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Unmanageable Work, (Un)liveable Lives: The UK Sex Industry, Labour Rights and the Welfare State

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Abstract

This article draws from interview material with sex worker rights activists in London, and sex work scholarship, to explore the demand for labour rights for sex workers and erotic dancers. I argue that there are two positions visible in activism and scholarship, which I term 'liberal' and 'materialist'. Whilst the former posits that the problem with sex work is insufficient mainstreaming of commercial sex within the labour market, the latter stresses the need for protections and freedoms from the labour market and repressive criminal and immigration laws. I suggest that these two perspectives need to be thought together. To this end, for the first time in the UK context I ask what labour rights can do for erotic dancers and indoor-based sex workers. I argue that, whilst labour law may offer some level of protection, both forms of commercial sexual service are ultimately unmanageable and that the strategy of securing individual labour rights suffers from several limitations. In the final part, I map the materialist frames onto broader feminist citizenship debates. I ask whether these models can deliver the protections sought and tentatively propose that a feminist-oriented demand for a basic income may be of use to the sex worker rights movement today.

Keywords

Activism, basic income, citizenship, labour rights, liberalism, materialism, sex work and erotic dance

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Introduction

How to conceptualise and govern commercial sex is far from settled and is the subject of profuse debate amongst policy makers, scholars and activists. In this article, I begin from the view that sex workers are workers, and focus on female erotic dancers (table top dancing, lap dancing and pole dancing) and brothel and sauna-based workers who sell sexual services (I will refer to this type of work throughout as sex work to mark it off from erotic dance). Sex work has never been recognised as a legitimate form of labour in the United Kingdom. Erotic dance clubs, on the other hand, are considered a legitimate business within the burgeoning night-time economy. This situation is complicated by the recent introduction of legislation that gives power to local authorities to control, and ultimately close, what are now called 'sex entertainment venues'.[1] The sexual exploitation and nuisance framework through which sex work is largely understood by the government has therefore been brought to bear on erotic dance, narrowing the discursive space in which to discuss the labour rights of erotic dancers.

This article draws from interview material with sex worker rights activists in London and my experience of sex worker rights and feminist activism in the same city.[2] Thirteen semi-structured interviews were conducted with members of the xtalk collective; Feminist Fightback; General, Municipal, Boilermakers and Allied Trade Union (GMB); International Union of Sex Workers (IUSW); Sex Worker Open University (SWOU); and English Collective of Prostitutes (ECP), and two interviews with sex worker rights supporters from the UK Network of Sex Work Projects. The aim of the interviews was to explore three themes: the type of rights and freedoms sought; politics regarding engaging the state and law; and the relationship between feminism/s and sex worker rights activism. Responses to the first two themes inspire, and are weaved throughout, this article.

The first part outlines two positions, apparent in activism and scholarship, structuring the question of labour rights for sex workers and erotic dancers. I start with these perspectives because they reveal two concerns that I argue must be thought together and form the basis of my discussion in the following two parts: access to labour rights and protections and freedoms from the capitalist labour market. First, then, the dominant position sees sex work and erotic dance as legitimate professions that can be brought in line with labour protections and treated as a 'respectable employment relation' (Weeks, 2011: 68). I term this the 'liberal' position and argue that it is premised on the notion that the problem with sex work is the *insufficient mainstreaming* of commercial sex within the labour market. The alternative position is one which I term 'materialist': whilst granting sex workers labour rights is not rejected, these scholars and activists offer a more critical vocabulary and radical politics. Materialist scholars and activists, not to mention their demands, have received little attention in the sex work literature.

In the second part, I ask what labour rights can do for indoor 'managed' sex workers and erotic dancers.[3] This is a question that has been posed but never answered in the UK context. I argue that both forms of commercial sexual service, whilst labour law may offer some level of *protection*, are ultimately *unmanageable*. Whilst erotic dancer–manager relations in the United Kingdom were recently construed as employer–employee by the Employment Appeal Tribunal (EAT) (only to be overturned by the Court of Appeal (CA)), indoor 'managed' erotic dance and sex work are not most usefully understood as

an employer–employee relation: club owners have not suddenly become compassionate capitalists and begun to offer contracts of service, workers are not organising for such contracts, and neither bosses nor workers appear to see this relation as desirable. It seems that workers are only using 'employee' status strategically and retrospectively, once they have left the workplace, and there is good reason to think that this is how employee status will continue to be used.

Despite this, the category of 'worker' found in the Working Time Regulations (Regulations) 1998, and 'in employment' as found in the Equality Act (EA) 2010 and interpreted in recent case law, might be of some use. Both self-employed erotic dancers and sex workers contracted *personally to perform work* in conditions of *subordination and dependency* can benefit from both layers of protection. However, the relationship between control (employee) and subordination/dependence ('worker' or 'in employment') is not at all settled, neither, for that matter, is the relationship between subordination and dependence. As with employee status, it does not seem that managers are going to opt for an employer–worker relation; thus attempts to secure rights as workers will remain individual and retrospective until sex workers decide that 'worker' is an employment relation that needs to be fought for *in* the workplace. I conclude this part by reflecting on the difficulties in bringing sex workers under the auspices of UK labour law, reflecting upon why employee status is not a desirable employment relation and the fact that formal inclusion is no guarantee of protection.

In the third part, I consider calls for protections and freedoms from the capitalist labour market being articulated by materialist scholars and activists. Judith Butler's theorisation of 'politically induced precarity' (Butler, 2009: 322), which must be apprehended in order to conceive of ways in which 'life' may be made more liveable (Butler, 2010: 31), frames the discussion. I suggest that the materialist frames outlined in the first part are exposing and contesting the government's 'sexual exploitation' and 'vulnerability' frames, which render many sex workers' lives unintelligible. I argue that stressing the need for protections from the labour market, these materialist perspectives can be mapped onto broader feminist citizenship debates. Drawing from Kathi Weeks' theorisation of the demand for a basic income as critique, practical response and provocation, I ask whether and how such a demand might be of use to the sex worker rights movement today.

Part 1. Two Approaches to Labour Rights: Liberal and Materialist Positions

Scholars and sex worker rights activists critical of the state and the radical feminist push to abolish the sex industry via criminalisation and rehabilitation argue that sex work must be decriminalised and that sex workers should be recognised as workers and have the right to unionise. But there is a lack of discussion about what *kind* of employment relations and protections are desirable. One activist described the confusion in the following way:

> . . . it seems a bit short sighted sometimes to just say, you know, we're against criminalisation . . . how is it going to operate then? Is anyone allowed to have a brothel, or should there be brothels with 2 or 3 people . . . I don't know, so, yeah, I kind of wish there were more debates in the sex work movement about what we actually want to achieve. (xtalk and SWOU activist)

Kate Hardy and Teela Sanders' recent study of lap dancing clubs across the United Kingdom concludes that the focus needs to shift from the demand rhetoric being pushed by feminist groups (such as Object[4]) to 'working practices which make dancing an initially low risk investment and buoyant even in times of crisis' (Hardy and Sanders, 2012: 530). I agree with Hardy and Sanders that working practices and relations require more attention. Before moving to discuss labour protections, I outline two perspectives on labour rights visible in UK activism and international scholarship; though neither engage with the particulars of labour rights, this discussion highlights that whilst 'liberals' believe inclusion of sex work within 'real', waged work will deliver protections for sex workers and erotic dancers, 'materialists' advance a more antagonistic politics that stresses 'protections *from* the capitalist labour market' (O'Connell Davidson, forthcoming 2013).

Liberal Perspectives on Labour Rights. Kathi Weeks' summation of the liberal feminist work ethic and its application to sex work serves as a neat introduction to the 'liberal' approach to labour rights. Feminists have campaigned 'to secure recognition of the moral respectability of excluded or marginalized workers and the ethical status of their labours' (Weeks, 2011: 65). Praising the virtues of wage labour, feminists have worked hard to secure women's standing in the labour market. And as Weeks argues, using the language of work rather than 'prostitution', sex work activists have shifted the discussion from 'a social problem to questions of economic practice' (p. 67). However, in so doing, scholars and activists tend to 'represent the employment contract as a mode of equitable exchange and individual agency' (p. 67).

Indeed, Julia O'Connell Davidson has convincingly argued that the 'sex work' position is structured by the liberal fiction of disembodied labour power: that what is commodified in the (sex) work contract is a worker's freely alienable, and fully separable, bodily property. Liberal scholars and activists make the case that if the body were commodified this would be slavery, thus signalling acceptance of the liberal narrative of the wage labour contract (and sex work contract) as the line between freedom and bondage (Larson, 2004; O'Connell Davidson, 2002, forthcoming 2013). Kristen Murray's theorisation of the work of sex work is instructive, 'Like all women engaged in paid labour, sex workers possess the ability to consent to alienate their bodily property and can exercise a degree of choice over the conditions under which this occurs' (Murray, 2001: 10).

And whilst some argue that sex work is work with essential worth and dignity, all agree that it must be understood as legitimate labour. Weeks cites COYOTE, and O'Connell Davidson discusses Wendy Chapkis' work, as examples of the belief that sex work has intrinsic social value or should be respected and protected (O'Connell Davidson, 2002; Weeks, 2011). As one activist puts it:

> . . . *there are people who do sex work as a calling*, as a career because they are good at it, enjoy it and get satisfaction from it. (xtalk and SWOU activist) (my italics)

However, rather than sex work being of inherent social value, more often it is argued as being legitimate labour that ought to be protected (see, e.g., Brooks-Gordon, 2006; Sanders, 2005; Scoular and O'Neill, 2008; Thomas, 2009). For Murray, the fact that

employee protections have not been of much use in Victoria, Australia, is 'symptomatic of *the lack of legitimacy* accorded to sex work in the arena of labour regulation and in the broader community' (my italics) (Murray, 2001: 10). In the UK context, the International Union of Sex Workers argues that sex workers should be able to 'access the full range of employment, contract and property laws'.[5] Though not articulated in such terms, implicit is the suggestion that sex workers have the 'right to work'. Where labour rights are failing, liberals believe this is because sex work has not been granted social, political and legal legitimacy as 'real', productive work. Thus, the 'problem with sex work' is the lack of legitimacy, and the answer is further mainstreaming into the capitalist labour market.

Materialist Perspectives on Labour Rights.

> . . . prostitution is wage labour, the form that it takes is sexual work, but nonetheless all you sell is the same commodity that everyone else sells, your labour power, you don't sell a separate object. (xtalk activist)

> . . . actually for me all workers are selling their bodies! (GMB activist)

Materialist scholars and activists argue that sexual labour, like other forms of wage labour, is *embodied*. But this is not to be confused with the radical feminist position, which insists that commodification is distinctive of 'prostitution' (the term used by radical feminists to denote all heterosexual commercial sex; (Coy, 2012: 1–2). Developing an analysis of sex work that is critical of liberal narratives of property and contract, O'Connell Davidson stresses that the 'body matters in prostitution', but that this point can be made 'without also insisting that this reduces the sex worker to nothing but a body, or that prostitution is a unique form of self-commodification' (O'Connell Davidson, forthcoming 2013). Given that 'what is commodified in prostitution, is a complex blend of labour power, socially marked bodies and individual attributes' prostitution can be compared to many other labour processes, whereby workers' bodies are racialised and sexualised, and these hierarchical relations secured (O'Connell Davidson, forthcoming 2013). And I agree with Jane Larson, that 'critics of contract freedom provide a complexity and depth of insight absent from much current debate about prostitution' (Larson, 2004: 686). Foregrounding the centrality of the body in the sexual labour contract, and the myth of disembodied labour power, materialist scholars and activists reject the radical feminist position, and the liberal insistence that sex workers are individual, free negotiators of contracts with equal bargaining power.

Such commodification is described as increasingly intense under the current configuration of capitalism. For Weeks, the post-industrial work ethic encourages 'workers to treat their work as if it were a calling' and 'today enjoys a wide application, serving as a disciplinary mechanism to manage the affects and attitudes of a service-based workforce that is less amenable to direct supervision' (Weeks, 2011: 72) Weeks is clear that the present configuration of work, and the insidious nature of the work ethic, colonise life and, as such, must be challenged. Whilst for O'Connell Davidson, those concerned with the capitalism's unrelenting quest to achieve universal commodification need to stress

that 'wage labour, like prostitution, commodifies what is integral to, and indivisible from, personhood' (O'Connell Davidson, forthcoming 2013).

Unsurprisingly, those that stress commodification and subjectification often have a more general critique of the wage relation. As one activist, who was clear she/he does valorise wage labour, puts it:

> . . . whether or not you think prostitution as an abstract concept is a defensible thing probably relates to whether or not you think people should sell their labour power in general . . . I'm interested in sex work and prostitution because that's where I work, or worked in the past. Am I interested in defending the sex industry, not at all, am I interested in defending sex workers, of course, and the distinction is important I think. (xtalk activist)

Weeks has warned that the term 'sex work', whilst laudable for de-stigmatizing sex work(ers), is problematic precisely because of its 'association with conventional work values' (Weeks, 2011: 67). Supporting sex worker struggles within the labour process need not mean that sex work, or any form of wage labour, be celebrated, or even tacitly accepted as inevitable. The view that work is something to be disidentified with rather than celebrated arises in part from an acknowledgement that the wage relation cannot be (and never was) the means through which sex workers, and workers in general, sustain themselves, let alone live comfortably. This is an insight being articulated and developed by activists, especially in relation to political strategy.

In terms of strategy, then, materialists, like liberals, argue that sex workers should be able to access labour rights. But, as one activist puts it,

> . . . sex workers who want to have the right to work and to gain money, that is not going to bring about any major social change . . . just campaigning for the decriminalisation of sex work per se because I want to earn my money in peace without an analysis of these linkages [capitalism, migration, sexual and gender politics] or how it is not necessarily revolutionary is not enough. I'm in favour of decriminalisation, not legalisation, so not creating a special law for sex work, just the end of the policing of it, just regarded as a job like any other job. *But then it has to go further for me . . . it cannot be just that*. (xtalk activist) (my italics)

Activists are arguing that struggles for labour rights need to be informed by a wider politics of resistance. When asked what the state should do about sex work, activists responded in the following way:

> . . . the things that I would try and make the state do about sex work probably don't relate directly to sex work. So it would be something like having a living wage, recognising unpaid labour of women, or all reproductive labour, and then I would decriminalize it. (xtalk activist)

> I think that of course there is loads of other stuff they could do in terms of economic policies and benefits which would stop women from being forced into prostitution in the first place, and would enable women to leave, and greater recognition of mothers would be a massive improvement, if the work of raising children were actually acknowledged as work, and you know, remunerated, women would have greater choices. (ECP activist)

> I mean what I often say is labour rights, which means having the same legal protection as any other worker, but we'd also need to demand a world without borders and papers for all migrants. (GMB activist)

For these activists, then, recognising sex work as work entails challenging broader social and economic processes and relations. For some, as noted above, it is also about the desire to refuse the wage relation as the means through which people must attempt to survive. Activists, most notably the xtalk project, have insisted that a discussion of labour rights needs to focus on how criminal law and immigration policy are affecting sex workers. For example, the project has observed how anti-trafficking laws are being enforced using raids on brothels in London. They argue that these raids are creating, or least exacerbating, conditions for the exploitation of migrant workers by managers due to workers being in constant fear of arrest and deportation. In response to this, members of the collective call for migrants to be able to work without less favourable treatment because of their visa status and for borders to be abolished (xtalk project, 2010).

Part 2. The Liberal Position: Labour Rights and Unmanageable Work

The dominant employment relation across the sex industry is self-employment. But it is also evident that self-employment is being used as a mode of categorizing contracts between workers and venues that are exploitative and entail varying levels of subordination. In this part, I argue that whilst it is feasible that erotic dancer–/sex worker–manager relations be construed as employee–employer, neither erotic dance nor sex work is best understood as managed forms of work. In the United Kingdom, it seems that workers in the sex industry are using 'employee' status strategically and retrospectively in order to claim unfair dismissal and that employee status *in* the workplace is not considered desirable. Nonetheless, UK labour law might offer some protection for nominally self-employed workers. Of particular relevance is the category of 'worker' used by the Regulations,[6] and the fact that self-employed workers can draw upon anti-discrimination laws if they are deemed 'in employment' as defined by the EA. Noteworthy for my purposes is the fact that 'worker' status covers independent contractors who perform work personally (though not as a business undertaking), in conditions of 'semi-dependency'. However, sex work scholars and activists in the United Kingdom have not considered how these protections apply; where protections are mentioned, the industry standard of self-employment is accepted and legal protections go unexamined. I end this part by reflecting upon why it is unlikely that employee status will become the norm as well as more general limitations that prevent sex workers and erotic dancers from being brought under the auspices of UK labour law.

There is no room to outline fully the economic dynamics of erotic dance clubs, brothels and saunas (see, e.g., Hardy and Sanders, 2012; O'Connell Davidson, 1998, 2006). However, for the purposes of the following discussion, I outline a handful of economic practices that cut across each of these workplaces. Doing so foregrounds the level of control sex workers' and erotic dancers' experience, many of which are not normally associated with self-employment. Workers in the indoor sex industry are not in a position to offer a substitute or subcontract their labour. There might be a contractual term to this

effect, or it will have been implied that the contract is for her to personally perform the work. Indoor venues are staffed using a rota system managed by the owner, the 'house mother' or 'maid'. Workers typically do long shifts in brothels or massage parlours, but shorter shifts in lap dancing clubs. Every worker will have to pay a fee to work each shift, which could be any amount upto around £350. Workers are provided with a number of services, ranging from the provision of sheets and cleaning through to the use of the stage and pole. The manager of the venue sets the prices for sexual services and dances, and each worker will pay a percentage to the manager of the amount paid directly to her by the customer. In lap dancing clubs, this may be characterised as a commission fee, which is a percentage of earnings accrued each shift. In lap dancing clubs, the dancers may be paid in cash by each customer or in vouchers, which must be turned at the end of each shift in order for deductions to be made. For workers in brothels, they may pay the manager a portion at the end of each service, or this may be figured into the fee to work payment or calculated at the end of the shift. It is not uncommon for workers to finish their shift having made no money or owing money to the venue. However, the trade off appears to be that workers can occasionally make better money than in other forms of employment. It is also not uncommon for workers to be disciplined and fined. Hardy and Sanders report that 61% of the dancers they interviewed had been fined at some point during their time of dancing (2012). Finally, workers are required to bring their own clothes but will be told how they should dress, wear their hair, when they can take breaks and how they should act around clients.

From Sex Work is Work to Sex Workers as Workers. Nadine Quashie had had a contract with the lap dancing company Stringfellows since 2007, which was terminated because of alleged drug dealing. As a step on her claim for unfair dismissal, the Employment Tribunal (ET) had to decide whether she was an employee on the nights she danced at the club (Stringfellows conceded that she had a contract on each night she danced but not a contract of service). This turned not on whether she was contracted to personally perform the contract (the club agreement stipulated personal performance), nor on the question of control, but whether there was sufficient *mutuality of obligation* between the parties to provide evidence of a contract on each night she danced, or an umbrella contract.[7] The ET held that the essential components of the wage/work bargain were missing:

> The Respondent was not obliged to pay the Claimant anything. The Respondent never paid the Claimant; rather the Claimant paid the Respondent Club to be able to dance at their venues. The Claimant did often go to work and earn nothing because she had not earned sufficient Heavenly Money vouchers to cover the cost of the tip out fee, house fee fines and commission . . . The essential element of the wage/work bargain is not present in this case. When the Claimant came to dance at the Club she was obliged to follow rules and I have already found she was subject to a degree of control by the Respondent but I do not find that level of control amounted to mutual obligation. There is no contractual obligation on the Respondent to provide work for which the Claimant would be paid. The Claimant was not required to work a set number of nights per week but was required, if rostered to work, to work one Saturday and one Monday every two weeks in a month and one night a week at

> Angels . . . I also find that there was no mutuality of obligation in the periods when the Claimant was not dancing at the Respondent Club. (para 78, 79, 81)

Constructing the obligations between the parties in this way, and emphasising the financial risk placed upon Nadine if she failed to attract customers, the ET found Nadine self-employed rather than employed under an umbrella contract. On appeal, the Employment Appeal Tribunal (EAT) reversed this decision, finding that the ET had placed too much emphasis on the wage/work relation and not enough on the fact that this does not:

> . . . encompass all forms of bargains within employment relationships . . . These days, it is not uncommon to find a person agreeing to work for no pay (to gain work experience), or to attend for the mere opportunity of being given work for which remuneration would be available. The wage/work bargain would be satisfied if Ms Quashie agreed to dance in exchange for accommodation, for free meals, for fees paid directly to her university, or even for payment of 1p a night. She could make the bargain to dance to the Respondent's tune if the Respondent agreed to let her be seen at the club so as to enhance her reputation, or to keep her hand in, or even just to maintain networking in a congenial workplace. (para 51)

Essentially, then, provided that a dancer 'gives up her night to be available for something provided' by the club owner there will be mutuality of obligation. Nadine was clearly obliged to work on the nights rostered, work every other Saturday and Monday plus one night a week and attend weekly meetings. Indeed, as the EAT stated, 'findings . . . under the heading of control indicate plain obligations on the Claimant deriving from the Respondent's right to control her activities' (para 52). The club was obliged to give Nadine the opportunity to dance and earn money *and* to pay her. Crucially, the EAT found that it did not matter that the payment or wage came to her indirect because employment status 'is not decided by reference to the source, or the route, of the payment' (para 50, 54). In cases where a dancer is paid in vouchers, which are transferred into money at the end of the shift, or where a sex worker pays a sum to work in a brothel and/or pays a percentage of her takings to the manager, as long as the club owner/manager is found to be under an obligation, which could include, for example, the provision of space to work from, clean sheets, or even 1 pence for her whole shift, there will be mutuality of obligation.

Second, the EAT stressed that findings on control put mutuality of obligation in a secondary position. The ET's construction of control was accepted, which had drawn attention to the fact that Nadine had to follow a dress code; give free dances; seek permission to leave early; was expected to attend weekly meetings and disciplinary action was taken in cases of non-attendance; Stringfellows controlled the rota. Added to this is the inference of the EAT that 'if the Claimant were directed to a customer, she could not refuse' (para 55).

Nadine was therefore found to be an employee on the nights she danced, and employed under an umbrella contract. Notwithstanding that this was a welcome victory in so far as Stringfellows might have had to pay a sum for unfair dismissal, Nadine *did not* want to remain in the workplace and carry on being subject to these practices; she was not asking to be recognised as an employee in the context of remaining in a contractual relationship with Stringfellows. Whilst case law from other jurisdictions suggests

that to be an employee in the sex industry the level of control and indications of mutuality of obligation are more flexible than might have been imagined, erotic dancers and sex workers have campaigned fervently *not* to labour under controlling conditions of any kind (the Sex Workers in Europe Manifesto states that 'The fact that sex becomes work does not remove our right to have control over who we have sex with *or* the sexual services we provide *or* the condition under which we provide those services'[8]), and employers do not want the obligations that such conditions would entail (see, e.g., Daalder, 2007: 61–71). This means that erotic dancers would have been unlikely to use it as a basis for arguing for employee status whilst *in* the workplace. And given that employment law is embedded in freedom of contract, the EAT's decision would not have obliged club owners to begin to offer contracts of service (I expand on these arguments in the following section).

Restoring the decision of the ET, the CA found that Stringfellows were not obliged to pay Nadine wages; she negotiated her own fees, took an economic risk and only received from her employer money received from clients, minus deductions. This obviously precludes Nadine's challenges for unfair dismissal, and suggests that, notwithstanding high levels of control, employee status will rarely be found where an erotic dancer is deemed to have taken on the financial risk and to be paid by third parties. As will become clear, I am sceptical that the EAT judgment would have altered employment relations within lap dancing clubs. However, the EAT's approach is preferable. This argument cannot be fully developed here, but Nadine was personally obliged to work certain days and attend weekly meetings; she was, as the CA conceded, highly controlled and integrated into the club. But the fact that she could go home empty handed, and that Stringfellows (despite deriving profits from food and drink sold to the workers' 'clients') stipulated that dancers were simply paying to be provided with a space to earn money, led the CA to find that the level of mutuality was not that of a contract of service. Essentially, although the CA conceded that the club was *obliged to provide Nadine with work* when rostered, because they *were not obliged to provide her with paid work* there was no contract of service.

However, it would be wrong to assume that erotic dancers and sex workers are simply self-employed and unprotected. It is also possible they are 'workers' for the purposes of the Regulations, which cover self-employed contractors who perform work personally other than on the basis of conducting a profession or a business undertaking. In *Byrne Brothers (Formwork) Ltd v Baird*, the EAT stated that drawing the distinction between workers and those that are genuinely self-employed:

> will involve all or most of the same considerations as arise in drawing the distinction between a contract of service and a contract for services—but with the boundary pushed further in the putative worker's favour. (para 17[5])

Workers must therefore be personally obliged to do the work, have a contractual relationship, and not be an individual business undertaking. In *Redrow Homes (Yorkshire) Ltd v Wright* the Court of Appeal (CA) heard an appeal from Redrow Homes challenging the EAT's finding that construction workers who challenged their status as independent contractors for the purposes of the *Regulations* were in fact workers. The workers argued that their contract with Redrow stipulated *personal performance* of the work and entitled

them to claim compensation for leave accrued during their employment. However, this question seems not to pose a problem in relation to the sex industry; it seems highly unlikely that there would be an express or implied term allowing the worker to replace herself with a substitute, indeed, in Stringfellows' contract with Nadine there was an express term to this effect.

If erotic dancers do begin to contest their status as workers it is hoped that the EAT's construction of mutuality of obligation (which has been read into the definition of 'worker') will be accepted. Nadine's working arrangements are quite typical of the sex industry in general. Obligations to perform work weigh heavily on the worker (to perform when rostered by the club and on certain days; to work in a highly circumscribed manner; to attract clients to purchase dances and food/drink), but the club attempts to absolve itself of any obligation to provide or pay for work. As Guy Davidov argues, the courts should look at reality of the situation if the purpose of the 'worker' category is not to be thwarted.

In what sense, then, is the boundary pushed in the alleged worker's favour? As Davidov argues, 'the intermediate 'worker' category has been interpreted as covering semi-dependent/subordinate work relationships, assessed by reference to whether a person is 'somewhere in the middle of the spectrum, between the existence of a business undertaking and the lack thereof' (Davidov, 2005: 59–60). However, given the difficultly separating employees from independent contractors using the categories of control, risk, exclusivity and provision of equipment it 'is virtually impossible to find room for a middle category' (p. 61). Despite this, the key question will be whether, using these indicia, erotic dancers and sex workers are somewhere between an 'employee' and an independent business undertaking.

As Nadine's case demonstrates, there should be little difficulty demonstrating this level of subordination and dependency in many cases. However, would a dancer less controlled than Nadine – who, for example, specified her own dress code and rota, freely left the workplace when business was slow, and occasionally danced for other venues – be a worker for the purposes of the Regulations? Drawing parallels with *Byrne Brothers, Redrow Homes* and *Cotswold Developments Construction*, it seems possible that an erotic dancer could be classified as a worker if she set her own hours within club opening hours and left when business was slow; worked mainly for one club but occasionally took on shifts in other clubs; supplied her own clothes/set her own dress code and chose which customers to dance for; refused shifts.

If classified as a worker, a dancer could claim holiday pay that stands at 5.6 weeks or 28 days including bank holidays. This applies to both full-time and part-time workers; and for those who do not receive an hourly wage, there is scope for calculating holiday pay by multiplying average weekly hours by average hourly rate over the past 12 weeks. Alongside holiday pay, dancers would also be entitled to other protections, including weekly working time restricted to 48 h, a 20-min break away from the workspace every 6 h and for 11 consecutive rest hours in every 24-h period.

Worker status is arguably a matter on which the two unions that accept sex workers and erotic dancers (General, Municipal, Boilermakers and Allied Trade Union and Equity) should be advising their members. But as with employment disputes more generally, workers might be reluctant to assert their rights until they have left employment,

and there is a 3-month time limit. If successful, however, it may mean that other workers follow suit and begin to challenge conditions *in* their own workplace. Moreover, organising for workers' rights could be strengthened by a focus on *dependence* rather than *subordination* (in addition to the usual requirements of personal service and mutuality of obligation). Davidov makes a case for *sole* focus on dependency.

> Dependency on a specific relationship—especially economic dependency, but also dependency for the fulfilment of social and psychological needs—justifies various kinds of regulatory protections . . . (Davidov, 2005: 63)

If erotic dancers could rely solely on their dependency on a primary employer,[9] rather than the somewhat vague test set out in *Byrne Brothers*, it may prove a more appealing employment relation given the level of autonomy that workers demand.

Finally, erotic dancers are arguably entitled to protection as 'employees' under anti-discrimination provisions within the EA. Under the EA, 'employment' is defined as '*employment under* a contract of employment, a contract of apprenticeship or *a contract personally to do work*' (my italics). The Supreme Court (SC) case *Jivraj v Hashwani* (which centred on whether arbitrators are 'in employment' for the purposes of the Employment Equality (Religion of Belief) Regulations 2003) ruled that in addition to personal performance there must be some level of *subordination*. Affirming *Allonby v Accrington and Rossendale College*, the SC stated that the test is

> whether, on the one hand, the person concerned *performs services* for and *under the direction of another person* in return *for which he or she receives remuneration* or, on the other hand, he or she is an independent provider of services who is *not in a relationship of subordination* with the person who receives the services. Those are broad questions which depend upon the circumstances of the particular case. (para 34) (my italics)

As Christopher McCrudden has argued, the SC's definition of subordination is embedded in employment, rather than discrimination law; 'vulnerability and social stratification, where the oppression arises from the subordination inherent in the labour context, rather than focusing on the subordination of particular status-based groups' (McCrudden, 2012: 39). However, as with 'worker' status, it is not completely clear what draws the line between 'employees' and those self-employed. McCrudden has posed the problem in the following way:

> No doubt, in the future, there will be considerable debate as to what 'subordination' involves, such as how far it extends beyond the 'control' test, applied by the Supreme Court in *Jivraj*, to also include 'economic dependency' … All this is for the future and the outcome of these debates is uncertain. (pp. 38–39)

For now, it seems that, like workers, a self-employed person will be in employment if their level of subordination is 'somewhere in the middle of the spectrum'. And whilst dancers who are contracted personally to work in a club, and subject to the same level of control as Nadine, will have no problem being constructed

as 'in employment', the parameters of subordination, and the relationship to dependency, are far from clear.

There is no room to fully discuss how anti-discrimination law might apply to those 'in employment' in the sex industry, and so I will briefly consider *direct* discrimination in attempting to access employment on the basis of sex or race. This encompasses those discouraged from applying as well as those who apply and are rejected. Under Section 13(1) of the EA, direct discrimination is defined as 'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'. Direct discrimination might consist of treating a person differently because of a difference in sex or racial group, or treating a person differently on the basis of *stereotypes* associated with that person's sex or racial group. Further, a worker does not need to demonstrate that the putative discriminator was *motivated* by the prohibited ground when she/he meted out less favourable treatment – if this were the case a club owner could argue that she/he refused to employ black women or gay men 'not because he intended to do so but because of (for example) customer preference' (*R v Birmingham City Council ex parte EOC*).

In cases of direct discrimination, then, a worker would need to satisfy the Tribunal that *but for* her sex or racial group she would not have been discriminated against, and she will need a comparator, whether actual or hypothetical. In the case of a worker deciding not to apply for a post, or applying and not gaining employment, she would need to compare her treatment with an erotic dancer or sex worker of the opposite sex or another racial group who has the same characteristics *bar* her sex/racial group. The question then becomes, did the complainant, because of her sex/racial group, receive less favourable treatment (being discouraged or denied a post in a lap dancing club or brothel/sauna) than would have been received by a worker who, for example, has the same level of experience in the sex industry? As with other forms of work, though perhaps most similar to modelling, it is quite obvious that workers in the sex industry are hired and often fired according to their sex or racial group, or because of stereotypes about either of these characteristics. Therefore, as long as a sex worker could satisfy the Court that she would be 'in employment' she can challenge access to, or denial of, employment in the sex industry.

From Theory to Practice: The Limited Use of Labour Rights for Sex Workers. As the EAT verdict and the development of employment law in other countries demonstrate, it is possible that erotic dancers be legally construed as employees. Why, then, does self-employment remain the norm? Is it simply that sex work needs to be further mainstreamed into the capitalist labour market and rendered a legitimate occupation? In this section, I argue that there are a number of factors that help to explain the gap between theory and practice, which cannot be reduced to lack of legitimacy. I then move on to consider further limitations to formal inclusion in the overall structure of labour rights.

First, neither bosses nor workers appear to see employee status as desirable. Bosses in the sex industry have a preference for *nominal* self-employment. As I have suggested, construing relations in this way simultaneously allows for the exertion of significant levels of control and the elision of the legal obligations that employee–employer relations entail.[10] Given this, if bosses were to start offering contracts of service, it is extremely

unlikely that they would be embedded in acceptable levels of control. Nadine's circumstances are quite typical of lap dancing, and workers *do not* think this is a desirable situation. This is to say that it is one thing for an erotic dancer or sex worker to offer a *retrospective* account of having been controlled for the purpose of constructing her employment relation as a contract of service for an unfair dismissal claim;[11] it is quite another to argue that the level of control seen in the *Quashie* case is desirable and should be rolled out across the industry through individual contracts of employment. It seems unlikely, for example, that workers would organise for legally enforceable obligations to dance for free, be fined for turning up late or for wearing their hair the wrong way. Whilst employee status might be imposed retrospectively, then, freedom of contract dictates that a finding of employee status in an individual case need will not necessarily have any wider bearing on the practices of clubs. Workers would need to challenge their status before an ET, as Nadine did, or collectively organise in the workplace for a contract of employment. Neither of which are likely to happen if workers do not view employee status as desirable.

Indeed, sex workers have vigorously campaigned for the right *not* to be told how to do their work, whom to do for and under what conditions; sex workers want to remain 'unmanaged'. O'Connell Davidson has reflected on why this is the case for those that argue from a 'liberal' perspective: that freedom and slavery are oppositional categories; that sex work parallels the former; and that what is sold is a fully alienable service. O'Connell Davidson argues that these scholars and activists are asking *for* bodily autonomy (encapsulated in the activist demand: 'My Body, My Business') and *not* that sex workers be fully proletarianised ('i.e. they are *not* calling for the social organization of prostitution to be reconfigured such that workers sell their commodified sexual labour power to employers to direct and control') (O'Connell Davidson, forthcoming 2013). Thus, whilst liberals describe sex workers as providing a disembodied and detachable service, and draw parallels with the alienable labour that wage labourers are imagined as trading, they also want sex work to be distinguished from other forms of wage labour, and this is because they 'regard sexuality as a site of embodied personhood' (O'Connell Davidson, forthcoming 2013). Liberals therefore have an affinity with the radical feminist tendency to *exceptionalise* sex work/prostitution, albeit because they understand sexuality to be a 'private' matter, rather than the sale of sex to be 'sexual slavery'. In practical terms, then, the high level of autonomy demanded by liberal sex work activists and scholars is inimical to the structure of employee status.

I previously noted that, whilst framed by a broader politics, materialists do not reject the use of labour rights. There are tensions about whether a controlling employment relation is desirable for sex workers and erotic dancers: some suggested that sex work should be treated like any other form of work, but others were ambivalent, stressing the violence of wage labour and equating managed sex work with factory labour. As one activist puts it:

> . . . it is not very nice being in a factory if it's a brothel, in that it isn't very nice being in a factory making shoes, so there is something about the centralization, discipline and control that goes on in really large brothels that people who campaign for legalization don't really understand. Yes, it is definitely safer, yes you can have cameras everywhere, yes you can have panic buttons, yes you can make sure that clients know they are on camera, but it very much

> makes it very similar to those other moments of wage work that very much feel quite violent in other ways, and then all of a sudden that violence is imposed upon sex. (xtalk activist)

However, it seemed that the desire to avoid a controlling relationship had less to do with 'sexuality' being a 'private' matter (which fits with the materialist view that *all* labour power is embodied), and more with a strong distrust of capitalists, or 'managers', and the state.

> That maybe nicer bits of capitalism would get involved in the sex industry doesn't really fill me with much hope in terms of ethical good capitalists saying 'I know, I'm just going to go invest in a brothel.' And do you want the state really running prostitution just like any other job, I'm not sure we really do. (xtalk activist)

Ultimately a preference for more cooperative working environments was evident. For the ECP, the question of employment rights is difficult to contemplate in a context of criminalisation. A spokesperson did say, however, that

> ... most sex workers in our experience would want to work in smaller, more collective environments, just purely because you keep a bigger percentage of your money, and you have more control over your working conditions, specifically being able to refuse clients and you know, not being docked.

As I have suggested, there might be a partial way around the problems with employee status in so far as the category of 'worker' may deliver some rights *and* allow sex workers some level of control over their work. At the same time, however, it is exceedingly difficult to imagine discrimination law making so much as a dent within the sex industry. And if cases were successfully fought, and managers and club owners started to comply with anti-discrimination provisions, it would, as O'Connell Davidson points out, have

> a hugely negative impact on ... profitability. If prospective customers knew they could no more expect to find a particular 'type' of person working in a brothel than they can now expect to find a particular 'type' of person working in local authority library ... the demand for sexual services would fall dramatically. (forthcoming 2013)

Indeed, as O'Connell Davidson points out, the worker–citizen model and attendant labour protections, fought for by workers to alleviate the commodification of labour power, only ever returned partial protections, and only for some workers, protections that are decreasing in number for many. And sex work has *never* been successfully incorporated into traditional employment relations (O'Connell Davidson, forthcoming 2013).

Another way of putting this is that sex workers are *precarious* workers. Precariousness has been described as a feature of the 'new economy', whereby badly paid wage labour, few benefits and job insecurity predominate, as well as 'a persisting zone of secondary status in the labour market' (Rittich, 2006: 31). Given that sex workers have not had and lost labour rights, it seems apt to describe sex workers as precarious to the extent that their precarity *persists* and, as recent studies document, is being *intensified*

(Barbagallo and Federici, 2012; Hardy and Sanders, 2012). Thus, as activists make clear, formal rights are of little use to those who are unable, because of visa status and stigma, to benefit from labour rights. Activists that are, or work with, migrant sex workers are well aware of this:

> I've always said traditional forms of politics don't work, they don't work because of two axes, one because of the increasingly large amount of irregular labour that exists in the sex industry that cannot, due to immigration policies, exist in a visible way, and two, and the old one, which is stigma, which is around being involved in the sex industry. (xtalk activist)

And for the ECP not only stigma but also prohibitive costs impede legal challenges.

> The biggest thing in terms of asserting our rights, I think, is the stigma associated with prostitution, because you know, there are potential cases that could be brought but you need, well the other thing, realistically, is getting legal aid to do it, because it is very expensive, but it is people being ready to be public, to fight for their rights.

Some indoor managed sex workers may also not want to register as self-employed (as a 'worker' this would still be their obligation) because of the impact this will have on other earnings or benefits. If sex workers engage in unpaid labour, have another job, or receive any benefits, they may perceive registering as self-employed, even where this would be accompanied by rights as a worker to holiday pay, as too onerous. As a gendered form of work, often performed by migrants, many workers do not work in the industry for long stretches of time, nor do they see their work as a profession with which they are willing to identify.

Given these limits, it is urgent to explore the demands of materialist activists and scholars that exceed the inclusion of sex work as 'real' work.

Part 3. The Materialist Position: (Un)Liveable Lives and Freedom From the Labour Market

For Judith Butler, a life is not liveable unless it is apprehended as precarious, and the 'precarity of life imposes an obligation upon us' (Butler, 2010: 2). Precariousness is a 'shared condition of all human life'; it is 'coextensive with birth itself' (p. 14). Though we all are ontologically precarious, this condition is exacerbated, and differentially allocated, under certain social, political and economic formations. Butler's theorisation of politically induced precarity ties together two important dimensions. First, the failure of social and political institutions to make good on their promise 'that populations have the means available by which life can be secured'. Second, being subject to arbitrary state violence or other forms of violence from which the state offers little protection. 'So by precarity we may be talking about populations that starve or who near starvation, but we might also be talking about sex workers who have to defend themselves against both street violence and police harassment' (Butler, 2009: 322).

Butler argues that apprehending life as precarious depends on our epistemological frames or norms of recognition that qualify a 'life' as living or render 'life' unrecognisable (2010: 2). Following sex work scholars and activists, I agree that the governmental 'sexual exploitation' and 'vulnerability' frame – which frame sex workers as individual '"risk-managers" who must behave "responsibly" in the face of disadvantage', and privileges the criminal justice system for addressing (or abolishing) the sex industry (Munro and Scoular, 2012) – are normative schemes that render those sex workers who do not correspond unintelligible. In Butler's terms, these normative frames aid in the production of, yet fail to apprehend, the precarity of sex workers' lives. And this failure means that little regard is paid to what would make sex workers' lives more liveable.

Opposed to the governmental narrative are the materialist perspectives outlined in part 1, which expose and contest the 'orchestrating designs of the authority who sought to control the frame' (Butler, 2010: 12). As the governmental frame is pulled apart, it becomes possible to apprehend precarious lives previously unintelligible.[12] In the previous part, I outlined the frames that allow these scholars and activists to apprehend the material realities of sex workers' working lives. The materialist perspective realises that precarity is a condition resulting from the failure of the social democratic state to provide social and economic support, that the governmental prostitution frame misses the mark, and that there is an urgency, indeed an obligation, to find ways to make (sex) workers' lives more liveable.

In this part, I argue that by stressing protections and freedom from the capitalist labour market, these debates pivot around a broader feminist debate about the welfare state, and what Nancy Fraser terms proposals for either the 'universal breadwinner' (equality/public sphere/male) or 'caregiver parity' (difference/private sphere/female) model (Fraser, 1994). I follow Fraser in recognising the utopian dimension of both models and believe that either would be a welcome alternative to our currently contracting welfare state. Nonetheless, feminist political theorists and economists have argued that problems inhere in both, problems which I believe should be of concern to sex worker rights activists. I ask whether Weeks' elaboration of the demand for a basic income as critique, practical response and provocation (2011) adequately responds to the limits of the universal breadwinner/caregiver parity model, and thus how it might be of use to materialist activists' and scholars' attempts to develop a broader politics of resistance that exceeds labour rights.

Materialist Perspectives, Sex Work and Citizenship. The materialist approaches to political strategy outlined in the previous part pivot around two feminist approaches to citizenship. The ECP rely on a notion of citizenship based on women's difference from men: thus women's work in the 'private' sphere be adequately compensated so that they need not enter the public sphere and engage in sex work. Other activists argue for recognition of reproductive labour and a living wage for all workers. Complicating this further, some are committed to a struggle against wage labour in general, to finding ways of reproducing ourselves outside of capitalism and thinking about the reconfiguration of gender, sexual and familial relations this would entail.[13]

> . . . if we start to, as a worker's movement, or as a revolutionary movement, reproduce ourselves, i.e., life outside of that wage relation, then the question remains, would people still use sex in an exchange? (xtalk activist)

The ECP's position could be described as the 'caregiver parity' model, which advocates the remuneration of care and domestic work on a par with paid employment. The second argument mirrors the 'universal breadwinner' model that promotes women's participation in the labour market and benefits for childcare. However, both of these models rely on a notion of 'separate spheres', and whereas the former understands the problem in terms of the inadequate compensation of 'women's work' (not in terms of the sexual division of labour as such), the latter implicitly relies on 'the primacy of the public sphere for individual empowerment and flourishing, and as the primary site of gender equality. It views caregiving and other domestic work as problems to be solved through commodification' (Zelleke, 2011: 31). Whilst both models may return some level of equality, and reduce levels of poverty, as Almaz Zelleke argues, neither 'fundamentally challenges the assumption of an autonomous, independent worker as the model citizen' (p. 32). A woman would still have to choose whether to be a 'worker' or 'caregiver' and both rely on the model of paid employment to think about how to distribute reproductive labour (increased childcare so that women can go out to work or the expansion of the wage relation to care work) (Katada, 2010; Zelleke, 2011).

As many feminists have pointed out, reproductive labour cannot be fully commodified (the double shift for women workers, whereby paid and unpaid work must be done each day, is one way of making this argument), nor can it be limited to the confines of employment-comparable hours (women could be paid wages as the ECP advocate but care and domestic work cannot be structured on the 9–5 model). And, as Kaori Katada argues, neither model can lead to life without dependence on the market *and* life without dependence on the family (Katada, 2010, 2012). But those activists and academics that are not only demanding protections whilst within the capitalist labour market but asking what life might look like *outside* the wage relation, arguably stressing the need for both *decommodification* and *defamilialisation.*

Basic Income: Critique, Practical Response and Provocation. Carole Pateman notes that the usual response to the demand for a basic income (BI) is that it 'would cost far too much, but political imagination is required here. Besides, before turning to problems of implementation and cost we need to know why a basic income … should be introduced at all' (Pateman, 2004: 93). And I agree that 'a great deal of democratic value in the idea of a basic income is lost if immediate political feasibility dominates the academic discussion' (p. 93). Indeed, engaging with BI my intention is not to make a definitive policy proposal. The feminist BI literature is intriguing because it is framed by a political commitment to decommodification and defamilialisation. The demand is also of interest to me because, as Weeks (2011) argues, it functions in three ways: as a *critique* of our existing welfare system and feminist models of citizenship, as a *practical response* to the limits of these models for female sex workers and erotic dancers, and as a *provocation* to imagine what life might look like if the demand were successful.

All advocates agree that the current wage system is not functioning, as evidenced by the high rates of underemployment, unemployment and contingent employment (see, e.g., Pioch, 2002; Weeks, 2011). It is suggested that each citizen receive an unconditional income rather than wage support and that it be continuous and unattached to past or future labour market participation. For liberal and libertarian advocates, BI 'provides

policy-makers with a tool to support contemporary labor market structures as well as a means of fulfilling a necessary welfare function of the state' (McKay and Vanevery, 2000: 273). What is crucial for its liberal supporters is that work and income are only *partially* separated so as to 'promote the flexibility of labor on a microlevel, which ultimately will improve the efficiency of modern labor market processes' (McKay, 2001: 99). Feminists have criticised the androcentric and productivist bias in the liberal approach, arguing instead for a *complete* decoupling of income from work and family form. The payment should be delinked from labour market participation and be enough to provide 'a modest but decent standard of life' (Pateman, 2004: 92). It would also need to be continuous rather than a one off payment, which may leave a woman 'open to the vagaries of chance and the market' (p. 95). Finally, grants for children would be paid direct to their guardian.

As Weeks argues, by breaking 'the link between work and income' BI makes visible 'the arbitrariness of which practices are waged and which are not' (Weeks, 2011: 143). A BI would allow people, regardless of gender, to (continue to) contribute to society in any number of ways that are not limited to wage labour or care. And for those who continue to work, a BI would provide economic stability to fight for rights in the workplace, to leave for other employment or to take up some other pursuit. As Pateman argues, 'it would allow individuals more easily to refuse to enter or to leave relationships ... that involve unsafe, unhealthy, or demeaning conditions' (Pateman, 2004: 96).

However, a BI must be sufficient enough to not entrench the sexual division of labour; simply alleviating poverty, or 'tinkering with the existing system' (p. 101), would not make more democratic the relationship between marriage, employment and citizenship. Following Pateman, and Alisa McKay and Jo Vanevery, I agree that if set at an amount that decouples income from work, and paid directly to individuals rather than couples, families or households, BI could be a major step towards 'defamilialisation'. Taking seriously the fact that men are better paid and more successful in paid employment, subsistence level payments would probably mean that women would do more unpaid care work or would encourage more of what Pateman calls 'free-riding' by husbands.

A feminist-oriented demand for a basic income holds potential (though is no panacea) for precarious workers such as sex workers. I have argued that sex work cannot be brought fully within existing labour protections: even if the universal breadwinner model was realised, sex workers and erotic dancers will not become full worker-citizens. The universal breadwinner model also requires sufficient care facilities to free women from unpaid labour in the home. At present, the Child Tax Credit Scheme allocates mothers a meagre sum; and unless she is working 16+ h per week and not relying on informal networks for childcare, she cannot access Working Tax Credits (HM Revenue and Customs). But even if she received such support, domestic and care work that has not been commodified would remain unrecognised and devalued. On the other hand, sex work is not best understood as a 'private' matter (in the sense of negative liberty, cf. Brown, 2000: 476), and its intimate quality makes workers themselves reluctant to view it as work like any other. The ECP argue that the work of mothers should be recognised and remunerated and that this might stop women being forced into prostitution. But this approach assumes women *are* caregivers and attempts to model reproductive labour on the model of 'real', productive work. Many have noted that BI need not mean that

people do not engage in work, and some people may opt to continue working in the sex industry. But it would establish a floor beneath which a worker cannot fall. This point seems particularly pertinent to sex workers and erotic dancers, as it would give the freedom to be truly flexible in their choice of workplace or any other activity. Taking seriously the embodied nature of sex work means that many workers face a point at which their skills are no longer 'marketable'. A BI would ensure that these workers are not hurled out onto the labour market with no protection.

The demand for a BI might also function as a general *provocation* for the sex worker rights movement. As Weeks argues, the collective practice of demanding 'has its own epistemological and ontological productivity' (2011: 131). Distinguished from both critique and practical response, BI as provocation necessarily encourages us to imagine forms of life and social relations that would arise if that demand was successful. It should not be thought that the contents of the space opened up by this provocation to uncouple income from work and family structure could be determined in advance; but it may be marked by an insistent questioning of how sex work, sexual relations and sexual desire would be organised if sex as wage labour was not a necessity, or how sexual labour might be organised under truly voluntary conditions.

On Costs and Citizenship. Finally, I want to flag two criticisms that might be waged at a feminist-oriented demand for a BI. Feminists argue that it must be enough to provide for a standard of living that is 'modest'. Although specifics as to the amount would, as McKay and Vanevery point out, require engaging with poverty lines and costs of living, it

> would replace all existing income maintenance benefits and would involve the abolition of all personal reliefs set against income tax. The amount paid would be tax-free. The scheme would be financed via general taxation and would entail full-scale integration of tax and benefit mechanisms. (2000: 270)

Again, there are specifics that would need to be decided about tax rates (see, e.g., Healy et al., 2012). Rates aside, BI would be funded through general taxation that would include income tax, corporation tax and value added tax. A new source could be introduced, such as financial transaction tax, which is currently being proposed by the European Commission, or a tax on waste production. And as Sean Healy et al. argue, integration of tax and welfare systems 'would result in far less bureaucracy and significant savings to Government which could be used to fund part of the basic income system' (Healy et al., 2012: 16).

But charges of prohibitive cost are not isolated to a feminist-oriented BI. As Fraser notes, the universal breadwinner and caregiver parity models would each require radical restructuring of institutions, policies and cultures: employment-enabling services (including day care, the cost of which should not put women at a pay disadvantage to men), macroeconomic policies to create primary labour force jobs thus doing away with precarious employment, revaluing care work on a par with primary employment and an increase in part-time wages, and full access to social insurance as a worker or caregiver. For those unable to participate in work, with caring responsibilities, or unable to earn a wage though informal care work, generous means tested assistance would need to be in

place (Fraser, 1994). And, as I have stressed, neither model can lead to both decommodification and defamilialisation. Feminist advocates of BI point out that the payment itself is no panacea and would need to be supplemented with, for example, well-paid part-time work and publicly supported childcare (Zelleke, 2011). However, I agree with Ingrid Robeyns that feminists dedicated to developing BI as a policy need to be more specific about the level of payment necessary to meet the basic needs of each child and adult, as well as how childcare provisions and provisions for those dependant on care should be structured (Robeyns, 2008). To my mind, though, the task is no smaller for feminists committed to the universal breadwinner or caregiver model.

Less often has the question of eligibility been debated. Again, however, this objection is not peculiar to BI: it also applies to the universal breadwinner and caregiver parity models. Nonetheless, if BI were a national scheme, what would be the status of those who fail to meet the conditions? Roswitha Pioch argues that either a global basic income be demanded (which she believes is unrealistic), or it be a European or national scheme, in which case citizenship needs to be altered to include migrants who reside in national welfare states. As she points out, given the array of residence statuses, this is easier said than done (Pioch, 2002). However, I think that the most pressing task for the feminist BI literature, particularly for those scholars and activists concerned with the precarity of migrant workers, involves trying to think together demands for a BI and No Borders, the latter being a demand that I have highlighted is often made by sex worker rights activists. Bridget Anderson et al. have stressed that borders are ideological, productive and oppressive, with lingering negative consequences (such as access to public services, exploitation by employers) long after the initial crossing (Anderson et al., 2009). In response to this violence, No Borders scholars and activists are demanding the absolute right to move or indeed stay put. How, then, might such a borderless BI be thought? How does such a demand render visible the precarity of migrant workers, including sex workers? And how might such a demand function as a provocation for the sex worker rights movement?

Concluding Remarks

I began by outlining two positions on labour rights visible in activism and scholarship. My aim was to illustrate that there is a narrow and broad perspective: whilst the former focuses solely on mainstreaming of sex work into the labour market, which it is assumed will deliver the desired protections, the latter stresses the need for labour rights to be considered alongside protections from the labour market, and is framed by a wider politics of resistance. The liberal/material distinction allowed me to then consider *both* the possible application of labour protections as well as the broader question of protections from the capitalist labour market. With regard to the former, I argued that sex work and erotic dance are unmanageable but may be covered by some existing labour protections. A useful strategy for activists and workers would be to approach either the GMB or Equity for advice about determining entitlement to, for example, holiday pay under the Regulations. However, as activists have pointed out, formal inclusion is severely limited. The materialist approaches to labour rights were then returned to so as to illustrate that the question of labour rights cannot be separated from questions about the welfare state,

citizenship and borders. Having rehearsed the universal breadwinner and caregiver parity debate, and its relevance to the question of protections for sex workers and erotic dancers, I tentatively proposed that a feminist-oriented demand for a BI has potential for sex worker rights activists. Concluding, I want to suggest that arguing against BI on the ground that it is utopian, or would create, or continue exclusions, is inadequate. If we accept Butler's definition of politically induced precarity as a condition which – with the contraction of the welfare state, and increasingly punitive border policies and other forms of state violence – afflicts increasing numbers of people, it seems hopelessly pessimistic to refuse to engage with demands that might make 'life' liveable.

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Notes

1. Section 27 Policing and Crime Act 2009.
2. I have been a member of the xtalk collective since 2008 and Feminist Fightback since 2010.
3. Given that brothel and sauna based work is not recognised as legitimate labour my comments regarding labour protections are hypothetical.
4. http://www.object.org.uk
5. http://www.iusw.org (accessed 26 November 2012).
6. 'Worker' is also used in the Minimum Wage Act 1998. I do not have room to consider the usefulness of the Act here, but it would be interesting to consider whether and how its provisions might be of use to sex workers and erotic dancers.
7. An umbrella contract is an overarching contract wherein mutuality of obligation persists during gaps in employment.
8. http://www.joannestle.com/diningrm/SexWorkersEuropeManifesto.html (accessed 28 January 2013).
9. Davidov notes that in Canada a person must earn at least 80% from the putative employer, and in Germany the figure stands at 51%.
10. This mode of categorising employment is not specific to sex work and erotic dance. It is also prevalent in the construction industry (Anderson, 2010).
11. However, following the CA verdict it is unlikely that a dancer would be found to be an employee, thus restricting the possibility of an unfair dismissal claim.
12. I am not suggesting that the frames articulated by materialists contain the 'scene' of sex worker's lives once and for all.
13. I have separated out these perspectives more than is often visible in activism; it is common to argue both for a living wage and to be committed to struggling against wage labour.

Cases cited

Allonby v Accrington and Rossendale College [2004] ICR 1328.
Byrne Brothers (Formwork) Ltd v Baird [2002] ICR 667.
Cotswold Developments Construction Ltd v Williams [2006] IRLR 181.
Jivraj v Hashwani [2011] UKSC 40.
Quashie v Stringfellows Restaurant Ltd [2012] IRLR 536.

Redrow Homes (Yorkshire) Ltd v Wright [2004] ICR 1126.
R v Birmingham City Council ex parte EOC [1989] AC 115.

References

Anderson B (2010) Migration, immigration controls and the fashioning of precarious workers. *Work, Employment and Society* 24(2): 300–317.

Anderson B, Sharma N and Wright C (2009) Editorial: Why no borders? *Refuge* 26(2): 5–18.

Barbagallo C and Federici S (2012) Introduction: Care work and the commons. *The Commoner* 15: 1–21.

Brooks-Gordon B (2006) *The Price of Sex: Prostitution, Policy and Society*. Cullompton, UK: Willan Publishing.

Brown W (2000) Revaluing critique: A response to Kenneth Baynes. *Political Theory* 28(4): 469–479.

Butler J (2009) Performativity, precarity and sexual politics. *Revista de Antropología Iberoamericana* 4(3): 321–336.

Butler J (2010) *Frames of War: When is Life Greivable?* London, UK: Verso.

Coy M (2012) *Prostitution, Harm and Gender Inequality*. Aldershot, UK: Ashgate.

Daalder AL (2007) *Prostitution in the Netherlands Since the Lifting of the Brothel Ban*. Meppel, Drenthe, The Netherlands: Boom Juridische Unitgevers.

Davidov G (2005) Who is a worker? *Industrial Law Journal* 34(1): 57–71.

Fraser N (1994) After the family wage: Gender equity and the welfare state. *Political Theory* 22(4): 591–618.

Hardy K and Sanders T (2012) Devalued, deskilled and diversified: explaining the proliferation of the strip industry in the UK. *The British Journal of Sociology* 63(3): 513–530.

Healy S et al. (2012) Basic income: Why and how in difficult economic times: financing a BI in Ireland. In: *14th International Congress of the Basic Income Earth Network*, Munich, Germany, 14–16 September 2012. pp. 1–28. Available at: http://www.bien2012.de/sites/default/files/paper_253_en.pdf (accessed 10 April 2013).

HMRC (HM Revenue and Customs) Digital Service (2013) A guide to Child Tax Credit and Working Tax Credit. Available at: http://www.hmrc.gov.uk/leaflets/wtc2.pdf (accessed 26 November 2012).

Katada K (2010) Basic income and feminist citizenship (s): In terms of de-commodification and defamilialization. In: *13th international congress of the basic income earth network*, Sao Paulo, Brazil, June 30–July 2 2010, pp. 1–10. Available at: http://www.sinteseeventos.com.br/bien/pt/papers/BIEN2010KATADA.pdf (accessed 10 April 2013).

Katada K (2012) Basic income and feminism: in terms of "the gender division of labor". In: *14th international congress of the basic income earth network*, Munich, Germany, 14–16 September 2012, pp. 1–14. Available at: http://www.bien2012.org/sites/default/files/paper_193_en.pdf (accessed 10 April 2013).

Larson JE (2004) Prostitution, labor and human rights. *U.C Davis Law Review* 37(3): 673–700.

McCrudden C (2012) Two views of subordination: the personal scope of employment discrimination law in Jivraj v Hashwani. *Industrial Law Journal* 41(1): 30–55.

McKay A (2001) Rethinking work and income maintenance policy: promoting gender equality through a citizens' basic income. *Feminist Economics* 7(1): 97–118.

McKay A and Vanevery J (2000) Gender, family, and income maintenance: a feminist case for citizens basic income. *Social Politics* 7(2): 266–284.

Munro V and Scoular J (2012) Abusing vulnerability? Contemporary law and policy responses to sex work in the UK. *Feminist Legal Studies* 20(3): 189–206.

Murray K (2001) *Sex work as work: labour regulation in the legal sex industry in Australia*. Masters Thesis, University of Melbourne, Australia.

O'Connell Davidson J (1998) *Prostitution, Power and Freedom*. Ann Arbor, MI: University of Michigan Press.

O'Connell Davidson J (2002) The rights and wrongs of prostitution. *Hypatia* 17(2): 84–97

O'Connell Davidson J (2006) Will the real sex slave please stand up. *Feminist review* 83(1): 4–22.

O'Connell Davidson J (forthcoming 2013) Liberal Fictions of Disembodiment: Prostitution, Slavery and Wage Labour.

Pateman C (2004) Democratizing citizenship: Some advantages of a basic income. *Politics and Society* 32(1): 89–105.

Pioch R (2002) Migration, citizenship, and welfare state reform in Europe: Overcoming marginalization in segregated labour markets. In: *9th international congress of the basic income earth network*, Geneva, 12th–14th September 2002, pp. 1–10. Available at: http://www.basicincome.org/bien/pdf/2002Pioch.pdf (accessed 10 April 2013).

Rittich K (2006) Rights, risk, and reward: Governance norms in the international order and the problem of precarious work. In: Fudge J and Owens R (eds) *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*. Oxford and Portland: Hart Publishing, pp. 31–52.

Robeyns I (2008) Introduction: Revisiting the feminism and basic income debate. *Basic Income Studies: An International Journal of Basic Income Research* 3(3): 1–6.

Sanders T (2005) *Sex Work: A Risky Business*. Cullompton, UK: Willan Publishing.

Scoular J and O'Neill M (2008) Legal incursions into supply/demand: Criminalising and responsibilising the buyers and sellers of sex in the UK. In: Munro VE and Della Giusta M (eds) *Demanding Sex: Critical Reflections on the Regulation of Prostitution*. Aldershot, UK: Ashgate, pp. 13–35.

Thomas RM (2009) From 'toleration' to zero tolerance: A view from the ground in Scotland. In: Phoenix J (ed) *Regulating Sex for Sale: Prostitution, policy reform and the UK*. Bristol, UK: Polity Press, pp. 137–159.

Weeks K (2011) *The Problem with Work: Feminism, Marxism, Antiwork Politics and Postwork Imaginaries*. Duke, NC: Duke University Press.

xtalk project (2010) Human rights, sex work and the challenge of trafficking. In: Whittaker X, Barbagallo C and Cruz K, et al (eds) *Funded by the Daphne Programme, European Commission*. London, UK: Creative Commons, pp. 1–14. Available at: http://www.xtalkproject.net/wpcontent/uploads/2010/12/reportfinal1.pdf (accessed 10 April 2013).

Zelleke A (2011) Feminist political theory and the argument for an unconditional basic income. *Policy and Politics* 39(1): 27–42.