the Worker Vice-Chairperson of the Committee on the Application of Standards has raised three major problems in respect of the current application of this treaty.⁵⁵⁷ The first is that employment has increasingly been ‘seen as a product of macroeconomic policies, not as an objective in itself’.⁵⁵⁸ Secondly, macroeconomic policies are being made ‘to the detriment of the objective of full employment’ within several countries.⁵⁵⁹ The last problem is that employment policy has been strongly focussed on labour supply. Following these objections (that were not elaborated upon further), ‘profound changes in the paradigms of national and international economic policy’ were claimed to be required.⁵⁶⁰

Lastly, as set out in the earlier section, insofar as precarious employment in the informal economy (which, whilst not specified as such, statistically predominates within developing countries) is concerned, the International Labour Office has specified that priorities should include reviewing ‘factors that impede or facilitate transition to formality and decent work’.⁵⁶¹ On the basis of such recommendations that precarity within the informal economy can be eradicated through a transition to formality, a host of recommendations on transitioning from formality to informality are hence effectively incorporated into the international legal discourse on precarity. Together with this, the problems facing the developing world in regulating employment are therefore perceived as stemming from a lack of labour regulation (as seen in the abovementioned definition of informal economy). Therefore, problems underpinning the

⁵⁵⁵ ILO. (1964). Employment Policy Convention (No. 122).

⁵⁵⁶ International Labour Conference. (2010). *ILC99 - Report of the Committee for the Discussion on Employment*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142318.pdf.

⁵⁵⁷ *Ibid.*, at 18/32-18/33.

⁵⁵⁸ *Ibid.*

⁵⁵⁹ *Ibid.*

⁵⁶⁰ *Ibid.*

⁵⁶¹ See: International Labour Conference. (2010). *ILC99 - Report of the Committee for the Discussion on Employment*. ILO: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142318.pdf.

design of an effective regulatory strategy to ‘effectively eliminate unacceptable work’⁵⁶² enter the foreground when considering how precarious work may be remedied.

Having broadly understood international labour law’s response to precarity, it is important to situate this discussion within the broader context of international law itself to better understand the relationship between international law and precarity.

Within the field of international human rights law, precarious work is seen as having a human rights dimension. As such, there has been a move to support regulatory responses within international labour law. For example, the orientation towards a transition to formality has also been captured within international human rights instruments, in reference to the specific problem of slavery. In a discussion of the contemporary forms of slavery within the informal economy, the Special Rapporteur on contemporary forms of slavery has promoted the ‘transition from the informal to the formal economy as important for the promotion of decent work and to reduce the risk of contemporary forms of slavery’.⁵⁶³

There are various international legal developments also evidencing an increased connection between labour rights and human rights with reference to precarious work. For instance, the revised 2017 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy has been interpreted as providing the opportunity for precarious workers to argue that they may be experiencing discrimination under the International Convention on Economic, Social and Cultural Rights in relation to the nature of their employment relationship, since their status of contract or agency work was in violation of their right to equal remuneration for work of equal value.⁵⁶⁴ Another example would be the interpretation of the UN Guiding Principles on Business and Human Rights as implying that states should ensure that ‘any measures taken to alleviate the economic impact of Covid-19 would place the protection of workers, *particularly those in the most precarious and vulnerable situations*, at the core’ (italicised for emphasis), and businesses having to prevent and mitigate

⁵⁶² See UFW Report.

⁵⁶³ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences. G.A. Res. 77/163. U.N. Doc. A/77/163 (July 14, 2022). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/425/94/PDF/N2242594.pdf?OpenElement>.

⁵⁶⁴ Bureau for Workers’ Activities (ACTRAV). (2017). *The ILO MNE Declaration. What’s in it for Workers?* International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_627351.pdf

any human rights impacts as a result of Covid-19 in relation to all those impacted by their activities, including those in precarious work situations.⁵⁶⁵

This supportive element within the international human rights sphere aligns with the shift in discourse in the ILO towards a rights-based approach following its 1998 Declaration of Fundamental Principles and Rights at Work and its follow-up known as the Social Declaration which identifies four categories of fundamental rights at work: the right to freedom of association and effective collective bargaining, the elimination of forced and compulsory labour, the effective prohibition on child labour, and the elimination of discrimination within the realm of employment.⁵⁶⁶ While core labour rights were limited to these four rights, they were simultaneously ‘elevated’ to the status of fundamental human rights.⁵⁶⁷ This development resulted in a heated debate involving conflicting views regarding the recognition of all labour rights as human rights, and the normative commensurability of labour rights and human rights.⁵⁶⁸ It is important to note the larger context pertaining to the rise of the ‘language, and logic of human rights’ within the ILO, which tracks the decline from the 1990s of the institutional centrality of trade unions and the welfare state in the promotion of labour rights due to ‘sweeping transformations in the economy’⁵⁶⁹ such as globalisation (as described within the dominant discourse of precarity set out in Chapter II). However, even if human rights are generally positively viewed, caution has been raised about the extent to which human rights litigation can adequately address the relational dimensions of sectoral collective bargaining requirements.⁵⁷⁰

On the other hand, international human rights law and international labour law in providing protections against precarious work are frequently juxtaposed to the role of international financial and economic institutions in promoting and normalising precarious work

⁵⁶⁵ United Nations High Commissioner of Human Rights. (2020). *Business and Human Rights in times of Covid-19*. <https://www.ohchr.org/Documents/Issues/Business/BusinessAndHR-COVID19.pdf>

⁵⁶⁶ Fudge, J. (2007). The new discourse of labor rights: From social to fundamental rights. *Comp. Lab. L. & Pol’y J.*, 29, 29.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ Alston, P., & Heenan, J. (2003). Shrinking the international labor code: an unintended consequence of the 1998 ILO declaration on fundamental principles and rights at work. *NYUJ Int’l. L. & Pol.*, 36, 221; Langille, B. A. (2005). Core labour rights–The true story (reply to Alston). *European Journal of International Law*, 16(3), 409-437; Davidov, G., & Langille, B. (2011). *The idea of labour law*. Oxford University Press.

⁵⁶⁹ Albin, E. (2012). Introduction: Precarious Work and Human Rights. *Comp. Lab. L. & Pol’y J.*, 34, 1.

⁵⁷⁰ *Ibid.*

in today's globalised world.⁵⁷¹ Beyond understanding precarious work on its own terms within the realm of international labour regulation, it can also be placed within a broader set of governance debates regarding labour market reform in the international financial and economic institutions.⁵⁷²

International financial institutions such as the World Bank and the International Monetary Fund are perceived as directly contributing to an increased production of precarious work in today's globalised world. For example, liberalisation policies promoted by institutions such as the World Bank are described as having resulted in financialization of the economy, privatization, changes in labour institutions, and an erosion of the redistributive role of the state as a result of fiscal austerity.⁵⁷³ Following the fiscal austerity and structural measures imposed by international financial institutions during the Financial Crisis, workers' representatives protested how the ILO 'was largely excluded from the process of economic policy design'. Furthermore, they subjected the ILO itself to criticism for not being 'proactive or effective in defending its own core principles and fundamental rights in recent years'.⁵⁷⁴ They further claimed that austerity measures pushed for by economic institutions had 'increased inequalities, undermined social dialogue and destroyed collective bargaining mechanisms'.⁵⁷⁵

Within the realm of trade, shortly following the creation of the World Trade Organization ('WTO') in 1995 against the larger backdrop of globalisation debates, the WTO formally established the separation of trade and labour in international law with the Singapore Declaration in 1996.⁵⁷⁶ This is a significant institutional development because it emasculated the influence of the ILO in the broader international institutional sphere, severed the link

⁵⁷¹ See Rittich, K. (2006). Rights, Risk and Reward: Governance Norms in the International Order and the Problem of Precarious Work. In Fudge, J. & Owens, R. (Eds.) *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (pp. 31-52). Hart Publishing.

⁵⁷² *Ibid.* Rittich provides a detailed examination of how and why these institutions have become important to and impinged on international debates on labour market reform and 'by extension, to the issue of precarious work'.

⁵⁷³ Rittich, K. (2002). *Recharacterizing Restructuring: Law, distribution and gender in market reform*. Brill.

⁵⁷⁴ International Labour Conference. (2016). ILC 105 - Sixth item on the agenda: Evaluation of the Impact of the ILO Declaration on Social Justice for a Fair Globalization, 2008. ILO: Geneva.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ Leary, V. A. (1997). The WTO and the social clause: post-Singapore. *Eur. J. Int'l L.*, 8, 118; Delgado, N. (2019). Towards work liberalization: the WTO discourse on labour standards and policy. *International Journal of Comparative Labour Law and Industrial Relations*, 35(4), 454-482; and Lee, E. (1997). Globalization and labour standards: A review of issues. *Int'l Lab. Rev.*, 136, 173. Cf. Cho, S., & Rosado Marzán, C. F. (2019). Labor, Trade, and Populism: How ILO-WTO collaboration can save the global economic order. *Am. UL Rev.*, 69, 1771.

between social rights and the international trade of goods and services, and isolated the ILO from broader international economic policies that would have an impact on the production of precarious work. Nonetheless, studies show how the WTO continues to advance specific views on how international trade interrelates with a range of issues pertaining to ‘labour standards, labour market policy, migrant workers, unemployment benefits, workers’ skills and social protection’. In doing so, the WTO continues to ‘strongly link the success of its agenda to deregulatory reforms in labour market policy and labour standards’.⁵⁷⁷

Furthermore, the 1996 Declaration was passed in the wake of what was described as the failure to include a social clause in international trade agreements.⁵⁷⁸ Consequently, for some critics, the Decent Work Agenda is merely a discursive device that recognizes the labour rights of those who had previously been excluded from the international labour system, but ‘fails to provide the material basis for effectively moving beyond the neo-liberal development paradigm’ by ‘challenging the structural mechanisms causing indecent working conditions in the first place’.⁵⁷⁹ For example, it has been argued that the ILO’s reliance on soft-law mechanisms implicitly results in the issue of enforcement of social clauses within trade agreements (making preferential market access to a market conditional on respect for workers’ rights within the exporting country) being sidelined.⁵⁸⁰

Conclusion

This concluding section seeks some critical distance from the important institutional debates set out above by briefly reflecting on some of the assumptions underpinning the relationship between international legal regulation and precarity.

The first assumption is the conceptualisation of precarious work as expanding within a context where the SER has widely been perceived as the norm, and with this premise underlying the ILC. Accordingly, on these terms, the historical task at hand had been ‘to bring within [international law’s] ambit those who remained at the margins of the standard

⁵⁷⁷ *Ibid.*

⁵⁷⁸ De Wet, E. (1995). Labor standards in the globalized economy: the inclusion of a social clause in the General Agreement on Tariff and Trade/World Trade Organization. *Human Rights Quarterly*, 17(3), 443-462.

⁵⁷⁹ —Hauf, F. (2015). The paradoxes of decent work in context: A cultural political economy perspective. *Global Labour Journal*, 6(2), 138-155.

⁵⁸⁰ *Ibid.*

employment relationship' such as atypical workers. Consequently, the spread of precarious work today is now portrayed as 'cannibalizing the core of the 'formal' economy'⁵⁸¹ and challenging this notion of what constitutes the margins. This assumption points to precarity as being positioned in exceptional terms, in relation to the notion of 'standard work' as captured within the normative model of the SER.

The second assumption is that such a conceptualisation of precarious work, conceived as a deviation from the SER norm (as set out in Section A), can be extended towards analysing and remedying informal employment within developing countries where the SER had never been the norm. Indeed, international law quite readily perceives precarity within informal employment of non-European origins (as set out in Section B), with the discourse of the unacceptability of precarious work hence being used to advocate for a transition towards formality (as set out in Section C). This assumption points to an expansive notion of precarity, being used to describe (or redescribe) global labour relations.

The third assumption is that international law has an unproblematic relationship with precarity, and if at all, the only problem is the lack of adequate laws in regulating precarity. However, Rodgers have already indicated as early as 1989 in their report that the 'interaction of direct and indirect forms of regulation tends to concentrate disadvantage among specific groups of workers, in the absence of a unifying institutional frame'.⁵⁸² In this vein, there is an emerging body of literature detailing precarity's relationship with legal regulation, and its constitutive role in precarity. For example, while the international legal conceptualisation of precarity acknowledges that there are legal markers of precarity (as set out in Section A), Professor of Labour Law Nicola Kountouris has gone further to label them as 'legal determinants of precariousness in personal work relations'.⁵⁸³ However, the relationship of *international* labour law with precarity has been less examined, and even less so its role in consolidating such legal norms constituting precarity within global political economy, and the implications that flow from this for our understanding of the role that international law plays in producing precarity.

⁵⁸¹ See Cunniah, D. (2013). Foreword to Meeting the Challenge of Precarious Work: A Workers' Agenda. *International Journal of Labour Research*, 5(1), 5-8.

⁵⁸² Rodgers, at p. 16.

⁵⁸³ Kountouris, N. (2012). The legal determinants of precariousness in personal work relations: A European perspective. *Comp. Lab. L. & Pol'y J.*, 34, 21.

The final assumption is that the concept of precarity presupposes what constitutes work within the economy, excluding (for example) unpaid work, and defines how value is to be calculated. Furthermore, the concept of precarity itself and the solutions proposed appear disconnected from the earlier section describing the ways in which the subject of precarity is differentiated along axes of class, race, gender and citizenship (amongst others). The assumptions underpinning the overarching narrative of precarity arising out of neoliberal globalization, flexibilization and changes in modes of production does not appear to account for the processes that produce *differentiated* precarious subjects. This disconnect points to the possibility that some of the systemic logics producing precarity may be obscured from regulatory solutions.

These four assumptions will now be explored in various ways in the next three chapters.

THE RELATIONALITY OF PRECARIETY

This chapter focuses on subjecting three significant assumptions that underpin international law on precarity, which were drawn out in the previous chapter, to further scrutiny. These three assumptions are the conceptualisation of precarious work as expanding within a context where the standard employment relationship had been a norm (*'exceptional nature of precarity'*), the extension of the conceptualisation of precarious work to encompass informal work within the global South (*'expansive concept of precarity'*), and that law is seen as a solution to precarity rather than being potentially complicit in its production (*'law's relationship with precarity'*).

In response to the first assumption regarding the exceptional nature of precarity, Section A foregrounds critical bodies of literature that describe both the exceptional nature of the antithesis of precarious work (the 'standard employment relationship' (SER) or 'standard work') and the *normality* of precarious work on both a temporal (historical) and spatial (geographical) scale. In doing so, I seek to foreground the contingency of the international legal labour frameworks.

In response to the second assumption regarding the expansive concept of precarity, Section B analyses the conceptual slippage between informal work and precarious work seen within the international legal arena. In doing so, Section B seeks to connect the discourse on precarity to a more long-standing discourse on informality within the ILO. Instead of a concern with the precarious, unstable nature of work within the global South, concerns about informality arose out of a rather different set of concerns regarding productive employment and unemployment. This section thereafter proceeds to problematise the conceptual conflation of informality and precarity, and more specifically, the solution to informality of formalisation being redescribed as a solution to precarity.

In response to the third assumption regarding law's unproblematic relationship with precarity, Section C seeks to reinscribe precarious work within a relational/causational context of the underlying process of informalisation. Framed in this light, I hope to unsettle some of the assumptions within international legal discourse that the precarious nature of work within

the global South is largely due to informality and a lack of compliance with the law, which I suggest is an incomplete explanation that occludes deeper systemic logics at play in the production of precarity globally.

A. Deconstructing Dichotomy

Whilst not all non-standard work is precarious, the position is clear that much of non-standard work is indeed precarious.⁵⁸⁴ Today, most states, especially liberal industrial democracies, have organised their labour and social policies around the SER as a normative model of employment.⁵⁸⁵ What is interesting about the SER is that it is also, in part, an *international legal* construct. As highlighted in Chapter III,⁵⁸⁶ a series of treaties were adopted to promote norms ranging from regular weekly hours to the right to freedom of association to the provision of social security benefits, that effectively enshrine the SER. Of course, it is not contended that the SER emerged historically *because of* international legal regulation. To this end, the discipline of labour history has long documented the struggles of workers to contest the nature of their employment as waged labourers and to establish new norms relating to their working conditions.⁵⁸⁷ However, the fact remains that international law has been a medium through which the SER has been vindicated and has oriented our understanding of what we ought to be able to *expect* from waged employment.

Indeed, it appears that precarious work, with all its pejorative associations of instability, insecurity and implicit relations of dependence and subjugation,⁵⁸⁸ derives its material substance from its antithesis, the ‘good job’. Within the international legal arena, this idealised job takes the form of the SER and the security and stability that is afforded by it through the employment contract and the benefits received from the state. Of course, a good job within popular and political cultures could take on a variety of other meanings, with one oft-cited example being a high-paying job that presumably eradicates and/or reduces the need for dependence on a state for benefits such as healthcare and pensions, since the wages in themselves are sufficient to fund these costs independently and/or through the purchase of

⁵⁸⁴ This was earlier highlighted in Chapter II.

⁵⁸⁵ See p. 18 of Chapter III.

⁵⁸⁶ *Ibid.*

⁵⁸⁷ Thompson, E. P. (2013). *The making of the English working class*. Penguin.

⁵⁸⁸ This relationality is recalled from Chapter II on The Idea of Precarity, as set out in Comparative Studies scholar Armstrong’s examination of the term’s etymological associations.

private insurance. In addition, within this narrower conception of a good job, long and/or irregular working hours may be seen as irrelevant to notions of a ‘good job’, so long as the wages are high enough to fund a desired lifestyle. Interestingly, the ILO has clarified that instead of this popular perception of job insecurity being compensated through higher wages, insecure jobs are co-related with low pay.⁵⁸⁹ In any event, even if a good job is more narrowly defined on economic terms (such that various other aspects of the SER are excluded), precarious work is still set up in opposition to this narrower definition since it is mostly poorly paid.

Setting aside such contentions regarding what may or may not comprise a good job, and by implication what constitutes precarious work, this thesis seeks to focus on the international legal vision of precarious work. Briefly recalling our discussion in Chapter III on International Law and Precarity, specifically in Section A ‘The Problem of Precarity’, the broad elements of precarious work are largely seen to be derived from its opposition to international labour standards and their construct of the SER. This opposition is briefly captured in the table below (constituting an over-simplification, but nonetheless useful for comparative reference):

Element	SER norm	Indicators of Precarious Work
Time	Full-time job	Part-time work, Temporary Work
Status of Employment	Permanent contract with an employer	Part-time permanent work (possibly), Temporary work, Informal work, Undeclared work, Self-Employment (disguised)
Earnings	Minimum living wage level	Insufficient wages
Social protection	Social benefits and statutory entitlements	Lack of access to social protection and benefits
Bargaining rights	Rights of collective bargaining and collective association, to retain some control over schedules, working relations and income	Lack of such applicable mandatory norms
Immigration status (citizenship)	Usually, a permanent resident or citizen	Refugees, irregular migrants, unregistered rural migrants, migrants part of managed temporary migrant programmes
Social context (occupation, industry and geography)	Industrial labour or manufacturing within advanced capitalist countries	Industries such as hospitality, construction, agriculture, retail, personal care and cleaning

⁵⁸⁹ ILO. (2010). *Global Wage Report 2010–11: Wage policies in times of crisis*. International Labour Office, Geneva, at p. 46.

Accordingly, it becomes immediately apparent from the comparisons set out in the table above that in substance these key elements of precarity constitute *deviations* from the SER norms of a full-time job, a permanent contract with long-term job security, minimum living wages, social benefits and statutory entitlements, usually obtained within the industrial context. What is therefore significant about this conceptualisation of precarity is that it is underpinned by a narrative within international law of what comprises ‘normal’ work, with a telos of work that is to be aspired to (taking the form of the SER). The international legal labour framework (and the discourse of precarity) therefore *presupposes* the SER as the primary object of regulation as something to be aspired to, and simultaneously *produces* the SER as an international legal construct organising and orienting labour relations globally within nation states. More immediately, international law actively *reproduces* the SER even in its conceptualisation of the elements of what constitutes precarious work as a normative claim.

Having broadly understood this relationship between international law and the SER as a construct, I suggest that the first and second assumptions within international law, regarding the exceptional nature of precarity and the expansive nature of precarity, need to be brought into conversation with each other. There appears to be a contradiction in terms here, because the first assumption involves characterising precarious work as exceptional in relation to the *normality* of the SER, while the second assumption expansively extends the concept of precarity to analyse work relations within the global South. This apparent contradiction could, on the face of it, be reconciled by suggesting that factually the first assumption only extends to advanced capitalist countries, and that precarious work has always been the norm within the global South. However, I suggest that there is more at stake here than factual accuracy. As the next section will show, even the first assumption regarding the alleged normality of the SER is problematic given the temporal limitations of the prevalence of the SER as a norm. In addition, as the section thereafter will show, conceptually speaking, it is not immediately apparent that work relations within the global South can or should be analysed in terms of precarity (as suggested in the second assumption of the expansive nature of precarity) – and even more so, when informal work relations within the global South are *re-characterised* as precarious work relations.

(1) Within the global North

Within the global North, I draw on critical literatures of precarity and welfarism to suggest that the SER was historically both an exclusionary and contingent construct within the global North.

Firstly, the SER has been widely criticised for having been a historically exclusionary construct. Scholars have pointed to this ‘long history’ of the different ways in which regulatory labour frameworks had been built on the legal exclusion of women, migrants, Black and other racialized minorities within jurisdictions such as the United States, Canada and South Africa.⁵⁹⁰ For example, scholars have shown how white trade unionists within the UK engaged in exclusionary practices that restricted or altogether excluded the employment of racialised labour in the 1950s and 1960s.⁵⁹¹ Furthermore, entire industries such as domestic work and agriculture were excluded from the SER compact. Labour law scholars have also pointed to how ‘full belonging or citizenship’ required ‘participation within the labour market’, despite the postwar welfare state having been grounded in ‘universality’.⁵⁹² Consequently, racialised and migrant workers who were engaged in atypical employment would therefore be ‘liable to pay lower social insurance contributions’ and would be at a disadvantage in accessing welfare benefits during employment, illness or accident.⁵⁹³

Indeed, this historically exclusionary pattern of the SER does not appear to have arisen out of negligence or lack of awareness and was more deeply rooted in the construction of labour markets themselves. Labour law scholars have insightfully shown us how labour markets in the global North had been constructed on the basis of the racial capitalism of slavery and the ‘colonial extraction and commodification of labour power from the global South for the benefit

⁵⁹⁰ Agarwala, R., & Chun, J. J. (2018). Gendering Struggles against Informal and Precarious Work. In *Gendering Struggles against Informal and Precarious Work (Vol. 35)* (pp. 1-28). Emerald Publishing Limited [Agarwala & Chun], at p. 9; Chun, J. J. (2016). The affective politics of the precariat: Reconsidering alternative histories of organizing women, immigrants, and racialized work. *Global Labour Journal*, 7(2), 136-147; Kenny, B. (2018). *Retail worker politics, race and consumption in South Africa: Shelved in the service economy*. Cham: Palgrave MacMillan; Vosko, L. (2000). *Temporary work: The gendered rise of a precarious employment relationship*. University of Toronto Press.

⁵⁹¹ Virdee, S. (2014). *Racism, class and the racialized outsider*. Bloomsbury Publishing; Ashiagbor, D. (2021). Race and colonialism in the construction of labour markets and precarity. *Industrial Law Journal*, 50(4), 1-26 [Ashiagbor], at p. 18.

⁵⁹² Ashiagbor, at p. 17.

⁵⁹³ *Ibid.*

of markets in the global North'.⁵⁹⁴ This dynamic of racialised exploitation and commodification continues to be relevant in the labour markets of today, which widely excludes migrant labour and relies on a 'racialised segmentation of labour markets' when one looks at the subject of precarious workers.⁵⁹⁵

The SER is also a historically contingent construct, whose prevalence may be temporally confined to the first few quarters of the 20th century (at best), especially the post-World War II economic boom (popularly known as the Golden Age of Capitalism). Historically, improvements to working life under capitalism had been achieved from the start of the 20th century through collective action. Against the destructiveness of the 'dynamics of an unfettered commoditized economy' (as Karl Polanyi detailed⁵⁹⁶), a new system of work is described as having emerged. A significant feature of this system was that of 'regular and regulated work based on a formal labour contract',⁵⁹⁷ particularly within the context of industrial production. While the development of this system of work was uneven and different across countries, terms of employment (many of which are now familiar features of the SER) are widely acknowledged as having become 'more favourable' compared to the initial poverty and terrible working conditions resulting from the industrial revolution.⁵⁹⁸ In addition, social security provisions were often extended to a large proportion of the population, which necessitated the expansion of the public sector to provide such arrangements and therefore resulted in an increasing role for the state.⁵⁹⁹ This development is seen as having laid the foundations of a 'social order', with 'municipal utility corporations for gas, water and electricity, and for garbage and sewage disposal as well as sanitation', being established in the late 19th and early 20th centuries.⁶⁰⁰ In addition, the creation of the welfare state was linked to the emergence of public institutions that provided both education and health services. The expansion of such public services

⁵⁹⁴ Ashiagbor, at p. 1; pp. 10-15.

⁵⁹⁵ Ashiagbor, pp. 15-20.

⁵⁹⁶ Polanyi, K. (2001 [1957]). *The Great Transformation: the political and economic origins of our time*. Beacon Press.

⁵⁹⁷ Breman, J., & van der Linden, M. (2014). Informalizing the economy: The return of the social question at a global level. *Development and change*, 45(5), 920-940 [Breman & van der Linden], at pp. 920-921.

⁵⁹⁸ *Ibid.*, p. 921. These favourable terms include now familiar features of the SER, including a minimum wage, protection against hazardous work, a shorter working day, a higher rate for overtime and a ban on arbitrary dismissal, which are generally perceived as having given labour a stronger bargaining position as well.

⁵⁹⁹ *Ibid.* This includes paid sick leave and medical insurance, pension rights, unemployment and disability benefits, widows and orphans' support, and as supplemented after World War II by child benefits and an old-age allowance.

⁶⁰⁰ *Ibid.*

therefore involved ‘higher taxation’ and ‘higher bureaucratization’.⁶⁰¹ During this period, the massive expansion of the public sector was perceived as having arisen from the ‘outcome of a trend of social levelling’, which was reflected in the ‘disappearance of extreme poverty and excessive wealth’ with ‘public displays of both’ widely regarded as ‘embarrassing’.⁶⁰²

However, modern welfare states only achieved their full development in the ‘Golden Age of Capitalism’ in the early post-war decades when national economic boundaries were effectively controlled. Rampant protectionism emerged after the Great Depression and ‘the complete breakdown of world markets’ during World War II, which resulted in extensive restrictions being imposed within international finance.⁶⁰³ During this period, ‘most currencies were not freely convertible’, ‘with capital transfers being highly restricted and domestic financial markets being subject to strict regulations in several countries.’⁶⁰⁴ Following these historically contingent developments, a slow process of restoring international trade within product markets resumed.⁶⁰⁵ During this transitional period, ‘export dependence and import penetration’ remained limited, while a wide range of economic activities were shielded from international competition.⁶⁰⁶ For example, most countries protected the services industry and agriculture, while manufacturing was ‘generally more export oriented’. Australia and New Zealand were exceptions to this overall trend since they relied on the exports of agriculture and raw materials to sustain protected manufacturing industries. Thus, while it would be inaccurate to describe national economies as having been ‘closed’ during the early post-war period, the fact remains that nation states were ‘able to control their own economic boundaries and the conditions under which transnational economic transactions would take place’.⁶⁰⁷

Given the presence of these protective barriers, national governments and unions were relatively insulated from international competitive pressures and could largely ‘ignore the exit options of capital owners, tax-payers and consumers’.⁶⁰⁸ It was during these highly circumscribed and contingent set of circumstances that advanced industrial democracies were

⁶⁰¹ *Ibid.*

⁶⁰² Breman & van der Linden, at p. 922.

⁶⁰³ Scharpf, F. W., & Schmidt, V. A. (Eds.). (2000). *Welfare and work in the open economy: volume II: diverse responses to common challenges in twelve countries (Vol. 2)*. Oxford University Press [Scharpf & Schmidt], at p. 2.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ *Ibid.*

⁶⁰⁶ *Ibid.*

⁶⁰⁷ *Ibid.*, pp. 2-3.

⁶⁰⁸ *Ibid.*

able to achieve the ‘Great Transformation’⁶⁰⁹ that allowed them to ‘exploit the economic efficiency of “dynamic capitalism” without having to accept its recurrent crises and highly unequal distributional consequences’.⁶¹⁰ Since governments were able to control transnational capital movements, most governments learned to dampen macro-economic fluctuations through macro-economic principles of Keynesian demand management, and were thereby able to achieve and maintain relatively high rates of economic growth and full employment.⁶¹¹ At the same time, national control over external trade gave governments and unions the freedom to shape their conditions of production ‘without endangering the viability of their capitalist national economies’.⁶¹² These specific macro-economic conditions (that are vastly different from the current globalised era underpinned by a commitment to free trade) therefore resulted in the historical prevalence of the SER as a norm.

However, subsequently, post-war welfare states were seen to be impacted by major changes in the international environment that therefore increased the economic vulnerability of advanced welfare states and resulted in the related decline of the SER as a norm. This is not meant to deny the importance of endogenous challenges that also differed in their impact on different types of post-war welfare states.⁶¹³ However, the focus here is on the impact of external economic challenges. Firstly, the period from the early 1970s to the mid-1980s were marred by macro-economic shocks, involving the collapse of the Bretton Woods system (of fixed but adjustable exchange rates) and the OPEC oil crisis in the early 1970s, which signalled the end of the golden age and the phasing out of full employment capitalism.⁶¹⁴ Secondly, a new international division of labour has arisen from the later period to the present, slowly seeing the exodus of major industries such as textiles and shipyards to the tiger economies in Asia,⁶¹⁵ and which is characterised by intensified competition in both international capital and product markets. Simultaneously, Western societies were transforming from industrial into post-industrial ones, encouraging working classes to ‘reach up to a more sumptuous lifestyle’

⁶⁰⁹ Polanyi, K. (2001 [1957]). *The great transformation: The political and economic origins of our time*. Beacon press.

⁶¹⁰ Scharpf & Schmidt, at p. 3.

⁶¹¹ Scharpf, F. W. (2000). The viability of advanced welfare states in the international economy: vulnerabilities and options. *Journal of European Public Policy*, 7(2), 190-228.

⁶¹² *Ibid.*

⁶¹³ This included ‘technical changes that have revolutionized production and consumption patterns, the effects of expanding education, the ageing of the population, the transformation of traditional family structures and profound value changes’.

⁶¹⁴ Scharpf & Schmidt, at p. 5.

⁶¹⁵ Munck, R. (2002). *Globalisation and labour: the new ‘Great Transformation’*. Zed Books.

and mass consumption ‘vindicating aspirations for upward mobility’.⁶¹⁶ Against this larger socio-economic context, flexibilization⁶¹⁷ became the organizing principle for labour policies in the West since the 1980s instead, which has greatly undermined the SER as a norm.⁶¹⁸

Given the historically limited prevalence of the SER as a norm within the global North, one can start to question the dominant narrative of SER-centrism (and its depiction of precarity as a pathology) underpinning international labour regulation. Indeed, it is precisely the decline of the SER that has marked the ‘crisis of labour law’ that labour law scholars have been grappling with in recent decades.⁶¹⁹ This crisis is perceived as having arisen due to the SER (as a foundational norm that had historically underpinned mainstream labour law) having been undermined by globalisation⁶²⁰ and the neoliberal narratives of flexibility resulting in sweeping changes in political economy (as described in Chapters II and III). These changes have further provoked searching reflection regarding ‘the question of who is (and who should be) covered by labour law’ that has now become ‘highly contested and often debated’.⁶²¹

(2) *Within the global South*

Beyond the global North, there is a significant body of literature problematising the dominant discourse of precarity as having resulted from neoliberal flexibilization within the global South. Instead, precarity has been conceived to be conceptually and materially distant from the realities of work in the global South. In the section to follow, I use the term ‘Global South’ (and related terms derived from this concept, such as Southern workers) recognising that this broad usage risks the same over-simplification that I have criticised narratives of precarity for in their account of the experiences of those in advanced industrial nations (or ‘the North’). In response, I contend that my purpose is a more limited one than the overarching narratives underpinning precarity. It aims to show how a history of precarity written from the

⁶¹⁶ Breman & van der Linden, at p. 924.

⁶¹⁷ I will touch on this in the next section.

⁶¹⁸ See Chapter II(B), and Chapter III(C).

⁶¹⁹ Davidov, G. (2016). *A purposive approach to labour law*. Oxford University Press; Davidov, G., & Langille, B. (2011). *The idea of labour law*. Oxford University Press.

⁶²⁰ Conaghan, J., Fischl, R. M., & Klare, K. (Eds.). (2004). *Labour law in an era of globalization: Transformative practices and possibilities*. Oxford University Press.

⁶²¹ Davidov, G. (2014). Setting labour law’s coverage: Between universalism and selectivity. *Oxford Journal of Legal Studies*, 34(3), 543-566; Davies, P., & Freedland, M. (2007). *Towards a flexible labour market: Labour legislation and regulation since the 1990s*. Oxford University Press. I will revisit this issue in the next chapter, Gendering Precarity.

perspective of those in the Global South sheds light on how our current understanding of the *political economy* of precarity (which will be further explored in Section C) may be obscured by a narrative oriented towards advanced capitalist countries. As such, I emphasize that these accounts that I provide should not be assumed to apply to all workers, and any such generalisations merely provide a counterpoint for reference rather than an all-encompassing, definitive story.

Countering precarity's narrative that it was the neoliberal era that had resulted in the commodification of livelihoods, global labour history scholars Kevin Harris and Ben Scully point to how the 'mid-20th century developmental era' resulted in 'widespread commodification for Southern workers'.⁶²² This runs contrary to the perception that there was a widespread increase in *social* income during the Golden Age of Capitalism. To the contrary, during formal decolonization in the 1960s and 1970s, there were a range of capitalist projects that gained tractions such as 'capitalist modernization via import-substituting industrialization, capital-intensive agrarian transformation and state-led redistributive programs for socio-economic welfare were influential'.⁶²³ Through this process of state-led development, Southern states sought to achieve their objective of stimulating capitalist growth through the transfer of labour from rural and agricultural settings to the urban and industrial sectors.⁶²⁴ Consequently, the twin processes of industrialisation and urbanisation decreased the access of Southern workers to non-wage incomes on a large scale and increased their dependence on wage labour as a source of income.⁶²⁵ However, whilst development policies increased 'mass reliance on markets for income and social reproduction',⁶²⁶ de-commodified social protection was not made widely available in the 20th century in most of the global South. Consequently, even relatively secure wage workers have relied on complex 'livelihood strategies' combining wages with non-wage income sources.⁶²⁷ Labour historians Sarah Mosoetsa, Joel Stillerman and Chris Tilly therefore highlight that insofar as the global South is concerned, it is 'historically

⁶²² Scully, B. (2016). Precarity north and south: A southern critique of Guy Standing. *Global Labour Journal*, 7(2), 160-173 [Scully].

⁶²³ Hussain, M. (2018). Contesting, (Re) producing or Surviving Precarity? Debates on Precarious Work and Informal Labor Re-examined. *International Critical Thought*, 8(1), 105-126, at p. 114.

⁶²⁴ Scully, at p. 165.

⁶²⁵ *Ibid.*

⁶²⁶ Harris, K., & Scully, B. (2015). A hidden counter-movement? Precarity, politics, and social protection before and beyond the neoliberal era. *Theory and Society*, 44(5), 415-444, at p. 424.

⁶²⁷ These include 'subsistence production of both food and other reproductive needs, petty commodity production for the market, small-scale trading... [and] solidarity and reciprocity in various forms' and the pooling of household incomes for survival. See Scully, pp. 165-166.

inaccurate' to call for a 'return' to standard employment relations since they did not prevail in the past.⁶²⁸

Within the context of the narrative of precarity, this insight points to the need to clarify descriptions of flexibilization within the global North. For example, scholars have drawn attention to how international development institutions such as the International Monetary Fund and the World Bank had 'dictat[ed] the use of flexible employment forms that deny basic labo[u]r protections and livelihood support to poor workers'.⁶²⁹ Consequently, these scholars have sought to argue that this led to a drastic increase in precarious work across the global South, through the dismantling of governmental protections such as social insurance and the 'proliferation of temporary and contract work, involuntary part-time work and independent contracting'⁶³⁰ – which are legal forms that we recognise as being associated with precarity. In response, scholars of informality have highlighted how these developments 'should not overshadow the world's mass of unprotected workers that have been extant all along'.⁶³¹ While most countries are seen to have experienced a 'substantive change in the discourse on the ideal employment relationship', scholars have argued that the 'experience of erosion of rights and protections' must be delimited to 'a (previously privilege) minority of the world's workers'.⁶³²

Indeed, for Southern workers, 'the 'social compact' of the mid-20th century was not built around social protection [and the SER], but on the basis of the *promise* of national development' [italicised for emphasis].⁶³³ Security and stability were posited as *future* goals that would be achieved through successful national developmental efforts, instead of citizenship rights.⁶³⁴ Even after independence, the drive towards development characterising the politics of newly established states meant Southern workers were 'more likely to be subject to government repression and control' than to be considered beneficiaries of employment-based citizenship rights (like their Northern counterparts).⁶³⁵ Even in the few instances of 'significant developmental social protection', such as that of the 'guaranteed employment of

⁶²⁸ Mosoetsa, S., et al. (2016). Precarious labor, south and north: An introduction. *International Labor and Working-Class History*, 89, 5, at p. 11.

⁶²⁹ Lee, C. K., & Kofman, Y. (2012). The politics of precarity: Views beyond the United States. *Work and Occupations*, 39(4), 388-408; Agarwala & Chun, at p. 9.

⁶³⁰ Agarwala & Chun, at p. 9.

⁶³¹ *Ibid.*

⁶³² *Ibid.*

⁶³³ Scully, at p. 168.

⁶³⁴ *Ibid.*

⁶³⁵ *Ibid.*

China's "'iron rice bowl' system', these differed sharply from the 'democratic and citizenship-expanding welfare systems' in the global North.⁶³⁶ Indeed, sociologist Gay Seidman has thus described capitalist industrialisation in 'the Third World' as 'generally being marked by intensified inequalities', since states 'seeking to attract or retain capital have often turned to political and labour repression' thereby 'postponing both democracy and redistribution in the effort to promote growth'.⁶³⁷

In contemporary terms, these historical dynamics within the global South have now been redescribed within the international legal sphere as informality. In 2019, the ILO and Organisation for Economic Co-operation and Development (OECD) released a report titled 'Tackling vulnerability in informal economy',⁶³⁸ which captures the global demographics of informality in the following terms. Informality is seen to 'affect most workers of the world', with a brief descriptive account of 'most of the world's employed population' being in informal employment given as comprising 61% of all workers including agriculture, and 50% of all workers excluding agriculture.⁶³⁹ Informality is described as having a 'strong rural dimension', with about 60% of informal workers living in rural areas, whilst the agriculture and industry sectors are seen to be the most exposed to informality with 94% of agricultural workers and 57% of industry workers respectively being informal.⁶⁴⁰ In addition, informal jobs are characterised as 'possess[ing] specific characteristics', with workers in temporary or part-time employment and in micro and small enterprises being 'particularly exposed' to informality although informal employment 'still constitutes a significant share of employment in large formal enterprises'.⁶⁴¹ On an enterprise-level, globally 81% of all enterprises are described as being informal.⁶⁴² In addition, a hierarchy of development is diffused within discussions of informality, with informality being described as being the norm in developing countries. It is depicted as representing '70% of all employment in developing and emerging countries' in comparison to only about 18% in developed countries.⁶⁴³ There is also 'substantial variation'

⁶³⁶ Scully, at p. 168.

⁶³⁷ *Ibid.*; Seidman, G. (1994). *Manufacturing Militance*. Berkeley: University of California Press, at p. 8.

⁶³⁸ OECD/ILO. (2019). *Tackling vulnerability in the informal economy*. Development Centre Studies, Paris: OECD Publishing.

⁶³⁹ *Ibid.*, p. 16.

⁶⁴⁰ *Ibid.*

⁶⁴¹ *Ibid.*

⁶⁴² *Ibid.*

⁶⁴³ *Ibid.*

described across geographical regions, from ‘86% in Africa to around 68% in the Arab States and Asia and the Pacific, 40% in the Americas and 25% in Europe and Central Asia’.⁶⁴⁴

Several scholars of history and sociology have gone further to make the claim that there is an ongoing global ‘convergence’ in labour relations, due to informality within the global South and the precarity in the global North increasing.⁶⁴⁵ Labour historians Breman and van der Linden have supported the idea of such a convergence insofar as the spread of informality and precarity is concerned by claiming that the ‘West is more likely to follow the Rest than the other way around’.⁶⁴⁶ Labour historian Andreas Eckert has contended that the normalization of precarity within the West has resulted in a process of convergence between Western and sub-Saharan African labour arrangements.⁶⁴⁷ Mosoetsa, Stillermann and Tilly have similarly argued for a global convergence in labour relations, by ‘interpreting the recent spread of precarious work as a “return”’.⁶⁴⁸ At the end of the 1990s, sociologist Ulrich Beck coined the expression ‘Brazilianization of the West’ to emphasize the ‘informalization of Western labour conditions and the “unexpected convergence” with informal/precarious labour arrangements that were already existing in the ‘peripheral economies’⁶⁴⁹ of the global South’.⁶⁵⁰ Nonetheless, whilst there appears to be a convergence in labour relations in the form of precarious work from a synchronic perspective, it bears emphasis that there are different kinds of precarization in substance from a ‘diachronic’⁶⁵¹ perspective. As such, labour historian Scully has cautioned against simplistically viewing precarious work as a ‘universal phenomenon whose meanings and implications are cognate for workers everywhere’.⁶⁵² Mosoetsa, Stillermann and Tilly themselves, despite contending that there has been a global convergence (as indicated above), have emphasized that whilst precarious work is spreading, it has ‘different characteristics in each national setting, reflecting patterns of boundary drawing, legal frameworks and histories of collective action’.⁶⁵³

⁶⁴⁴ *Ibid.*

⁶⁴⁵ See generally, Betti, E. (2018). Historicizing precarious work: Forty years of research in the social sciences and humanities. *International Review of Social History*, 63(2), 273-319 [Betti], at p. 296.

⁶⁴⁶ Breman & van der Linden, at p. 920; Betti, at p. 926.

⁶⁴⁷ Eckert, A. (2016). Capitalism and Labor in Sub-Saharan Africa. In Kocka, J. & van der Linden, M. (Eds.). *Capitalism. The Reemergence of a Historical Concept* (pp. 165-185). Bloomsbury Publishing; Betti, at p. 926.

⁶⁴⁸ Betti, at p. 926; Mosoetsa, S., et al. (2016). Precarious labor, south and north: An introduction. *International Labor and Working-Class History*, 89, 5-19, at p. 6.

⁶⁴⁹ On the concept of peripheral economy and labour, see, Amin, S., & Van der Linden, M. (Eds.). (1997). *Peripheral labour: studies in the history of partial proletarianization*. Cambridge University Press.

⁶⁵⁰ Beck, U. (2014). *The brave new world of work*. John Wiley & Sons.

⁶⁵¹ Betti, at p. 296.

⁶⁵² Scully, at p. 161.

⁶⁵³ Mosoetsa, S., et al. (2016). Precarious labor, south and north: An introduction. *International Labor and Working-Class History*, 89, 5-19, at p. 6.

In conclusion, in light of the historical contingency and spatially restricted application of ‘standard work’, I suggest that ‘standard work’ should be reframed as a discursive *process*, and not simply taken for granted as a fixed construct. Since ‘standard work’ has never functioned in reality as a norm for most of history or within most of the world, its existence today serves the function of actively *orienting* actors towards the creation of particular labour relations. Whilst it is widely acknowledged that ‘standard work’ is the historical result of political struggles by the working class, it serves the function today of *normatively* stabilising otherwise insecure employment relations through its association with and orientation towards security. Yet, the SER as a legal construct is not necessarily an active *economic* principle influencing the dynamics of market capitalism (in particular, labour markets), as can be seen in the competing economic norm of flexibilization that has been propagated in its place. Accordingly, whilst providing a point of orientation towards stability that is greatly influential within political discourse, a perception of ‘standard work’ as a static idealised norm has the tendency to obscure the inherently insecure nature of employment relations within labour markets (which I will explore in Section C below).

B. Relationality of Informality

This section now proceeds to examine the next assumption within international law regarding the *expansive* concept of precarity, in that informality has been redescribed as precarity within the international legal arena. I problematize how precarity, which has been conceived as a deviation from the norm of ‘standard work’, has been extended towards analysing and remedying informal employment within developing countries where ‘standard work’ had never been the norm. In response to this assumption, it is suggested that there appears to be a conceptual slippage between informal and precarious work that needs to be unpacked. I first point to the historical specificity of informality as a discourse and reflect on the contemporary conflation of informality and precarity.

(1) Historical Specificity of Informality

One way of understanding informality involves a theoretical understanding which explores the nature of informality and gives an account of its causes. Insofar as definitions go, in the adoption of conclusions on decent work and the informal economy in 2002, the tripartite

delegates to the International Labour Conference noted the absence of any ‘universally accurate or accepted description or definition’ of informality.⁶⁵⁴ Nonetheless, it was acknowledged that ‘there is a broad understanding’ of the informal economy as encompassing the following three possibilities: all economic activities by workers or economic units operating ‘outside of the formal reach of the law’; the lack of application or enforcement of law even if such activity takes place within the formal sector; or the law itself discouraging compliance due to it being ‘inappropriate, burdensome, or impos[ing] excessive costs’.⁶⁵⁵ The Conference conclusions further distinguished such activities from ‘criminal and illegal activities, such as smuggling of illegal drugs, [which] are not appropriate for regulation or protection under labour or commercial law’.⁶⁵⁶ What appears of importance here is the role of law in defining discussions pertaining to informality. In other words, the state of enforcement of regulations itself is constitutive in conceptualizing and measuring informality.⁶⁵⁷ Informality is broadly defined in an all-encompassing way that includes those who do not comply with existing regulations and those who are not covered within the scope of regulations, even if these various categories appear to point to distinctive causes.⁶⁵⁸

Against this discursive framing of the legal artefact of informality, it is important to provide some theoretical and historical context in order to better situate this concept. Officially, international legal discourse understands informality as having differing theoretical interpretations.⁶⁵⁹ These interpretations arose following the development of modernisation theories developed by economists within the 1950s, who conceived of a marginal, *traditional* sector which comprised of a ‘vast pool of surplus labour’ within developing countries, that was not perceived to be linked to the formal economy or the ‘modernity’ of development efforts.⁶⁶⁰ This was a theory that propagated economic growth for emerging markets and believed that this surplus would eventually be absorbed into the modern industrial sector as that growth transpired.

⁶⁵⁴ ILO. (2002). Resolution concerning decent work and the informal economy. ILC90/PR25/292.

⁶⁵⁵ *Ibid.*

⁶⁵⁶ *Ibid.*

⁶⁵⁷ Kanbur, R. (2021). The long discourse on informality as reflected in selected articles of the International Labour Review. *International Labour Review*, 160(4), 1-11, at pp. 2-3.

⁶⁵⁸ *Ibid.*

⁶⁵⁹ ILO. (n.d.). *Decent Work and the Informal Economy*. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/publication/wcms_2_10442.pdf.

⁶⁶⁰ *Ibid.*, at p. 3.

In response to observations that what was called the ‘informal sector’ had not only persisted but expanded in subsequent decades, a range of theories were developed to account for this disjuncture. Firstly, the *Dualist* school perceived the informal sector as being peripheral to the formal sector and being linked to ‘pre-capitalist economies’.⁶⁶¹ However, it conceived of problems within the growth model posited within modernisation theories, such as the persistence of peasant forms of production being due to ‘imbalances where the labour supply outstrips economic development and where traditional skills do not match new economic opportunities’.⁶⁶² The *Legalist* school (popularized by Hernando de Soto and others) characterized the informal sector as comprising of micro entrepreneurs who tried to avoid the costs of formal registration. In contrast to their depiction of legal regulations as hindering private enterprises, De Soto and others extolled property rights to create ‘real capital’.⁶⁶³ However, the *Structuralist* school (including proponents such as Alejandro Portes) contended that the informal sector was an integral feature of capitalist development. Seen in this light, the informal sector was perceived as being subordinated to the formal sector, in order to decrease labour costs and assist in increasing the competitiveness of larger firms.⁶⁶⁴ For this last school of thought, in asking the question of what a world without informality look like, the response would be that it would not exist, since formality and informality inter-connect and are mutually interdependent.

However, in order to better situate and understand theoretical accounts of informality, it is important to provide some historical specificity to the concept of informality. As it so turns out, the concept of informality was birthed within the international legal sphere, and the next part of this section traces that history. Post-war efforts within the ILO initially involved the specific context of creating a worldwide operational concept of unemployment to be deployed within Less Developed Countries (LDCs).⁶⁶⁵ In this particular historical moment, he shows how the ILO officials were concerned with the statistical measurement of employment scarcity or underemployment, which in itself presupposed that a generalisable standard for measurement could be created for application.⁶⁶⁶ However, this project was subsequently abandoned by the ILO officials from the late 1960s due to its unfeasibility since it was

⁶⁶¹ *Ibid.* at p. 4.

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*.

⁶⁶⁴ *Ibid.*

⁶⁶⁵ Benanav, A. (2019). The origins of informality: the ILO at the limit of the concept of unemployment. *Journal of Global History*, 14(1), 107-125 [Benanav]. at p. 116.

⁶⁶⁶ *Ibid.*

impossible to accurately measure what was termed ‘disguised unemployment’ when the act of working for wages was not representative of a global social norm.⁶⁶⁷

It is important to note that these efforts to develop such a concept of global unemployment – and their subsequent failure – took place against the backdrop of the popularity of the earlier mentioned modernisation theories of the first generation of development economists during the 1950s. Developmentalists projected that the ‘modern’ economic sector which already prevailed in the West (during what we now realise was the Golden Age of Capitalism) would spread throughout the rest of the world, as the global development project oriented around industrialization and economic growth took off. Against this backdrop of assumptions that the growth of the modern sector due to industrialisation would create sufficient employment to gradually absorb surplus labour from the ‘traditional’ sector,⁶⁶⁸ the move to create a measure of ‘unemployment’ and ‘underemployment’ to track this progress was only logical. However, the rapid *expansion* of the informal sector confounding the developmentalists’ expectations meant that the ILO’s endeavour to measure what had been projected to be shrinking unemployment was similarly misconceived.

In the wake of this failure to operationalise ‘unemployment’, the now widely known term informality was introduced into the wider literature through two publications prepared for the ILO’s country missions for the ILO’s World Employment Programme. The term informality was first introduced by Keith Hart, who provided an ethnographic study of the Frafra’s income-earning activities in Accra, Ghana. He described how ‘price inflation, inadequate wages, and an increasing surplus to the requirements of the urban labour market’ had resulted in a high degree of informality.⁶⁶⁹ Giving examples of how informal activities successfully supplemented formal income, he shifted the terms of the discourse by proposing the promotion of such activities rather than suppressing them within developmental efforts.⁶⁷⁰

Subsequently, the term was taken up by Hans Singer and Richard Jolly, for their mission to Kenya pursuant to the WEP. Moving away from the mainstream underemployment

⁶⁶⁷ *Ibid.*

⁶⁶⁸ Ashiagbor, D. (2019). Introduction: Narratives of Informality and Development. In Ashiagbor, D. Re-imagining Labour Law for Development: Informal work in the global North and South. Hart Publishing.

⁶⁶⁹ Keith, H. (1973). Informal Income Opportunities and Urban Employment in Ghana. *Journal of Modern African Studies* 11(1): 61–89, at p. 61.

⁶⁷⁰ *Ibid.*, at p. 66.

framework, they shifted the focus from representative figures such as ‘petty traders, street hawkers and shoeshine boys’⁶⁷¹ depicted by modernisation theorist Harry Arthurs towards various urban ‘enterprises and individuals’ committed to economically effective and profit-making endeavours.⁶⁷² Similarly to Hart, they sought to paint the informal sector in a more positive light by drawing attention to the ‘vitality and dynamism’⁶⁷³ inherent in its economically productive dimensions. In doing so, they urged a shift in perception away from the presumption that ‘the problem lies within the informal sector’, which was an easy observation to make for ‘observers surrounded by imported steel, glass and concrete’ in ‘central Nairobi, with its gleaming skyscrapers’.⁶⁷⁴ They suggested that ‘an imaginative leap and openness of mind’ was required to solve Kenya’s employment problems, and that this position of viewing the informal sector in a more positive light was indeed entirely justified. They pointed to how there was ‘considerable evidence of technical change’ within the urban sector, and evidence of ‘regular employment at incomes above the average level attainable in smallholder agriculture’.⁶⁷⁵

However, unlike the Hart report, the Kenya report was not entirely optimistic in its recommendations. Its authors argued that even if there was sustained growth of the economy, this would be ‘unlikely to broaden the base of income-earning opportunities for the majority of the people’.⁶⁷⁶ They expressed their fears that ‘a class of poor and disadvantaged persons, already prominent on the Kenyan social scene’ would expand over time and ‘suffer further relative impoverishment’, unless strategies for economic growth included ‘a more egalitarian distribution of the benefits of growth’.⁶⁷⁷ As such, unlike neoliberal proposals of De Soto seeking deregulation, Singer and Jolly pointed to the need for deregulation and promotion of the informal sector to be combined with and fitting ‘into a framework aimed at greater equality’.⁶⁷⁸

⁶⁷¹ ILO. (1972). *Employment, incomes and equity: a strategy for increasing productive employment in Kenya*. ILO: Geneva [Singer and Jolly], at p. 24; See also *Benanav*, at p. 116.

⁶⁷² *Ibid.*

⁶⁷³ Singer and Jolly, at p. 505

⁶⁷⁴ *Ibid.*, at p. 5.

⁶⁷⁵ *Ibid.*, at p. 5.

⁶⁷⁶ Singer and Jolly, at p. 98.

⁶⁷⁷ *Ibid.*

⁶⁷⁸ *Benanav*, at p. 116.

Following this push to positively frame the now newly coined ‘informal sector’, this concept gained ‘wide currency’ in the 1970s within developments studies.⁶⁷⁹ However, despite the authors’ positive initial intentions in challenging pejorative perceptions of what was supposed to be transitory and marginal within modernisation theory, such a recognition of the informal sector in dichotomous opposition to the idealised formal sector (or SER, as was discussed in the earlier chapter) ended up ‘preserv[ing] an even more fundamental assumption: the existence of a dual economy’.⁶⁸⁰ As set out in Section A of this chapter, it is worth recalling that the formal sector in itself in the global North was a historically contingent construct that started unravelling from the series of macro-economic shocks experienced in the 1970s and the subsequent push towards flexibilization. As such, it appears that the ILO’s benevolent endeavour to label the informal sector unwittingly resulted in the idealisation and reification of the ‘formal sector’ at the very moment that it was starting to dissolve.

Subsequent developments show us that this benevolent naming of the informal sector unwittingly turned out to be a political act.⁶⁸¹ Despite the original intention to destigmatise the activities of the informal sector, the concept subsequently came to be viewed in a pejorative light.⁶⁸² This could be seen as a fairly ironic development given the backdrop of widespread deregulation of the labour market from the 1970s. Indeed, informalisation was the name of the game in the structural adjustment policies applied to the global South in response to the Debt Crisis, entailing the rescinding of various labour protection measures. In the midst of a wider context of ‘unfolding economic depression’, the ILO took on the task of tracking the ‘expansion of informality across Africa, Asia, and Latin America’.⁶⁸³ It was observed that ‘levels of informality swelled dramatically’, with workers who once had formal-sector jobs beginning to work within the informal sector as well.⁶⁸⁴

During this time, the Director-General of the ILO described the further expansion of the informal sector as precisely having resulted from the structural adjustment policies, due to

⁶⁷⁹ Sethuraman, S. V. (1976). The urban informal sector: Concept, measurement and policy. *Int'l Lab. Rev.*, 114, 69.

⁶⁸⁰ Rosaldo, M. (2021). Problematizing the “informal sector”: 50 years of critique, clarification, qualification, and more critique. *Sociology Compass*, 15(9), e12914.

⁶⁸¹ See Pratt, A. (2019). Formality as exception. *Urban Studies*, 56(3), 612-615 for suggestions that naming in itself is ‘an inherently political act’, through the creation of a lens through which one views the world.

⁶⁸² Benanav, p. 121.

⁶⁸³ *Ibid.*

⁶⁸⁴ *Ibid.*

‘modern sector enterprises’ and the public sector having had to retrench labour or greatly reduce wages.⁶⁸⁵ However, in doing so, the ILO described the workers affected as having ‘had no alternative but to resort to the informal sector’, with the absorptive capacity of the ‘labour sponge’ described as being ‘put to a severe test’.⁶⁸⁶ In other words, the informal sector was now coded in pejorative terms in binary opposition to the struggling but nonetheless still idealised formal sector. Nonetheless, the Director-General affirmed that there was ‘no longer any cause to believe’ that the informal sector was a transient phenomenon that would gradually disappear, and instead appeared to be resigned to its ever increasing growth.⁶⁸⁷ In doing so, he drew attention to what we have come to understand as the dominant discourse of precarity, entailing the ‘greater deregulation and casualisation’ of work formerly performed by the ‘core’ workers, with the new ‘flexible’ means of production involving decentralisation through subcontracting measures.⁶⁸⁸ His comment foreshadowed developments within the ILO to come, regarding the clarification of the relationship between informality and the formal sector.

As it turned out, the ILO subsequently began to ‘lose control over the meaning of the concept’ of informality.⁶⁸⁹ For example, Hernando de Soto (from the earlier mentioned Legalist school) started using the informality concept from the Kenya report to argue that ‘the legal system’ was reason why the informal sector existed and sought to push for a reduction in business regulations.⁶⁹⁰ However, instead of pushing for greater equality (as Singer and Jolly had), he was in favour of neoliberal deregulation and the liberalisation of market forces. For the ILO itself, it remained plagued by ‘persistent ambiguities’⁶⁹¹ within the concept, which necessitated successive efforts to expand the concept of informality in order to take into account the various criticisms that were raised. For example, in 2002, the International Labour Conference has been depicted as breaking new ground in the debates surrounding informality, by broadening its conceptualisation from the informal ‘sector’ (and binary distinctions drawn between the formal and informal sector) to the informal economy (involving an economy wide phenomenon).⁶⁹² It moved from an enterprise-based concept involving production units to one

⁶⁸⁵ International Labour Conference. (1991). *Report of the Director-General (Part I): The dilemma of the informal sector*. ILO: Geneva; *ibid.*

⁶⁸⁶ *Ibid.*, at p. 10.

⁶⁸⁷ *Ibid.*, at p. 11.

⁶⁸⁸ *Ibid.*

⁶⁸⁹ Benanav, p. 122.

⁶⁹⁰ de Soto, H. (1980). *The other path: the invisible revolution in the Third World*. New York: Harper and Row, at p. 185, also cited in Benanav, p. 122.

⁶⁹¹ Benanav, p. 122.

⁶⁹² Benanav, p. 123.

that included the individualised characteristics of the job or worker.⁶⁹³ This broadened understanding of informality was seen to open opportunities for a more nuanced perspective on what informality, and to more closely understand why and how informality had come about through an analysis of its linkages with the informal economy and formal regulatory environment.⁶⁹⁴

This new definition was required as a response to previous definitions ‘failed to capture the growth of informal employment relationships within the formal sector itself’ (what we recognise now as precarity).⁶⁹⁵ As early as 1993, the ILO expert report on informality had noted that ‘atypical’ employment had expanded within businesses in several countries, including ‘clandestine employment, involuntary part-time work, work on short-term contract or no contracts, casual work’, and ‘labour on call’.⁶⁹⁶ This narrative should now ring familiar as the dominant discourse of precarity within the global North, except that it was being depicted within discussions of informality. Following a decade of neoliberal deregulation, and the increased trend of flexibility within the 1990s (as discussed earlier in Chapter III), a response to these ‘new’ developments were seen to be required for the measurement of informality.⁶⁹⁷ Following a ‘sea change in perception’ when the International Labour Conference adopted a resolution allowing the informal economy to encompass all economic activities that were ‘not covered or insufficiently covered by formal arrangements’, this led to a change in the statistical definition of informal work.⁶⁹⁸ In 2003, these developments therefore culminated in the 17th ICLS introducing the concept of ‘informal employment’ ‘which counted informal workers in both the formal and the informal sectors’.⁶⁹⁹

There are two key points that emerge from this account of both the theoretical approaches to informality and its history. The first provides historical context to the conceptual conflation of informality and precarity, which are in effect underpinned by two sets of different concerns and causes. Informality arose out of distinct political economy concerns, in the form

⁶⁹³ ILO. (n.d.). *Decent Work and the Informal Economy*. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/publication/wcms_210442.pdf

⁶⁹⁴ Benanav, p. 123.

⁶⁹⁵ *Ibid.*

⁶⁹⁶ *Ibid.*

⁶⁹⁷ Marti, S. (2024). The ILO, the Politics of Statistics, and Changing Perceptions of Informal Work, 1970–Present. *Labor*, 21(1), 98-116, at pp. 106-108.

⁶⁹⁸ *Ibid.*

⁶⁹⁹ *Ibid.*

of dealing with unemployment (and under-employment) within the global South from the 1970s onwards, rather than the insecurity of employment relations as perceived in the 2000s within the global North. As such, this history brings to the foreground the real dangers of mischaracterising what has been the norm of informality within the global South, in contrast to predominantly formal work within the global North, in broadly pejorative terms. Specifically, it risks instituting an eternal developmental hierarchy, and a dynamic of difference between the global North and South that characterizes the global South as always inferior and under-developed.⁷⁰⁰

The second is that the history of informality as a concept tells us that, despite having been characterised as a longstanding phenomenon within the global South, it has been perceived in different ways depending on the theoretical lens that one used to interpret it. For example, Singer and Jolly distanced themselves from an underemployment framework by positively framing informal work as efficient and profit-making, and further contended that broader policy changes that redistributed the benefits of economic growth were needed instead. In our current setting, it appears that informality has taken on a new inflection of concerns regarding the pejorative effects of precarity and insecurity (which has also been *explicitly* recognised in these terms within international legal discourse, as noted in Chapter III(B) ‘Situating the Subjects of Precarity’). Materially, this conflated discourse has since resulted in the characterisation of responses to informality as ‘formalisation’, which carries an orientation towards a legalised and idealised approximation of ‘standard work’ in the form of formalised work that has regulatory protections and benefits. With this contingent history of informality in mind, the discourse of ‘formalisation’ is now subject to closer scrutiny.

(2) *Unsettling Formality through Precarity*

Having grasped the historical contingency of the concept of informality, it is important to reflect on the contemporary conceptual conflation of informality and precarity within the international legal sphere. Specifically, I reflect on the strategy of ‘formalization’ that has been proposed by the ILO in response to informal work, and shed light on its limitations precisely because precarity is largely found within the formal sector and is increasingly described as

⁷⁰⁰ Anghie, A. (2007). *Imperialism, sovereignty and the making of international law*. Cambridge University Press.

involving a process of ‘informalisation’. This sub-section does not, of course, propose to set out an extensive legal analysis of the ILO’s formalisation policy, or to reflect on the role that labour law ought to play within the global South, which is a context where informal work has ‘long been, and remains, the predominant form’.⁷⁰¹ Such questions have already been raised by esteemed labour law scholars, and I do not propose to attempt the same in this sub-section. Instead, I seek to draw on the expertise of such labour law scholars to ground my subsequent reflections in this section.

Preliminarily, I furnish some further detail pertaining to the ILO’s policy on formalisation to provide further discussion to the analysis to follow. In 2015, the International Labour Conference adopted Recommendation No. 204 to formalize the informal economy [‘Formalisation Recommendation’].⁷⁰² Recalling that decent work deficits ‘are most pronounced in the informal economy, the aims of this Recommendation are to ‘facilitate the transition of workers and economic units from the formal to the informal economy’, ‘promote the creation, preservation and sustainability of enterprises’, and ‘prevent the informalisation of formal jobs’.⁷⁰³ Reflecting similar language to the earlier mentioned statistical discussions, it is significant that the Recommendation also frames informality in a negative way by claiming that ‘most people enter the informal economy not by choice but as a consequence of a lack of opportunities in the formal economy and in the absence of other means of livelihood’.⁷⁰⁴ The Recommendation is therefore premised on a stigmatisation of the informal sector, which some have called a ‘fetishization of the formal’. The agenda of formalisation is now widely recognised as having gained ‘considerable momentum’ within ‘international policy debates and discussions at the regional level’.⁷⁰⁵

It is noteworthy that precarious work was a subject of consideration within these discussions pertaining to informality. For example, in preparatory discussions leading up to the

⁷⁰¹ Indeed, the disjuncture between this norm of informality within the global South, and the ‘declining prevalence of the post-war model of employment within the formal sector’ has been given prominence within the abstract of a valuable resource for scholars interested in this dimension of labour law: Ashiagbor, D. (Ed.). (2019). *Re-imagining labour law for development: Informal work in the Global North and South*. Bloomsbury Publishing.

⁷⁰² ILO. (2015). *Recommendation No. 204 concerning the Transition from the Informal to the Formal Economy*. International Labour Conference, ILO: Geneva.

⁷⁰³ *Ibid.* See Article I(1) at p. 3.

⁷⁰⁴ *Ibid.*, at p. 2.

⁷⁰⁵ ILO. (2014). Report V(1), Transitioning from the informal to the formal economy. International Labour Conference, Geneva, at p. 31.

International Labour Conference's discussion of the Formalisation Recommendation, several worker representatives underlined the importance of recognising the presence of informal employment within 'formal establishments'.⁷⁰⁶ Indeed, the worker expert from Australia noted that such a recognition would be consistent with the 2002 Conclusions and the 2003 ICLS guidelines to include informality within formal arrangements.⁷⁰⁷ She pointed to two ways in which such informality could occur. The first was when workers are employed through 'arrangements that are not formally covered by labour law', as was common for out-workers and workers engaged in triangular employment relationships. The second was when formal enterprises failed to comply with labour laws that were applicable, or to pay mandatory social insurance contributions. She describes these issues as shared by both developed and developing countries.

In 'the first scholarly investigation of informalisation in global labour regulation policy', labour law scholar Deidre McCann subjected the ILO's Transition from the Informal to the Formal Economy Recommendation 2015 (No. 204) ('Recommendation') to closer scrutiny.⁷⁰⁸ On the one hand, she shows that the Recommendation relies on a 'fairly robust embrace of the ILO standards', particularly the 'non-standard work' standards such as the Private Employment Agencies Convention (1997)⁷⁰⁹ (which she describes as requiring an 'unambitious' degree of protection for temporary agency workers), the Employment Relationship Recommendation (2006),⁷¹⁰ the Home Work Convention and Domestic Workers standards, as 'essential references for formalisation policies'.⁷¹¹ On the other hand, she points to how the Recommendation was 'not equally convincing' insofar as the use of legal frameworks and techniques to combat informalisation were concerned.⁷¹² She provides examples of a range of mechanisms that include an equal treatment mandate, 'specific allocation of legal obligations in multilateral relationships', 'explicit distribution of responsibilities across value chains',

⁷⁰⁶ ILO. Sixth Supplementary Report: Report of the Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy. GB.319/INS,14/6, International Labour Office, Geneva, at p. 12.

⁷⁰⁷ *Ibid.*

⁷⁰⁸ McCann, D. (2019). Informalisation in International Regulation Policy: Profiles of an Unravelling [McCann]. In Ashiagbor, D. (Ed.). *Re-imagining labour law for development: Informal work in the Global North and South* (pp. 77-98). Bloomsbury Publishing.

⁷⁰⁹ ILO. (1997). Private Employment Agencies Convention (No. 181).

⁷¹⁰ ILO. (2006). Employment Relationship Recommendation (No. 198).

⁷¹¹ McCann, p. 94.

⁷¹² *Ibid.*

‘restricting outsourcing or mandating protections for the outsourced workforce’ and ‘working time techniques that limit fragmentation or that promote certainty in scheduling and wages’.⁷¹³

Consequently, McCann formed the conclusion that ‘to some degree, this limitation reflects that the Recommendation references the non-work standards without fully absorbing the regulatory strategies that those instruments demand’.⁷¹⁴ As such, she draws parallels between the Recommendation and the World Bank literature ‘by assuming the centrality of substantive protections’.⁷¹⁵ She provides the example of how section IV of the Recommendation pertaining to Employment Policies called for measures to help low-income households to ‘escape poverty’ by including minimum wage policies. However, she highlights that wages policies ‘cannot adequately respond to the regulatory conduits of informalisation’.⁷¹⁶ Specifically, she addresses the problem of fragmented work forms – casual work, zero hours contracts, day labour – which are ‘characterised by the absence of guaranteed hours’ and therefore having harsh consequences for the ‘levels and predictability of incomes’.⁷¹⁷ She points to how such outcomes ‘cannot be tempered by conventional wage policies’, and raises the issue that ‘novel – and at present only nascent – mechanisms designed specifically to regulate casual work’ are needed to address such work.⁷¹⁸ In other words, the Recommendation is inadequate in providing mechanisms that address the income dimension of precarious work.

While McCann observed that the ILO had a firm grasp of the role of legal regulation in ‘generating, shaping, and sustaining informal work’, through its recognition that ‘informality is a continuum’ with legal regulations governing ‘a shifting boundary between formal and informal work’, and the ‘informality that resides in formal settings’, she describes its policy discourses as ‘not being alive to certain of the associated regulatory dynamics’.⁷¹⁹ She concludes that while the Recommendation contains labour regulation mechanisms that could potentially curb informalisation and cites most of the relevant international labour standards, it appeared to be ‘primarily preoccupied with informal settings, rather than with informalisation

⁷¹³ *Ibid.*

⁷¹⁴ *Ibid.*

⁷¹⁵ *Ibid.*, p. 95.

⁷¹⁶ *Ibid.*

⁷¹⁷ *Ibid.*

⁷¹⁸ *Ibid.*

⁷¹⁹ *Ibid.*, p. 96.

of formal working relations'.⁷²⁰ She points to the need for a more 'sophisticated conception of informalisation' that had the aim of improving 'job quality in the formal sector', which are described as vital 'in the face of the increasingly intense pressures towards informalisation'.⁷²¹

In contrast to McCann's portrayal of the formalisation discourse in rather neutral terms, another scholar Claire Hovary emphasized the politics underlying this discourse. She drew similar conclusions to McCann in pointing to how 'perhaps most troubling is the fact that the discourse promoting formalization is occurring in a context of increasing formalization of precarity'.⁷²² She described the aim of formalization as only making sense if it was 'embedded in a broader concept of decent work for all', with formalization alone not being 'good enough' for being implemented within a context where Employers were questioning concepts such as decent work or precarity, or established rights to strike, and were instead 'seeking to push a particular vision of formalization'.⁷²³ She draws attention to how Employers made their position clear regarding formalization during the 2014 International Labour Conference, when they stated that while 'Enterprises and workers must transition to the formal economy, [...] incentives or provisions guaranteeing workers' rights would not help that process'.⁷²⁴ In doing so, she drew attention to the 'broader political circumstances, both within and outside the ILO' in her interpretation of the formalisation discourse within the ILO.⁷²⁵

Of course, this stance of the Employers is unsurprising, as the history of the ILO regarding the concept of precarity tells us. As set out in Chapter III, the formalization discourse has been proposed *after* a series of historical failures to internationally regulate and limit contract labour, which instead resulted in treaties that legitimated intermediary agencies and sub-contracting, and its inability to respond to precarization. Indeed, due to these historical failures, the ILO itself was described as an agency for globalization due to its failures to respond adequately to flexibilization.⁷²⁶ While the formalization discourse today has discursively captured 'the prevention of informalisation as an integral element of the

⁷²⁰ *Ibid.*

⁷²¹ *Ibid.*

⁷²² La Hovary, C. (2014). The informal economy and the ILO: A Legal Perspective. *International Journal of Comparative Labour Law and Industrial Relations*, 30(4), 391-412 [Hovary], at pp. 410 – 411.

⁷²³ Hovary, at pp. 410-411.

⁷²⁴ *Ibid.*, p. 411.

⁷²⁵ *Ibid.*

⁷²⁶ See Standing, G. (2008). The ILO: An agency for globalization? *Development and change*, 39(3), 355-384, for a fuller account of the various ways in which the ILO was unable to respond adequately to the challenge of globalisation.

formalisation project’, which should ‘not be understated’, the fact remains that this amendment had in reality been opposed by the Employer counterpart.⁷²⁷ Instead, they highlighted that ‘the stance of the international employer lobby would have precluded informalisation as an element of domestic formalisation policies’.⁷²⁸

Seen in this light, it appears that ‘formalisation’ for the global South could be redescribed today as a governance mechanism that obscures the entrenched difficulties of achieving material gains in reversing informalization within the formal sphere (largely found within the global North). Instead, it appears likely that, in practice, the informal sphere that has not been formalized (largely found within the global South) is likely to be the object of the ILO’s concern. However, formalization does not lead to the reduction of precarity. Indeed, there is a growing body of literature that points to the limitations of formalization as a strategy.⁷²⁹ Significantly, critical international legal scholars have pointed to the ways in which ‘formalization continues to be implemented in ways that end-up responsabilizing waste pickers for the failures in getting formalized’.⁷³⁰ This is a perspective that points to how the individualizing discourse of formalization screens from view the systemic logics that are producing precarity. Instead, they call for international economic institutions to ‘recognise the failures of the universal promise of formalization’ and for an approach that foregrounds how informal work is ‘a structural element of the world economy’.⁷³¹

To take stock, this section has shown how the notion of informality arose out of distinct political economy concerns, in the form of dealing with unemployment (and under-employment) within the global South from the 1970s onwards, rather than the insecurity of

⁷²⁷ McCann, p. 92.

⁷²⁸ *Ibid.*

⁷²⁹ Alessandrini, D., et al. (2022). The dream of formality: Racialization otherwise and international economic law. *Journal of International Economic Law*, 25(2), 207-223; Durán, G., & Narbona, K. (2021). Precarising Formality: Understanding Current Labour Developments in Chile. *Global Labour Journal*, 12(3) 206-226; Rosaldo, M. (2021). Problematizing the “informal sector”: 50 years of critique, clarification, qualification, and more critique. *Sociology Compass*, 15(9), e12914; Salmivaara, A. (2021). Precarious Work and Insecure Lives. De Facto Informalization in Cambodia’s Garment Factories. *Journal of labor and society*, 24(1), 44-75; O’Hare, P. (2020). ‘We Looked after People Better when We Were Informal’: The ‘Quasi-Formalisation’ of Montevideo’s Waste-Pickers. *Bulletin of Latin American Research*, 39(1), 53-68.

⁷³⁰ Alessandrini, D., et al. (2022). The dream of formality: Racialization otherwise and international economic law. *Journal of International Economic Law*, 25(2), 207-223, at p. 223.

⁷³¹ *Ibid.* See also Chen, M. A. (2005). *Rethinking the informal economy: Linkages with the formal economy and the formal regulatory environment*. WIDER Research Paper (No. 2005/10), Helsinki: United Nations University World Institute for Development Economics, supporting the view that the informal economy is not an aberration within the formal economy but an integral part of the formal economy.

employment relations as perceived in the 2000s within the global North. However, a curious convergence between the discourses of informality and precarity is witnessed here, which may account for the contemporary conceptual slippage between informality and precarity. However, against this contestation, the recommendation for informality within the global South *remains* the *transition* to formality, despite the formal sector itself (subject to processes of informalisation) not holding the promise of stability that those in the informal sector are held out as aspiring towards. Analytically, against the backdrop of conceptual slippage between precarity and informality within contemporary institutional discourse, there therefore appears to be a logical leap in contemporary prescriptions that the solution to informality (of formalisation) may now be *redescribed* as a solution to precarity. The problem of informalisation within the formal sector is therefore effectively concealed from view through this prescription of formalisation.

Against this context of an understanding of formalisation as unsupported by regulatory mechanisms directed at informalisation within the formal sector and historical failures within the ILO to regulate precarious work within the formal sector, it is important to further reflect next on the significance of these *dynamics* of informalization within precarity, which predominantly pertains to *formal* work within the global North, that appear to be elided within formalization as a governance strategy within the global South.

C. Precarization: Precarity as a Process

In response, I foreground the relationality of precarity in this section, as being rooted in the underlying dynamics of capitalist accumulation, and thereby leading to the re-emergence of informalisation even within the formal sector. In doing so, I draw attention to how the discourse of formalisation obscures these systemic logics of precarization. In order to do so, I turn to the Marxist tradition to assist in deepening our analysis of precarity.

‘[F]or Marx, the wage-labour condition is essentially precarious’.⁷³² Specifically, the relationship between capital and labourer only has the ‘appearance of a relationship between free and equal subjects’.⁷³³ The fact that workers can change who buys their labour power (the

⁷³² Munck, R., et al. (2020). Introduction: special issue on precarious and informal work. *Review of Radical Political Economics*, 52(3), 361-370 [Munck, Pradella & Wilson].

⁷³³ *Ibid.*

employer) may appear at first glance to provide a sense of freedom to the worker, and a sense of equal exchange between employer and employee. However, Marx invites us to consider the whole life span of the worker, during which the repetition of this exchange transpires. While the workers ‘exchange with capital their entire labour capacity’, capital ‘does not buy it in bulk or in a continuous manner’.⁷³⁴ While one can see this demonstrated immediately today through the example of workers being employed on zero-hours contracts, or casual labour, Marx further draws attention to employment over the course of one’s whole life to foreground these dynamics for all who are employed. Accordingly, such a situation ‘determines a condition of precarity for the workers’ because they are ‘forced to sell their labour power’ since they are ‘deprived of the material conditions of work in the first place’.⁷³⁵

When one looks at this life-long process of constant repetition of such an exchange between the worker and the employer, and ‘from a social point of view’, it becomes evident that for Marx, the ‘formal freedom of the wage labo[u]rer conceals a relationship of wage slavery’:⁷³⁶

In reality, the worker belongs to the capital even before he has sold himself to the capitalist. Its economic bondage is at once mediated through, and concealed by, the periodic renewal of the act by which he sells himself, his change of masters, and the oscillations in the market price of his labo[u]r.

Therefore, for Marx, ‘precarity is constitutive to the condition of wage labour’ and is ‘closely linked to labour exploitation in the workplace’,⁷³⁷ with the development of the capitalist mode of production instituting a tendency to intensify precarity for workers. Specifically, he analyzes the ‘general law of capitalist accumulation’ as demonstrating a ‘link between growing working-class exploitation, precarity, and impoverishment’:⁷³⁸

The higher the productivity of labo[u]r, the greater is the pressure of the workers on the means of employment, the more precarious therefore becomes the condition for their existence, namely the sale of their own labo[u]r power for the increase of alien wealth, or in other words the self-valorization of capital.

⁷³⁴ *Ibid.*

⁷³⁵ *Ibid.*, p. 364.

⁷³⁶ Munck, Pradella & Wilson, at p. 364.

⁷³⁷ *Ibid.*

⁷³⁸ *Ibid.*

Such an ‘increase in labour productivity’ and the ‘role of machinery in the production process’ is seen as resulting in in-built tendencies to render a proportion of the working population as redundant.⁷³⁹ Described in terms of superfluity to the demands for labour power in production, this portion of the population is redescribed as a ‘reserve army of labour’ that is critical to the process of capital accumulation precisely because this superfluous army is at the disposal of the needs of capital. While it was Friedrich Engels who introduced the idea of precariousness in relation to an industrial reserve army, this concept became a ‘key element in Marx’s analysis of the industrial reserve army in volume I of *Capital*’.⁷⁴⁰ Subsequently, close to a century later, this concept has remained relevant with sociologist Pierre Bourdieu describing precariousness as being present when ‘the existence of a large reserve army... helps to give all those in work the sense that they are in no way irreplaceable’.⁷⁴¹ Scholars have reflected on how ‘intriguingly, almost the entire contemporary vocabulary – redundant, superfluous, precarious – can be found in Marx’s *Capital*’.⁷⁴²

Marx characterizes the reserve army of labour as comprising workers who are only partially employed (whom we may initially recognise today as those as in intermittent employment, engaged in casual or temporary work⁷⁴³) or fully unemployed.⁷⁴⁴ However, the reserve army does not comprise a separate category of workers that are distinct from those who are fully employed (or in ‘standard work’, as we would describe today in contemporary terms). Instead, they are put into relation with those in ‘standard work’ precisely because they place pressures on the employed population to ‘limit’ their claims and resistance. The general condition of the working class is therefore characterised in terms of precariousness due to the ‘constant threat of being thrown into the “surplus population” of the unemployed and underemployed’, which is a dynamic that is seen to intensify ‘over the course of capital accumulation’.⁷⁴⁵ Therefore, the presence of temporary workers is conceived as being essential

⁷³⁹ *Ibid.*

⁷⁴⁰ Jonna, R. J., & Foster, J. B. (2016). Marx’s Theory of Working-Class Precariousness - And Its Relevance Today. *Alternate Routes*, 27, 1 [Jonna & Foster].

⁷⁴¹ Jonna & Foster, pp. 1-2.

⁷⁴² Harris, K., & Scully, B. (2015). A hidden counter-movement? Precarity, politics, and social protection before and beyond the neoliberal era. *Theory and Society*, 44(5), 415-444.

⁷⁴³ The reserve army of labour involves a more sophisticated categorisation of different groups of workers, which will be further explored below. However, an extended treatment of this concept of the ‘reserve army of labour’ lies outside the scope of this chapter. See Colombini, I. (2020). Form and essence of precarization by work: from alienation to the industrial reserve army at the turn of the Twenty-first century. *Review of Radical Political Economics*, 52(3), 409-426; Das, R. J. (2022). What is Marxist geography today, or what is left of Marxist geography? *Human Geography*, 15(1), 33-44, for a broader contextualisation of debates.

⁷⁴⁴ Munck, Pradella & Wilson, at p. 364.

⁷⁴⁵ Jonna & Foster, p. 4.

for capital to intensify its exploitation of those are in work, and to thereby further reduce labour costs partly by decreasing the numbers of those who need to be employed, and partly by keeping wages down.⁷⁴⁶ Such a relational dynamic between those within standard work, and those within casual or temporary work or the unemployed, is seen to result in ‘a vicious circle of overwork and underemployment/unemployment’⁷⁴⁷ that operates at both the national and global level.⁷⁴⁸

Consequently, early Marxist theorists extended the concept of the reserve army of labour by *explicitly* grounding their critique of capital in the concept of ‘precariousness’, and thereby ‘integrally related’ this concept to the Marxist critique of capitalism.⁷⁴⁹ For example, William Morris theorised how labour-saving machines did not actually reduce the need to work. In reality, they reduced the skilled labourer to ‘the ranks of the unskilled’ instead, thereby increasing the number of the ‘reserve army of labour’, intensifying the labour of those operating the machines, and generally increasing the precariousness of life amongst the workers.⁷⁵⁰ According to Morris, the essence of working class life was precisely captured in its instability (i.e. precarity) – the need to struggle to find a job, the threat of unemployment or underemployment, the extreme ‘suffering, degradation and even death brought on by exploitative working conditions’, and the ‘omnipresence of pauperism’.⁷⁵¹

Consequently, scholars writing in the Marxist tradition have highlighted how Marx’s analysis of the ‘general law of capitalist accumulation’ points to tendencies to the production of increasing precariousness within employment conditions, and the ‘relative impoverishment of the labouring population’.⁷⁵² While such a tendency had been ‘dismissed by mainstream social scientists as constituting a crude theory of immiseration’, such a notion of precariousness as describing the ‘general condition of working-class life’ is perceived to have been ‘rediscovered’ in recent years. However, in contrast to the ‘larger theory’ of the general laws of

⁷⁴⁶ Wilson, T. D. (2020). Precarization, informalization, and Marx. *Review of Radical Political Economics*, 52(3), 470-486, at p. 481 [Wilson].

⁷⁴⁷ Such patterns are underscored by the tendency to crisis within capitalism, and its ‘destabilising effects such as under-production and over-accumulation’. See Leichtweis, M. G. (2023). ‘Transforming our world?’ A historical materialist critique of the sustainable development agenda. *London Review of International Law*, 11(2), 273-314, at pp. 288-289.

⁷⁴⁸ Munck, Pradella & Wilson, at p. 364.

⁷⁴⁹ Jonna & Foster, p. 2.

⁷⁵⁰ Morris, W. (1896). *Signs of Change: Seven Lectures*. Longmans, Green, and Company.

⁷⁵¹ Jonna & Foster, p. 10.

⁷⁵² *Ibid.*

capitalist accumulation within Marxist and Marxian writings, the concept of precariousness today is criticised for being frequently treated in an ‘eclectic, reductionist, ahistorical fashion’.⁷⁵³

Seen in this light, it is unsurprising that Standing’s conceptualisation of the precariat as a ‘new dangerous class’⁷⁵⁴ has been the subject of intense criticism by scholars who have foregrounded the class dynamics within the global South. They have collectively described Standing’s theorising as ‘elid[ing] the class aspects of precarity, including its propensity to generate a reserve army of labour, surplus populations and disposable lives’.⁷⁵⁵ Marxist scholars position the idea of the ‘proletariat’ as not being opposed to precariousness – thereby resulting in the creation of a ‘new’ and discrete category of the precariat, or gig workers, or the informal worker, or the unemployed or other such contemporary variation – but foreground the relationality of precariousness as being ‘a defining element in working-class existence and struggle’.⁷⁵⁶

Critical political economy scholars have sought to foreground the global dimension of Marx’s conceptualisation of the reserve army of labour. While capital is described as having originated through the global ‘processes of colonization, forced market expansion and dispossession’, the accumulation of capital today is described being concentrated within a decreasing number of the population (what we narrowly recognise today as inequality) is seen to result in an expansion of the reserve army of labour.⁷⁵⁷ This expansion is facilitated precisely through the global dimension of the reserve army of labour (what we may recognise today in terms of globalisation). For Marx, the colonies (or the global South today) were seen to represent ‘enormous pools of labo[u]r power that could be exploited via international migration or capital investment’.⁷⁵⁸

⁷⁵³ *Ibid.*

⁷⁵⁴ See Chapter II(A).

⁷⁵⁵ Vij, R. (2019). The global subject of precarity. *Globalizations*, 16(4), 506-524. See also Breman, J. (2013). A bogus concept? *New Left Review*, 84, 130; Munck, R. (2013). The precariat: A view from the South. *Third World Quarterly*, 34(5), 747-762; Scully, B. (2016). Precarity north and south: A southern critique of guy standing. *Global Labour Journal*, 7(2), 16-173.

⁷⁵⁶ Jonna & Foster, p. 11.

⁷⁵⁷ Munck, Pradella & Wilson, p. 365.

⁷⁵⁸ *Ibid.*

Marx categorises the various functions of this surplus population, and puts these categories into relation with each other, often in spatial terms. For example, the '*floating surplus population*' is largely concentrated within the 'most dynamic centers of the capitalist economy' and fluctuates based on business cycles.⁷⁵⁹ Today, we would recognise their institutionalised forms as the temporary worker or the sub-contracted worker.⁷⁶⁰ A '*latent surplus population*' comprises of self-sustaining segments of the rural population, that produces resources domestically or within the home to sustain the working population.⁷⁶¹ This appears to be a category that is less generalisable today in global terms, due to the increased industrialisation of agriculture within the global North, while the subsistence farmers within the global South are seen to comprise a large proportion of the poor. Within the global South, this also includes peasants and small farmers that have been 'marginalized by capitalist agriculture' and may seek to migrate to urban centers on a seasonal or permanent basis.⁷⁶² Scholars have extended Marx's notion of 'domestic industry' to characterize home-based workers and sub-contracted or informalized employment within manufacturing as falling within this category.⁷⁶³ There is also the category of a '*stagnant surplus population*', which is described as being 'part of the active labour army but with extremely irregular employment', thereby experiencing the 'most extreme forms of precarity and exploitation with 'a maximum of working time and a minimum of wages'.⁷⁶⁴ In today's terms, they could be described as workers who are on zero-hour contracts or gig workers, though many of them suffer from the predicament of not having enough work to sustain them. '*Pauperized workers*' are seen to represent the 'lowest sediment' of the reserve army,⁷⁶⁵ including those who are aged, disabled, ill or unemployed but able to work and employable during periods of economic expansion.⁷⁶⁶

Under global capitalism today, critical political economy scholars have described all categories of the reserve army of labour as having expanded greatly. Firstly, the global labour force has expanded due to entry into the labour force of formerly socialist countries. Secondly, there has been a 'continuing de-peasantization in the periphery due to the expansion of

⁷⁵⁹ *Ibid.*

⁷⁶⁰ Wilson, p. 481.

⁷⁶¹ *Ibid.*

⁷⁶² *Ibid.*; McIntyre, M. (2011). Race, surplus population and the Marxist theory of imperialism. *Antipode*, 43(5), 1489-1515.

⁷⁶³ *Ibid.*

⁷⁶⁴ Munck, Pradella & Wilson, p. 365.

⁷⁶⁵ *Ibid.*

⁷⁶⁶ Wilson, p. 481.

agribusiness'.⁷⁶⁷ The dynamics of the global dispossession of peasantries are to be understood against this backdrop. For example, de-peasantization (pertaining to the 'differentiation of the peasantry into capitalist farmers and semi-proletarian proletarianized (in formal and informal work') is described as having 'accelerated' after introduction of Green Revolution technologies and other such new agricultural technology (including genetically modified seeds).⁷⁶⁸ Consequently, political economist Samir Amin has foregrounded the precarity of three billion people being involved peasant activities within Africa, Asia and Latin America by asking:

One can imagine that the food brought to market by today's three billion peasants, after they ensure their own subsistences [*sic*], would instead be produced by twenty million new modern farmers... Such agriculturalists would indeed compete successfully with the billions of peasant peasants... What will become of these billions of human beings, the majority of which are already poor among the poor, who feed themselves with great difficulty? In fifty years' time, industrial development, even in the fanciful hypothesis of a continued growth of 7 percent annually, could not absorb even one-third of this reserve.⁷⁶⁹

Seen in this light, one understands why the concept of precarity could also be connected to other threads of literature such as 'adverse incorporation' within global economic structures, and 'immiserising growth', which both foreground the ways in which the extension of market relations could harm certain groups of populations.⁷⁷⁰

Rooted in such an understanding of the relational dynamics underlying precarity, contemporary Marxist theorists have further drawn attention to the commonalities between precarious work and informal labour (foregrounding the informalizing dimension).⁷⁷¹ Firstly, both groups have a shared sense of disposability, in that they can be 'hired during periods of economic expansion and discarded during recession and economic contraction'.⁷⁷² Secondly, they are both largely unprotected by welfare state legislation, thereby resulting in insecurity during under or unemployment, ill-health or old age.⁷⁷³ While workers under capitalism need to be paid at least subsistence wage for 'the maintenance and reproduction' of the labourer, this may not necessarily be the case for outsourced or offshored workers, due to competitive logics

⁷⁶⁷ *Ibid.*

⁷⁶⁸ *Ibid.*

⁷⁶⁹ Amin, S. (2013). *The implosion of contemporary capitalism*. NYU Press, at pp. 127-128.

⁷⁷⁰ Cruz-Del Rosario, T., & Rigg, J. (2019). Living in an age of precarity in 21st century Asia. *Journal of Contemporary Asia*, 49(4), 517-527.

⁷⁷¹ Wilson, pp. 476-477.

⁷⁷² *Ibid.*

⁷⁷³ *Ibid.*

between countries to lower wages.⁷⁷⁴ Thirdly, they are situated closer to the other end of a polarized spectrum, between workers with ‘good jobs’ and ‘bad jobs’ – which is increasingly described as ‘standard work’ or ‘non-standard’ work within the international legal sphere.⁷⁷⁵ This polarization is seen to capture an essential difference between the core and peripheral workers, although these segments of the ‘core’ and ‘periphery’ are themselves continuously being redefined, with maintenance and reproduction costs only being guaranteed for core workers, while the peripheral workers are more easily replaced by others within the reserve army of labour.⁷⁷⁶ Lastly, while the longstanding historical relationship of precariousness and capitalism could have been perceived as being contested through the construct of ‘standard work’ and the creation of labour rights within the global North, the narratives of precarity have shown the inadequacy of this construct as having unravelled within flexibilization. Consequently, the endemic nature of precarity has re-emerged and been made apparent within the global North for previously privileged segments of the population.

However, differences between the dynamics of informalization/precarization in the Global North as compared with the Global South have also been highlighted. The first difference is that countries in the Global South are described as having been subject to ‘imperialist influences’ through the dynamics of globalization that have led to outsourcing to informalized or precarious labour.⁷⁷⁷ This has occurred either directly by transnational corporations or indirectly through value chains that involve national firms. The second difference is that informalization in the Global South has been related to ongoing dynamics of dispossession of the peasantry through land grabs, and the consequent expansion of the reserve army of labour, while informalization within the global North is more closely associated with the rise of a reserve army of labour through migration or the ‘shedding of “core workers” into peripheral labour” when labour was recommodified during the neoliberal era.⁷⁷⁸ Lastly, insofar as forms of work are concerned, those pertaining to temporary staffing agencies that have been conceptualised in terms of precarity are perceived to be spreading within the global South, while other forms of work such as home-based work that had initially been conceptualised as informal work is returning to the global North.⁷⁷⁹

⁷⁷⁴ *Ibid.*, p. 479.

⁷⁷⁵ *Ibid.*, p. 477.

⁷⁷⁶ *Ibid.*

⁷⁷⁷ Wilson, p. 478.

⁷⁷⁸ *Ibid.*

⁷⁷⁹ *Ibid.*

Against the backdrop of these important commonalities and distinctions between the precarious and informal work within the global North and South respectively, Kalyan Sanyal offers an important critique of the hegemonic notion of development-as-transition (or the transition towards formality, as a marker of development and progress).⁷⁸⁰ Sanyal argues that the Marxist notion of primitive accumulation,⁷⁸¹ rather than being a ‘pre-history’ of the emergence of the capitalist mode of production, is an always incomplete and continuing process⁷⁸² that is intrinsically linked to the process of capitalist growth and expansion within the context of the postcolonial economies in the Global South.⁷⁸³ However, unlike the earlier forms of primitive accumulation, while the expanded reproduction of capital in the postcolonial economies dispossesses the populations within the traditional sector to release resources for the purposes of accumulation, it does not necessarily proceed to absorb the dispossessed population into capitalist production relations as wagedworkers.⁷⁸⁴ This ‘excluded’ population is, then, forced to eke out its livelihood by recreating and reproducing non-capitalist, informal economic spaces that are geared towards satisfying the economic “needs” of this population (rather than being driven by the logic of accumulation⁷⁸⁵ and expanded reproduction, as in the case of the capitalist segment).⁷⁸⁶ Capitalist growth, therefore, itself results in a continued reproduction of such spaces.

The systemic logics at play in the production of precarity globally, as evidenced by the dynamics of capital accumulation, therefore reveal that the assumption within international legal discourse that the precarious nature of work within the global South is largely due to informality and a lack of compliance with the law, is an incomplete explanation. Instead, it occludes deeper systemic logics at play in the production of precarity globally. In this vein, Neilson and Rossiter underscore how precarity problematizes the centrality of work under capitalism, instead of merely ‘providing a sociological problem that may be resolved through

⁷⁸⁰ Sanyal, K. 2007. *Rethinking Capitalist Development: Primitive Accumulation, Governmentality and Post-Colonial Capitalism*. New Delhi: Routledge.

⁷⁸¹ This concept of primitive accumulation will be revisited and elaborated upon in Chapter VI(A).

⁷⁸² Bhattacharya, S., et al. (2023). Exclusion, Surplus Population, and the Labour Question in Postcolonial Capitalism: Future Directions in Political Economy of Development. *Review of Political Economy*, 35(1), 145-173.

⁷⁸³ *Ibid.*

⁷⁸⁴ *Ibid.*

⁷⁸⁵ This logic of accumulation is also referred to as ‘the profit maximisation imperative’. See Leichtweis, M. G. (2023). ‘Transforming our world?’ A historical materialist critique of the sustainable development agenda. *London Review of International Law*, 11(2), 273-314, at pp. 288-289.

⁷⁸⁶ *Ibid.*

regulations and adjustments in the labour markets'.⁷⁸⁷ While I will further elaborate in Chapter VI(B) 'TWAAIL-ing precarity' on how such dynamics of precarization offer a different story of 'precarity'/'informality' for those in the global South, what is important for our current purposes is that the dominant discourse of precarity as arising from neoliberal flexibilization in recent decades has been unsettled. Instead, this section has underscored a deeper historical trajectory to precarity as being rooted within the development of capitalism itself.

⁷⁸⁷ Neilson, B., & Rossiter, N. (2008). Precarity as a political concept, or, Fordism as exception. *Theory, Culture & Society*, 25(7-8), 51-72.

GENDERING PRECARITY

“The woman question is one of the organisation of society as a whole.”
~ Edward Aveling and Eleanor Marx Aveling⁷⁸⁸

This chapter turns to the analysis of precarity through the lens of gender. In the first part, I turn to a range of feminist literatures to clarify how and why precarity is significant through the lens of gender, and to provide an underlying context to the discourse of the ILO on gendered precarity. I examine the gendered nature of precarious waged work and point to how an important explanatory account for how precarious work came to be gendered is that gendered *unwaged* work underpins precarious waged work. In the second part, I excavate the relationship between international law, precarity and gender. I highlight the role of international law in producing precarity as a gendered phenomenon through its historic exclusion of women’s work from its construct of ‘standard work’. This points to the underlying narrative of precarity as being juxtaposed to the normality of ‘standard’ work, as being a gendered narrative.⁷⁸⁹ Nonetheless, I track the ILO’s subsequent evolution in its increasing recognition of the gendered reality of precarity. While largely coded as a positive development, I pose the question of which women are more affected by precarity and reflect on some limitations of international legal discourse regarding the intersectionality of gendered precarity.

A. Relationship between precarity and gender

A feminist approach draws attention to the way in which gendered relations are not natural and ahistorical, and instead are socially constructed.⁷⁹⁰ This particular approach departs from conventional presuppositions that the categories of women and gender are pre-determined and exist as fixed, immutable norms. On the contrary, these categories and relations are ‘contingent and depend upon a material context’, and ‘a set of cultural and ideological forces

⁷⁸⁸ Aveling, E. & Aveling, E. M. (1886). *The Woman Question: From a Socialist Point of View*. *Westminster review*, 125(249), 207-222.

⁷⁸⁹ See Betti, E., & Boris, E. (2023). *Feminised work after Fordism: The new precarity*. In Ness, I. *The Routledge Handbook of the Gig Economy* (pp. 131-144). Routledge, which has a similar orientation of showing that standard employment was never a universal model, and investigating the intersectionality of gendered and global precarity. However, while there are several similar themes, that article has a different emphasis regarding the increasing informalisation of labour relations, which is not the focus of this chapter.

⁷⁹⁰ Scott, J. W. (1986). *Gender as a useful category of historical analysis*. *The American Historical Review*, 91(5), pp. 1053-1075.

constantly negotiated by social subjects'.⁷⁹¹ Following this approach, this section draws attention to a significant body of literature reporting that the phenomenon of precarity is gendered and, where possible, foregrounds the historical specificity of these gender relations.⁷⁹² Of course, this section does not attempt to provide a definitive account of gendered precarious employment relations across all temporal scales across the globe and jobs within various economic sectors. Furthermore, it is difficult to generalise about gender-specific effects, since 'much depends on a country's level of development, forms of integration into the world economy, socio-economic structures and dominant culture'.⁷⁹³ Instead, there is a more modest ambition of providing analytical categories and illustrations to illuminate the various ways in which women may be shown to be differently affected by precarity. It further clarifies the underlying theoretical contestation regarding the relative significance of these claims within different strands of feminism.

(1) Gendered nature of precarious waged work

A key starting point of discussion is the extent to which women have been affected by precarity. I start with the caveat that while I do not purport to identify women as a fixed category and as being definitive of gender, I refer to the category of women because it is the one that appears to be most commonly used within studies of precarity and gender. Employing varying definitions of precarity, a significant body of literature (including studies done by the ILO) has responded that women have been found to be *disproportionately represented* in precarious work.⁷⁹⁴ International Monetary Fund affiliates from 'countries as diverse as Brazil, Canada, Chile, Colombia, Dominican Republic, Hong Kong (China), Indonesia, Japan, the Republic of Korea, Panama, Peru, Singapore, Thailand, United States and Uruguay' have all affirmed that women are 'more likely to be forced into precarious employment' and are the likely to have their employment terminated first.⁷⁹⁵ Women have also been found to be more likely to be employed on zero-hours contracts (where a minimum number of hours per week

⁷⁹¹ Flores Garrido, N. (2020). Precarity from a feminist perspective: A note on three elements for the political struggle. *Review of Radical Political Economics*, 52(3), 582-590 [Garrido], at p. 584.

⁷⁹² In doing so, I draw inspiration from and modify the analytical framework set out in Garrido.

⁷⁹³ Kanji, N., & Menon, K. (2001). *What does the Feminisation of Labour mean for Sustainable Livelihoods?* International Institute for Environment and Development.

⁷⁹⁴ See also Fudge, J., & Owens, R. (Eds.). (2006). *Precarious work, women, and the new economy: The challenge to legal norms*. Bloomsbury Publishing, at pp. 12-13.

⁷⁹⁵ Holdcroft, J. (2013). Implications for union work of the trend towards precarization of work. *International Journal of Labour Research*, 5(1), 41-57.

are not guaranteed) compared to men.⁷⁹⁶ For example, in 2017, 54.7% of workers on zero-hour contracts in the United Kingdom were women.⁷⁹⁷

Beyond findings that more women are likely to be affected by precarious employment, the question now arises of how women are *differently affected* such that their particular experience of precarity is different. Firstly, women have been found to be more likely to be employed in certain sectors within which precarious employment relations are shown to predominate. Historically, gendered occupation segmentation has been described as having been prevalent, with men described as largely having been employed within blue-collar industrial occupations and white-collar management jobs and professional occupations, while women were predominantly found in lower-status ‘pink-collar’ administrative or clerical jobs in the office setting, or in low pay, part-time sales and services occupations.⁷⁹⁸ While it has been observed that there has since been a sizeable increase in women (‘notably white women’) within management and professional positions,⁷⁹⁹ studies still show that many occupations around the world remain split by gender. For example, 88% of women from 121 countries are personal care workers, while 84% of men are science and engineering associate professionals.⁸⁰⁰ Indeed, women are found to be ‘systematically overrepresented’ in sectors such as ‘health, cleaning, care, social services, hospitality, education and retail’, which are sectors within which precarious employment (in the form of temporary, atypical or part-time contracts) predominates.⁸⁰¹

Precarious work has also been criticised for making a large contribution to the gender pay gap. The gender pay gap refers to the gendered phenomenon of women receiving less wages than men, which is usually calculated based on the difference between median earnings of men and women. Despite laws passed mandating the equal treatment of women ‘in virtually

⁷⁹⁶ Adams, A., & Prassl, J. (2018). *Zero-hours work in the United Kingdom*. Inclusive Labour Markets, Labour Relations and Working Conditions Branch, ILO: Geneva.

⁷⁹⁷ Buckingham, S. et al. (2020). *Precarious work from a gender and intersectionality perspective, and ways to combat it*. European Parliament, Policy Department for Citizens’ Rights and Constitutional Affairs, at p. 32.

⁷⁹⁸ England, K., & Boyer, K. (2009). Women's work: the feminization and shifting meanings of clerical work. *Journal of social history*, 43(2), 307-340, at p. 325.

⁷⁹⁹ *Ibid.*

⁸⁰⁰ ILOSTAT. March 6, 2020. ‘These occupations are dominated by women’. <https://ilostat.ilo.org/these-occupations-are-dominated-by-women/>

⁸⁰¹ Buckingham, S. et al. (2020). *Precarious work from a gender and intersectionality perspective, and ways to combat it*. European Parliament, Policy Department for Citizens’ Rights and Constitutional Affairs, at p. 47.

every industrialized country’, the gender wage gap has been described as being a ‘persistent feature of virtually every nation's labo[u]r market’ even if it is decreasing in many countries.⁸⁰² Indeed, the President of the Australian Council of Trade Unions has even described the proliferation of precarious employment ‘as one of the most important issues of gender equity in the Australian workforce’.⁸⁰³ Women colleagues have been described as less likely than their male counterparts to be covered by social insurance such as healthcare and retirement benefits, and more likely to receive lower wages. Compounding the high level of occupational and industrial segregation between women and men, these jobs traditionally associated with women have also been shown to pay lesser wages compared to other segments of the economy. For example, in the care sector, studies have shown how work has been found to pay less than other occupations even after controlling for other factors such as ‘education and employment experiences’ and ‘many industry and occupation characteristics’.⁸⁰⁴ While both men and women in care work pay this relative wage penalty, it has been highlighted that ‘more women than men pay the penalty, since more women than men do this kind of work’.⁸⁰⁵ Other studies have shown how differences in productivity (such as human capital, job-specific skills and time investment) do not fully explain the wage gap, thereby reaffirming that feminised occupations incur a wage penalty.⁸⁰⁶ This is a perspective that draws attention to how ‘the labour market is organized along gender lines’.⁸⁰⁷

This differentiated impact on the basis of gender in the global economy has been linked with what has been more broadly described as the ‘sexual division of labour’, as a ‘substructure of gender relations characterized by both the separation between what men and women do’, and ‘by the less value associated with the activities performed by women’.⁸⁰⁸ Flowing from this analysis of the gendered division of labour, the term ‘precarity of feminization’ has been proposed as ‘a way to make visible’ how the decontextualised and naturalised conception of

⁸⁰² Blau, F. D., & Kahn, L. M. (2003). Understanding international differences in the gender pay gap. *Journal of Labor economics*, 21(1), 106-144.

⁸⁰³ Holdcroft, J. (2013). Implications for union work of the trend towards precarization of work. *International Journal of Labour Research*, 5(1), 41-57, at p. 45.

⁸⁰⁴ England, P., Budig, M., & Folbre, N. (2002). Wages of virtue: The relative pay of care work. *Social problems*, 49(4), 455-473.

⁸⁰⁵ *Ibid.*

⁸⁰⁶ Murphy, E., & Oesch, D. (2016). The feminization of occupations and change in wages: A panel analysis of Britain, Germany, and Switzerland. *Social Forces*, 94(3), 1221-1255.

⁸⁰⁷ Ferguson, S. (2020). *Women and work: Feminism, labour, and social reproduction*. Pluto Press [Ferguson], at p. 38.

⁸⁰⁸ Garrido, p. 583. See also Gutiérrez-Rodríguez, E. (2014). The precarity of feminisation. *International Journal of Politics, Culture, and Society*, 27(2), 191-202.

women being employed in ‘precarious jobs that precede their participation’ is erroneous.⁸⁰⁹ To the contrary, the term points to ‘how every social activity culturally associated with the identity of women is automatically degraded and, therefore, precarized’.⁸¹⁰ This is especially apparent within the specific context of the ‘work of reproducing human beings and workers through domestic and care work’, which are ‘activities that have been historically devalued, unpaid, and unrecognized by the system as having economic value’⁸¹¹ (which I will attend to later in the next section).

Flowing from the point above about historical devaluation, having understood how the phenomenon of precarity is gendered today, it is necessary to provide some historical specificity to our contemporary state of affairs. Therefore, the question now arises of for how long precarity has been gendered. There are two competing accounts offered here. On one account, precariousness has been described as having historically been a defining feature of women’s work.⁸¹² Based on this account, women are described as *continuing* to be disproportionately concentrated in temporary, casual, seasonal, part-time, and contract work. Historical studies have shown how women are noted to have predominantly performed precarious work for the purposes of supplementing the male wage.⁸¹³ For example, labour historian Andrea Komlosy has ‘explicitly link[ed] the analysis of capitalism, labour relations, and precarious work’.⁸¹⁴ Questioning conceptions of work that position paid wage labour as the ‘dominant labour relationship of historical and contemporary capitalism’, she ‘conceived precarious work as a labour relationship by itself, which has characterized the capitalist system throughout its history’.⁸¹⁵ Another labour historian Alice Kessler-Harris has documented the ways in which women in the United States were historically recruited into poorly paid jobs, and how the women who entered the labour force were themselves likely to be poor (‘daughters of New England farmers, the children of immigrants or African American families’).⁸¹⁶ These low wages were further facilitated by the ‘moral imperative of women being bound to the

⁸⁰⁹ Garrido, at p. 583.

⁸¹⁰ *Ibid.*

⁸¹¹ *Ibid.*

⁸¹² Betti, E. (2018). Historicizing precarious work: Forty years of research in the social sciences and humanities. *International Review of Social History*, 63(2), 273-319 [Betti], at p. 292.

⁸¹³ Kessler-Harris, A. (2014). *A woman’s wage: Historical meanings and social consequences*. University Press of Kentucky.

⁸¹⁴ Betti, at p. 289; Komlosy, A. (2018). *Work: The last 1,000 years*. Verso Books.

⁸¹⁵ *Ibid.*; Betti, at p. 290.

⁸¹⁶ Kessler-Harris, A. (2018). *Women have always worked: A Concise History* (2nd ed.). University of Illinois Press, in the sub-section on ‘Working for Wages’ at p. 79.

household’, which restricted them to ‘supportive roles in relation to the male workforce’.⁸¹⁷ In turn, this social context facilitated the precarity of employment relations, since it helped to ensure the brevity of employment of those women who did earn wages, since they ‘remained primarily committed to their families’ and ‘satisfied with low-paid jobs’.⁸¹⁸ Consequently, ‘industry’ has been described as having benefitted from the services of ‘an unpaid labour force at home whose task was to stretch male wages’.⁸¹⁹ I will provide further detail to this dimension of unpaid work in the section to follow.

On another account, it has been argued that an important dimension of the rise of precarious employment itself has been its gendered nature. Specifically, the recent developments in the 20th century of the rise in precarious employment (as referred to in Chapter II) have been described as having been accompanied by a ‘crucial social change regarding gender and the economic system’: the feminization of the labour market.⁸²⁰ Feminization has ‘a double meaning’ here.⁸²¹ Accordingly, one definition of feminization refers to an increase in labour market participation by women in the last few decades.⁸²² A historically unprecedented number of women have been observed to enter the labour market, seeking paid jobs, even if the form and intensity of such participation in the labour market has been on varied terms. While this trend has been observed as being more visible in countries of the global North, it is also present in the global South (although described in different terms, such as informal work instead of formal waged labour). Crucial observations have been made that women have been deployed as part of development strategies, with ‘no country ha[ving] successfully industrialized via export promotion without drawing on a pool of low-wage female workers’.⁸²³ On a macro scale, this broader trend of the ‘feminisation’ of labour markets has been observed within the context of ‘increasing integration of the global economy and the move to flexible work arrangements across the world’.⁸²⁴ In other words, the integration of large

⁸¹⁷ Kessler-Harris, A. (2018). *Women have always worked: A Concise History* (2nd ed.). University of Illinois Press, in the sub-section on ‘Working for Wages’ at p. 79.

⁸¹⁸ *Ibid.*

⁸¹⁹ *Ibid.*

⁸²⁰ Garrido, at p. 583.

⁸²¹ Fudge, J., & Owens, R. (Eds.). (2006). *Precarious work, women, and the new economy: The challenge to legal norms*. Bloomsbury Publishing, at p. 12.

⁸²² *Ibid.*

⁸²³ Rittich, K. (2004). Feminization and Contingency: Regulating the Stakes of Work for Women. In Conaghan, J., et al. *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (pp. 117-136). Oxford University Press; Standing, G. (1999). Global feminization through flexible labour: A theme revisited. *World development*, 27(3), 583-602.

⁸²⁴ Kabear, N. (2008). *RPC Pathways of Women’s Empowerment: Paid Work, Women’s Empowerment and Gender Justice: Critical Pathways of Social Change*. Pathways Working Paper 3 [Kabear], at p. 4.

numbers of women within the global work force has *simultaneously* occurred with the integration of the global economy and its related increase in precarious employment relations.

Against this setting of the changing nature of employment as a whole, feminization has also been used in a different sense to broadly describe the ‘proliferation of forms of employment historically associated with women’,⁸²⁵ that is, jobs that are part-time, temporary, poorly paid, and lacking benefits and collective forms of representation⁸²⁶ – or, in other words, what we have come to recognise today as precarious employment. Here, concerns have been raised about irregular conditions within the paid labour market becoming widespread for *both* sexes. This was seen to signal the general deterioration of employment conditions for men, whose jobs were beginning to resemble those once relegated to women.⁸²⁷ Subsequently, women were seen to emerge as the ‘flexible labour force par excellence’,⁸²⁸ since they frequently were hired in contexts where ‘male employment was stagnant or declining’.⁸²⁹ Women have also taken up many of these new opportunities by migrating, whether through internal migration patterns from rural to urban areas, or internationally.⁸³⁰ Indeed, studies have shown how women make up ‘an increasing percentage of international labour migration, and the majority in some countries’.⁸³¹ In interpreting these trends, sociologist Saskia Sassen has put forward the idea of ‘the existence of a systemic relationship between the globalization and feminization of paid work’, in that ‘the productive structures that cannot be transferred offshore and must operate where demand exists, can use a female workforce, whereas the structures which lend themselves to being transferred abroad can use lower-paid workforces in less developed countries’.⁸³²

⁸²⁵ Fudge, J., & Owens, R. (Eds.). (2006). *Precairous work, women, and the new economy: The challenge to legal norms*. Bloomsbury Publishing, at p. 12.

⁸²⁶ Kabeer, at p. 4.

⁸²⁷ Standing, G. (1999). Global feminization through flexible labour: A theme revisited. *World development*, 27(3), 583-602; Figart, D., & Mutari, E. (1999). Global feminization and flexible labour markets: gendered discourse in the opposition to Pay Equity Reform. In Gregor, J., Sales, R. & Hegewisch, A. *Women, Work and Inequality: The challenge of equal pay in a deregulated labour market* (pp. 44-57). Palgrave Macmillan.

⁸²⁸ Kabeer, at p. 4.

⁸²⁹ Standing, G. (1999). Global feminization through flexible labour: A theme revisited. *World development*, 27(3), 583-602.

⁸³⁰ Oishi, N. (2005). *Women in Motion. Globalisation, State Policies and Labour Migration in Asia*. Stanford University Press.

⁸³¹ Kabeer, at p. 4.

⁸³² Sassen, S. (1998). *Globalization and its Discontents: Selected Essays 1984–1998*. New Press; See also Morini, C. (2007). The feminization of labour in cognitive capitalism. *Feminist review*, 87(1), 40-59.

Of course, this ‘trend’ begs the question of why the focus has not turned to unsettling the naturalisation of women’s working conditions as ‘feminized’ such that they are historically associated with low-paid and insecure work in the first place. This provides a link between contemporary developments of women being used to ‘feminize’ overall working conditions, with their increased participation within labour markets occurring on ‘feminized terms’, to our earlier observations by labour historians that the work of women has historically been used to supplement the male wage. As historian Deborah Valenze highlighted in her seminal study of ‘The First Industrial Woman’ within the context of England,⁸³³ a ‘startling contrast’ can be observed between the 18th century’s inclusive description of women’s work within the household as ‘productive’ and industrious, and the 19th century disparaging of female workers as being casualties of the progressive industrial age who were to be cast aside or pitied.⁸³⁴ She points to how women’s ‘demands as workers’ being considered ‘disruptive’ to the smooth uninterrupted continuity demanded by production processes, alongside ‘large-scale unemployment and growing poverty’ as a result of industrialization, could account for this change in attitudes.⁸³⁵ Female industriousness within the household was newly redescribed as idleness, such that women now took on the pejorative status of being unemployed and being ‘dead weights on the father’s labour’.⁸³⁶ Due to their need for seasonal, ‘atypical’ work as a result of their caretaking roles within the household, women’s employment itself ‘became categorised as unskilled’ and ‘low-paid’ [italicised for emphasis], thereby offering little security as ‘secondary wage earners’.⁸³⁷ This perspective points to how it is important to reinscribe the contingency of historical and cultural factors as having shaped the meaning of work,⁸³⁸ and to unsettle our naturalisation of women’s work as ‘feminized’.

Beyond this underlying contestation over the naturalisation of insecure and low-paid work being coded in feminine terms, the concept of ‘feminisation of work’ has been further criticised by some feminists as being ‘ambiguous and full of contradictions’.⁸³⁹ The concept

⁸³³ Valenze, D. (1995). *The First Industrial Woman*. Oxford University Press; See also Folbre, N. (1991). The unproductive housewife: Her evolution in nineteenth century economic thought. *Signs: Journal of Women in Culture and Society*, 16(3), 463–484.

⁸³⁴ Valenze, D. (1995). *The First Industrial Woman*. Oxford University Press, at p. 3.

⁸³⁵ *Ibid.*, at p. 183.

⁸³⁶ See generally, Chapter 7 ‘Women in the Age of Malthus: Political Economy and the Feminization of the Female Worker’, *ibid.* at pp. 128 – 140.

⁸³⁷ *Ibid.* at p. 184.

⁸³⁸ Valenze, D. (1991). The art of women and the business of men: Women's work and the dairy industry c. 1740-1840. *Past & present*, 130, 142, at p. 169.

⁸³⁹ Sconvegno, G. M., et al. (2007). A snapshot of precariousness: Voices, perspectives, dialogues. *Feminist review*, 87(1), 104-112.

has been described as involving the ‘introduction and extension of the model of availability’, which is described as ‘characteris[ing] the work of reproducing’, being integrated within the labour market itself.⁸⁴⁰ This involves the ‘willingness’ to enter and exit the labour market on variable terms, and the extension of ‘typically female’ models of managing complex hours. ‘Feminisation’ has hence been criticised as giving rise to the risk that ‘women's ability to create time will become functional’, and to meet the external needs of companies ‘rather than their own wishes’.⁸⁴¹ As such, feminists have described dichotomous perspectives such as ‘Fordism/post-Fordism’, ‘typical/atypical work’, ‘self-employed/employed’ as ‘inadequate both on an epistemological [and] political level’.⁸⁴² They draw attention to how ‘we continue reading reality in terms of rigid and opposing categories’ when what is ‘peculiar’ to this phase of transition is the ‘growing lack of clarity in the boundaries between life spans and work’ and therefore the ‘extension of precarity as a condition of existence’.⁸⁴³

Indeed, it appears that claims could be made that the liberal feminist claim may even have contributed to the production of precarity. The claim of employment liberating women from domesticity and dependency on a male wage earner has been criticised for legitimising both a shift away from the family wage, thereby resulting in a *reduction* in labour costs through decreased wages for both men and women, and an attack on welfare for mothers of young children.⁸⁴⁴ The ideal of the family wage has yielded to a new norm of a ‘two-earner family’,⁸⁴⁵ which implies that households have to put in more hours of labour to maintain the same standard of living as before. Capitalist globalization is hence re-described as having ‘drawn women into waged labour, producing them as the optimal and preferred cheap and flexible labour force’.⁸⁴⁶ By pointing to patriarchal relations of oppression as underpinning and providing an explanatory context to the gendered nature of work, such an account of feminism inevitably makes ‘equal paid work’ alone central to emancipatory visions.⁸⁴⁷ In response, some feminists have sought to ‘establish a critical distance from liberal understandings of feminism’

⁸⁴⁰ *Ibid.*, at p. 106.

⁸⁴¹ *Ibid.*

⁸⁴² *Ibid.*

⁸⁴³ *Ibid.*

⁸⁴⁴ Eisenstein, H. (2009). *Feminism seduced: How global elites use women's labor and ideas to exploit the world*. Routledge; Fraser, N. (1994). After the family wage: Gender equity and the welfare state. *Political theory*, 22(4), 591-618.

⁸⁴⁵ Fraser, N. (2016). Contradictions of capital and care. *New Left Review*, 100, 99-117, at p. 112.

⁸⁴⁶ Hartsock, N. Globalization and Primitive Accumulation: The Contributions of David Harvey's Dialectical Marxism. In Castree, N. & Gregory, D. (2006). *David Harvey: A Critical Reader* (pp. 167-190). Malden: Blackwell.

⁸⁴⁷ Ferguson, at p. 39.

and to ‘construct new social horizons’ in which ‘women’s empowerment, freedom and autonomy are disentangled from their participation in productive activities in a capitalist system’.⁸⁴⁸ Others have sought to devalorize wage labour as a privileged phenomenon, suggesting that feminists’ imaginations need to move beyond ‘individual narratives of the successful woman’.⁸⁴⁹

This perspective connects the systemic logics of globalization and precarization to the overarching context within which women find themselves seeking emancipation through work. This highlights how demands for increased female participation within the labour market was ‘absorbed and reshaped by the economic system’, during a moment of crisis for capitalism and the perceived necessity of deregulating and weakening the labour movement.⁸⁵⁰ Feminist political economy scholars have offered an alternative critique here that the entry of women into paid work has resulted in a double-edged development; whilst women’s striving for relative autonomy has been met, a new capitalist strategy of accumulation aimed at restoring declining profit rates has been developed. In doing so, it neglects the broader systemic logics producing inequality within labour markets themselves. Seen through this light then, liberal feminism could be redescribed as being hegemonic in refracting wider feminist concerns through a narrowed prism, which obscures the conditions for emancipation for women being situated within an increasingly precarious labour market. Consequently, the move to emancipate women through ‘access to better positions’ within the realm of paid employment is criticised for being inadequate due to the limitation of opportunities reserved for a small percentage of ‘highly privileged women’; it foregrounds how ‘in a capitalist system, it is simply not possible to fulfil the promise of emancipation to *all* women’.⁸⁵¹

(2) *Relationship of Gendered Unwaged Work to Precarious Waged Work*

An important explanatory account for how precarious work came to be gendered is that gendered *unwaged* work underpins precarious waged work. However, before unpacking this relationship, it would first be useful to view how feminists understand the idea of gendered unwaged work.

⁸⁴⁸ Garrido, at p. 586.

⁸⁴⁹ *Ibid.*

⁸⁵⁰ *Ibid.*, at p. 585.

⁸⁵¹ *Ibid.*, at p. 586.

Feminists have highlighted how women engage in valuable efforts to reproduce workers and life itself, which are preconditions for the sustenance of economic systems in need of workers.⁸⁵² Accordingly, these feminists have argued that it is ‘not possible to understand capitalism without understanding the relations of reproduction that allowed the relations of class to emerge in the first place’, with men largely being characterised as paid employees within the labour market while women are positioned as being responsible for the reproduction of the family, of the workforce and of society as a whole.⁸⁵³

Let us first start with Black feminist Angela Davis underscoring the contingency of gendered relations in her famous work ‘Women, Race and Class’.⁸⁵⁴ She drew attention to Frederick Engels’ claim in the ‘Origin of the Family, Private Property and the State’ that ‘sexual inequality as we know it today did not exist before the advent of private property’.⁸⁵⁵ Pre-capitalist sexual division of labour was described as having previously being ‘complementary as opposed to hierarchical’, for both sexes performed essential economic tasks for ‘their community’s survival’ with women gathering vegetables and fruits and performing household chores, while men raised cattle and hunted animals. She gave her own personal observations that when travelling in Tanzania, women’s domestic labour within the economy of the Masai included the building of houses. This was captured in the vivid image of ‘six Masai women enigmatically balancing an enormous board on their heads’, which her Tanzanian friends explained was probably going to be used as a house roof for their new village. Within this social context, housework was ‘no less productive and no less essential’ than the contributions of Masai men, and therefore valued and respected within their community. These two examples were then contrasted to the experiences of women following the transition to industrial capitalism, whereby domestic labour was defined as an inferior form of work because it did not generate profit. In other words, the profit-driven mode of capitalist production of commodities directly resulted in the *devaluing* of housework, because value was now to be newly (and solely) conceived in monetary terms.

⁸⁵² Garrido., at p. 583.

⁸⁵³ *Ibid.*

⁸⁵⁴ Davis, A. Y. (1983). *Women, race, and class*. Penguin [‘Davis’].

⁸⁵⁵ See Davis, Chapter 13 ‘The Approaching Obsolescence of Housework: A Working-Class Perspective Notes’.

Indeed, feminists in the United States and Europe founded the ‘Wages for Housework’ movement in the 1970s to challenge the division of productive and reproductive spheres,⁸⁵⁶ thereby resulting in the devaluation of domestic labour which was largely performed by women. One of the founders of this movement, Silvia Federici, published a provocative essay ‘Wages Against Housework’, in partial response to the reduction of welfare programs in the United States in the 1970s.⁸⁵⁷ In seeking wages for housework, she wished to ‘expose the fact that housework is already money for capital’ and wished to obstruct the creation of value on which capital thrived.⁸⁵⁸ She sought to denaturalise perceptions of domestic labour as being a natural domain for women as a ‘labour of love’ with the response that ‘we want to call work what is work, so that eventually we might rediscover what is love’.⁸⁵⁹ Accordingly, through this intervention, domestic work was characterised as work in the first place, and furthermore, as productive work. Feminists now sought to ‘redefin[e] the capitalist function of the wage as a creator of labour hierarchies’, and as an ‘instrument serving to naturalise exploitative social relations and to delegate to wage-workers power over the unwaged’.⁸⁶⁰ However, it must also be mentioned that this effort to ‘revalorize reproductive labour as the ground of anti-capitalist struggle’ was subject to criticism from theorists and activists who contended that such discourses ‘inevitably reinvest in a normative reproductive order’.⁸⁶¹ Concerns were voiced about ‘a revalorization of women’s caring role as distributed nurturers of the left and mothers of the common’.⁸⁶² Others have criticised the claim for wages⁸⁶³ as being narrowly reformist and therefore damaging to women, because it would ‘turn the state into housewives’ employers’ thereby resulting in womens’ domestic lives being tightly regulated, and reducing broader public responsibilities to provide essential social services.⁸⁶⁴

⁸⁵⁶ See Ferguson, at p. 69.

⁸⁵⁷ See Chapter 6 ‘A Political Economy of Women’s Work’ in Ferguson, which provides an incisive theoretical analysis of socialist feminism, and situates it in relation to social reproduction theory.

⁸⁵⁸ Federici, S. (1975). *Wages against housework*. Falling Wall Press, pp. 1-8, at p. 5.

⁸⁵⁹ *Ibid.*, at pp. 2-4.

⁸⁶⁰ Federici, S. (2019). Social reproduction theory: History, issues and present challenges. *Radical Philosophy*, 2(4), 55-57, at p. 55.

⁸⁶¹ Capper, B., & Austin, A. (2018). “Wages for Housework Means Wages against Heterosexuality” On the Archives of Black Women for Wages for Housework and Wages Due Lesbians. *GLQ: A Journal of Lesbian and Gay Studies*, 24(4), 445-466, at p. 446.

⁸⁶² *Ibid.*

⁸⁶³ It is worth clarifying that Federici’s claims for wages against housework were not meant to only be interpreted as a claim for money. It also meant to encompass more radically the right to refuse this money and the work associated with it. The focus on receiving wages was only meant to render visible, within the materialist discourse of a capitalist economy, the unremunerated yet essential work that women were performing. See Ferguson, at p. 98.

⁸⁶⁴ Ferguson, at p. 98.

Having understood the significance of gendered unwaged work, we now turn to understand the relationship between precarity and gendered unwaged work. Feminists argue for a broadened conception of precarity as not only relating to economic conditions within the labour market, but as ‘a problem of the reproduction of life’⁸⁶⁵ since it is ‘related to the ways in which society organizes the sustainability of life and human beings’, and the increasingly ‘scarce resources for this task’.⁸⁶⁶ They seek to challenge the ‘productivist bias of work’⁸⁶⁷ within political economy by asking us to redefine the economic system in broader terms, through moving beyond the dichotomy between production and reproduction, and reconceptualising the ‘productive, market-oriented’ dimensions of the economy as one that invisibilizes and devalues the work of reproduction.⁸⁶⁸ In doing so, this perspective decentres a more conventional understanding of waged labour as being the only site of productive labour.

Such discussions illuminate how unpaid work that is performed outside the realm of the productive sphere, or the market, is nonetheless crucial for capitalism.⁸⁶⁹ Specifically, processes of social reproduction facilitate the recuperation of ‘workers’ energies on a daily basis’, the development of ‘a new generation of workers’ through the raising of children, and meet the ‘needs of care’ for workers during their ‘lifetime of labour’ and well after their services are no longer required in old age.⁸⁷⁰ While waged labour within the formal economy is described as being ‘necessary for these processes of social reproduction’, they are nonetheless plainly inadequate.⁸⁷¹ Beyond the realm of waged labour within the ‘productive sphere’, unpaid labour within the household is also required for the reproduction of life and the worker.⁸⁷² Accordingly, the capitalist system is described as being ‘integrally connected to the gendered division of labour in the household’, with domestic labour providing an essential ‘economic contribution to maintaining the capitalist system by providing labour necessary for

⁸⁶⁵ See generally, Picchio, A. (1992). *Social reproduction: the political economy of the labour market*. Cambridge University Press; Bakker, I. (2007). Social reproduction and the constitution of a gendered political economy. *New political economy*, 12(4), 541-556; Bhattacharya, T. (2017). *Social reproduction theory: Remapping class, recentering oppression*. Pluto Press.

⁸⁶⁶ Garrido, at p. 584.

⁸⁶⁷ Mezzadri, A., Newman, S., & Stevano, S. (2022). Feminist global political economies of work and social reproduction. *Review of International Political Economy*, 29(6), 1-21, at p. 7.

⁸⁶⁸ Garrido, at p. 584.

⁸⁶⁹ Pulignano, V., & Morgan, G. (2022). The Social Foundations of Precarious Work: The Role of Unpaid Labour in the Family. In Choonara, R., Murgia, A., & Carmo, R. M. *Faces of Precarity: Critical Perspectives on Work, Subjectivities and Struggles* (pp. 114-129). Bristol University Press, at p. 116.

⁸⁷⁰ *Ibid.*

⁸⁷¹ *Ibid.*

⁸⁷² *Ibid.*

the reproduction of labour power'.⁸⁷³ In other words, women's oppression, in the form of the devaluation of their work, is inextricably tied to and facilitates economic logics of accumulation.⁸⁷⁴

Building on this approach, sociologist Maria Mies refers to the economy, as defined by economists, as only being the tip of the iceberg comprising capital and visible labour (protected labour, usually defined as that which is regulated and organised).⁸⁷⁵ However, she points out that the largest part of the iceberg is 'below the water', 'invisible, unregulated and unprotected'. She describes unorganised work, the unpaid work of women in the household, the work of subsistence producers, work in the informal sector, and the 'work of nature' as collectively 'constitut[ing] the hidden underground of the capitalist world economy and its accumulation model'. In this connection, she uses the metaphor of an iceberg economy since the largest part of an iceberg is hidden under the water. This devaluation is referred to as being part of 'a process of housewifisation', with such elements not being considered as relevant to the production of capital. Indeed, Mies describes the invisible labour of subsistence production as being 'the optimal labour for capitalism' because it is 'structurally free of costs'.⁸⁷⁶

Mies further draws attention to how the historical devaluation of women's work has a continuing impact and direct relationship to wages of those within *precarious* employment today:

Whereas for wage workers, wage and labour conditions are protected by labour laws and tariff contracts, nothing like that exists for the atomised, unorganised informal sector workers. Their wage is often not even a living wage. It is calculated as if all of them still had a breadwinner behind them. Therefore, their income, as it is with housewives, is only considered as supplementary to that of a male breadwinner.. Instead of housewifisation one speaks of precarious work, or of flexible work. Yet the fact remains, that people need about three such jobs if they want to earn enough money for a living (McJobs).⁸⁷⁷

[underlined for emphasis]

⁸⁷³ *Ibid.*

⁸⁷⁴ Cf. See Ferguson at p. 104.

⁸⁷⁵ Mies, M. (2007). Patriarchy and accumulation on a world scale revisited (Keynote lecture at the Green Economics Institute, Reading, 29 October 2005). *International Journal of Green Economics*, 1(3-4), 268-275, at pp. 270-271.

⁸⁷⁶ *Ibid.* at p. 269.

⁸⁷⁷ *Ibid.*, at p. 270

She thereafter proceeds to problematize how we speak in terms of precarization today instead of housewifisation, as being part of the global restructuring of labour, and criticises how ‘our concept of labour ... still refers only to waged labour’, which ‘does not at all reflect this reality’.⁸⁷⁸ Consequently, we need to pay attention to the ways in which such gendered logics may be reproduced within new modes of the production of precarity.⁸⁷⁹

Most recently, the concept of unwaged work has come to be associated with ‘care’, pertaining to the provision of personal services within the household.⁸⁸⁰ Building on earlier feminist theorising regarding the value of unpaid work within the capitalist economy, this perspective foregrounds the similarities of unpaid and paid work, and highlights the ways in which the ‘demands and exigencies of unpaid work affect opportunities for and status within paid work, particularly for women’.⁸⁸¹ In other words, it is precisely due to the gendered reality of women predominantly providing care within the household, that they are consequently described as having to take on ‘atypical’ work, which adapts to the varied temporality of caregiving familial responsibilities. However, women are performing these gendered roles within the context of a broader ‘care crisis’ that has been observed as having arisen within both the global North and South, relating to a ‘crisis in social and health care’.⁸⁸² Against the backdrop of neoliberal measures to reduce welfare benefits and social services provided by the state, and austerity measures following the Financial Crash in 2008,⁸⁸³ women are described as being exposed to the ‘rising demands of caregiving’,⁸⁸⁴ whilst they are simultaneously pulled to work more hours as part of dual-earner households. Such a perspective is seen to ‘sensitiz[e]’ us to the importance of public policies pertaining to child care and family leave’, within the realm of paid employment.⁸⁸⁵

⁸⁷⁸ *Ibid.*, at p. 268.

⁸⁷⁹ Gerber, C. (2022). Gender and precarity in platform work: Old inequalities in the new world of work. *New Technology, Work and Employment*, 37(2), 206-230.

⁸⁸⁰ Ungerson, C. (1997). Social politics and the commodification of care. *Social politics*, 4(3), 362-381, at p. 362.

⁸⁸¹ *Ibid.*, at p. 363.

⁸⁸² Rosen, R. (Feb. 27, 2007). *The Care Crisis*. The Nation. <https://www.thenation.com/article/archive/care-crisis/>; Rai, S. M., et al. (2014). Depletion: The cost of social reproduction. *International Feminist Journal of Politics*, 16(1), 86-105; Bärnthaler, R., & Dengler, C. (2023). Universal basic income, services, or time politics? A critical realist analysis of (potentially) transformative responses to the care crisis. *Journal of Critical Realism*, 22(4), 670-691.

⁸⁸³ Dowling, E. (2022). *The care crisis: What caused it and how can we end it?* Verso Books.

⁸⁸⁴ Kalleberg, A. L., & Vallas, S. P. (2017). Probing precarious work: Theory, research, and politics. In Kalleberg, A. L., & Vallas, S. P. (Eds.) *Precarious work (Vol. 31)* (pp. 1-30). Emerald Publishing Limited, at p. 15.

⁸⁸⁵ *Ibid.*

In response, political economist Joseph Choonara has sought to complicate this narrative of the crisis of care, by pointing to how capital ‘is not simply interested in engendering precarity’ but is simultaneously ‘concerned with the retention and reproduction of labour power’, which is described as leading to ‘contradictory imperatives’.⁸⁸⁶ Accordingly, the observation has been made that despite the recent restructuring and flexibilization of workplace relations, ‘total welfare expenditure has tended to remain stable or expand in most advanced capitalist states’, even though services are increasingly provided by private contractors⁸⁸⁷ through market mechanisms. Indeed, care is described as being increasingly commodified⁸⁸⁸ and corporatized within the global North.⁸⁸⁹ However, such a move towards the commodification of care has further intensified demand for domestic workers, which has been perceived as leading to an ‘international division of reproductive labour’.⁸⁹⁰

Additionally, Choonara’s theoretical observation do not lead us to an understanding of how these inherent contradictions could be resolved. For example, political theorist and philosopher Nancy Fraser has pointed to how contradictions have emerged with every transmutation of capitalism. She describes social reproduction as ‘a condition of possibility for sustained capital accumulation’ while ‘capitalism’s orientation to unlimited accumulation tends to destabilize the very processes of social reproduction on which it relies’.⁸⁹¹ She positions these destabilizing capitalist logics of accumulation as having resulted in a crisis of care in *all* historical forms of capitalism, whether within industrial capitalism (involving the separate sphere of production and reproduction ideology⁸⁹²), corporatist/welfare capitalism (the

⁸⁸⁶ Choonara, J. (2020). The precarious concept of precarity. *Review of Radical Political Economics*, 52(3), 427-446 [Choonara], at p. 427.

⁸⁸⁷ *Ibid.*, at p. 437.

⁸⁸⁸ Green, M., & Lawson, V. (2011). Recentring care: Interrogating the commodification of care. *Social & Cultural Geography*, 12(6), 639-654; Schwiter, K., & Steiner, J. (2020). Geographies of care work: The commodification of care, digital care futures and alternative caring visions. *Geography Compass*, 14(12), e12546.

⁸⁸⁹ Farris, S. R., & Marchetti, S. (2017). From the commodification to the corporatization of care: European perspectives and debates. *Social Politics: International Studies in Gender, State & Society*, 24(2), 109-131.

⁸⁹⁰ Parreñas, R. S. (2000). Migrant Filipina domestic workers and the international division of reproductive labor. *Gender & society*, 14(4), 560-580. I will further explore this point in Section B(3) below.

⁸⁹¹ Fraser, N. (2017). Crisis of care? On the social-reproductive contradictions of contemporary capitalism. In T. Bhattacharya (Ed.), *Social reproduction theory: Remapping class, recentring oppression* (pp. 21-36). Pluto Press.

⁸⁹² Boris, E. (2019). Beyond Separate Spheres. *Labor*, 16(2), 43-47.

family wage with state welfare protections) and financial capitalism (involving the dual earner).⁸⁹³

Having explored something of the relationship between gender and precarious work, let us now turn our attention to the international legal sphere.

B. International law and the gendered relations of precarity

In the second part of this chapter, I explore the relationship between gender and precarious work through a focus on the international legal arena. The first section highlights the historic role of international law in producing precarity as a gendered phenomenon through its construct of ‘standard work’ (with such gendered norms becoming the reference point in subsequent discussions about precarity) and differentiated gendered norms of work for women within the global South, while the second section tracks the evolution of international law’s increasing recognition of the value of women’s work. In both these sections, I draw on major contributions to the literature by feminist political economists, legal scholars and labour historians on the relationship between international law, gender and precarity (which is by no means meant to be exhaustive), as the basis of my subsequent analysis in relation to the concept of precarity and the gendered nature of precarious work.

(1) International Law’s Production of Gendered Precarity

Let us now turn to the international legal sphere, to understand its relationship with precarity and gender. Feminist labour law scholars have long argued that law can be understood as having constitutive (or constructive) power instead of merely being an instrument that ‘acts upon pre-determined social relations’ or as a ‘purely symbolic force projecting social values’.⁸⁹⁴ Legal constitution refers to the ways in which social relations and activities are ordered through legal institutions, and provide a framework for ascribing different forms of value to them.⁸⁹⁵ Seen in this light, legal institutions and legal norms do not merely reflect what

⁸⁹³ Fraser, N. (2021). *Gender, Capital, and Care*. In Browne, J. *Why Gender?* (pp. 144-169). Cambridge University Press; Fraser, N. (2014). Can society be commodities all the way down? Post-Polanyian reflections on capitalist crisis. *Economy and Society*, 43(4), 541-558.

⁸⁹⁴ Fudge, J. (2016). A new vocabulary and imaginary for labour law: Taking legal constitution, gender, and social reproduction seriously. In Brodie, D., et al (Eds.). *The Future Regulation of Work: New Concepts, New Paradigms* (pp. 9-26). Palgrave Macmillan, at p. 15.

⁸⁹⁵ *Ibid.*

is presumed as ‘natural differences between the sexes’, but are heavily involved in the ‘gendering’ of various forms of work.⁸⁹⁶ In this regard, law’s role in the devaluation and marginalisation of care work, ‘particularly its role in demarcating and maintaining the gendered division of labour’,⁸⁹⁷ has been highlighted in a growing body of literature.⁸⁹⁸ In other words, the phenomenon of precarious work that we explored in Section A as being produced in gendered ways, involving the systemic devaluation of women’s work, has a distinctly *legal* dimension to it.

Feminist political economist Leah Vosko has made a significant contribution to international legal scholarship by ‘tracing the prehistory of the SER at national and international levels, demonstrating its gendered roots’ and subsequently the creation of the SER itself within international labour regulation.⁸⁹⁹ She shows how protective labour legislation within Europe and North America had already ‘established the basis for the emerging male breadwinner / female caregiver gender contract’⁹⁰⁰ when international labour regulations were being created in the early 20th century. While there were variations in these measures, there were a few noticeable gendered patterns. This included protective legislation limiting the ‘hours of work, night work, and dangerous substances and occupations’,⁹⁰¹ and maternity protections (which was itself a contested issue between feminists⁹⁰²). Significantly, these measures appear to have been rationalised on the gendered basis of ‘women’s supposed weakness and their role in reproducing and maintaining the population’.⁹⁰³ These rationalizations were underpinned by the establishment of industrial worker norms for men, and the normalization of a ‘nuclear family household’.⁹⁰⁴ Significantly, international labour regulation was subsequently influenced by these historically and spatially contingent norms.

⁸⁹⁶ *Ibid.*

⁸⁹⁷ McKenna, M. B., & Grasten, M. (2022). Legal borderlands in the global economy of care. *Transnational Legal Theory*, 13(1), 131-156.

⁸⁹⁸ McKenna, M. B., et al. (2021). Feminist Materialism and the Laws of Social Reproduction. In O’Connell, P. & Özsü, U. (Eds.). *Research Handbook on Law and Marxism* (pp. 283-298). Edward Elgar Publishing; Alessandrini, D. (2022). A Not So ‘New Dawn’ for International Economic Law and Development: Towards a Social Reproduction Approach to GVCs. *European Journal of International Law*, 33(1), 131-162.

⁸⁹⁹ Vosko, L. F. (2011). *Managing the margins: Gender, citizenship, and the international regulation of precarious employment*. Oxford University Press [Vosko].

⁹⁰⁰ See Chapter 1 ‘Forging a Gender Contract in Early National and International Labour Regulation’, in Vosko.

⁹⁰¹ Vosko, at p. 11.

⁹⁰² *Ibid.*, at pp. 12-20.

⁹⁰³ *Ibid.*, at p. 11.

⁹⁰⁴ Vosko, at pp. 11-12.

Indeed, early international legal labour efforts to create ‘protective’ measures for women were underpinned by underlying concerns of the woman worker as a ‘threat’ to both the wages and working conditions of the male worker.⁹⁰⁵ Significantly, these sex-specific regulations regarding maternity and night work were subject to contestation ‘between and amongst trade unionists, working-class and liberal feminists, women social reformers, and philanthropists’⁹⁰⁶ over whether equal protection between men and women should be pursued, or whether protections should be exclusively reserved for women. Through the introduction of sex-specific regulations pertaining to maternity and night work (amongst others), and by cultivating a male breadwinner/female caregiver gender contract, these early regulations helped lay the foundations for a notion of ‘standard work’ taking the normative model of the SER that had the gendered assumption of male employment. Furthermore, labour historians have drawn attention to how there was a ‘gendered culture of protection that pervaded standard setting’ during this particular historical moment, with questions of reproductive labour dominating these discussions.⁹⁰⁷

Vosko illuminates how early international labour regulations created in the early years of the ILO can be ‘identified with the birth of a package of international labour regulations installing the SER as a normative model of employment geared to adult male citizens’.⁹⁰⁸ In doing so, she identifies three main pillars of the SER. The *first* involves a bilateral employment relationship between an employer and employee, which is a legal concept that forms the basis of workers’ access to various labour protections (including working time, minimum wages, leave policies and social insurance). She highlights how the legal construct of employee status ‘played a pivotal role in standardizing contracts for the performance of work under Fordism’ and in ‘shaping social insurance provision in the world of welfare capitalism’.⁹⁰⁹ Specifically, it ‘facilitated the combination of a high level of subordination on the part of the worker to the employer and long-term stability’.⁹¹⁰ Indeed, this is a familiar story, and we have already explored the ways in which the SER had stabilised capitalist relations in Chapters II and III.

⁹⁰⁵See Boris, Chapter 1 ‘Protection’ for an insightful historical account of these debates within the international legal sphere.

⁹⁰⁶ Vosko, at p. 2.

⁹⁰⁷ Boris, E. (2019). *Making the woman worker: Precarious labor and the fight for global standards, 1919-2019*. Oxford University Press, at pp. 38-39.

⁹⁰⁸ *Ibid.*, at p. 21.

⁹⁰⁹ Vosko, at p. 3.

⁹¹⁰ *Ibid.*

However, Vosko proceeds to draw attention to how this employment status was also associated with a gendered ‘standard working time’ that supported a ‘dualistic conception of time’.⁹¹¹

Described as the *second* pillar of the SER, Vosko describes how standardized work involved the ‘uniform and measurable time associated with the employment norm’ that was coded in masculine terms, and the ‘unlimited time’ of ‘female time, a space populated by retired workers, women and children’.⁹¹² Additionally, she points to the gendered ways in which the working day was sequenced to ‘male’ patterns of working, while the work of ‘daily and intergenerational reproduction’ was depicted as ‘non-work’ or ‘free time’.⁹¹³ As was discussed earlier, these dimensions were, and have been, integral to a gendered sexual division of paid and unpaid labour. This underlying contingent context was thereafter translated within the international legal sphere. The ILO’s first convention – the Convention on Hours of Work (Industry) (‘Hours of Work Convention’) – is widely known to introduce the eight-hour day and the 48-hour week. However, the terms of this treaty and the negotiations leading up to the treaty also show that this was a gendered convention.

Vosko highlights how the terms of Hours of Work Convention itself only covered industrial waged workers, which was a designation that many working women lacked ‘due to narrow conceptions of industrial employment’.⁹¹⁴ Furthermore, by permitting the exclusion of ‘certain classes of workers whose work is essentially intermittent’ such as casual workers and workers in undertakings ‘in which only members of the same family are employed’⁹¹⁵ the convention effectively excluded women and children for whom such modes of work were common. This historical pattern of gendered exclusion of women, who are still disproportionately represented in intermittent and casual work, is seen to have continued to play out during negotiations pertaining to the Part Time Work Convention. In other words, the institutional discourse of precarity that we had visited in Chapter III pertaining to the exclusion of intermittent or casual work has a significant *gendered* dimension. This is a gendered dimension that is not only captured as a matter of fact – in that women are disproportionately represented within precarious work – but also as a matter of *law*.

⁹¹¹ Vosko., at p. 5.

⁹¹² *Ibid.*, at p. 3.

⁹¹³ *Ibid.*, at pp. 5, 15.

⁹¹⁴ *Ibid.*, at p. 6.

⁹¹⁵ *Ibid.*

Additionally, Vosko brings to our attention how the Hours of Work Convention was underpinned by an ‘assumed’ caregiving norm for women and breadwinning norm for men. For example, in discussions regarding the scope of application of the convention, a delegate from Panama stated:

with regard to production, assurance can well be given that if the men performed productive labour... we could very well produce all that is necessary to meet the requirements of consumption, without having to commit the cowardice of making mothers... and children work.⁹¹⁶

International labour regulations regarding the temporal dimension of the SER were also consolidated by several ancillary regulations regarding weekly rest, leisure time, and weekly working hours. By stipulating one uninterrupted day of rest per week, it failed to take into consideration the time needed for care work by women. As such, the ILO instruments therefore effectively universalized the double day for women. Furthermore, the records of proceedings adopted a gendered attitude towards women’s work within the household, by not including any explicit provision for domestic workers or house servants. Instead, it was seen to be ‘in the interest of industry’ to exempt domestic work.⁹¹⁷

The *final* pillar of the SER was continuous employment, which Vosko suggests was a legal norm that helped employers ‘cultivate forms of labour control aimed at maximizing profit’,⁹¹⁸ by securing their cooperation in profit-making through the promise of stability via a permanent contract. She describes this relationship as one that ‘secured the risk-sharing integral to the psychological contract upholding the SER’.⁹¹⁹ Within the international legal sphere, this pillar was developed alongside early regulations on unemployment insurance. The Recommendation on Unemployment (1919) called for establishing ‘effective system[s] of unemployment insurance’ at the national level, as protective measures for wage-earners that were experiencing unemployment intermittently between a series of permanent jobs.⁹²⁰ Again, the gendered assumption was made that such a typical unemployed person would be ‘an adult male employed formerly in industry’.⁹²¹

⁹¹⁶ *Ibid.*

⁹¹⁷ International Labour Conference. (1919). *ILC 1 - Report on the eight-hours day or forty-eight hours week*. ILO: Washington DC.

⁹¹⁸ Vosko. at p. 8.

⁹¹⁹ *Ibid.*, at p. 9.

⁹²⁰ *Ibid.*, at p. 9.

⁹²¹ *Ibid.*

Subsequent conventions developed this norm, with the Convention on Unemployment Provision (1934) making an ‘explicit link between access to unemployment benefits and continuous employment relationships’.⁹²² Unemployment insurance was reserved for waged or salaried workers and excluded those who were employed occasionally, or within a family business. It further permitted the ‘exclusion of young workers, domestic workers and homeworkers, regardless of the nature of their employment relationship or its duration’.⁹²³ This is evidently another gendered exclusion, for it effectively excludes women’s work within the household, and domestic work or homework that is frequently performed by women. The nature of these exclusions therefore make it clear that the ‘work’ that was the focus of international legal regulation pertained to male working conditions.

Consequently, Vosko establishes that by the mid-century, the central pillars of the gendered SER had been consolidated within international labour regulation: ‘full-time continuous wage or salaried employment performed by an adult male citizen for a single employer’.⁹²⁴ This was supplemented by the ‘liberal equal treatment approach that was aimed at removing exclusions from the SER’,⁹²⁵ which arose against the backdrop of a reduction in restrictions in women’s participation in the labour force resulting in a dramatic rise in their employment within industrialised countries.⁹²⁶ As detailed in Chapter III, the gendered normative model of the SER and the liberal equal treatment approach has since oriented legal instruments on precarious work in ways which seek to ‘resuscitate the SER’⁹²⁷ by addressing deviations from this norm on the basis of time, place and status. As we saw in Chapter III, the forms of work that are closer in form to the SER (specifically, part-time permanent work) have been better protected, compared to other forms of employment (such as temporary or casual work), and this differentiation in the levels of protection is a gendered one. In other words, despite the discursive recognition of gendered forms of employment in legal instruments, the regulatory responses themselves materially reinforce gendered precarity. By orienting

⁹²² *Ibid.*, at p. 10.

⁹²³ *Ibid.*

⁹²⁴ See Vosko, Chapter 2 ‘Constructing and Consolidating the Standard Employment Relationship in International Labour Regulation’.

⁹²⁵ See Vosko, Chapter 4 ‘Regulating Part-Time Employment: Equal Treatment and its Limits’.

⁹²⁶ See Vosko, Chapter 3 ‘The Partial Eclipse of the SER and the Dynamics of SER-centrism in International Labour Regulations’.

⁹²⁷ See Vosko, Chapters 3 to 6 for a more in-depth legal analysis.

responses to precarity on the basis of these gendered norms, it is suggested that the ILO continues to play a key role in producing precarity as a gendered phenomenon.

Let us now briefly take stock of the implications of Vosko's analysis for the dominant discourse of precarity. The historic role of international law in producing 'standard work' as a gendered phenomenon significantly undermines the dominant discourse that precarity emerged due to the loss of 'standard' work that resulted from neoliberal globalization. To the contrary, the feminist perspective *reverses* this narrative, by pointing us to the ways in which precarity is a much more deeply rooted phenomenon that is actively produced through the gendered norm of 'standard work' itself. For example, the gendered temporal rigidity of 'standard work' appears to have exacerbated precarity for women. As a legal construct, 'standard work' has consolidated temporal norms that only a full-time job (which in itself disregards women's second shift) deserves full remuneration and social insurance benefits, while part-time work and other forms of atypical work should be remunerated in partial ways. The question that is posed here is therefore not one about whether workers require 'flexibilization' (in terms of their working hours), with feminist perspectives pointing to a need for this.⁹²⁸ Instead, we are moved to ask how we can unsettle the assumption that there should be a strict relationship between the temporal norm of full-time 'standard' work and the payment of wages and entitlement to benefits. It points to deeper questions regarding our ingrained yet historically contingent assumptions regarding the ways in which our labour market structures have been set up, in ways that naturalize temporal rhythms that are not in line with the requirements of care.

One could further question why our legal norms of employment are gendered in *assuming* the temporal working patterns of a male worker 'unencumbered by responsibilities of care and sustenance' such that they are "free" to engage in employment according to the temporal requirements of his employment,⁹²⁹ instead of a norm of employment that recognizes the temporalities of caregiving. Feminist labour law scholars have shown that this legal norm is itself contingently rooted in 'the historical expression of male patterns of employment under industrial capitalism', where workers had to be 'disciplined into more regimented ways of working' in order to maximise the amount of workers' time available that would be 'at the

⁹²⁸ Rittich, K. (2002). *Recharacterizing Restructuring: Law, distribution and gender in market reform*. Brill.

⁹²⁹ Conaghan, J. (2017). Labour law and feminist method. *International Journal of Comparative Labour Law and Industrial Relations*, 33(1), 93-114 [Conaghan], at p. 94.

disposal of masters'.⁹³⁰ This temporality can be contrasted to the 'irregular, subsistence-governed rhythms of pre-industrial life'.⁹³¹ Industrialisation therefore actively resulted in the reconfiguration of the labour process such that productive and reproductive work were no longer 'temporally and spatially aligned'.⁹³² Even though this male norm is seen to be 'increasingly anachronistic', it has been observed to remain 'privileged in most employment protection regimes' despite its lack of consonance with the temporality of contemporary working patterns.⁹³³ Accordingly, our 'operative [legal] conceptions of working time' are described as remaining 'cognitively entrenched in a gendered division of labour which reflects the social, spatial and conceptual separation of work and family life'.⁹³⁴

(2) *International law's increasing recognition of gendered precarity*

Given this underlying context of international law's historic role in actively creating the gendered legal construct of 'standard work', women faced an uphill battle for international legal recognition and protection of various types of 'atypical' work that women largely performed – which is a battle that they have engaged in for the last century. Legal historian Eileen Boris has provided an illuminating account of the complexities of these negotiations within the international legal sphere, and the role of the ILO in actively setting standards over the course of the last century for the various forms of precarious work that women are engaged in.⁹³⁵ These standards also pertained to a wide range of different forms of employment, including outwork, home-work⁹³⁶ and care work, and have involved a range of struggles for recognition and protection. Indeed, Boris has defined *all* women's work as precarious women's work, with her definition of work considering 'reproductive labo[u]r as work that exists as a counterpart, but often prior, to other forms of productive labo[u]r'.⁹³⁷

⁹³⁰ Conaghan, J. (2018). Gender and the Labour of Law. In Collins, H., Lester, G., & Mantouvalou, V. *Philosophical foundations of labour law* (pp. 271-286). Oxford University Press, at p. 275. See also Section A(1) above.

⁹³¹ *Ibid.*

⁹³² *Ibid.*

⁹³³ Conaghan, at p. 94.

⁹³⁴ *Ibid.*

⁹³⁵ See Boris, E. (2019). *Making the woman worker: Precarious labor and the fight for global standards, 1919-2019*. Oxford University Press [Boris], for a stellar historiography of the contested ways in which the woman worker was constructed within the ILO during the 20th century. This includes an important account of international regulatory efforts regarding various types of women's work outside the construct of 'standard work'.

⁹³⁶ Boris, E., & Prügler, E. (1996). *Homeworkers in global perspective: invisible no more*. Psychology Press.

⁹³⁷ Boris, at p. 7. See also pp. 6-8.

Such struggles took place within the historical context of law having played a constitutive role regarding the institutionalisation of the gendered division of labour that arose during the advent of industrial capitalism, which involves the separation of paid and unpaid work.⁹³⁸ Through the legal mode of wages becoming the ‘dominant mode of recognising and rewarding labour’, women’s unpaid domestic contributions ‘began to disappear as real work’.⁹³⁹ While collective action was used to secure an increase in men’s wages over the course of the late 19th and early 20th century, feminist scholars have shown how there was simultaneously a confluence of ‘laws, regulations and workplace practices’ that actively excluded women from the realm of waged work.⁹⁴⁰ This exclusion was oriented towards creating a gendered division of labour that confined women within the household where they would be made to carry out domestic labour.⁹⁴¹ Gender concerns were subordinated ‘to those of a homogenized labour class, enacted and expressed in the collective power of trade unions’.⁹⁴² While formal and informal barriers to the employment of married women were repealed in England in the 1940s and 1950s, part-time work was not seen to ‘threaten to disrupt the patriarchal status quo in the household’ since married women engaging in part-time work would still be able to ‘perform the full range of domestic tasks’.⁹⁴³ Neither did this unsettle the gendered assumption that married women would be ‘economically dependent on a male breadwinner’.⁹⁴⁴

Subsequently, the ‘dismantling of Fordism and the creation of a new regime of accumulation’ (also described in more neutral terms of flexibilization, as described in Chapter II) has been described as providing the context for a range of debates within the 1990s in the international legal sphere regarding atypical forms of work, including homework (people who work at home for pay).⁹⁴⁵ These discussions themselves were historically preceded by the development of feminist labour law scholarship itself ‘during a period of intense global economic restructuring’, (which we have come to recognise as giving rise to precarity) that was

⁹³⁸ For an illuminating account, see Fudge, J. (2016). A new vocabulary and imaginary for labour law: Taking legal constitution, gender, and social reproduction seriously. In Brodie, D., et al. *The Future Regulation of Work: New Concepts, New Paradigms* (pp. 9-26). Palgrave Macmillan [Fudge].

⁹³⁹ *Ibid.*, at p. 13.

⁹⁴⁰ *Ibid*; Pateman, C. (1988). *The Sexual Contract*. Polity Press.

⁹⁴¹ *Ibid.*

⁹⁴² Conaghan, at p. 94.

⁹⁴³ Fudge, at p. 15.

⁹⁴⁴ *Ibid.*

⁹⁴⁵ Prügl, E. (1999). What is a worker? Gender, global restructuring, and the ILO convention on homework. In Meyer, MK. and Prügl, E. *Gender politics in global governance* (pp. 197-209), Rowman & Littlefield Publishers [Prügl], at p. 198.

seen to ‘transform... the world of work as traditionally conceived by labour law scholars’.⁹⁴⁶ Feminist labour law scholarship itself has therefore come to be ‘associated with critique of traditional labour law models’, that is foregrounded in ‘the context of contestation over the nature, scope and purposes of labour law as a discipline’.⁹⁴⁷ In other words, mainstream labour law itself had historically contributed to the production of gendered standards. Such efforts to ‘improve the legal status of women workers’ can themselves be located within a ‘broader shift in focus in labour law away from a preoccupation with collective issues towards a concern with the adequacy and scope of individual legal rights’.⁹⁴⁸

Against this backdrop, within the international legal sphere, there were two major shifts in the ILO’s attitudes towards precarious work (and its gendered nature) that are of interest to us. With some of these developments having already been set out in Chapter III, let us now explore the *gendered* dimension of these shifts.

The first shift is that the ILO has finally engaged in attempts to regulate and provide protections to forms of employment that predominated *amongst women* from the 1990s. Initially, these efforts culminated in the Convention on Part-Time Work (1994) and Convention on Home Work (1996) (amongst others). With regard to the Convention on Part-Time Work, scholars have observed that since these norms themselves relied on the gendered norm of the SER as a reference point, the forms of work that were closer in form to the SER (specifically, part-time permanent work) were therefore better protected, compared to other forms of employment (such as temporary, casual work in which women predominate).⁹⁴⁹ With regard to the Convention on Home Work, the extent to which these developments can be seen to signal progressive attitudes towards women’s varied forms of home work globally is more ambivalent, since it also took place within a context of ‘androgynous’⁹⁵⁰ technological shifts. With ‘home bec[oming] the home office, and cottage industry be[coming] management from

⁹⁴⁶ Conaghan, J. (1999). *Feminism and Labour Law: Contesting the Terrain*. In Morris, A., & O'Donnell, T. *Feminist perspectives on employment law* (pp. 13-42). Cavendish Publishing, at pp. 13-14.

⁹⁴⁷ *Ibid.*

⁹⁴⁸ *Ibid.*

⁹⁴⁹ Vosko, see Chapters 3 to 6.

⁹⁵⁰ Prüggl, at pp. 208-209.

the lodge in the country’,⁹⁵¹ the ‘exemplary worker of a flexibly organized global economy’ was constituted in the home.⁹⁵²

The second shift is captured within the shift in international legal discourse towards the more universal conception of ‘decent work for all’, which tracks a positive shift in the recognition of women’s work.⁹⁵³ In line with this agenda, the ILO could be perceived as facilitating greater access to deliberation for precarious and informal sector workers (who are predominantly women). For example, Boris has centred the migrant woman in debates regarding informality, since she is the most subject to the informality and precarity of paid care work and housework.⁹⁵⁴ Accordingly, against the backdrop of the ILO broadening the scope of its standard-setting efforts to the informal economy,⁹⁵⁵ the Domestic Workers’ Convention of 2011 (‘DWC’) is perceived as reflecting a shift towards the recognition of the centrality of reproductive labour to the global economy. Indeed, the DWC is seen to signal a breakthrough in conceptions of domestic work, which had been historically invisibilized and excluded from the scope of labour law (as alluded to earlier, in Vosko’s description of the construct of the ‘standard work’).⁹⁵⁶ The successful passing of this treaty is seen to be a result of the uphill battle of domestic workers in gaining recognition of their work as valuable and worthy of protection within the ILO,⁹⁵⁷ and has given domestic workers ‘a voice on the international stage’.⁹⁵⁸

⁹⁵¹ *Ibid.*

⁹⁵² Prüggl, E. (1999). *The global construction of gender: Home-based work in the political economy of the 20th century*. Columbia University Press.

⁹⁵³ Cf. Vosko, L. (2011). ‘Precarious Employment and the Problem of SER-centrism in Regulating for Decent Work’. In Lee, S., & McCann, D. (2011). *Regulating for decent work: new directions in labour market regulation* (pp. 58-91). Springer. She notes the problem of SER-centrism when regulating for decent work and proposes strategies of re-regulation that are ‘attentive to gender, citizenship and age’.

⁹⁵⁴ See Boris, at pp. 217-233.

⁹⁵⁵ While discussions regarding informality and limitations of the formalisation discourse have already been broadly set out in Chapter IV, the specific gendered dimension pertaining to domestic work and care work is addressed in this section.

⁹⁵⁶ Albin, E. & Mantovalou, V. (2012). The ILO convention on domestic workers: From the shadows to the light. *Industrial Law Journal* 41(1), 67–78; Boris, E. & Fish, J.N. (2014). ‘Slaves no more’: Making global labour standards for domestic workers. *Feminist Studies* 40(2), 411–443; Oelz, M. (2014). The ILO’s domestic workers convention and recommendation: A window of opportunity for social justice. *International Labour Review*, 153(1), 143–172.

⁹⁵⁷ Blackett, A. (2019). *Everyday Transgressions: Domestic Workers’ Transnational Challenge to International Labour Law*. Cornell University Press.

⁹⁵⁸ Visel, S. (2013) Who cares? The ILO Convention ‘Decent Work for Domestic Workers’. *Transnational Social Review* 3(2), 229–243; Boris, E., & Fish, J. N. (2015). Decent work for domestics: feminist organizing, worker empowerment, and the ILO. In Hoerder, D., van Nederveen Meerkerk, E., & Neunsinger, S. *Towards a global history of domestic and caregiving workers* (pp. 530-552). Brill.

While the DWC in 2011 focused on commodified forms of household and care work, the ILO's International Conference on Labour Statisticians (whose agenda the ILO's Governing Body sets) went a step further in 2013 by recommending the inclusion of unpaid reproductive labour as 'work' in official statistics.⁹⁵⁹ In line with this positive discursive shift from a feminist perspective, and against the larger context of a 'crisis of care' within the global North, the ILO has also released a few major reports in recent years pertaining to care work. Significantly, these reports expressly signal the importance of care leave policies,⁹⁶⁰ and of unpaid care work: '[the] unpaid care work — paid work — paid care work circle . . . affects gender inequalities in paid work outside the care economy and has implications for gender equality within households'.⁹⁶¹ Indeed, this progressive language appears to discursively promote the long-held concerns of feminist labour lawyers regarding the need for the inclusion of unpaid work within the realm of labour law.⁹⁶² However, despite expansive efforts to reconsider law's treatment of social reproduction, the material fact remains that unpaid household and care labour are still excluded from legal regulation and protection.⁹⁶³

(3) *The Question of Intersectionality*

Having understood some of the ways in which the ILO understood and responded to the gendered nature of precarious waged and unwaged work, we now turn to the question of *which women* are more affected by this gendered reality. This question seeks to foreground the intersectional dynamics of precarization that are left out of account of the ILO's responses to gendered precarious work.

Before asking the specific question of which women are more affected by precarity, we will first need to review intersectionality which has foregrounded in general this method of

⁹⁵⁹ Boris, at p. 229.

⁹⁶⁰ Addati, L., et al. (2022). *Care at work: Investing in care leave and services for a more gender equal world of work*. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_838653.pdf.

⁹⁶¹ ILO. (2018). *Care Work and Care Jobs for the Future of Decent Work*. International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633166.pdf.

⁹⁶² Conaghan, J. (2018). Gender and the Labour of Law. In Collins, H., (Eds). *Philosophical foundations of labour law* (pp. 271-286). Oxford University Press.

⁹⁶³ See Boris, E. (2019). Reproduction as Production: Thinking with the ILO to Move beyond Dichotomy. *Journal of Labor and Society*, 22(2), 283-298, for a thoughtful response to this problem.

questioning ‘which women?’ Grounded in the work of Kimberlé Crenshaw,⁹⁶⁴ the category of intersectionality has pointed to the specificity of the lived experiences of black women, for being ‘not only women, and not only black, but both of these at the same time’.⁹⁶⁵ It therefore points to the increased vulnerability of black women due to the intersection of both their gender and race identities, in contrast to the raced experiences of black men and the gendered experiences of white women.⁹⁶⁶ In doing so, it asks us to look beyond the ‘narrowly circumscribed demands for inclusion’ and points us to the ‘larger ideological structures [within] which subjects, problems and solutions [are] framed’, which ‘reif[y]’ and ‘flatten’ relations of power ‘into unidimensional notions of discrimination’.⁹⁶⁷

Consequently, some feminists have drawn attention to how ‘one strand of feminism has been privileged in popular understandings of what it means to be a feminist’.⁹⁶⁸ This perspective underscores the diversity of feminism as a theoretical lens and social justice praxis, and encourages efforts to broaden the current focus on what has been variously described as ‘liberal feminism’ or ‘equality feminism’, which advocates for equal participation of women within existing political and socio-economic structures, ‘without necessarily questioning the exploiting, racialized, and imperialist character of capitalism’.⁹⁶⁹ Authors like postcolonial feminist Chandra Mohanty point to how women’s movements (taking the example of the United States) have grown ‘increasingly conservative’ with their emphasis on a narrow vision of equality. She foundationally questions the conceptual basis of equality, by pointing to how it neglects ‘power differences within and among the various communities of women’.⁹⁷⁰ Accordingly, intersectionality leads us to reflect on feminism as encompassing a broader set of relations that do not only pertain to gender (which treats women as a ‘single analytic

⁹⁶⁴ Crenshaw, K. (1990). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stan. L. Rev.*, 43, 1241; Crenshaw, K. W. (2017). *On intersectionality: Essential writings*. The New Press. See also Garrido, at p. 587.

⁹⁶⁵ Garrido, at p. 587.

⁹⁶⁶ *Ibid.*

⁹⁶⁷ Cho, S., et al. (2013). Toward a field of intersectionality studies: Theory, applications, and praxis. *Signs: Journal of women in culture and society*, 38(4), 785-810, at p. 791.

⁹⁶⁸ Garrido, at p. 585.

⁹⁶⁹ *Ibid.*

⁹⁷⁰ Mohanty, C. T. (2003). “Under western eyes” revisited: Feminist solidarity through anticapitalist struggles. *Signs: Journal of Women in Culture and Society*, 28(2), 499-535, at p. 502. It is important to note the nuances of her argument, and the clarifications that she has provided regarding her earlier scholarship: “I did not argue against all forms of generalization, nor was I privileging the local over the systemic, difference over commonalities, or the discursive over the material” (p. 502). She emphasizes how she drew attention to locality in order to highlight ‘the dichotomies embraced and identified’ within ‘universalised’ frameworks (at p. 503).

category’),⁹⁷¹ but as including a relationality with ‘other systems of oppression’, that ‘interact, constitute, and strengthen each other’.⁹⁷² An intersectional methodology therefore calls for systemic critiques of ‘oppression and exploitation as collective, systematic processes and institutions of rule that are gendered and raced’.⁹⁷³ In response to this thoughtful provocation, let us now look at how the intersectional perspective can be applied to deepen our analysis of the relation between gender and precarious work (more broadly defined to include women’s unpaid work within the household).

One of the founding members of the Wages for Housework (WfH) movement (described earlier in Section A(2)), Dalla Costa, has described the decline of the WfH movement in the 1970s as arising from women having been ‘given a little more emancipation, rather than liberation’.⁹⁷⁴ This occurred through the introduction of a ‘limited welfare system’ having supported the ‘double burden of women’ in having to perform both paid work in the market economy and unpaid work within the household.⁹⁷⁵ However, she proceeds to describe Italian women as having responded to the insufficiency of these state strategies in the 1980s through two means. The *first* has been the refusal of motherhood, with Italian fertility rates today being among the lowest in the world), which researchers have since argued is rooted in economic insecurity.⁹⁷⁶ The *second* development pertains to an increasing employment of migrant workers as domestic care workers since the late 1970s, which has resulted in the shaping of ‘new class relations’ since professional Italian women have gained ‘relative autonomy’ at the expense of migrant women being employed to perform care work.⁹⁷⁷ This is a pattern that is not unique to Italy, with scholars describing the rise of ‘global care chains’ in response to the global care crisis, whereby predominantly female migrants move to developed countries or from rural to urban areas within poor countries to provide low-cost care work.⁹⁷⁸ The growth of the two wage family is suggested to have resulted in a care deficit within households, which

⁹⁷¹ Bartlett, K. T. (1990). Feminist Legal Methods. *Harvard Law Review*, 103(4), 829–888, at p. 834.

⁹⁷² *Ibid.*

⁹⁷³ Mohanty, C. T. (2013). Transnational feminist crossings: On neoliberalism and radical critique. *Signs: Journal of Women in Culture and Society*, 38(4), 967–991, at p. 971.

⁹⁷⁴ Bracke, M. A. (2016). Between the Transnational and the Local: mapping the trajectories and contexts of the Wages for Housework campaign in 1970s Italian feminism. *Women’s History Review*, 22(4), 625–642 [Bracke].

⁹⁷⁵ Hochschild, A., & Machung, A. (2012). *The second shift: Working families and the revolution at home*. Penguin.

⁹⁷⁶ Bracke, at p. 637.

⁹⁷⁷ *Ibid.*

⁹⁷⁸ Isaksen, L. W., et al. (2008). Global care crisis: a problem of capital, care chain, or commons? *American Behavioral Scientist*, 52(3), 405–425; Nadasen, P. (2017). Rethinking care: Arlie Hochschild and the global care chain. *WSQ: Women’s Studies Quarterly*, 45(3), 124–128.

is increasingly being met through the development of global care chains that involve ‘a series of personal links between people across the globe based on the paid or unpaid work of caring’.⁹⁷⁹ However, this would also result in the transfer of the care deficit from households in the global North to the global South.⁹⁸⁰

Feminists have foregrounded the racial dimensions of the commodification of domestic work, with some describing a ‘new period of colonial relations’ where the ‘main resources extracted from the Third World are female traditional care work’, with such a transfer of care also being described as ‘the nanny phenomenon’.⁹⁸¹ Migrant women from the global South are described as having to leave their own children behind, sometimes for years, in order to ‘provide maternal caring and/or domestic services for First World children and parents’.⁹⁸² While their children’s material needs may be met through this arrangement, they ‘lack the physical presence and care of their mother on a daily basis’ and may even not see her for ‘most of their growing-up years’.⁹⁸³ Seen from this perspective, motherhood could newly be described as ‘just another resource that can be reallocated from poor to rich countries’.⁹⁸⁴ To shed further light on this phenomenon, some scholars have highlighted the historical *continuities* in the racialised dimensions of the provision of reproductive labour, which previously took the form of servitude.⁹⁸⁵ Accordingly, in response to the idea that paid domestic work is a progressive move since it ‘liberates women from the drudgery of housework’, Mies (who espoused the concept of ‘housewifisation’ instead of precarization, as described in Section A(2)) has cautioned that ‘if one woman moves up in the capitalist hierarchy by exploiting another woman’, this is not liberation but ‘a new type of colonisation’.⁹⁸⁶ In this vein, prominent feminist labour lawyers have therefore cautioned against the ‘shift of emphasis

⁹⁷⁹ Ehrenreich, B., & Hochschild, A. R. (2003). *Global woman: Nannies, maids, and sex workers in the new economy*. Macmillan.

⁹⁸⁰ *Ibid*; See also O’Manique, C., & Fourie, P. (2016). Affirming our world: Gender justice, social reproduction, and the Sustainable Development Goals. *Development*, 59, 121, making a similar argument in relation to a different object of analysis (the SDGs), at p. 122.

⁹⁸¹ Mack-Canty, C. (2008). The global restructuring of care: The third world nanny phenomenon. *Journal of the Association for Research on Mothering*, 10(1), 107-118.

⁹⁸² *Ibid.*, at p. 108.

⁹⁸³ *Ibid.*; Ehrenreich, B., & Hochschild, A. R. (2003). *Global woman: Nannies, maids, and sex workers in the new economy*. Macmillan.

⁹⁸⁴ *Ibid.*

⁹⁸⁵ Glenn, E. N. (1992). From servitude to service work: Historical continuities in the racial division of paid reproductive labor. *Signs: Journal of women in culture and society*, 18(1), 1-43; Hoerder, D., et al. (2015). *Towards a global history of domestic and caregiving workers*. Brill.

⁹⁸⁶ Mies, M. (2007). Patriarchy and accumulation on a world scale revisited (Keynote lecture at the Green Economics Institute, Reading, 29 October 2005). *International Journal of Green Economics*, 1(3-4), 268-275, at p. 272.

from the employment rights of carers to the provision of caring rights for those who engage in paid work'.⁹⁸⁷

Related to Mies' perspective on paid domestic work is a response to the WfH movement by Black feminist Angela Davis in her well-known essay "The Approaching Obsolescence of Housework".⁹⁸⁸ Her opening paragraph highlighted how housework annually consumed almost three to four thousand hours of the average housewife's year, with the nature of such housework being described in pejorative terms as 'invisible, repetitive, exhausting, unproductive, [and] uncreative'. In this essay, Davis argued that the WfH strategy 'failed to account both for black women's differential relation to the domestic sphere' and for the 'racial divisions of reproductive labour internationally that forced black women to leave home to work for others'.⁹⁸⁹ Similar critiques were made by collectives such as the Brixton Black Women's Group, which released a statement in 1984 titled 'Black Feminism' describing WfH campaigns as 'middle class deviations from the real issues of women's liberation'.⁹⁹⁰ Such a focus on the domestic sphere would simply 'resediment the racial-sexual determinations of the domestic as a gendered spatial arrangement'.⁹⁹¹ Harlem activist Claudia Jones went beyond her analysis of how racism had historically relegated black women to 'servile paid labour', to provide a more complex conceptualisation of domestic labour, with black women's low wages being associated with the 'ghettoization of African American lives'.⁹⁹² 'Low salaries, high rents, high prices' were described as having 'virtually become an iron curtain hemming in the lives of Negro children', and resulting in the triple oppression of the black women who 'as mother, as Negro and as worker fights against the wiping out of the Negro family'.⁹⁹³

Linked to such concerns, feminist political economy scholars have more recently shown how the crisis of care 'is embedded in a broader crisis of social reproduction',⁹⁹⁴ which is located not only within the global North but also within the global South. Accordingly, the

⁹⁸⁷ Fudge, J. (2013). *Commodifying Care Work: Globalization, Gender and Labour Law*. The Inaugural Labour Law Research Conference, Barcelona, June 13-15.

https://www.upf.edu/documents/3298481/3410076/2013-LLRNConf_Fudge.pdf

⁹⁸⁸ Davis, A. (1983). *Women, Race and Class*. Penguin.

⁹⁸⁹ Capper, B., & Austin, A. (2018). "Wages for Housework Means Wages against Heterosexuality" On the Archives of Black Women for Wages for Housework and Wages Due Lesbians. *GLQ: A Journal of Lesbian and Gay Studies*, 24(4), 445-466, at p. 451.

⁹⁹⁰ *Ibid.*

⁹⁹¹ *Ibid.*

⁹⁹² Ferguson, at p. 80.

⁹⁹³ *Ibid.*

⁹⁹⁴ Fraser, N. (July-Aug 2016). Contradictions of Capital and Care. *New Left Review*, 100, 99.

ILO's emphasis on care work (with responses defined in terms of childcare policies for formal workers, and unpaid work within the household which is increasingly commodified and corporatized) could therefore be reflective of legitimate concerns of the global North in dealing with the gendered dimensions of its care crisis. However, such an approach would neglect the class and race dimensions of the gendered care crisis within the global North (as detailed above), resulting in poorer and racialised women being disproportionately affected.⁹⁹⁵ *Firstly*, it disregards the ways in which precarious and informal workers are less likely to benefit from care leave policies, due to the atypical nature of their work. In this regard, Dalla Costa's account of the decline in fertility rates in Italy (where insecure work is prevalent) indicates a crisis of social reproduction, which has not been resolved *despite* the presence of contradictory imperatives within capitalism to regenerate its labour force (as Choonara had suggested). Such a perspective lends credence to Fraser's analysis of the cannibalistic nature of capitalism in relation to its own productive power, to ensure the accumulation of profit.⁹⁹⁶ *Secondly*, a commodified approach to care work privatizes the hiring of domestic workers by individual households, and invisibilizes the struggles of low-waged workers who are unable to afford domestic workers. Such an approach leaves out the struggle to treat 'wage-earning women and welfare mothers as part of the same history' – that of 'poor women's struggles for subsistence, dignity and recognition'.⁹⁹⁷ Scholars have pointed to how social policies within welfare regimes have been constructed to 'coercively discipline the poor', and the gendered ways in which women are disproportionately punished for being poor.⁹⁹⁸

Additionally, the ILO's focus on relating gender to care work, would further come at the expense of 'a perennial crisis of social reproduction' within regions in the global South where work is predominantly informal and precarious.⁹⁹⁹ For the majority of women within the world population,¹⁰⁰⁰ 'working and living in precarious contexts has been the norm under a capitalist

⁹⁹⁵ Roberts, A. (2016). *Gendered states of punishment and welfare: Feminist political economy, primitive accumulation and the law*. Taylor & Francis; Glenn, E. N. (2001). Gender, Race and the Organization of Reproductive Labour. In Baldoz, R. (Ed.). *Critical Study of Work* (pp. 71-80). Temple University Press.

⁹⁹⁶ Fraser, N. (2022). *Cannibal capitalism: How our system is devouring democracy, care, and the Planet and what we can do about it*. Verso Books.

⁹⁹⁷ See also Roberts, A. (2016). *Gendered states of punishment and welfare: Feminist political economy, primitive accumulation and the law*. Routledge.

⁹⁹⁸ *Ibid.*

⁹⁹⁹ Mezzadri, A. (2019). On the value of social reproduction: Informal labour, the majority world and the need for inclusive theories and politics. *Radical Philosophy*, 2(4), 33-41.

¹⁰⁰⁰ Agarwala, R., & Chun, J. C. (2018). Gendering Struggles against Informal and Precarious Work. In Agarwala, R. & Chun, J. C. *Gendering Struggles against Informal and Precarious Work (Vol. 35)* (pp. 1-28). Emerald Publishing Limited, at p. 2.

regime that has used racial and gender differences as a way to construct some bodies as disposable, and not worthy of any kind of protection'.¹⁰⁰¹ While gender is described as a 'principal constitutive feature' of commodity chains since they rely on the disposability of women, the racial dimensions of such studies should not be forgotten for these women are also located within the global South and seen to embody 'a persistent state of under-development' that paradoxically makes it easier to justify their disposability.¹⁰⁰² Furthermore, a 'creative application of commodity chain analysis' would not only render waged labour used for the production of value in the form of commodities visible, but simultaneously underscore the 'subsidy of unwaged labour' within families and households that produce these labourers.¹⁰⁰³ In this way, precarity is 'deeply connected to processes of colonialism and the different role of racialized bodies in capitalism'.¹⁰⁰⁴ Indeed, Mies has shown how the demand to 'integrate women into development ... [has been] largely used in Third World countries to recruit women as the cheapest, most docile and manipulable labour force'.¹⁰⁰⁵ For this reason, a conversation between Boris and Vosko led to the idea that 'what is most radical may not be the decommodification of housework and all forms of social reproduction, but their reorganisation outside of a racialised and gendered global division of labour'.¹⁰⁰⁶

Conclusion

Having set out with the initial intention to understand precarity through the lens of gender, and the significance of international law as part of the explanatory context of precarity as a gendered phenomenon, it appears that a new layer has been uncovered. Reification supports relations of domination by making such relations appear eternal and necessary, such that the social world is seen as fixed and unchangeable.¹⁰⁰⁷ De-reification, then, requires

¹⁰⁰¹ Garrido, at p. 588.

¹⁰⁰² Wright, M. (2013). *Disposable women and other myths of global capitalism*. Routledge.

¹⁰⁰³ Collins, J. (2014). A feminist approach to overcoming the closed boxes of the commodity chain. In Dunaway, W. A. (Ed.) *Gendered commodity chains: Seeing women's work and households in global production* (pp. 27-37). Stanford University Press, at pp. 27-28. See Alessandrini, D. (2022). A Not So 'New Dawn' for International Economic Law and Development: Towards a Social Reproduction Approach to GVCs. *European Journal of International Law*, 33(1), 131-162, for a creative legal application of such an approach.

¹⁰⁰⁴ *Ibid.*

¹⁰⁰⁵ Mies, M. (1981). *The Social Origins of the Sexual Division of Labour*. Hague: Institute of Social Studies.

¹⁰⁰⁶ Boris, E., & Vosko, L. F. (2020). Beyond "Legal Equality" vs. "Difference" Feminism: Leah F. Vosko Interviews Eileen Boris on Women and the ILO. *Labor*, 17(4), 106-112, at p. 111.

¹⁰⁰⁷ Lukács, G. (1971). *History and Class Consciousness*. Merlin Press. For a lucid account of reification, and of ideological modes in general, see Marks, S. (2003). *The riddle of all constitutions: International law, democracy, and the critique of ideology*. Oxford University Press, at pp. 19 – 25.

restoring contingency and historical specificity to these relations of domination.¹⁰⁰⁸ Extending this concept developed by Marxist philosopher Georges Lukács to expose ideology within capitalist domination of class relations to that of patriarchal domination of gender relations, this chapter has made a contribution to de-reify what has been described as gendered relations of precarity. Firstly, it turned to feminist literatures to provide historical specificity and context to the relationship between precarity and gender. Secondly, it highlighted the historic contingency of international law in producing gendered norms as the basis of regulatory responses to precarity. Thirdly, it tracked international law's increasing attention to the gendered nature of work, which signals the potential mutability of gender relations, yet obscures systemic logics producing 'a crisis of social reproduction' and the differentiated precarization of women.

¹⁰⁰⁸ *Ibid.*

RETELLING THE TALE OF PRECARITY

“It appears, accordingly, from the experience of all ages and nations, I believe, that the work done by freemen comes cheaper in the end than that performed by slaves.”
~ Adam Smith¹⁰⁰⁹

Introduction

This chapter develops our focus on precarity to tell a much larger story about the *international* regulation of ‘free labour’. What this chapter offers is a different framing of the international regulation of labour, by clarifying the epistemic implications of the discourse of the ILO for the international legal order. It seeks to do so by providing a broader theoretical analysis of the function of international labour regulation, to help us comprehend more critically the role that international law plays through the means of this body of law. In this regard, if we understand the ILO as suggested within ‘recent research’ to be a ‘dynamic intellectual actor’ seeking to create ‘long-term social change’ through ‘the conceptualisation, diffusion, and transmission of ideas and policies on labour issues’ within a ‘broad transnational network of diverse actors’ that act ‘beyond the nation-state’,¹⁰¹⁰ the significance of this chapter regarding the ILO’s epistemic role takes on deeper meaning. In doing so, I seek to provide insight into the more fundamental question of what the ILO means for the working conditions of the global working class, and to reiterate its ‘human link to the real world of work’.¹⁰¹¹

To clarify, the purpose of this story is not to replace one story with another in a totalizing manner, but rather to unsettle dominant narratives and offer alternative ways of understanding ourselves and how we relate to each other. Additionally, this story is not meant to be a historiography of the ILO, which itself has previously been noted to be a field that was not ‘as global as it could and should be’.¹⁰¹² Such stories of the ILO have been told not only by historians, but also ‘international and industrial relations specialists, sociologists, lawyers and

¹⁰⁰⁹ Smith, A. (1776). *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by Cannan, E. (1937). New York: Modern Library edition, at pp. 80-81.

¹⁰¹⁰ Van Daele, J. (2008). The International Labour Organization (ILO) in past and present research. *International Review of Social History*, 53(3), 485-511 (‘Van Daele’), at p. 506.

¹⁰¹¹ Van Daele, at p. 511.

¹⁰¹² Van Daele, at p. 487.

labour economists'¹⁰¹³. These stories have been categorised as both '*inside* studies' produced by persons from within the ILO itself, who had a stake in 'expound[ing] and justify[ing] the ILO's work and self-image',¹⁰¹⁴ and '*outside* studies' produced by 'academics with an independent scientific position' whose works introduced 'theoretical questions and frames of reference' that employed a more critical perspective that exceeded the dominant approach of '*inside* studies'.¹⁰¹⁵ Having said that, this story does overlap with the intent of 'outside' studies through the employment of critical frames of reference that have been used to situate and interpret the work of the ILO.

In telling this story, I offer two perspectives that lead on from each other. In this first section, I tell the story of how a key purpose of international law had been the shaping and production of a *global* workforce that met the demands of capitalist enterprise. While there are many possible angles to such a story, I focus specifically on the role of international law on labour in producing an epistemic framing of what work counted as labour, and the conditions within which such labour could be perceived as 'free'. In the next section, I move on to tell a different story of the silences and, arguably, complicity of international law – a story of what has been left out of this narrative of 'free labour', through which I seek to problematise the mainstream narrative of precarious working conditions that have been affecting 'free labour', and instead offer some alternative accounts for our consideration. In doing so, I seek to render the familiar strange, via the unsettling of the concepts of 'unfree' and 'free' labour through the lens of precarity, and to also render the strange familiar for those who are accustomed to hearing the mainstream narrative of precarity. In the last section, I seek to reflect on the theoretical implications of this story and offer an alternative framing that helps us see the international regulation of labour in a different way. Specifically, I suggest that precarity is not just a problem to be solved through the international regulation of labour, but a mode of governance in itself.

¹⁰¹³ Van Daele, at p. 487.

¹⁰¹⁴ *Ibid.*

¹⁰¹⁵ *Ibid.* Of course, Van Daele acknowledges that this is a broad categorisation, for there is obviously overlap between the two approaches. She cites Professor Robert Cox, who left the ILO after being an official for 25 years to teach International Relations with a highly critical perspective, as an emblematic example. See: Cox, R. (1977). Labor and Hegemony. *International Organization*, 31, 385.

A. Dereifying International Law: Epistemic Framing by International Labour Law

I start this story by first juxtaposing two historical accounts of international labour law. The first is one provided by prominent international jurist and respected Third World Approaches to International Law ('TWAAIL') scholar Georges Abi-Saab. In an article titled 'The ILO and the Structural Transformation of Labour Law',¹⁰¹⁶ he provides an account of how the founding of the ILO in 1919 transformed the international legal system from a purely state-centric system of 'coexistence' to one of 'cooperation'. He first traces the transformation of international law through the Peace of Westphalia, from the 'world state of medieval Christendom' that was hierarchically 'rooted in a double allegiance to the Pope and Emperor', to a 'completely horizontal system' based on the principles of sovereignty and equality, under which each State could 'follow its own ideology within its territory'.¹⁰¹⁷ Abi-Saab then positions the ILO as, in turn, having been created in response to the advent of the Industrial Revolution, which resulted in a 'new wave of globalization' and 'new means of production and exchange' that created 'material interdependence' in the form of an emerging 'international economy based on a growing division of labour' which exceeded the territorial scope of States.¹⁰¹⁸ While this was a hopeful account that pointed to the importance of international regulation in facilitating the development of a *newly* international economy,¹⁰¹⁹ premised on the basic assumptions of 'common interest' and 'community',¹⁰²⁰ he concluded that we are living in a period where we are searching for a 'new paradigm' for international law that has 'yet to be captured'.¹⁰²¹ This account is a fairly liberal framing of the ILO that positions it as a *response to* international political economy, through its creation of international labour regulations.

In contrast to the first account of the liberal justifications for international labour law, the second account draws attention to the specificity of historical context in which the ILO was formed during an era of colonialism and revolution to govern and manage labour. The story that follows in this section builds on the tenor of this second account, with a view to eventually

¹⁰¹⁶ Politakis, G. P. et al. (2019). *ILO 100: Law for Social Justice*. International Labour Office, Geneva.

¹⁰¹⁷ *Ibid.*, at p. 20.

¹⁰¹⁸ *Ibid.*, at p. 22.

¹⁰¹⁹ *Ibid.*, at p. 22.

¹⁰²⁰ *Ibid.*, at p. 23.

¹⁰²¹ *Ibid.*, at p. 24.

revisiting at the end of this chapter the question asked by Abi-Saab in the first account of what ‘common interest’ and ‘community’ could look like. We first start with international legal scholar Ali Hammoudi’s more critically oriented history of the ILO in his article titled ‘International order and racial capitalism: The standardization of “free labour exploitation” in international law’.¹⁰²² Hammoudi highlights a gap within the field of international legal history (including the TWAIL approach) as tending to examine meta-level questions related to development and state sovereignty, and having marginalised questions of labour exploitation in the making of international legal order.¹⁰²³

The premise for Hammoudi’s critique of labour exploitation is drawn from the work of critical political theorist Mark Neocleous, who describes how international law was imbricated in processes of primitive accumulation.¹⁰²⁴ Primitive accumulation is a Marxist concept that refers to the mass dispossession of peasants from lands that had previously been their means of subsistence to create a new dependence on waged work, which in turn is meant to facilitate the exploitation of their labour power.¹⁰²⁵ ‘Labour power’ is a Marxist term that refers to the ‘sale of people compelled through the force of circumstances to alienate their own energy, time, and hence life’, such that they have to directly sell their labour-power as a commodity instead of commodities produced with their labour.¹⁰²⁶ Neocleous demonstrated that, historically, these processes of primitive accumulation had been facilitated through the development of an international legal right that justified enclosures which ‘forcefully expropriated’ people from ‘the commons’.¹⁰²⁷ Hammoudi builds on this premise of primitive accumulation underpinned by international law to further analyse how international law ‘facilitated and structured... capitalist accumulation’ through an exploration of the early interwar history of the ILO and its construction of ‘the question of native labour’, particularly in relation to sub-Saharan Africa where the problem of native labour ‘first emerged as a question for international institutions’.¹⁰²⁸

¹⁰²² Hammoudi, A. (2022). International order and racial capitalism: The standardization of ‘free labour’ exploitation in international law. *Leiden Journal of International Law*, 35(4), 779-799 (‘Hammoudi’).

¹⁰²³ *Ibid.*, at pp. 779, 783.

¹⁰²⁴ *Ibid.*, at p. 783.

¹⁰²⁵ *Ibid.*

¹⁰²⁶ Marks, S. (2008). Exploitation as an International Legal Concept. In Marks, S. *International Law on the Left: Re-examining Marxist Legacies*. Cambridge University Press.

¹⁰²⁷ Hammoudi, at p. 783.

¹⁰²⁸ *Ibid.*, at pp. 780, 784.

The central plank of Hammoudi's argument is that the valorization of free labour within international institutions (including the ILO) served an 'ideological function' of 'veil[ing] capitalist exploitation',¹⁰²⁹ by creating an artificial division between free and unfree labour through the standardization processes of international law to abolish slavery and forced labour. He describes how European powers engaged in 'humanitarian imperialism' by relying on the idealised veneer of the supposed illegality of anti-slavery to then justify European intervention within Africa through the replacement of this mode of labour relations with free labour, i.e. "legitimate" commerce', thereby enabling 'economic access for European traders'¹⁰³⁰ and opening up Africa to 'global capitalist markets'.¹⁰³¹ Put in another way, the international legal construct of 'unfree labour' provided 'the ideological justifications and the legal discourse' for 'free labour', which was portrayed as 'a more "humanitarian" form of capitalist exploitation'.¹⁰³² The exploitation of African labour was therefore *enabled* through 'its internationalization, juridification and standardization',¹⁰³³ specifically through the internationalization of 'native labour policy' and 'its reformulation through the drafting of conventions and labour standards'.¹⁰³⁴ By valorizing 'free (wage) labour', anti-slavery politics simultaneously instituted a *process* of 'freeing' labour from slavery, thereby forming part of the 'civilizing mission' to 'remodel non-European societies' through an 'idealized European vision of "capitalist social [and labour] relations' that served the 'ideological function' of 'veil[ing] capitalist exploitation'.¹⁰³⁵ Such exploitation was a necessary part of the colonial project of the extraction of resources from African lands, since this project required the use of Black labour.¹⁰³⁶

Hammoudi then goes on to criticise the manner in which these standardization processes were implemented, with the prohibition of slavery being re-interpreted as involving a gradual process rather than an outright abolition,¹⁰³⁷ and allowances for a flexible interpretation of 'forced labour' within the context of ongoing colonial relations globally¹⁰³⁸ that 'validated the existence of a regulated form of forced labour' (such as the legitimisation of its use for

¹⁰²⁹ Hammoudi, at p. 788.

¹⁰³⁰ *Ibid.*, at p. 787.

¹⁰³¹ *Ibid.*, at p. 784.

¹⁰³² *Ibid.*

¹⁰³³ *Ibid.*

¹⁰³⁴ *Ibid.*

¹⁰³⁵ *Ibid.*, at p. 788.

¹⁰³⁶ Rodney, W. (2018). *How Europe underdeveloped Africa*. Verso Books, also cited by Hammoudi at p. 784.

¹⁰³⁷ Hammoudi, at p. 789.

¹⁰³⁸ *Ibid.* at p. 790.

‘essential’ public works and not for private employers).¹⁰³⁹ Regarding the latter, the passing of the 1930 Forced Labour Convention (‘FL Convention’) was criticised for only ‘push[ing] forced labo[u]r underground’¹⁰⁴⁰ and in many cases being disguised as wage labour, with administrators manipulating the ‘legal fictions’ of the contractual form to enlist compulsory forms of labour.¹⁰⁴¹ Hammoudi proceeds to ask why the FL Convention resulted in the further ‘legitimization and structuring’ of labour exploitation, and responds that forced labour *could* not be abolished due to its significance (amongst others) for the development of Africa and its ‘intimate’ connections to the ‘capitalist mode of production’. In doing so, he deconstructs how ‘free labour’ has always been co-constituted by and dependent on ‘violent compulsion’ (which included ‘extra-economic forms of ‘unfree labour’), and how ‘unfree labour’ forms an integral part of the ‘normal operations’ of capitalist markets (rather than being an aberrant form of labour). This is a perspective that contributes to a much larger body of scholarship on racial capitalism, and its structural dependence on slavery, colonialism, and forced labour.

For our purposes, what is most useful within Hammoudi’s insightful scholarship is the way in which he problematizes the construct of *free* labour as being free simply because it was set in opposition to the artificially constructed dichotomous category of ‘unfree labour’. More precisely, his work illuminates the production of *epistemic* categories¹⁰⁴² through these standardization processes of international labour regulation in constituting what ‘free’ and ‘unfree’ labour meant. Additionally, he has drawn attention to the *material effects* that flow from this epistemology in concealing the exploitation that remains a critical part of the operation of capitalist markets, not only within ‘unfree labour’ but within ‘free labour’ itself which has been simultaneously valorised ‘as one that is ‘legitimate’. As he mentioned, it was precisely this artificial divide between ‘free’ and ‘unfree’ labour that *enabled* the global expansion of capitalist markets, in the progressive name of ‘free labour’. We can now draw on this understanding of international law as creating an episteme that constitutes our worldview of what ‘free’ labour looks like. Our story of precarity, then, begins with it being situated within the international legal category of ‘free’ labour, historically forming part of a larger imperial

¹⁰³⁹ Hammoudi, at p. 790.

¹⁰⁴⁰ Okia, O. (2019). *Labor in colonial Kenya after the forced labor convention, 1930–1963*. Springer Nature, also cited by Hammoudi at p. 792.

¹⁰⁴¹ Hammoudi, at p. 793.

¹⁰⁴² To clarify, he does not explicitly frame his argument in terms of epistemology or epistemic framing, even if he does refer to ideological and discursive effects.

project of civilising labour relations in line with an *idealised* universally relevant standard of ‘free’ labour, such that the exploitation embedded within ‘free labour’ is obscured.

It bears mentioning at this juncture that while various references have been made to the concept of ‘exploitation’, the definition of exploitation relied on varies. Hammoudi appears to initially draw on international legal scholar Susan Marks’ work on exploitation as an international legal concept (drawing on a Marxist understanding of exploitation).¹⁰⁴³ However, Hammoudi later appears to employ a broad definition of exploitation that involves references to a series of contemporary characterisations of work within international labour policy such as informal labour,¹⁰⁴⁴ ‘modern slavery’, precarity, trafficking and ‘forced migration “(not to mention apartheid)”’.¹⁰⁴⁵ He also interchangeably defines slavery and exploitation, employing a broad definition of slavery ‘in an expansive way’ that ‘includes all forms of exploitation and racialized violence, whether ... in the form of “free” or “unfree” labour’.¹⁰⁴⁶ Nonetheless, for the purposes of this story, I leave in the background and do not explicitly pursue the important question of how the Marxist language of exploitation – naturalised within the creation of the category of ‘free labour’ – is relevant for understanding the phenomenon of precarity.

Instead, I would like to foreground some less-developed threads that Hammoudi touches on but did not explore in the detail required for our purposes. *Firstly*, I would like to reverse the focus on ‘unfree labour’¹⁰⁴⁷ (and its concealment within the structural logics of international political economy), by analysing the construct of ‘free labour’ instead. How could historically entrenched universal standards of civilisation regarding ‘free labour’ be obscuring other forms of embedded oppression and structural injustices, *within* the realm of ‘free’ labour? *Secondly*, what modes of governance has international law set in place to govern the valorised construct of ‘free labour’ itself, under the veneer of remodelling non-European societies through idealized European visions of labour relations? How could these modes of governance be

¹⁰⁴³ *Ibid.*

¹⁰⁴⁴ Specifically, Hammoudi broadly states that informal workers today have replaced native labourers: ‘[t]he informal workers of the present era have come to replace the native labourers of old as those who, “stand at the centre of some of the largest governance questions of our time”, in the name of a “global economic good” that they are hardly benefitting from rather than colonial development’, at p. 798.

¹⁰⁴⁵ Hammoudi, at p. 799.

¹⁰⁴⁶ *Ibid.*, at p. 785.

¹⁰⁴⁷ Such a focus on ‘unfree labour’ and its associations of slavery, violence and expropriation builds on a long and important lineage within scholarly thought on racial capitalism. See Williams, E. (2021). *Capitalism and slavery*. UNC Press Books, for an emblematic example.

interpreted as being historically *continuous* with the ‘civilising’ anti-slavery politics that served the ideological function of veiling capitalist exploitation?

I seek to answer both questions specifically with reference to precarity (which Hammoudi had referenced as being part of exploitative labour relations within the construct of ‘free labour’). To clarify, I do not seek to downplay the significance of ‘unfree labour’ through this approach. Instead, I am merely seeking to add an additional dimension to our understanding of ‘labour’, by more closely scrutinizing the concept of ‘free labour’ and our international legal regulation of this. This approach is informed by the Marxist understanding of labour within capitalist systems as not only being based on duress, but also being based on ‘voluntary employment’ – which is precisely what the process of primitive accumulation seeks to produce (dependence on waged labour). As Marks succinctly describes it, the point is not that ‘the degree and nature of labour exploitation remain always the same, and always objectionable in the same measure’, but simply that ‘account must be taken of the compulsion that comes not from violence, threats or deceit, but from the limitation of options and the denial of opportunities’.¹⁰⁴⁸

Moving forward, I will take up the first set of questions in Section B and the second set of questions in Section C.

B. TWAIL-ing Precarity

This section seeks to foreground how the realm of ‘free labour’ obscures other forms of embedded oppression and structural injustices within international labour regulation. It is important to bear in mind that the ILO itself is largely perceived to be an institution that has been created to respond to these very injustices (as we may recall from Abi-Saab’s account of the ILO), and as such it appears that the ILO has more in common with TWAIL rather than being the object of TWAIL critique. To this end, the apparent similarities and differences between the ILO’s social justice discourse and the TWAIL approach, as noted by TWAIL scholars, are first disclosed. They are both focused on international law and its capacity to foster (or prevent) social justice struggle, concerned about improving the rights and labour

¹⁰⁴⁸ Marks, S. (2008). Exploitation as an International Legal Concept. In Marks, S. *International Law on the Left: Re-examining Marxist Legacies*. Cambridge University Press.

conditions of workers, and are conceptually concerned about economic and social rights (instead of only civil and political rights).¹⁰⁴⁹

Nonetheless, TWAIL scholars have suggested that TWAIL adopts a social justice praxis that more deeply questions the existing global distribution of wealth within our international order and is hence interested in analysing structural barriers that create these deep inequalities in global material conditions.¹⁰⁵⁰ A failure to do so would otherwise result in these social injustices ‘continu[ing] to expand in scale and intensity’.¹⁰⁵¹ Additionally, they have also suggested that TWAIL is generally ‘more suspicious of assertions of our common humanity’ and ‘allegedly or even legitimately universal standards’ precisely because these standards are usually never quite realised in reality,¹⁰⁵² and conversely these universal standards could work against the interests of those concerned.¹⁰⁵³ While this does not translate to a fixed antagonistic opposition towards all universal standards, it is an approach that prefers caution and circumspection in responding to such claims.¹⁰⁵⁴ Nonetheless, TWAIL scholars are described as potentially benefitting from the ILO’s approach of not treating the Third World State as ‘supra-class’ (instead of one that is itself differentiated and divided by class and other such divisions).¹⁰⁵⁵ With this theoretical backdrop in mind, our story now begins.

This is a story of precarity that is TWAIL in spirit precisely because it asks what it means to ‘analytically centre the Rest rather than the West’, and in taking global history seriously (not just the history of the West).¹⁰⁵⁶ However, it appears that the use of the term ‘Third World Approaches’ in TWAIL may be misleading insofar as it suggests that it is a world view that is only relevant to those found within the Third World.¹⁰⁵⁷ Instead, I seek to foreground a perspective of precarity as told through the eyes of the ‘Third World’ precisely in order to unsettle the dominant understanding of precarity within the ‘First World’, so as to offer insight

¹⁰⁴⁹ Okafor, Obiora C., Adebola, T., Al-Alami, B. (2019). Viewing the International Labour Organization’s Social Justice Praxis Through a Third World Approaches to International Law Lens: Some Preliminary Insights [‘Okafor, Adebola, Al-Alami’]. In Politakis, G., Kohiyama, T., Lieby, T. *ILO 100: Law for Social Justice*. International Labour Office, Geneva, for a fuller account of these similarities and differences.

¹⁰⁵⁰ Okafor, Adebola, Al-Alami, at p. 119.

¹⁰⁵¹ *Ibid.*, at p. 120.

¹⁰⁵² *Ibid.*, at p. 119.

¹⁰⁵³ *Ibid.*, at p. 120.

¹⁰⁵⁴ *Ibid.*, at p. 119.

¹⁰⁵⁵ *Ibid.*, at p. 120.

¹⁰⁵⁶ *Ibid.*, at p. 105.

¹⁰⁵⁷ Anghie, A. (2023). Rethinking International Law: A TWAIL Retrospective. *European Journal of International Law*, 34(1), 7-112, at p. 104.

into the global dynamics of contemporary capitalism. Simultaneously, I recognise that there are oppressive logics at play that nonetheless cannot be easily attributed to *all* those within the ‘First World’ and/or the ‘Third World’, and only seek to draw attention to these broad dynamics to enable a better grasp of the spatiality and scale of efforts required to address precarity.

Initially, the telling of this story appears to only be influenced by the TWAIL sensibility of seeking to ‘eradicate the conditions of underdevelopment within the Third World’,¹⁰⁵⁸ through a deconstruction of international law to show how a ‘racialized hierarchy of international norms and institutions ... subordinat[ing] non-Europeans to Europeans’¹⁰⁵⁹ has been instituted. After all, this story is first situated within the Third World, with a focus on the ways in which international labour policy has been framed in reference to the Third World. However, this story is also told with the aim of showing a more generalised and global relevance of this historical story during our contemporary times.

One significant thread of the mainstream narrative of precarity (indeed, supplemented by narratives of neoliberalism) depicts low wages and weak social (and environmental) standards as being the key ‘comparative advantage’ of most countries within the global South, which is resulting in a global race to the bottom in labour conditions¹⁰⁶⁰ and increasing precarity globally. Such a narrative relying on a dynamic of difference between the global North and the South,¹⁰⁶¹ presupposes that it is the pre-modern or backwards nature of economic conditions within the global South that is resulting in this retrograde development. Such a description of eternalised precarity is one that reifies *ongoing* dynamics within the global South in an ahistorical and static manner. Specifically, it conflates and obscures the layered ways in which precarity has been produced in new and different ways in the global South in recent decades. In response, it is important to temporally situate developments within the global South and North in relation to each other. For example, a story of precarity told from the perspective of

¹⁰⁵⁸ Mutua, M. (2000). What is TWAIL? *Proceedings of the ASIL Annual Meeting*, 94, 31.

¹⁰⁵⁹ *Ibid.*

¹⁰⁶⁰ Salem, S., & Rozental, F. (2012). Labor standards and trade: A review of recent empirical evidence. *J. Int'l Com. & Econ.*, 4, 63.

¹⁰⁶¹ See Knox, R. (2016). Valuing race? Stretched Marxism and the logic of imperialism. *London Review of International Law*, 4(1), 81-126, for a materialist conception of the dynamic of difference that was described within TWAIL scholarship in Anghie, A. (2007). *Imperialism, sovereignty and the making of international law*. Cambridge University Press. Arguably, Anghie had also been attentive to the materiality of the dynamic of difference, as seen in the chapter on ‘The Mandate System and the League of Nations’ providing an account of worker subjectivity and disciplinary governance in relation to the institution of (racialised) colonial political economy (see, in particular, pp. 181-190).

the global South would foreground how she has been the *recipient* of outsourcing and offshoring associated with production, and the precarious employment arrangements of temporary and short-term employment now associated with it, at the same time in which the global North *became* precarious after the Golden Age of Capitalism. More precisely, outsourcing and offshoring were only contingently possible as strategies for the global North to lower its production costs precisely *because* the global South was readily available to be positioned as a place that was ‘always precarious’ – a vast infinite pool of cheap labour.¹⁰⁶²

Even if one insists on claiming that the global South is a cheaper source of labour for a range of unrelated reasons, such as the cost of living being generalised as being cheaper in the global South, it was not a natural conclusion that the previously secure nature of employment in manufacturing within the global North (as narratives of the Golden Age of Capitalism inform us) would now be newly transmogrified within the global South to take the form of insecure employment. In other words, the terms on which manufacturing within the global South had been *newly* integrated within global capitalist circuits largely tracks that of precarious employment relations, such that its relations with the global North are *co-constitutive* of precarity. The dynamics underlying the widespread commodification of the livelihoods of workers within the global South during the mid-20th century ‘developmental era’, as previously set out in Chapter IV, Section A(2), are reiterated to support this claim. Consequently, an understanding of the global South as ‘always having been precarious’ is only rendered sensible when set against the ILO’s historical efforts to normalise the SER as a standard of reference, a ‘universal’ norm which retains ongoing relevance today through its definition as ‘standard work’. This difference sets in place a clear dynamic of difference between the global North and the South, and a flawed focus reserved for the global South to formalise itself (with the contradictions of this discourse and consequent epistemic erasure of precarization already having been analysed in Chapter IV).

In response, I seek to recover a largely lost history, showing how the ILO had sought to discursively stabilise international tensions over the conditions of labour in the global South, to render its role in creating epistemic erasures and depoliticising labour relations more clearly. This history is located within a particular moment in the 1960s when the modernisation theories

¹⁰⁶² Luxemburg, R. (1913). *The Accumulation of Capital*. Routledge and Kegan Paul Ltd., at p. 365: “Capital needs the means of production and labor-power of the whole globe.”

of developmental theorists like Arthur Lewis that the ‘modern’ economic sector would eventually expand to generate enough employment to absorb all labour from the ‘traditional sector’ had already been proven to be wanting. The frequently told story in response to this moment is that which has already been recounted in Chapter IV, which is the rise of the concept of informality within the ILO to address the inadequacies of this telos of an ever-expanding ‘modern’ sector. However, the political dynamics at stake during this moment well exceeded the simple characterisation of the concept of ‘informality’ in binary opposition to that of ‘formality’. Even in countries where high levels of economic growth were being reported, observations were made that the standard of living was not appreciably increasing for most of the population.¹⁰⁶³ This was a period of crisis in which anxieties were high regarding rapid population growth, tracking neo-Malthusian fears, with the widespread immiseration within the global South only looking to be worsening.¹⁰⁶⁴

A rarely told story involves the ILO promoting the creation of ‘productive employment’ and ‘the inclusion of employment goals’ within developing countries from the early 1960s onwards, resulting in the launching of the World Employment Programme (‘WEP’) in 1969,¹⁰⁶⁵ *in response* to this discursive and material crisis of development as an orienting concept for the international order. It was indeed during one of the WEP missions to Kenya that the concept of informality was created. During this moment of crisis – coincidentally running alongside the Golden Age of Capitalism – the ILO proposed that the social dimensions of development had to be foregrounded ‘in order to save the concept of development itself from being discredited’.¹⁰⁶⁶ The ILO website today generically describes employment as having been ‘seen as a central issue in economic and social development’,¹⁰⁶⁷ without mentioning the explicit agenda of the ILO at that time in formulating a ‘coherent, ground-breaking approach that made employment the crux to understand and engage with the question of development’.¹⁰⁶⁸ This was also a development that took place just as the final period of political decolonisation was underway, and therefore is likely to have functioned as an orienting concept for these newly

¹⁰⁶³ Maul, D. (2020). *The International Labour Organization: 100 years of Global Social Policy*. Berlin: De Gruyter [Maul 2020], at p. 171.

¹⁰⁶⁴ Unger, C.R. (2018). *International Development: A Post-War History*. Bloomsbury Academic, also cited by Maul 2020, at p. 171.

¹⁰⁶⁵ When the WEP is mentioned, it is usually described ahistorically as an ‘achievement’ of the ILO, with the context provided (if at all) of Keynesian economic policies of ‘full employment’.

¹⁰⁶⁶ Maul 2020, at p. 171.

¹⁰⁶⁷ ILO. (2020). *The World Employment Programme (WEP): Past, Present and Future Background Paper for the 50th anniversary of the launch of the WEP*. International Labour Office, Geneva, at p. 5.

¹⁰⁶⁸ *Ibid.*

decolonised countries (even if situated within broader discursive contestation). Indeed, these ‘active employment policies’ were largely ‘tailored to the situation in the developing world’.¹⁰⁶⁹

Of course, the ILO had already prioritised employment policies as early as the Philadelphia in 1944.¹⁰⁷⁰ However, what is contingent and significant about this moment is that this focus on ‘productive employment’ within developing countries offered the ILO ‘a way out of’ the ongoing development debates during the early 1960s.¹⁰⁷¹ In this regard, dependency theorists Hans Singer¹⁰⁷² and Rans Prebisch (who had been high-ranking United Nations officials) had drawn uncomfortable attention to ‘the international division of labour and the shifting terms of trade between primary producers and industrialised countries’.¹⁰⁷³ This is a relatively more familiar history, with their arguments described as having ‘gained increasing currency’ amongst developing countries and resulting in the founding of the Group of 77 at the United Nations Trade Conference on Trade and Development (UNCTAD) in 1964.¹⁰⁷⁴ Beyond the terms of trade debate, it should be noted that this historical context can be deepened by examining what was transpiring within other institutions in the international legal order. There is already a rich body of TWAIL scholarship detailing the struggles of the ‘Third World’ in creating a New International Economic Order,¹⁰⁷⁵ and the struggles that the Third World

¹⁰⁶⁹ Maul 2020, at p. 172.

¹⁰⁷⁰ *Ibid.*, at p. 173.

¹⁰⁷¹ *Ibid.*

¹⁰⁷² There is a related story to be told here of how and why Hans Singer – who was one half of the Prebisch-Singer terms of trade thesis – changed his views of seeking foreign aid for developing countries to offset the disproportionate gains to developed trading nations, to a more conservative political economy approach of supporting a vision of ‘fuller’ and ‘productive’ employment for developing countries (as espoused in his role as an official of the WEP mission to Kenya). However, this lies outside of the scope of this section. One indicative place to start could be Shaw, J. (2002). *Sir Hans Singer: The Life and Work of a Development Economist*. Palgrave Macmillan.

¹⁰⁷³ Maul 2020, at p. 173.

¹⁰⁷⁴ Maul 2020, at p. 173. See also chapter 4 ‘Radicalizing institutions and/or institutionalizing radicalism? UNCTAD and the NIEO debate’, from Rajagopal, B. (2003). *International law from below: Development, social movements and third world resistance*. Cambridge University Press, for an intriguing examination of the ‘ambiguities, contradictions and opportunities’ in the creation and contestation over UNCTAD as a ‘terrain of struggle’ by the Third World. I have used the term ‘Third World’ here because the author has referred to it as such, and will employ it further to draw connections between the hitherto divided global North and South.

¹⁰⁷⁵ See Eslava, L. et al. (2017). *Bandung, global history, and international law: critical pasts and pending futures*. Cambridge University Press, for sophisticated accounts of the projects to shape international law through precursors to the New International Economic Order. This vision of TWAIL in establishing is usually described as belonging to the first generation of TWAIL scholars. In this regard, see Anghie, A. (2023). Rethinking International Law: A TWAIL Retrospective. *European Journal of International Law*, 34(1), 7-112 for a masterful account of the development of TWAIL scholarship and the evolution of its concerns.

(globally situated, including within the global North)¹⁰⁷⁶ has faced in the realm of international economic law and the regimes of trade, finance and investment,¹⁰⁷⁷ and as such, this section will not attempt to recreate here these stories that have been better told elsewhere.

However, what is less familiar is the role of the ILO in ‘directing the attention of developing countries away from world trade’ by ‘placing the focus on employment’ instead.¹⁰⁷⁸ For example, resolutions by the African and Asian Regional Conferences seeking the assistance of the ILO in the brokering of international agreements ‘guaranteeing price stability for raw materials on the world market’ were ‘met with little sympathy’ by all of the tripartite representatives of the industrialized Western countries (including the workers’ representatives).¹⁰⁷⁹ In place of this route, the proposed recommendations of the ILO valorising job creation domestically can indeed be seen as a classic example of how the dynamic of difference has been employed to create far-reaching structural transformations within the economies of the global South. For example, in the WEP 1970 mission to Colombia, an ‘integrated’ approach to employment was offered, with the consideration that an ‘effective employment policy’ would ‘need to include’ an extensive range of reforms ‘involving the whole structure of the society and economy of Colombia, including agrarian reform and income redistribution’.¹⁰⁸⁰

One might choose to respond to this historically contingent moment as the ILO simply choosing to act within its competencies by focusing on its areas of expertise,¹⁰⁸¹ during a complicated and contested political context, and therefore justify its lack of attention to ‘the

¹⁰⁷⁶ See, for example, Sornarajah, M. (2021). *The International Law on Foreign Investment*. Cambridge University Press, and Linarelli, J. et al. (2018). *The misery of international law: confrontations with injustice in the global economy*. Oxford University Press, which includes the example of Greece’s struggles against austerity measures, which are redescribed as structural adjustment programmes and modes of disciplining that had originally been intended for the Third World.

¹⁰⁷⁷ *Ibid.*

¹⁰⁷⁸ Maul 2020, at p. 173.

¹⁰⁷⁹ *Ibid.*, at p. 174.

¹⁰⁸⁰ ILO. (2020). *The World Employment Programme (WEP): Past, Present and Future Background Paper for the 50th anniversary of the launch of the WEP*. International Labour Office, Geneva, at p. 5. The nature and extent of such proposed reforms, and whether they were justified and/or implemented, offer important avenues for research, but lie outside the scope of this thesis.

¹⁰⁸¹ Of course, as is well-known, even though the ILO performed an initially critical, stabilizing function for the take-up of development as a concept, the ILO’s policies themselves were subsequently undermined during the era of neoliberalism. However, it remains arguable that the delimitation of the agenda of development, away from questions of international trade, had already been effected by then through the ILO’s focus on the discourse of jobs.

rules and structures of world trade'.¹⁰⁸² As an alternative justification, I foreground the loss of a language that the Third World used to speak in. Theoretically, I suggest that this moment opens up an understanding of 'productive employment' and its domestic focus on 'employment policy' as a discursive measure that epistemically erases/intentionally obscures systemic logics of international political economy and terms of trade from the international agenda. It unsettles the boundaries of 'productive employment' as being an adequate response to wider political issues of the international distribution of value, which shows up the discourse of 'development' through 'decent work for all' *as mediated and implemented* through the means of the individual nation-state alone to be a limited one. It also opens up space for incorporating and re-centering more critical accounts of the *relationality* of international political economy of labour, to shed light on what is otherwise being obscured from this discourse within the international legal order and could be analytically relevant in understanding the historical and contemporary conditions of *global* capitalism.¹⁰⁸³ As transnational labour law scholar Adelle Blackett has suggested, 'looking "past" the domestic market in discussions of the idea of labour law puts squarely into focus the broader geopolitical asymmetries'.¹⁰⁸⁴

Such an account of global capitalism could historically situate the current prevalence of international competition and 'the technology-enabled fragmentation of production' as having contingently *resulted* from the defeat of attempts by countries within the global South to introduce a new economic order through the NIEO.¹⁰⁸⁵ It would proceed to examine how international terms of trade are built on the exploitation of low-wages globally,¹⁰⁸⁶ with the imposition of poor working conditions by multi-national corporate employers on workers

¹⁰⁸² Maul 2020, at p. 173.

¹⁰⁸³ See, for example, classic accounts of imperialism in the work of Amin, S. (1977). *Imperialism and Unequal Development*. Monthly Review Press: New York; Frank, A. G. (1967). *Capitalism and underdevelopment in Latin America*. NYU Press. For a more contemporary account, see Smith, J. (2016). *Imperialism in the twenty-first century: Globalization, super-exploitation, and capitalism's final crisis*. NYU press.

¹⁰⁸⁴ Blackett, A. (2011). Emancipation in the idea of labour law. In Davidov, G., & Langille, B. *The idea of labour law* (pp. 420-436). Oxford University Press.

¹⁰⁸⁵ See Alessandrini, D. (2022). A Not So 'New Dawn' for International Economic Law and Development: Towards a Social Reproduction Approach to GVCs. *European Journal of International Law*, 33(1), 131-162, for making this important connection at p. 152.

¹⁰⁸⁶ See also scholarship relating international political economy to welfarism (which is a central tenet of 'decent work for all', in that social security is to be universally extended to all workers): Bhambra, G. K. (2022). Relations of extraction, relations of redistribution: empire, nation, and the construction of the British welfare state. *The British Journal of Sociology*, 73(1), 4-15; Bhambra, G. K., & Holmwood, J. (2018). Colonialism, postcolonialism and the liberal welfare state. *New Political Economy*, 23(5), 574-587.

within the global South.¹⁰⁸⁷ It could recharacterize outsourcing, that is usually represented as resulting in ‘unfair competition’, as being a tactic to intensify competition within the global South and drive their wages down, thereby benefitting those within the global North through reduced costs.¹⁰⁸⁸ Instead, it should expose the racial and ecological dimensions of the unequal distribution of value within global value chains.¹⁰⁸⁹ Global value chains (also known as global commodity chains or global supply chains) refer to the new mode of organising national economies (otherwise analysed in simple terms of Gross Domestic Product of distinct economies, with ‘trade and capital exchanges occurring between them’), whereby production is largely located within the global South and final consumption located within ‘monopolistic’ multi-national firms that are located mostly within the global North.¹⁰⁹⁰ This process of ‘more than 80 percent of world trade’ being controlled by multi-national corporations whose annual sales ‘equal around half of global GDP’ has been referred to generally as ‘globalisation’.¹⁰⁹¹

An increasing number of scholars have drawn attention to the *racialised* justifications for exploitation of workers within the global South through these global value chains, through the *myth* of productivity that rests on presumptions that the global South is ‘less developed’ and the labour force is ‘less productive’.¹⁰⁹² For example, they calculate how the difference in wages is greater than the difference in productivity between the global North and the South, and demonstrate that there are much higher rates of exploitation in the ‘periphery’ of the global South.¹⁰⁹³ Flowing from this perspective, one can connect empirical estimates of how the global North effectively receives 392 billion hours of uncompensated work due to the terms of

¹⁰⁸⁷ Gammage, C., & Novitz, T. (2019). *Sustainable Trade, Investment and Finance: Toward Responsible and Coherent Regulatory Frameworks*. Edward Elgar Publishing.

¹⁰⁸⁸ Smith, J. (2016). *Imperialism in the twenty-first century: Globalization, super-exploitation, and capitalism's final crisis*. NYU press [Smith].

¹⁰⁸⁹ Werner, M. (2016). Global production networks and uneven development: exploring geographies of devaluation, disinvestment, and exclusion. *Geography Compass*, 10(11), 457-469; Berndt, C. (2018). Uneven development, commodity chains and the agrarian question. *Progress in Human Geography*, 1, 14; Werner, M. (2019). Geographies of production I: global production and uneven development. *Progress in Human Geography*, 43(5), 948-958; Somerville, P. (2022). A critique of ecologically unequal exchange theory. *Capitalism Nature Socialism*, 33(1), 66-70; See also Taylor, M. (2007). Rethinking the global production of uneven development. *Globalizations*, 4(4), 529-542, for analysing the implications of neglecting the materiality of labour within development theory.

¹⁰⁹⁰ Suwandi, I. et al. (2019). Global commodity chains and the new imperialism. *Monthly Review*, 70(10), 1-24.

¹⁰⁹¹ *Ibid.*

¹⁰⁹² Smith; Suwandi, I. (2019). *Value chains: the new economic imperialism*. Monthly Review Press; Selwyn, B. (2019). Poverty chains and global capitalism. *Competition & Change*, 23(1), 71-97; Selwyn, B. (2013). Social upgrading and labour in global production networks: A critique and an alternative conception. *Competition & Change*, 17(1), 75-90.

¹⁰⁹³ *Ibid.*

unequal exchange,¹⁰⁹⁴ to the earlier story of how colonial-imperial relations today do not only rely on coercion through slavery, but in a much more extensive way through the widespread intensification of the exploitation of ‘free’ labour through global labour arbitrage,¹⁰⁹⁵ including migrant labour,¹⁰⁹⁶ that institutes a global process of unequal and uneven development.¹⁰⁹⁷ We could also point to the dependence of the global North on such low wages, and its proclivity to employ violence when these interests are threatened (as seen in the example of the coup in Haiti, when labour had organised to increase the minimum wage).¹⁰⁹⁸ These dynamics should therefore lead us to question the limitations of state regulatory action in improving worker conditions within global production networks that create such an international division of labour.¹⁰⁹⁹

One must further incorporate a broader understanding of how women have been disproportionately represented in these processes of precarization and point to how the feminization of flexibilization begs the question of why women’s work has been historically produced as insecure.¹¹⁰⁰ This would lead to an understanding of the ways in which the law has played a historical role in constituting the devaluation of women’s waged and reproductive work, and trace the continuities of this devaluation to the contemporary ‘gender pay gap’ issue.¹¹⁰¹ It should further underscore how the intersectionality of gendered and raced ways of thinking is presupposed within the discursive framing of the ILO, to enable the production of a more complex and differentiated understanding of gendered precarity.¹¹⁰² It would draw attention to the disposability of women within the global South being used as state development

¹⁰⁹⁴ Hickel, J. et al. (2022). Imperialist appropriation in the world economy: Drain from the global South through unequal exchange, 1990–2015. *Global Environmental Change*, 73(102467), 1-13.

¹⁰⁹⁵ Suwandi, I. (2019). *Value chains: the new economic imperialism*. Monthly Review Press; Selwyn, B. (2019). Poverty chains and global capitalism. *Competition & Change*, 23(1), 71-97.

¹⁰⁹⁶ Walia, H. (2021). *Border and rule: Global migration, capitalism, and the rise of racist nationalism*. Haymarket Books; Campbell, S. (2018). *Border capitalism, disrupted: Precarity and struggle in a Southeast Asian industrial zone*. Cornell University Press. For a more radical account of migration, see Achiume, E. T. (2019). Migration as decolonization. *Stan. L. Rev.*, 71, 1509, and Achiume, E. T. (2021). Racial borders. *Geo. LJ*, 110, 445 for an account of the historical origins of racial borders.

¹⁰⁹⁷ Carroll, T. et al. (Eds.). (2020). *The political economy of Southeast Asia: politics and uneven development under hyperglobalisation*. Springer Nature.

¹⁰⁹⁸ Miéville, C. (2008). Multilateralism as terror: International law, Haiti and imperialism. *Finnish Yearbook of International Law*, 19, 63. See also Knox, R. (2016). Valuing race? Stretched Marxism and the logic of imperialism. *London Review of International Law*, 4(1), 81-126, for drawing attention to the racial dimensions that naturalised this violence.

¹⁰⁹⁹ Blackett, A. (2001). Global governance, legal pluralism and the decentered state: A labor law critique of codes of corporate conduct. *Indiana Journal of Global Legal Studies*, 8(2), 401-447.

¹¹⁰⁰ See Chapter V. See also Alessandrini, D. (2016). *Value making in international economic law and regulation: alternative possibilities*. Routledge.

¹¹⁰¹ See Chapter V.

¹¹⁰² *Ibid.*

strategies within global production chains, alongside the subsidy of their unwaged labour to capitalist production.¹¹⁰³ It should highlight how the racialised nature of the international gendered division of labour is presupposed and produced through the development of global care chains, thereby obscuring a broader ‘crisis of social reproduction’ across both the global North and South.¹¹⁰⁴

More broadly, it could reflect on how ‘colonial’ ways of thinking in this approach of precarizing labour has been *extended* today within the global North,¹¹⁰⁵ or perhaps had always *pre-existed* the category of the global North.¹¹⁰⁶ It further complicates an understanding of the global South as being supra-class, by highlighting the complicity of elites within the transnational capitalist class who benefit from these exploitative logics of systemic accumulation¹¹⁰⁷ and how international institutions are failing to adopt a more critical stance towards development and neglecting the broader ‘crisis of social reproduction’.¹¹⁰⁸ Such an approach necessitates a rethinking of the function that these bordered categories of the global North and South serve in reifying artificial difference.¹¹⁰⁹ Nonetheless, the differentiated nature of precarization reminds us that an ‘evocative call to solidarity risks papering over deep and substantive differences of interest and perspective’.¹¹¹⁰ This perspective may shed light on claims that the term ‘globalisation’ has ‘displaced the dynamics of imperialism to our detriment’.¹¹¹¹

Our story of precarity thus ends with the *contingency* of the universality of international labour standards as a regulatory mechanism, of decent work ‘for all’ and the developmental discourse of ‘productive jobs’ as a collective set of myths that obscures structural causes of precarity (beyond the realm of labour conditions, but relevant in the production of labouring bodies) within international political economy. This points to international labour governance

¹¹⁰³ *Ibid.*

¹¹⁰⁴ *Ibid.*

¹¹⁰⁵ See Chapter IV, Section B.

¹¹⁰⁶ I will touch on this in the last section of this chapter.

¹¹⁰⁷ Chimni, B. S. (2004). International institutions today: an imperial global state in the making. *European Journal of International Law*, 15(1), 1-37.

¹¹⁰⁸ Pahuja, S. (2011). *Decolonising international law: development, economic growth and the politics of universality*. Cambridge University Press.

¹¹⁰⁹ See Hansen, P. (2022). Decolonization and the spectre of the nation-state. *British Journal of Sociology*, 73(1), 35-49 for a historically informed critique of methodological nationalism, and the ways in which the imperial state is often confused for the nation-state.

¹¹¹⁰ See Humphreys, S. (2022). Against future generations. *European Journal of International Law*, 33(4), 1061-1092, making this argument within the context of climate change debates, at p. 1063.

¹¹¹¹ Ruccio, D. (2003). Globalization and imperialism. *Rethinking Marxism*, 15(1), 75-94.

constituting a mode of governance by inoculation, seeking to neutralise ‘potential sources of destabilisation’,¹¹¹² which has the ‘effect of diverting attention away from the thing thereby ungoverned’¹¹¹³ – with that ungoverned ‘thing’ here referring to the systemic logics producing precarity.

C. Redescribing Precarity

In this last section, as mentioned at the start of this chapter, I seek to reflect on the theoretical implications of this account and offer a framing of the modes of governance that labour law *does* institute. In the first subsection that follows, I connect my previous set of questions to political theorist Isabell Lorey’s theorising of precarity as an instrument of governance, and thereafter build on her framework to better understand the modes of governance instituted by international labour regulation. In the next sub-section, I seek to analyse the role that international labour policy could be playing through its deployment of precarity as a mode of governance, that obscures the underlying dynamics involved in precarisation.

(1) Governance by Precarity

In this section, I am interested in drawing out how political theorist Isabell Lorey (‘Lorey’) has introduced a novel understanding of precarity as an instrument of governance that serves simultaneously as ‘a basis for capitalist accumulation that serves social regulation and control’. As Butler highlights in their foreword, Lorey’s work therefore introduces the question of how one should understand precarity as a ‘site of power in subject formation’.¹¹¹⁴ One can link this question to anthropologist Millar’s call for asking us to shift away from the question of ‘what precarity *is* to the question of what precarity *does*’ [emphasized in italics].¹¹¹⁵

Lorey describes insecurity as ‘generally [being] regarded as a nightmare, as a loss of all security, all orientation, all order’ within ‘the secularized modernity of the West’.¹¹¹⁶ She

¹¹¹² See Humphreys, S. (2020). Ungoverning the climate. *Transnational Legal Theory*, 11(3), 244-266. I will elaborate below further on the significance of this term ‘ungovernance’.

¹¹¹³ *Ibid.* at p. 252.

¹¹¹⁴ Butler, J. (2015). Foreword [Butler, J. Foreword]. In Lorey, I. *State of insecurity: Government of the precarious*. Verso Books [Lorey], at pp. vii to viii.

¹¹¹⁵ Millar, K. M. (2017). Toward a critical politics of precarity. *Sociology compass*, 11(6), e12483, at p. 5.

¹¹¹⁶ Lorey, at p. 1.

shows that the process of ‘precarization’ produces ‘insecurity’ as a key orientation, thereby resulting in the ‘political ideal’ of security concentrating power within the state and corporate institutions.¹¹¹⁷ Populations are ‘defined by their need to be alleviated from security’, which is achieved through ‘valoriz[ing]’ police and state control, and ‘promises of global investment and institutions of global governance’.¹¹¹⁸ Precarity as a discourse thereby enables those in positions of power to ‘alternately promise [the] alleviation [of precarity] and threaten its continuation’.¹¹¹⁹ Indeed, the neoliberal normalisation of precarious working conditions ‘at a structural level’ has become ‘a fundamental governmental instrument of governing’.¹¹²⁰ Instead of promising security and protection in the Hobbesian sense, neoliberal governing is chiefly conducted *through* social insecurity, whereby ‘minimal assurances’ are given while ‘simultaneously increasing instability’.¹¹²¹ Managing this threshold of precarization such that it does not ‘seriously endanger the existing order’ is ‘what makes up the art of governing today’.¹¹²² Precarity is hence described as ‘a new form of regulation that distinguishes this historical time’, which ‘has itself become a regime, a hegemonic mode of being governed, and governing ourselves’.¹¹²³

Unlike most theorists of precarity reaffirming the need to re-embed labour rights within the economy, Lorey seeks to problematise the current ‘politics of de-precarization’ because it ‘seeks nothing other than the reformulation of traditional social-security systems’.¹¹²⁴ She points to how such politics needs to rupture the ‘hegemonic political and social-security logics of modern nation states’, through an understanding of precarity and precarization serving as ‘instruments of domination’.¹¹²⁵ Instead of focusing on the question of how precarity could be dealt with, Lorey asks us to think about ‘how we are governed and keep ourselves governable’¹¹²⁶ through the process of precarization. In tracking historical shifts in socio-economic relations from the rise of the sovereign state (underpinned by the political theory of Hobbes requiring obedience to the sovereign as a safeguard against precariousness¹¹²⁷), to

¹¹¹⁷ Butler, J. Foreword, at p. viii.

¹¹¹⁸ *Ibid.*

¹¹¹⁹ *Ibid.*, at p. ix.

¹¹²⁰ Lorey, at p. 63.

¹¹²¹ *Ibid.*, at p. 2.

¹¹²² *Ibid.*, at pp. 9 – 10.

¹¹²³ Butler, J. Foreword, at p. vii.

¹¹²⁴ Lorey, at p. 12.

¹¹²⁵ *Ibid.*, at p. 7.

¹¹²⁶ *Ibid.*, at p. 2.

¹¹²⁷ *Ibid.*, at p. 47.

neoliberal weakening of the welfare state, she draws attention to how states have increasingly limited themselves to security discourses and practices, deploying techniques of control and surveillance.¹¹²⁸ Nonetheless, she appears to suggest that this does not necessarily result in the weakening of the political entity of the state itself, since the minimising of social safeguards, which results in the increase of precarization, adversely results in increased security demands¹¹²⁹ that presumably reinforce the state apparatus. Neoliberal governance mechanisms and securitization processes are precisely *enabled* through the production of inequality in insecurity and its associated hierarchisation of differences;¹¹³⁰ in other words, a security society that ‘has become governable *through* precarization’ [italicized for emphasis].¹¹³¹

To form these conclusions, Lorey provides incisive criticisms of the presuppositions contained within the framework of a significant theorist of precarity, Robert Castel, for juxtaposing precarity against the alleged norm of security within the context of waged labour and the welfare state.¹¹³² She describes this perspective in ‘biopolitical-immunological terms’,¹¹³³ with immunization only rendered possible through the integration or exclusion of those who have historically been excluded from liberal governmentality’s welfare-state paradigm.¹¹³⁴ Within this excluded group, she includes the unpaid labour of women, those who were excluded from the ‘nation-state compromise between capital and labour’ (such as immigrants), and exploitative relations within the colonies.¹¹³⁵ Lorey points to how state power constructs (and, I suggest, is consolidated) through ‘a threat against which a political community must be protected’, thereby resulting in the legitimisation and normalisation of the precarity of those who fall outside of the protective sphere of the state.¹¹³⁶ In this regard, there are a few limitations within her scholarship that I now briefly detail. Firstly, while she appears to build on her insightful theorising of precarity as governance to develop responses to this conundrum in the form of care-citizenship, she does not appear to incorporate feminist perspectives from the global South – and as such her perspective appears limited to that of

¹¹²⁸ Lorey, at p. 64.

¹¹²⁹ *Ibid.*

¹¹³⁰ *Ibid.*, at p. 66.

¹¹³¹ *Ibid.*, at p. 64.

¹¹³² See Castel, R. (Ed.). (2017). *From manual workers to wage laborers: Transformation of the social question*. Routledge. See also Lorey, at p. 42.

¹¹³³ Lorey, at p. 35.

¹¹³⁴ *Ibid.*, at pp. 36 to 42.

¹¹³⁵ *Ibid.*, at p. 36.

¹¹³⁶ *Ibid.*, at p. 16.

European Marxist-feminism rather than a global one.¹¹³⁷ Additionally, while she has mentioned exclusions as having been historically built into welfarism, she did not proceed to examine in detail how and why these exclusions existed, or the implications of this for the concept of precarity itself – which we have explored in the earlier chapters.

Connecting Lorey's work to the field of international law, a study of precarity therefore shifts our focus towards the governance of people, rather than 'things or territories'¹¹³⁸ (as in the international legal preoccupation with states' obligations¹¹³⁹). She helps us understand how governance through what is referred to as 'precarization in neoliberalism'¹¹⁴⁰ is conducted through individualization that 'produces relations to self' that are 'perceived as independent and autonomous',¹¹⁴¹ such that individuals are constituted to a lesser extent through their 'connections with others'¹¹⁴² and their interdependent positioning within society. In this sense, Lorey describes individualisation as 'isolation' that does not entail independence, but rather forms part of the 'pastoral relationship of obedience'.¹¹⁴³ In asking why resistance against governance through insecurity is 'so difficult and rare', she points to the 'double ambivalence' of such governmentality under neoliberalism, both the ambivalence between 'being governed by others and self-government' and that within self-government – between 'servile making-governable' and refusals to be governed on such terms.¹¹⁴⁴ As an alternative, Lorey builds on Butler's work by encouraging us to rethink how we could secure protection against precarization through the recognition of our shared precariousness. Precariousness in this sense is 'existentially shared' not only because we are mortal, but 'specifically because [we] are social'.¹¹⁴⁵ This is distinctly opposed to precarity, which is described as 'a category of order' that involves 'social positionings of insecurity and hierarchization',¹¹⁴⁶ wherein precariousness is differentially distributed within unequal relations, and 'naturalized relations of domination'.¹¹⁴⁷

¹¹³⁷ Lorey, I. (2018). Precarisation and care-citizenship. *Griffith Law Review*, 27(4), 426-438.

¹¹³⁸ Lorey, at p. 3.

¹¹³⁹ A notable exception to this approach is, of course, the development of human rights perspectives in the recent century centering the individual as being in possession of rights. However, broadly speaking, even human rights approaches usually regard these rights of individuals as needing to be enforced by the state.

¹¹⁴⁰ Lorey, at p. 14.

¹¹⁴¹ *Ibid.*, at p. 10.

¹¹⁴² *Ibid.*

¹¹⁴³ *Ibid.*

¹¹⁴⁴ *Ibid.*, at p. 11.

¹¹⁴⁵ *Ibid.*, at p. 12.

¹¹⁴⁶ Puar, J. (2012). Precarity Talk: A Virtual Roundtable with Lauren Berlant, Judith Butler, Bojana Cvejić, Isabell Lorey, Jasbir Puar, and Ana Vujanović. *TDR/The Drama Review*, 56(4), 163-177, at p. 165.

¹¹⁴⁷ Lorey, at p. 15.

Reflecting on Lorey's work, I am interested in connecting it more broadly to the international legal order, and to apply this theoretical framework to what I call 'governance by precarity' within a different sphere from that of biopolitical securitisation and neoliberal logics of governance of the self.¹¹⁴⁸ While her theorising of precarity on biopolitical immunological terms is a significant one that helps us to connect the global acceleration of precarity to the global rise of securitarian logics and authoritarianism¹¹⁴⁹ (or perhaps, more accurately, the *return* of colonial security governance¹¹⁵⁰), I would like to expand her work in a different direction. As such, I first point to how Lorey's work opens up the possibility of examining how *labour* precarity itself has become a mode of governance that facilitates capitalist accumulation, with governance enabled precisely through the politics of differentiation and exclusion of workers both within and across borders. However, I wish to push this line of enquiry further by asking what presuppositions are contained within the mode of labour governance itself, which obscure and therefore facilitate the production of precarity, thereby indirectly *enabling* the larger securitisation story told by Lorey. I then proceed to expand on this perspective by including the role of *international* labour governance in constituting and governing through precarity.

(2) Governing Labour by Precarity

In this section, I extend Lorey's approach of governance by precarity, to examine the constitutive role of labour governance, whereby precarity itself becomes a mode of governing labour. By creating legally differentiated categories of precarity, law creates a mode of governance *through* these ordered relations. Put in another way, in producing and reproducing precarity through these categories, law provides a mode of governing through the differences

¹¹⁴⁸ Knox, R. (2017). Law, neoliberalism and the constitution of political subjectivity: The case of organised labour. In Brabazon, H. (Ed.). *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (pp. 92-118). Routledge.

¹¹⁴⁹ Bruff, I., & Tansel, C. B. (2019). Authoritarian neoliberalism: Trajectories of knowledge production and praxis. *Globalizations*, 16(3), 233-244; Chacko, P. (2018). The right turn in India: Authoritarianism, populism and neoliberalisation. *Journal of Contemporary Asia*, 48(4), 541-565. Cf. Wilkinson, M. A. (2021). *Authoritarian liberalism and the transformation of modern Europe*. Oxford University Press, tracing how authoritarian liberalism has been a mode of governance within Europe from an even earlier temporal period, since the interwar period, and then developing during the postwar period 'with a constitutional dynamic' (p. 3).

¹¹⁵⁰ Hönke, J., & Müller, M. M. (2012). Governing (in)security in a postcolonial world: Transnational entanglements and the worldliness of 'local' practice. *Security dialogue*, 43(5), 383-401.

produced by these legal categories – a form of ‘legal coding’¹¹⁵¹ that in itself *enables* governance. On one level, this argument could be read as a legal institutionalist claim, with the latter showing how law is a ‘constitutive part of the institutionalized power structure’ and ‘a major means through which power is exercised’.¹¹⁵² The legal institutionalist claim shows how power is exercised through the mode of legal governance, which is an important perspective for scholars of political economy to incorporate. Such a perspective can be further connected to the work of international legal scholar B.S. Chimni, who draws attention to how the ‘law is not simply a reflection of the economic structure of society but is also in many instances constitutive of relations of production’.¹¹⁵³ However, the current argument gestures beyond legal institutionalism (as a response to precarity) to show how the *phenomenon* of precarity itself is shaped by governance, and, in turn, enables governance. Indeed, as Butler has highlighted, precarity is a ‘politically induced condition’ that is ‘differentially distributed’,¹¹⁵⁴ and one significant way in which this is done appears to be through the legal construction of differentiated rights within labour governance regimes.

Essentially, this approach asks the question of what it would mean to reverse our perspectives towards labour regulation – usually described as being inadequate or weak or incapable of responding to the crisis of labour law caused by globalization – and to instead conceive of it as underpinning an intricate lattice of governance mechanisms that *enable* the differential precarization of workers, and differentiated accumulation. This is a perspective that looks at labour governance regimes through the perspective of capitalist extractivist logics pertaining to labour as a commodity – which raises the question of whether these regimes are operating as intended (even if the precise terms of these relations between capital and labour remain contested), rather than being described as a vast sphere of weak and inadequate governance. This is a perspective that views law as not simply a ‘repressive’ or ‘contested’ instrument, but as ‘part of the social ontology of capitalism’.¹¹⁵⁵

¹¹⁵¹ See Pistor, K. (2019). *The code of capital: How the law creates wealth and inequality*. Princeton University Press, describing this method of ‘legal coding’ in constructing capital itself.

¹¹⁵² Deakin, S., et al. (2017). Legal institutionalism: Capitalism and the constitutive role of law. *Journal of Comparative Economics*, 45(1), 188 – 200.

¹¹⁵³ Chimni, B. S. (2017). *International law and world order*. Cambridge University Press, at p. 450.

¹¹⁵⁴ See p. 4, Chapter II on ‘The Idea of Precarity’.

¹¹⁵⁵ Roberts, A. (2016). *Gendered states of punishment and welfare: Feminist political economy, primitive accumulation and the law*. Taylor & Francis, at p. 13.

Moving away from a conventional understanding of law as a remedial response to precarity, it is hence important to draw attention to how the legal rules regulating labour in themselves have set up conditions that *produce* precarity. The widely described process of flexibilization that has given rise to the ‘deregulation’ of labour rights¹¹⁵⁶ has itself been (at least partly) conducted through an intensification of the legal production of precarity. Specifically, labour regulation has played an important role in ‘mediating and channelling the effects of global economic restructuring’ and has been described as ‘part of the problem’ in producing particular kinds of precarious work.¹¹⁵⁷ Indeed, many of the elements of precarity (as previously set out in Chapter III, Section A) have been re-described as ‘*legal* determinants of precariousness in personal work relations’¹¹⁵⁸ [italicised for emphasis]. Work relationships that ‘strongly deviate from the classic binary, personal, full-time, wage/salary remunerated, standard employment relationship’ are described as ‘always [being] at risk of falling outside the personal scope of labour law’.¹¹⁵⁹ While the ILO has been acknowledged for stepping in to confer protections beyond these strict boundaries, national judicial interpretations have been more circumspect.¹¹⁶⁰ In any event, as shown in Chapter III, even if the ILO has sought to discursively expand protections beyond the scope of the employment relationship, the employment relationship has been repeatedly reverted to as a key source of rights.

Indeed, legal rules themselves have been shown to make different ‘categories of workers’ vulnerable, with ‘structures of exploitation’ being ‘built and sustained by law’.¹¹⁶¹ Labour lawyers have long drawn attention to (and criticised) how the effects of classification of the status¹¹⁶² of a worker as an employee, independent contractor or self-employed person are crucial in determining their level of entitlement to labour protections.¹¹⁶³ While legal rules of course vary across countries, several developed countries are host to legal rules that tend to treat many workers who are employed by agencies and/or have zero-hours contracts (which is

¹¹⁵⁶ For example, see Dermine, E., & Mechelynck, A. (2022). Zero-hour contracts and labour law: An antithetical association? *European Labour Law Journal*, 13(3), 339-346.

¹¹⁵⁷ Hunter, R. The legal production of precarious work. In Fudge, J., & Owens, R. (Eds.). (2006). *Precarious work, women, and the new economy: The challenge to legal norms* (pp. 283-304). Bloomsbury Publishing.

¹¹⁵⁸ Kountouris, N. (2012). The legal determinants of precariousness in personal work relations: A European perspective. *Comp. Lab. L. & Pol’y J.*, 34, 21.

¹¹⁵⁹ *Ibid.* at p. 29.

¹¹⁶⁰ *Ibid.* at p. 30.

¹¹⁶¹ Mantouvalou, V. (2023). *Structural Injustice and Workers' Rights*. Oxford University Press.

¹¹⁶² Kahn-Freund, O. (1967). A note on status and contract in British labour law. *The Modern Law Review*, 30(6), 635-644.

¹¹⁶³ Davidov, G., & Langille, B. (Eds.). (2011). *The idea of labour law*. Oxford University Press; Conaghan, J. et al. (2004). *Labour law in an era of globalization: Transformative practices and possibilities*. Oxford University Press.

a group that is ironically more in need of protection) as limiting or excluding their rights to labour law protections.¹¹⁶⁴ Such an approach is usually criticised for limiting worker-protective rights to specific categories of workers, resulting in the exclusion of those who do not fall within these categories from protection.¹¹⁶⁵ Yet, efforts to regulate zero-hours contracts in themselves have been fundamentally called into question for legitimating precarity (presumably within the global North), since they ‘constitute a significant shift towards the normalisation of all but the most extreme forms of abusive employment arrangements’.¹¹⁶⁶ Indeed, the impact of the various contractual forms and legal regulations pertaining to work (such as temporary contracts, a bilateral or triangular relationship with the employer, and legal derogations allowing for the creation of permanent employees from temporary work agencies being ‘employed on terms inferior to those of permanent workers’) has been described as ‘augment[ing] insecurity, entrench[ing] unequal treatment and undermin[ing] rights’.¹¹⁶⁷

At an international level, immigration status is a key legal determinant of precariousness. It has been argued that human rights instruments and core ILO conventions that purport to regulate international migrant workers have ‘limited potential’ to challenge the regulatory practices of the state that produce precarious employment.¹¹⁶⁸ International law itself underpins this circumscribed potential, because it is the principle of state sovereignty that confers the rights on states to impose restrictions on migrant workers’ employment rights ‘in exchange for the privilege to enter host state territory’.¹¹⁶⁹ These measures are usually justified by states employing their sovereign right to exercise control over their territories, and to regulate their borders. Labour law scholars have drawn attention to how such rights are inscribed within international human rights instruments for migrant workers, which ‘defer to the principle of state responsibility over immigration policy’ and ‘accept the rights of states to impose restrictions’ on migrants’ employment rights in exchange for their right to seek employment within that country.¹¹⁷⁰ The Migrant Workers’ Convention also confers a much more limited scope of rights on irregular migrants compared to lawful migrant workers, and does not prevent

¹¹⁶⁴ *Ibid.*

¹¹⁶⁵ *Ibid.*

¹¹⁶⁶ Alexander, C., et al. (2015). *The “Zero-Hours Contract”: Regulating Casual Work, or Legitimizing Precarity?* European Labour Law Network Working Paper (No. 5), 205.

¹¹⁶⁷ Rossman, P. (2013). Establishing rights in the disposable job regime. *International Journal of Labour Research*, 5(1), 23-40.

¹¹⁶⁸ Fudge, J. (2012). Precarious migrant status and precarious employment: The paradox of international rights for migrant workers. *Comp. Lab. L. & Pol’y J.*, 34, 95.

¹¹⁶⁹ *Ibid.*

¹¹⁷⁰ *Ibid.*

the state from prosecuting irregular migrants if their employers were to report them when these migrants seek to enforce their employment rights.¹¹⁷¹ In conferring such powers, international law effectively legitimizes national laws that constitute ‘a source of workers’ vulnerability and a major cause of workplace exploitation’.¹¹⁷²

By creating a variety of different migrant statuses, the state itself is actively involved in ‘generat[ing] a differentiated supply of labour’ that in turn ‘produces precarious workers and precarious employment norms’.¹¹⁷³ For example, (economic) migrant workers can be subject to restrictive visa schemes,¹¹⁷⁴ while special legal rules apply to undocumented workers.¹¹⁷⁵ This mode of governance hence helps to produce precarious workers over whom ‘both employers and users of labour have particular mechanisms of control’.¹¹⁷⁶ There is usually a specific political economy to these actions by the state, which seeks to ‘actively regulate the supply’ of migrant populations, by instituting a range of ‘citizenship regimes’ with differentiated entitlements that reflect the diverse ‘needs of capital’ for different types of workers.¹¹⁷⁷

Consequently, scholars have suggested that, in practice, immigration controls constitute a ‘tap regulating the flow of labour’, with the *status* of migrants legally constructed as one of institutionalised uncertainty.¹¹⁷⁸ While there have been important interventions through the invocation of international human rights law to contest the validity of many of these measures,¹¹⁷⁹ there remains reasons to be sceptical about whether governments will comply. Indeed, studies have shown how governments have chosen to foster a hostile political climate

¹¹⁷¹ Berg, L. (2017). At the border and between the cracks: The precarious position of irregular migrant workers under international human rights law. In *Migrants and Rights* (pp. 287-320). Routledge.

¹¹⁷² Mantouvalou, V. (2023). *Structural Injustice and Workers' Rights*. Oxford University Press, at p. 7.

¹¹⁷³ Fudge, J. (2012). Precarious migrant status and precarious employment: The paradox of international rights for migrant workers. *Comp. Lab. L. & Pol'y J.*, 34, 95.

¹¹⁷⁴ See generally Chapter 4 ‘Migrant Workers’ in Mantouvalou, V. (2023). *Structural Injustice and Workers' Rights*. Oxford University Press; Zou, M. (2015). The legal construction of hyper-dependence and hyper-precarity in migrant work relations. *International Journal of Comparative Labour Law and Industrial Relations*, 31(2), 141-162.

¹¹⁷⁵ *Ibid.*

¹¹⁷⁶ Anderson, B. (2010). Migration, immigration controls and the fashioning of precarious workers. *Work, employment and society*, 24(2), 300-317.

¹¹⁷⁷ Lee, C.K. (2019). The Struggle Over Precarity. In Lee, C. K., Breman, J., Harris, K., & van der Linden, M. *The Social Question in the 21st Century: A Global View* (pp. 58-76). University of California Press.

¹¹⁷⁸ Anderson, B. (2010). Migration, immigration controls and the fashioning of precarious workers. *Work, employment and society*, 24(2), 300-317.

¹¹⁷⁹ See Mantouvalou, V. (2023). *Structural Injustice and Workers' Rights*. Oxford University Press, for an illuminating account.

to immigrants to devalue their labour, while simultaneously using international migration as a ‘regulatory labour market tool’ to reduce overall wage levels and increase flexibility.¹¹⁸⁰ Moreover, on a broader level, it is crucial to position the *relationality* of labour and capital, with borders being actively used as a construct to limit the freedom of movement of labour while international legal rules are set in place to facilitate the international mobility of capital.¹¹⁸¹

Building on the above analysis, it is also important to understand how the law does not merely produce precarity, but also creates a figure of the precarious *worker*. Instead of being confined to a conception of law that produces precarious working conditions which workers find themselves situated within, this approach sheds light on how the law itself conceptualises the political subjectivity of workers in particular, contingent ways. What a worker should be, and what a worker should accept as the normal and acceptable conditions of life, are implicitly drawn up through these laws that produce precarity. A zero-hour worker is hence persuaded to think of himself as a temporary ‘atypical’ worker with limited entitlements and protections; an undocumented worker is shamed into thinking of herself as an illegal immigrant with no choice but to access exploitative work; an immigrant care worker accepts that she leaves her children behind, while she cares for those of others with low pay. Without getting into decade-long debates about the relationship between agency and structure, I suggest that this dimension of law needs to be foregrounded for completeness and because of its significance in showing us how the law shapes political subjectivity, and the relationship of a worker with her own precarious state. Of course, on balance, while there is also the possibility of struggle against and within these legal structures – the very presence of these legal structures as *needing* to be struggled against demonstrate the metaphysical (and not only material) ways in which precarity has been produced *as a relation* with one’s self.

Taking stock of what we have discussed, these various modes of governance have been framed as part of the constitutive role of law, which can be understood in terms of law itself containing a pathway of ordering and actively constituting relations (including relations with our self). Next, I would like to suggest that there is another way in which modes of governance

¹¹⁸⁰ Bauder, H. (2006). *Labor movement: How migration regulates labor markets*. Oxford University Press.

¹¹⁸¹ See generally Piper, N. (2015). Global Migration Governance, Social Movements, and the Difficulties of Promoting Migrant Rights. In Schierup, C. U., Munck, R., Likic-Brboric, B., & Neergaard, A. (Eds.). *Migration, precarity, and global governance: Challenges and opportunities for labour* (pp. 261-279). Oxford University Press; Abdelal, R. (2007). *Capital rules: The construction of global finance*. Harvard University Press.

can be instituted, which is through modes of ‘ungovernance’ that I will now discuss in the next sub-section.

(3) *International Legal Reproduction of Precarity*

Any claim to governance ‘make[s] an initial assumption that the thing to be governend may become a viable object of law’, that it is ‘governable’.¹¹⁸² Legal scholar Stephen Humphreys has canvassed four modes of ungovernance – agnostic, experimental, inoculative and catastrophic – within the international institutional arena.¹¹⁸³ He asks us to think of ungovernance as the ‘provisional, strategic or self-conscious refusal of mechanisms of control in contexts of institutional purview’, whereby decisions are made *not* to manage a phenomenon ‘or the processes that produce it’,¹¹⁸⁴ or where ‘mechanisms of non-control’ are set in place that refuse institutions that have been ‘historically associated with “government”’.¹¹⁸⁵ The international legal apparatus therefore ‘presumes and embeds uncertainty regarding any resolution’, with the phenomenon itself therefore being produced as the ‘materialisation of ungovernance’.¹¹⁸⁶

Setting aside ontological questions of whether a phenomenon is indeed governable (which in itself presumes that a phenomenon can be known *a priori*, and is independently produced of modes of governance or ungovernance), I extend this compelling line of thinking regarding the ways in which ungovernance could be instituted to the *epistemic erasure* resulting from the concepts and categories that the law constructs and relies on, and the political economy contained within these decontextualised concepts that is therefore uncritically reproduced due to this mode of ungovernance – or, as the ‘materialisation of ungovernance’.¹¹⁸⁷ In theory, concepts could be criticised for obscuring the root causes and systemic logics producing a phenomenon, reifying social relations in an ahistorical way, or for concealing what is worthy of value. We can therefore think in terms of ungovernance even where choices have

¹¹⁸² See Humphreys, S. (2020). Ungoverning the climate. *Transnational Legal Theory*, 11(3), 244-266 [Humphreys] for a stimulating account of how governance by international legal institutions could constitute various modes of ‘ungovernance’.

¹¹⁸³ See also more generally Desai, D., & Lang, A. (2020). Introduction: global un-governance. *Transnational Legal Theory*, 11(3), 219-243.

¹¹⁸⁴ Humphreys, at p. 245.

¹¹⁸⁵ *Ibid.*, at p. 246.

¹¹⁸⁶ *Ibid.*, at p. 244.

¹¹⁸⁷ *Ibid.*

been made to include regulation by governmental institutions – where ungovernance is marked not by the absence of governance, but by the absence of governance of the logics producing the material phenomenon in question. Let us now think about how ungovernance operates within the international labour regulation of precarity.

On the face of it, the ILO has appeared to resolve the problem of exclusions from labour law (and therefore the problem of precarity) through the elegance of the new formula ‘decent work for all’, with the scope of work universally expanded to include *all* workers (including informal workers) and *all* forms of work (including unpaid care work). However, while this may well be an ideal scenario, the question remains of how this ideal formula is to be implemented in a *material* way. In this regard, the earlier two chapters have demonstrated that answering the question of *how* decent work is to be instituted (in the form of the transition to formality and the commodification of care work) has shown up the limits of universality as a discourse, replaced by newly configured permutations of a differential distribution of precarity (with those within the global South being disproportionately affected, while those within the global North nonetheless continuing to be subject to the systemic logics of precarization) – which are modes of racial and gendered governance in themselves.

As demonstrated in Chapter IV, precarization has been erased from debates regarding informality and formality, with a tenuous link to formalisation as a route to decent work established. However, in prescribing formalisation as a route to decent work, international labour governance orients states towards the creation of a system of legalised formal governance of labour relations, while the underlying systemic logics producing precarity are left untouched. As demonstrated in Chapter V, both precarization and feminization of the labour market are systemically linked, leading us to question the terms on which women are to be emancipated within the labour market. Labour regulation itself encapsulates an invisibly gendered form of work, while efforts to reduce the precarity of women in the form of the commodification of care raises questions of *which* women benefit from this arrangement. While the ILO seeks to engage in a valuable effort to increase the remuneration of women workers engaging in care work from the global South, thereby addressing the gendered exclusion of care work from labour protection regimes, the much larger question of unpaid care work effectively becomes invisible and remains unaddressed.

This last chapter has demonstrated the ways in which the racial dynamics of capitalism that produce and reproduce precarity, have been erased from view through the constructs of ‘free labour’ and depoliticised mode of governance of domestic ‘employment creation’ and the related construct of labour formalisation – issues that lie within the domain of domestic social policy. Instead, I have pointed to how labour regulation itself has become a method of facilitating capitalist accumulation, such that governance is enabled precisely through the politics of recognition and the symbolic classification (and differentiation) of workers. Precarity can therefore be analysed in relational, mutable and relative terms, rather than binary terms and idealised norm projections.¹¹⁸⁸ Understood in this light, the idealised projection of norms facilitates capitalist accumulation on variable terms and consent of those who are governed, rather than an achievable state, concealed beneath the telos of ‘decent work for all’ (as the ILO propounds).

It appears important to now take a step back from what are described as contemporary developments (as contained within the narrative of globalisation necessitating flexibilization), to remind ourselves that the international legal construct of ‘standard employment relations’ was itself a historical construct that was created in response to what appeared to be the inherently precarious nature of work within capitalist conditions. At the very least, it can be reasonably claimed that the deep historical roots of precarious work *pre-exist* globalisation¹¹⁸⁹ narratives, as seen in what has been described as a ‘pre-history of precarity’ within the global North. For example, the term ‘precarious employment’ (or related phrases) was already found within House of Commons debates between 1812 and 1935,¹¹⁹⁰ which is the period during which the Industrial Revolution was underway (and includes the second period of industrialisation). These terms were used precisely to refer to the types of work that we recognise today as precarious – ‘casual, temporary or seasonal work’ with low pay and irregular working hours – with a large range of occupations recognised as being predisposed to such precarious working conditions, including dockworkers (largely engaged on a daily basis), merchant seamen, construction labourers, agricultural labourers and ‘temporary’ government labourers.¹¹⁹¹ Additionally, this term included those with fixed term contracts (like seamen)

¹¹⁸⁸ Lee, C. K. (2021). China’s precariats. In Nilsen, A. G. & von Holdt, K. *Rising Powers, People Rising: Neoliberalization and its discontents in the BRICS Countries* (pp. 17-34). Routledge.

¹¹⁸⁹ For a more critical account of the concept of ‘globalisation’, see Osterhammel, J., & Petersson, N. P. (2005). *Globalization: A short history*. Princeton University Press.

¹¹⁹⁰ Quinlan, M. (2012). The ‘pre-invention’ of precarious employment: the changing world of work in context. *The Economic and Labour Relations Review*, 23(4), 3-23 [Quinlan].

¹¹⁹¹ *Ibid.*, at pp. 5-7.

and self-employed sub-contract workers (including fishermen, ‘home-based women workers’, and groups of children or families within the clothing trades).¹¹⁹² While recent research presents idealised or abstract views of subcontracting practices,¹¹⁹³ earlier accounts draw attention to the ‘coerciveness’, ‘harshness’ and inherent ‘exploitation’ within subcontracting regimes (such as the contractor/gangmaster system that was instituted to replace permanent farm labourers with casual workers).¹¹⁹⁴

Precarity was also used to describe labour market conditions more broadly, including particular seasonal occupations and more generally, to labouring classes ‘during periods of economic distress in industrial towns as in Birmingham in 1812’, and to describe the erratic nature of wages as a result of insecure work for ‘many if not most manual workers’ in the 19th and early 20th century.¹¹⁹⁵ The competitiveness of industrial conditions was described as having ‘compelled’ production to be implemented at speed and for low costs, leading to ‘the displacement of men no longer in the flush of youth’, and the deterioration of wages and working conditions for miners and industrial workers since the 1870s.¹¹⁹⁶ Such competitiveness was further exacerbated by practices of outsourcing. For example, in 1860, nearly 50,000 mostly female workers comprising of Irish migrants that had escaped the Great Famine were employed by industrialists in Dundee to process jute at very low wages.¹¹⁹⁷ However, most of this production shifted to India by the early 20th century since Indian workers could be employed more cheaply.¹¹⁹⁸ Labour historians have shown how modern outsourcing ‘continues a pattern begun by the earliest industry in the country, the textile industry, a century earlier’¹¹⁹⁹ precisely to circumvent strong trade unions by employing cheap labour overseas, with New England textile mills outsourcing production to the Americas in the early 20th century, then relocating in Puerto Rico in the 1930s, and in Colombia after the Second World War.¹²⁰⁰

¹¹⁹² *Ibid.*

¹¹⁹³ See Brass, T. (2004). ‘Medieval working practices’? British agriculture and the return of the gangmaster. *Journal of Peasant Studies*, 31(2), 313–340 for this observation, as cited by Quinlan at p. 8.

¹¹⁹⁴ Quinlan, at p. 8.

¹¹⁹⁵ *Ibid.*, at p. 10.

¹¹⁹⁶ *Ibid.*, at p. 11.

¹¹⁹⁷ Smith, at p. 40.

¹¹⁹⁸ See Roul, C., (2009). *The International Jute Commodity System*. Delhi: New Book Centre, and Cox, A. (2013). *Empire, Industry and Class: The Imperial Nexus of Jute, 1840-1940*, also cited by Smith at pp. 40 – 41.

¹¹⁹⁹ Chomsky, A. (2008). *Linked Labor Histories*. Duke University Press, at p. 294, also cited by Smith, at pp. 40 – 41.

¹²⁰⁰ *Ibid.*

This ‘pre-history’ shows us that these familiar practices of sub-contracting and offshoring – even if these have largely taken on arguably more sophisticated legalised and ‘formalised’ modes today such as the use of intermediary agencies and complex corporate governance structures – were commonly used even *before* the recent narrative of neoliberalism and globalisation. Indeed, there is a growing body of literature that indicates that the systematic rise of labour contracting arrangements is an adaptation and evolution from *colonial* recruitment methods.¹²⁰¹ In other words, this leads us to question what ‘normality’ really looks like, and it should lead us to more deeply question the terms on which we wish to pursue ‘development’. Instead, it shows us that the nature of such precarious work appears to be *endemic* within capitalism, with most of these ‘less productive’ jobs having been largely outsourced to the global South, therefore *enabling* the creation of an illusion that a developed ‘global North’ independently exists as captured within the telos of progress.

Instead, the assumption that capitalist development results in ‘progress’ as evidenced through progressive increases in wages is also undermined, with the competitive drive of industrial capitalism (even *during* an age of colonialism) inherently undermining incentives to increase wages. This ties in with Abi-Saab’s initial observation that the ILO had been set up in response to the Industrial Revolution and the growing interdependence of countries during this period, leading us to question why we have placed such an emphasis on the new forces of globalisation today as having resulted in precarity. Of course, while there are factors that have *accelerated* precarity – such as the growth of information technology and better transport and communications – the root causes¹²⁰² of precarity appear to be located within the development of capitalist conditions themselves, although we recognise this phenomenon today within the global South as signalling a lack of development or insufficient integration within the global economy.

Indeed, it is imperative that we connect the ‘crisis of labour law’ noted by labour law scholars (predominantly located within the global North and referring to labour relations found within the global North) to the globally declining terms of employment today. On the one hand,

¹²⁰¹ De Neve, G. (2014). Entrapped Entrepreneurship: Labour Contractors in the South Indian Garment Industry. *Modern Asian Studies*, 48(5), 1302–33; Mezzadri, A. (2016). The informalization of capital and interlocking in labour contracting networks. *Progress in Development Studies*, 16(2), 124–139. See also Mezzadri, A., & Fan, L. (2018). ‘Classes of labour’ at the margins of global commodity chains in India and China. *Development and change*, 49(4), 1034–1063, at p. 1040.

¹²⁰² See generally Marks, S. (2011). Human rights and root causes. *The Modern Law Review*, 74(1), 57–78.

international law has constituted a *hierarchically differentiated* understanding of ‘free’ labour precisely through the creation of a range of categories such as ‘precarious’ work, ‘atypical work’, ‘non-standard work’, ‘informal’ work and ‘unacceptable forms of work’. On the other hand, idealized norms of a ‘standard employment relationship’ and the related construct of ‘decent work’ (supposedly on terms that result in gender equality) appear to have subsequently evolved within the discourse of the ILO. Taken together, the continued orientation of the global South towards these idealised norms,¹²⁰³ in the form of a transition to formalisation despite the ongoing ‘crisis of labour law’, indicates a historical *continuity* with the civilising anti-slavery politics that serve the ideological function of veiling capitalist exploitation, through functioning as a mode of ungovernance in itself. However, the ongoing production of precarization within the global North and South (even if on differentiated terms) indicates that such a mode of ungoverned management of the Third World here refers to a broadened understanding of the Third World as that which is located within *both* the global North and South. Accordingly, insofar as Abi-Saab referred to the need for a politics of common interest, and community, perhaps this would be one place from which to start.¹²⁰⁴

Consequently, I suggest that international law appears to reify precarious work as a status, rather than a relation. It obscures a deeper understanding of the processes by which precarity is produced, by laying focus on the status or outcome of precarity rather than the underlying logic of labour markets in perpetuating precarity (both within and outside the labour market). Instead, it is *precisely* these various categories of labour with differentiated rights that have enabled an intricate lattice of governance to be produced, through which the contradictions and tensions of capitalist-labour relations on a global scale are managed, and systemic logics of accumulation facilitated. By locating precarity (increasingly described as informality) as a domestic problem of social policy, precarity always produces the state as failing,¹²⁰⁵ with this perennial state of failing thereby enabling governance.¹²⁰⁶ By excluding

¹²⁰³ See Chapter IV.

¹²⁰⁴ See Anghie, A. (2023). Rethinking International Law: A TWAIL Retrospective. *European Journal of International Law*, 34(1), 7-112, suggesting that TWAIL offers ‘important insights into the workings of neo-liberal capitalism’ and offering the insight that a crucial question needs to be asked of whether people in the global North and South ‘understand their common interests and develop a politics and a system of governance that can advance them’, at p 104.

¹²⁰⁵ Eslava, L., & Pahuja, S. (2020). The state and international law: A reading from the global south. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 11(1), 118-138.

¹²⁰⁶ See Section C(1) above, with the additional dimension of international labour governance as demonstrated within this dissertation thereby supplementing the insights within Chimni, B. S. (2004).

the systemic logics producing precarity from our modes of governance, this mode of ungovernance is precisely what reproduces precarity within our international legal order; it inimitably ensures that we remain governed by precarity.

In response, the question may then arise of whether international law could ever end up treating precarity as a relation, instead of a status.¹²⁰⁷ International law, at least within the field of international labour law, has certainly shown that it is capable of both discursively and materially accommodating relational dimensions, through its emphasis on collective bargaining. If the current modus operandi of the international legal order has created a lattice of differentiated rights, one could envisage a synergy within this lattice to create a system of more equal rights. Optimistic possibilities could, in theory, be suggested along the lines of using the vehicle of the ILO to strengthen the international bargaining power of workers, such as those found within global supply chains, to collectively improve their working conditions. The law plays a critical role in constituting political subjectivity,¹²⁰⁸ and this includes the constitution of trade unions or any such similar organisations, and the reach of their bargaining power (which could transcend the individual enterprise level to reach a sector-wide, or even global industry-wide scale). Furthermore, the law could structure this process in a way which ‘privileges the capacities, needs and desires of informal workers themselves’ and move away from a formalisation strategy rooted in ‘state-centric, legalistic and deficit-based origins’.¹²⁰⁹ Beyond this direct relationship between capital and labour (as encapsulated within collective bargaining relations), a relational perspective would pay closer attention to the relations that reproduce the worker, and the gendered dimensions of unpaid care work producing precarity, which are currently invisibilized within employment status that has been reified within international law. On a broader relational level, at the institutional level, these efforts could take place in dialogue with international financial institutions and perhaps even through rewriting the imperatives of international economic law itself.

International institutions today: an imperial global state in the making. *European Journal of International Law*, 15(1), 1-37.

¹²⁰⁷ I thank my examiners for this thought-provoking question.

¹²⁰⁸ Knox, R. (2016). Law, neoliberalism and the constitution of political subjectivity: The case of organised labour. In *Neoliberal Legality* (pp. 104-130). Routledge.

¹²⁰⁹ Rosaldo, M. (2021). Problematizing the “informal sector”: 50 years of critique, clarification, qualification, and more critique. *Sociology Compass*, 15(9), e12914.

In response to such an optimistic utopia, the next question that may consequently arise is whether we are asking more of international law than it is capable of as a social form.¹²¹⁰ Precisely due to my own scepticism regarding these optimistic possibilities that I have just sketched, I had chosen to conclude a previous version of this dissertation with the rather grand statement that the international legal order inimitably ensures that we remain governed by precarity. In response to boundless optimism, one could easily point to how unlikely such possibilities appear even within the insular context of the ILO, where the tripartite institutional setting has resulted in employers' representatives questioning everything from the right to strike, to the authority of the CEACR to issue pronouncements, to the language of precarity itself. From the workers' perspective, one could raise a litany of struggles, including the financialization of household debt increasing the financial insecurity of employees and thereby 'curb[ing] their resistance' to accepting precarious or atypical work.¹²¹¹ Moreover, as a TWAIL scholar, I am more than cautious about how a supposedly universalised system of global labour rights would be more likely to approximate the protectionist effects of social clauses rather than a genuine reorganisation of work outside of our 'racialised and gendered global division of labour'.¹²¹² As such, there would be a 'certain sense of irony' if I were to have ended this chapter with a 'fully workable protocol of universal salvation' complete with detailed 'programmatic prescription' (or, more likely 'speculative thought').¹²¹³

Nonetheless, the fact remains that there is a certain tension that animates this moment, where we find an ideally progressive project of critique, whose aim presumably is to 'work towards progressive change'¹²¹⁴ rather than reify a mystified portrayal of ungoverned precarity, juxtaposed against a Marxist legal critique that focuses on the social form¹²¹⁵ as crippling any

¹²¹⁰ I thank my examiners again for this stimulating question. See also Rasulov, A. (2021). The Discipline as a Field of Struggle: The Politics and the Economy of Knowledge Production in International Law. In Bianchi, A. & Hirsch, M. *International Law's Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (pp. 180 – 199). Oxford University Press, for an insightful account of the internal logics of the discipline of international law as a social form.

¹²¹¹ Gouzoulis, G. et al. (2023). Financialization and the rise of atypical work. *British journal of industrial relations*, 61(1), 24-45.

¹²¹² See Chapter V.

¹²¹³ Rasulov, A. (2018). A Marxism for International Law: A New Agenda. *European Journal of International Law*, 29(2), 631-655, at pp. 654 – 655 [Rasulov].

¹²¹⁴ Venzke, I. (2021). Cognitive Biases and International Law: What's the Point of Critique? In Bianchi, A. & Hirsch, M. *International Law's Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (pp. 55 - 71). Oxford University Press

¹²¹⁵ See Tzouvala, N. (2021). Capitalism as Civilisation, Or How to Respond to Your Book Reviews When the Author Is Dead. *Eur. J. Legal Stud.*, 13, 137, at pp. 148-50.

attempt at reform.¹²¹⁶ This dissertation has pointed to the ways in which the SER is the legal (and social) form that animates international labour governance, and therefore reproduces precarity. Critical scholars of labour law¹²¹⁷ have more broadly pointed to the ways in which the legal form of the wage relation ‘actively obscures, and sustains, capitalism’s distinguishing mode of exploitation’.¹²¹⁸ Supplementing such a critique, one could suggest that it is precisely the reification of the idealised SER that helps to obscure exploitation inherent within the wage relation,¹²¹⁹ which has the material effect of helping to stabilise the core of formal workers where applicable, whilst orienting regulatory strategies for those in the periphery towards an approximation of the SER.

However, such an account foregrounding the ideological¹²²⁰ dimensions of the SER would plainly disregard the ways in which labour rights have historically been the product of contestation and struggle by the working class, with the SER arising out of a particular historical moment of class compromise – even if it was accompanied by raced and gendered exclusions. It would also presuppose that it is the machinations of international law and an idealised SER that orients and constitutes political subjectivity globally. As such, if pressed, instead of placing emphasis on the limitations of law as a social form, I would point to the ways in which law nonetheless holds space for contestation arising out of the contradictions within capitalism. I have highlighted only one such dimension pertaining to the crisis of social reproduction within Chapter V, which points to the need to limit ‘the tendency for capitalist competition to destroy itself’.¹²²¹ Furthermore, I have not examined other potential sites of

¹²¹⁶ Rasulov, at pp. 639-644 discussing the untenability of a positionality that insists on revolution alone.

¹²¹⁷ See Dukes, R. (2019). Critical labour law: then and now. In Christodoulidis, E. et al. *Research Handbook on Critical Legal Theory* (pp. 345-362). Edward Elgar Publishing drawing an important distinction between the ways in which the ‘mainstream tradition’ of labour law is critical, and how critical legal scholars would take a critical view of law and legal processes itself. The sense in which I have employed the term ‘critical’ here is that of the latter.

¹²¹⁸ Adams, Z. (2022). A Structural Approach to Labour Law. *Cambridge Journal of Economics*, 46, 447. See also: Adams, Z. (2021). Labour Law, Capitalism and the Juridical Form: Taking a Critical Approach to Questions of Labour Law Reform. *Industrial Law Journal*, 50(3), 434-466; White, A. (2021). Marxism, labour and employment law, and the limits of legal reform in class society. In *Research Handbook on Law and Marxism* (pp. 299-318). Edward Elgar Publishing.

¹²¹⁹ Cf. Marks, S. (2008). Exploitation as an International Legal Concept. In Marks, S. [ed]. *International law on the left: Re-examining Marxist legacies* (pp. 281-307). Cambridge University Press [Marks], for an illuminating account of the international legal concept of exploitation.

¹²²⁰ As mentioned in the Introduction, I am inspired by and draw on the method of ideology critique from Marks, S. (2003). *The riddle of all constitutions: International law, democracy, and the critique of ideology*. Oxford University Press.

¹²²¹ Cf. Cammack, P. (2022). *The politics of global competitiveness*. Oxford University Press.

contestation and contradiction such as the ecological dimension pertaining to the materiality of social reproduction, which could be further explored.¹²²²

One would also need to be cautious against subscribing to false contingency, and recognising the ‘limits and pressures, tendencies and orientations, over-determination and determination in the last instance, that shape both realities and possibilities’¹²²³ within aspirational projects of worldmaking. For example, other countervailing factors at play include the increasing financialization of the labour process inducing employees to accept precarious work,¹²²⁴ or the ways in which funded pensions themselves act as catalysts for financialization.¹²²⁵ In response, I would personally find it difficult to speak of reducing lived experiences and the material reality of struggle to tactics in service of a larger strategy,¹²²⁶ and as such would not presume to sketch a roadmap of tactics or strategy regarding the role that international law ought to play or could play in our present moment. In its place, I have more modest ambitions of encouraging a ‘more adequate kind of engagement with the problem of exploitation [which] would point up the enormity and complexity, but also the irreducible specificity, of this facet of contemporary life’.¹²²⁷

¹²²² Davies, J. (2016). *The Birth of the Anthropocene*. University of California Press. Cf. Moore, J. W. (2018). The Capitalocene Part II: accumulation by appropriation and the centrality of unpaid work/energy. *The Journal of Peasant Studies*, 45(2), 237-279.

¹²²³ Marks, S. (2009). False contingency. *Current Legal Problems*, 62(1), 1-21, at p. 10. See also Tzouvala, N. (2020). *Capitalism as civilisation: a history of international law*. Cambridge University Press.

¹²²⁴ Thompson, P. (2013). Financialization and the workplace: extending and applying the disconnected capitalism thesis. *Work, employment and society*, 27(3), 472-488.

¹²²⁵ Braun, B. (2022). Fueling financialization: the economic consequences of funded pensions. *New labor forum*, 31(1), 70-79.

¹²²⁶ Cf. Knox, R. (2009). Marxism, international law, and political strategy. *Leiden Journal of International Law*, 22(3), 413-436.

¹²²⁷ Marks, p. 307.

CONCLUSION

The Outset

In order to retrace the path that I have taken in this thesis, I shall first recapitulate its original outset with a view to reflecting on how it has unfolded in this research study on *rethinking* precarity. The starting point of my endeavour was to think *with* precarity about the international regulation of labour law. My earliest intuitions regarding the project had been to critically examine the ways in which international law may have been facilitating precarity globally, through its failure to adequately regulate the problem of precarity. However, as my research unfolded, it became apparent that there were theoretical assumptions made in thinking conceptualisation of precarity that needed to be examined more closely. Accordingly, it became apparent to me that in thinking with precarity about the international regulation of labour, I needed to open a path to critically thinking *about* the understanding of precarity itself, which is usually presupposed as a lens that would be readily available for analysing the international regulation of labour.

By choosing such a different angle of rethinking precarity, I intended to subject the conventional use of precarity, that is as a lens through which the phenomenon of precarity is globally perceived, to closer scrutiny. In order to problematize this category in a reflexive way within the international legal sphere, I proposed to historicize the concept of precarity and its related assumptions that underpin international legal discourse. This, in turn, allowed an exploration of the ways in which international law is actually sustaining precarity while formally disavowing it, therefore shining light on its constitutive role in producing precarity. The real question is then how precarity itself could be functioning as a mode of governance. The aim of this thesis is thus to contribute to our understanding of the conceptualization of precarity in international law, and to open up critical questions of how precarization processes are being obscured within international legal discourse.

While focusing on the role of precarity in the regulation of labour law, the broader aim of this thesis has been to make a contribution to international legal scholarship, and I have drawn on the TWAIL approach (as broadly understood) to do so. My understanding of TWAIL

has involved exploring the ways in which international law furthers injustice not only within the Third World but globally, through its mode of analysis of centring the Rest rather than the West in our understanding of the concept of precarity.¹²²⁸ Particularly, I have been drawn to the idea of excavating ‘historical and conceptual distortions’ within the international legal sphere, and been motivated by the need to draw attention to the ‘political, cultural and economic biases’ that are ‘embedded within the international legal project’.¹²²⁹ This TWAIL orientation has offered a fruitful lens through which I have been able to examine the unstated assumptions that operate within the categories that international law employs, and the modes of ordering that have been set in motion as a result of regulatory processes instituted arising from these concepts.

Against this background, this dissertation builds on a small but growing body of scholarship foregrounding a more critical perspective in analysing the ILO’s role in the international regulation of labour. This perspective is distinct from an account of the ILO as being weak or ineffective, which in turn presupposes the possibility of effectiveness wherein it is idealised as performing the role of being a positive counterbalance within our globalised world to achieve decent work for all. Specifically, the lens of precarity (both as a concept with its own set of presuppositions and as a tool) has allowed me to work out a deeper understanding of the role of the ILO in internationally regulating labour. Briefly, I started with an overview of the general idea of precarity as a concept in the dominant discourse (Chapter II), explored how the ILO has discursively produced a construct of ‘standard work’ that is historically and spatially contingent, and which normatively orients regulatory responses to precarity (Chapter III), critically examined the relationality of precarity that is obscured in international legal discourse (Chapter IV), and turned to an analysis of how gendering precarity reverses the dominant discourse of precarity itself (Chapter V). This, in turn, has allowed using the concept of precarity to tell a much broader story about the *international* regulation of ‘free labour’ and the role of international law in obscuring the differentiated raced and gendered dynamics of precarity, and to understand the ways in which precarity has come to constitute a mode of governance in itself (Chapter VI).

¹²²⁸ Eslava, L., & Pahuja, S. (2011). Between resistance and reform: TWAIL and the universality of international law. *Trade L. & Dev.*, 3, 103-130, at p. 103.

¹²²⁹ *Ibid.*

Chapter II: The Idea of Precarity

The examination of the dominant discourse underpinning the concept of precarity has allowed us to understand how we (in the English-speaking world) have come to talk about precarity in the 21st century. Starting with the historical invention of the word ‘precarity’ within the English language, this general stock-taking allowed an exploration of the etymology of precarity and its associated derivation ‘precarious’ by putting these two terms into relation with each other. While the term ‘precarity’ is commonly understood in our modern world to refer to insecurity and threats of impermanence in relation to our means of living and our standard of living, this term has itself been derived from the word ‘precarious’ which involves connotations of physical instability (such as being precariously balanced on a precipice) or dependence on chance or circumstances. The etymology of ‘precarious’ in turn can be placed in the common Latin root of ‘prex’ (or prayer), with its historical usage describing the conditions of being dependent on someone instead of being entitled to something. However, the modern definitions of precarious appear to have divorced insecurity and instability from their relational and causal context (wherein one is situated within implicit relations of dependence and subjugation) and have moved towards a more neutral descriptive sense of an ahistorical state of being precarious. In a similar vein, philosopher and political theorist Judith Butler has distinguished between an ontological (ahistorical) condition of precariousness, and the politically induced condition of precarity which differentially distributes our universally experienced corporeal vulnerability. In doing so, their distinction allowed a foregrounding of the dynamic of *relationality* that underpins precarity which has in turn inspired the analysis that followed in this dissertation.

Next, I analysed the reasons underlying the rise of precarity as a concept, and as a discourse. Tracing the rise of precarity as a concept to the work of scholars Anne Kalleberg and Guy Standing, I located the importance of the concept of precarity as being partly rooted in academic theorizing pertaining to global changes in employment relations. However, further tracing its origins showed clearly that the rise of precarity needed to be properly understood in its historical context, notably as a concept that was taken up by European social movements for the purposes of political mobilization. Having identified some of the reasons underlying the rise of precarity as a concept, Chapter II set out a brief overview of how the concept of precarity has since been understood within various academic fields, including the scientific literature (psychology and public health) and social scientific literature (including sociology,

anthropology, cultural studies, industrial relations and international relations). What results is a sense of the diversity of ways in which precarity has been conceptualized within a range of disciplines, and the vibrant burgeoning nature of this area of scholarship.

This then allowed investigating the concept of precarity as both a ubiquitous yet differentiated phenomenon that is observed within the world, and as an analytical construct. A dominant discourse underlying the production of precarity and detailed a range of factors that were understood to causally give rise to precarity, largely rooted in neoliberal flexibilization from the 1970s onwards and larger systemic changes in production systems that were accelerated through the twin processes of globalisation and financialization.

Chapter III: International Law and Precarity

After analysing the genealogy of the general idea of precarity, the focus shifted to the international legal arena so as to examine what law has had to say about precarity, with a specific emphasis on the ILO.

First starting with the discourse of precarity, even if the significance of precarity was acknowledged within at the international institutional level, it was shown how the use of the language of precarity itself in the ILO was a contested one. Employer representatives within the tripartite institution of the ILO prefer a focus on the necessity for flexibility instead, while the ILO's Committee of Experts, government representatives and worker representatives continue to liberally refer to and presuppose what the term 'precarious employment' referred to. Subsequently, the attention of the analysis shifted to how international legal discourse has characterized precarious work in relation to a number of legal elements such as time, status of employment, earnings, regulatory protections and immigration status that were deemed to be missing, or inadequate. The significance of this definition could be seen to be set in antithetical opposition to the *norm* of the 'standard employment relationship' (SER), which had been a normative model of employment during the 20th century. This, in turn, has illustrated how several dimensions of precariousness have been implicitly derived from the *absence* of elements of the SER. What emerged is a clearer sense of the discursive role of international law in producing an understanding of what constitutes the normality of 'standard work' in juxtaposition to the inadequacy of 'precarious' work.

Moving beyond the question of demarcating what constituted the concept of precarity, I shifted focus to the question of who the subjects of precarity were, with a view to arriving at an understanding of how international law temporally and spatially situated these subjects of precarity. This question was informed by the understanding of precarity from Chapter II as a construct with the ‘baggage of a European social movement’ and its deviation from societal norms within industrialised countries of the SER. This question became crucial for understanding the material reality of precarious work and its wider significance, in terms of the perceived subjects of precarity. Here, it was identified how the term ‘precarious employment’ appeared to have been deployed at critical junctures to *justify* the transition from an ‘informal’ to formal economy, and therefore decent work. Furthermore, it drew attention to how the concept of precarity had been incorporated into an understanding of ‘unacceptable forms of work’ which was significant because the ILO had made the question of what makes forms of work socially unacceptable, and posed the related question of what modes of regulation can eliminate unacceptable forms of work, as a ‘central strand of its global policy agenda on its 2019 centenary’.

The analysis of the question of where precarity is found in the international legal discourse allowed an understanding that international law’s perception of precarious work was that it was predominantly found within the informal economy and in non-standard work. This kind of descriptive account has an important spatial significance, for informal work is predominantly found within the Global South. Cognizant of the fact that geographers have long understood that the spatial patterns that they study can usually only be explained in historical terms, I found that there appeared to be much less attention paid to the temporal scale of precarity within the international legal discourse, compared to the geographical scale of precarity. While many institutional materials had a temporal understanding of precarity as being confined to recent developments pertaining to globalisation within the European sphere, some perceived precarity as a long-standing feature within developing countries with predominantly informal economies, and as a feature that was now newly spreading to industrialized countries. Insofar as the subjects of precarity were concerned, international law appeared to be attentive to the material reality of precarity as a differentiated phenomenon along axes such as gender, age, class and citizenship.

The survey of the legal discourse then allowed an examination of the international legal response to precarity. Here, I showed how there were intractable debates within the ILO

regarding responses to this problem that could not ultimately be resolved. Multiple failures to successfully reach resolution regarding a draft Convention on Contract Labour, resulted in the employment relationship being seen as a 'no-go-area'. Significantly, criticisms of current international labour standards, which are premised on the normative model of 'standard work', have had little impact on the expansion of precariousness. This backdrop allowed foregrounding how 'profound changes in the paradigms of national and international economic policy' were claimed to be required to respond to the problem of precarity.

This description of international legal discourse invited a reflection on some of the assumptions that underpinned the relationship between international law and precarity. The first assumption was the conceptualisation of precarious work as expanding within a context where the SER has widely been perceived as the norm, and with this premise underlying the ILC. In this vein, this chapter drew attention to the discursive role of the international legal sphere in producing an understanding of what constitutes 'standard work' and 'precarious work'. Accordingly, on these terms, the historical task at hand had been 'to bring within [international law's] ambit those who remained at the margins of the standard employment relationship' such as atypical workers. Consequently, the spread of precarious work today was now portrayed as 'cannibalizing the core of the 'formal' economy' and challenging this notion of what constitutes the margins. This assumption pointed to precarity as being positioned in exceptional terms, in relation to the notion of 'standard work' as captured within the normative model of the SER.

The second assumption was that such a conceptualisation of precarious work, conceived as a deviation from the SER norm, can be extended towards analysing and remedying informal employment within developing countries where the SER had never been the norm. Indeed, international law quite readily perceived precarity within informal employment of non-European origins, with the discourse of the unacceptability of precarious work hence being used to advocate for a transition towards formality. This assumption pointed to an expansive notion of precarity, being used to describe (or redescribe) global labour relations.

The third assumption was that international law has an unproblematic relationship with precarity, and if at all, the only problem is the lack of adequate laws in regulating precarity. While there was an emerging body of literature detailing precarity's relationship with legal

regulation, and its constitutive role in precarity, I highlighted how the relationship of *international* labour law with precarity has been less examined, and even less so its role in consolidating such legal norms constituting precarity within global political economy, and the implications that flow from this for our understanding of the role that international law plays in producing precarity.

The final assumption was that the concept of precarity presupposes what constitutes work within the economy, excluding (for example) unpaid work, and defines how value is to be calculated. Furthermore, the concept of precarity itself and the solutions proposed appear disconnected from the earlier section describing the ways in which the subject of precarity is differentiated along axes of class, race, gender and citizenship (amongst others). The assumptions underpinning the overarching narrative of precarity arising out of neoliberal globalization, flexibilization and changes in modes of production does not appear to account for the processes that produces *differentiated* precarious subjects. This disconnect pointed to the possibility that some of the systemic logics producing precarity may be obscured from regulatory solutions.

After having worked out precarity as a concept, its significance, its consequences, and its proposed solutions, I moved to the next task of understanding what precarity (juxtaposed to ‘standard work’) does in terms of its discursive effects and the functions that it performs in orienting reality.

Chapter IV: The Relationality of Precarity

In order to be able to understand the relationality of precarity, three assumptions within the international legal discourse required further examination, notably the portrayal of precarious work as a deviation from ‘standard work’ as a norm (what I characterize as the ‘exceptional nature of precarity’); the extension of the conceptualisation of precarious work to encompass informal work within the global South (what I call the ‘expansive concept of precarity’); and the relationship between international law and precarity.

Regarding the first assumption of the exceptional nature of precarity, it was necessary to deconstruct the term ‘standard work’. Wide-ranging exclusions from the norm of ‘standard work’ (both within the global North and South), and the ways in which the historic norm of

‘standard work’ itself was built on unequal relations call into question the depoliticized portrayal of ‘standard work’ as an independent construct. It became evident that it was necessary to foreground these exclusions from the dominant discourse of precarity as involving a reversal of the historic normality of ‘standard work’, due to flexibilization, as undermining this larger narrative of precarity itself as being partial. More specifically, I have foregrounded the historic contingency of international labour frameworks in creating an idea of normality regarding ‘standard work’.

The second assumption within the expansive concept of precarity, i.e., that the conceptualisation of precarious work is conceived as a deviation from the norm of ‘standard work’, needs to be problematized by analysing and remedying informal employment within developing countries where ‘standard work’ had never been the norm. I critically discuss how informality was being redescribed as precarity within the international legal arena and analyze the conceptual slippage between these two concepts with a view to their material (and not only discursive) implications. I examined how the discourse on precarity could be connected to a more long-standing discourse on informality within the ILO. Instead of a concern with the precarious, unstable nature of work within the global South, concerns about informality arose out of a rather different set of concerns regarding productive employment and unemployment.

Firstly, I analysed the conceptual conflation of two sets of different concerns that underpin informality and precarity. Informality arose out of distinct political economy concerns, in the form of dealing with unemployment (and under-employment) within the global South from the 1970s onwards, rather than the insecurity of employment relations as perceived in the 2000s within the global North. As such, there was a real danger of mischaracterising what has been the norm of informality within the global South, in contrast to predominantly formal work within the global North, in broadly pejorative terms. Specifically, it risked instituting an eternal developmental hierarchy, and a dynamic of difference between the global North and South that characterizes the global South as always inferior and under-developed.¹²³⁰

The second was that the history of informality as a concept tells us that, despite having been characterised as a longstanding phenomenon within the global South, it has been

¹²³⁰ Anghie, A. (2007). *Imperialism, sovereignty and the making of international law*. Cambridge University Press.

perceived in different ways depending on the theoretical lens that one used to interpret it. For example, Singer and Jolly distanced themselves from an underemployment framework by positively framing informal work as efficient and profit-making, and further contended that broader policy changes that redistributed the benefits of economic growth were needed instead. In our current setting, it appears that informality has taken on a new inflection of concerns regarding the pejorative effects of precarity and insecurity (which has also been *explicitly* recognised in these terms within international legal discourse, as noted in Chapter III(B) ‘Situating the Subjects of Precarity’). Materially, this conflated discourse has since resulted in the characterisation of responses to informality as ‘formalisation’, which carries an orientation towards a legalised approximation of ‘standard work’ in the form of work that has regulatory protections and benefits. With this contingent history of informality in mind, I sought to subject the discourse of ‘formalisation’ to closer scrutiny.

In the next section, I showed how the notion of informality arose out of distinct political economy concerns, in the form of dealing with unemployment (and under-employment) within the global South from the 1970s onwards, rather than the insecurity of employment relations as perceived in the 2000s within the global North. However, a curious convergence between the discourses of informality and precarity is witnessed here, which may account for the contemporary conceptual slippage between informality and precarity. However, against this contestation, the recommendation for informality within the global South *remains* the *transition* to formality, despite the formal sector itself (subject to processes of informalisation) not holding the promise of stability that those in the informal sector are held out as aspiring towards. Analytically, against the backdrop of conceptual slippage between precarity and informality within contemporary institutional discourse, there therefore appears to be a logical leap in contemporary prescriptions that the solution to informality (of formalisation) may now be *re-described* as a solution to precarity. The problem of informalisation within the formal sector is therefore effectively concealed from view through this prescription of formalisation, with precarization therefore reifying a dynamic of difference between the global North and South.

Against this context of an understanding of formalisation as unsupported by regulatory mechanisms directed at informalisation within the formal sector and historical failures within the ILO to regulate precarity, I proposed that it is important to further reflect next on the significance of these *dynamics* of informalization within precarity, which predominantly

pertains to *formal* work within the global North, that appear to be elided within formalization as a governance strategy within the global South.

In response to the third assumption regarding law's unproblematic relationship with precarity, I sought to reinscribe precarious work within a relational/causational context of the underlying process of informalisation. Specifically, I drew on Marxist understandings of the deeper-rooted nature of the concept of precarity, to foreground the relationality of precarity in this section, as being rooted in the underlying dynamics of capitalist accumulation, and thereby leading to the re-emergence of informalisation even within the formal sector. Accordingly, I unsettled the assumption within international legal discourse that the precarious nature of work within the global South is largely due to informality and a lack of compliance with the law, which was an incomplete explanation that occludes deeper systemic logics at play in the production of precarity globally.

Chapter V: Gendering Precarity

This chapter turned to the analysis of precarity through the lens of gender. In the first part, I drew on a range of feminist literatures to understand how and why precarity is significant through the lens of gender. This body of literature illuminated how precarious work is, in some respects, a gendered phenomenon, with women's working conditions always having been precarious. Indeed, the fact that the very notion of 'flexibilization' is associated with the 'feminization' of working conditions captures this gendered reality. This section comprised of three parts: the gendered nature of precarious employment, the significance of gendered unwaged work in relation to precarious waged work, and the question of which women are more affected by precarious employment. Rather than broadly generalizing about gender-specific effects across broad temporal and spatial scales, I had the more modest ambition of providing analytical categories and illustrations to illuminate the various ways in which women may be shown to be differently affected by precarity. In doing so, I sought to further clarify the underlying theoretical contestation regarding the relative significance of these claims within different strands of feminism.

In the second part, I excavated the relationship between international law, precarity and gender. Specifically, I highlighted the historic role of international law in producing precarity as a gendered phenomenon within the international legal construct of 'standard work', and the

ways in which it has excluded women's work from its definitions of what is considered to be 'work'. This pointed to the underlying narrative of precarity as being juxtaposed to the normality of 'standard' work, as being a gendered narrative. Nonetheless, I tracked the ILO's increasing recognition of women's work as being of value, through its increased attention to care work (including unpaid care work and paid domestic work) which appears to reflect the potential mutability of gender relations. I connected this section to the earlier theoretical section (regarding the gendered nature of precarious work) and proceeded to ask questions about which women are left less protected by the ILO's attention to care work. In doing so, I drew on an intersectional lens to point to the ways in which race and class dimensions were left out of the ILO's approach to gender.

Having set out with the initial intention to understand precarity through the lens of gender, and the significance of international law as part of the explanatory context of precarity as a gendered phenomenon, I showed how it appeared that a new layer has been uncovered. Reification supports relations of domination by making such relations appear eternal and necessary, such that the social world is seen as fixed and unchangeable.¹²³¹ De-reification, then, requires restoring contingency and historical specificity to these relations of domination.¹²³² Extending this concept developed by Marxist philosopher Georges Lukács to expose ideology within capitalist domination of class relations to that of patriarchal domination of gender relations, this chapter made a contribution to de-reify what has been described as gendered relations of precarity. Firstly, it turned to feminist literatures to provide historical specificity and context to the relationship between precarity and gender. Secondly, it highlighted the historic contingency of international law in producing gendered norms (on the basis of the construct of 'standard work' which was in itself a gendered notion) as the basis of regulatory responses to precarity. Thirdly, it tracked international law's increasing attention to the gendered nature of work, which signals the potential mutability of gender relations, yet obscures systemic logics producing 'a crisis of social reproduction' and the differentiated precarization of women.

¹²³¹ Lukács, G. (1971). *History and Class Consciousness*. Merlin Press. For a lucid account of reification, and of ideological modes in general, see Marks, S. (2003). *The riddle of all constitutions: International law, democracy, and the critique of ideology*. Oxford University Press, at pp. 19 – 25.

¹²³² *Ibid.*

Chapter VI: Retelling the Tale of Precarity

This chapter developed our focus on precarity to tell a much larger story about the *international* regulation of ‘free labour’. What this chapter offered was a different framing of the international regulation of labour, by clarifying the epistemic implications of the discourse of the ILO for the international legal order. It sought to do so by providing a broader theoretical analysis of the function of international labour regulation, to help us comprehend more critically the role that international law plays through the means of this body of law.

In telling this story, I offered two perspectives that lead on from each other. In the first section, I told the story of how a key purpose of international law had been the shaping and production of a global workforce that met the demands of capitalist enterprise. While there are many possible angles to such a story, I focused specifically on the role of international law on labour in producing an epistemic framing of what work counted as labour, and the conditions within which such labour could be perceived as ‘free’. In the next section, I moved on to tell a different story of the silences and, arguably, complicity of international law – a story of what has been left out of this narrative of ‘free labour’, through which I seek to problematise the mainstream narrative of precarious working conditions that have been affecting ‘free labour’, and instead offer some alternative accounts for our consideration. In doing so, I sought to render the familiar strange, via the unsettling of the concepts of ‘unfree’ and ‘free’ labour through the lens of precarity, and to also render the strange familiar for those who are accustomed to hearing the mainstream narrative of precarity. In the last section, I sought to reflect on the theoretical implications of this story and offer an alternative framing that helps us see the international regulation of labour in a different way. Specifically, I suggest that precarity is not just a problem to be solved through the international regulation of labour, but a mode of governance in itself.

In conclusion, I suggested that international law appears to reify precarious work as a status, rather than a relation. It obscures a deeper understanding of the processes by which precarity is produced, by laying focus on the status or outcome of precarity rather than the underlying logic of labour markets in perpetuating precarity (both within and outside the labour market). Instead, it is *precisely* these various categories of labour with differentiated rights that have enabled an intricate lattice of governance to be produced, through which the contradictions and tensions of capitalist-labour relations on a global scale are managed, and

systemic logics of accumulation facilitated. By locating precarity (increasingly described as informality) as a domestic problem of social policy, precarity always produces the state as failing.¹²³³ By excluding the systemic logics producing precarity from our modes of governance, this mode of ungovernance is precisely what reproduces precarity within our international legal order; it inimitably ensures that we remain governed by precarity. Thereafter, I offered some reflections on whether international law was capable of treating precarity as a relation, and offered a considered response to the question of whether we are asking more of international law than it is actually capable of as a social form.

¹²³³ Eslava, L., & Pahuja, S. (2020). The state and international law: A reading from the global south. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 11(1), 118-138.

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