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SEEING WORK, ENVISIONING CITIZENSHIP

BY  
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I. INTRODUCTION

What is work? Who is a worker? Labor & employment law scholars have increasingly interrogated work and employment as constructed categories, categories whose legal definition incorporates a host of culturally and historically specific assumptions. These constructions are crucial not only for workers’ rights on the job but also for citizenship rights in the welfare state. To be a worker is to be protected by labor law, by wage & hour law, by employment discrimination law, and so on, but also to be entitled to disability, unemployment, and retirement benefits provided by the state but conditioned on employment. To put it broadly, to gain the title worker is also to belong, to become entitled to what T.H. Marshall called social citizenship – “the right to a modicum of economic welfare and security . . . the right to share to the full in the social heritage and to live the life of a civilised being according to the

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standards prevailing in society.”<sup>1</sup> This is where labor & employment law meets social welfare policy.

On what basis do we call something “work”? Much more is at issue than labeling a discrete activity like preparing a meal. Instead, we are saying something about the particular relationships and institutions within which such activity occurs. Does it matter whether a housewife assembles dinner for her family, a volunteer cooks for a soup kitchen, or an employee earns the minimum wage at a fast food restaurant? Immediately at issue are not only *what* is being done but also *by whom, for whom, and why*. To call something work is often to call someone a “worker,” which both raises a claim to dignity and respect but also signals the possibility of subordination and exploitation. Perhaps such naming also precludes other meanings and relationships, removing an activity from the realms of love, desire, and responsibility, commodifying human connection. Thus, the seemingly descriptive act of calling something “work” comes loaded with politics and the potential for controversy.

We can begin to answer, and complicate, the question “what is work?” by starting with what we familiarly understand as work. Paid employment in mainstream labor markets (“jobs”) typically supplies the paradigm for “work.” What about jobs makes them work?

Setting aside the technicalities of legal tests, four features seem significant: (1) the employee gets paid and thereby “makes a living” (livelihood); (2) the employer makes money selling the products of the employee’s labor, which are valued by those who pay for them (production); (3) the employee’s time and conduct are subject to the employer’s control – at work she is on “the company’s time” (discipline); (4) as someone who “works for a living” and “plays by the rules” the employee is accorded social respect and granted access to social citizenship (status).

These characteristics of livelihood, production, discipline, and status provide a useful framework for interrogating work more systematically. In particular, they provide a basis for making two complementary critical moves. First, they enable us to question the restriction of worker status to a narrow segment of waged labor, to make visible a domain of excluded work. Second, they enable us to question the conventional narration of waged labor in market terms, to revise our understanding of the terms on which work has been

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1. T.H. MARSHALL, CITIZENSHIP AND SOCIAL CLASS AND OTHER ESSAYS 11 (1950).

included.

## II. DIMENSIONS OF WORK

### A. Work Enables Livelihood

Even if we accept a narrow, materialist conception of livelihood, employment cannot monopolize work. Consider so-called “self-employment,” where the contorted terminology itself betrays a paradigm struggling to contain its incompleteness. Surely the farmer who lives off the sale of her crops is “working for a living.” But note already that the relationship to production has changed (she owns her crops, an employer does not), as has the nature of work discipline (she is “her own boss”).

We can invert the point as well. Are some jobs not “real work” despite their pay? Consider the sinecure, given to the relative or powerful friend who gets paid without doing much of value. The sinecure might be deemed a deviation from true labor markets, but do markets establish as “real work” all the activity devoted to procuring and securitizing the doomed mortgages that yielded an epidemic of foreclosure and economic catastrophe, all because bankers made a living off the practice?<sup>2</sup> Or consider the diligent, hard-working, low-paid individual who happens to “work” for a criminal enterprise.<sup>3</sup> Is a drug dealer or prostitute not working (and not working for someone), or just doing work that is criminalized? Perhaps we should split the difference and say that she works, yet her criminality strips her of honorific designation as a “worker.” A movement of “sex workers,” on the other hand, has embraced the term “worker” to claim dignity for their labor.<sup>4</sup>

Wages provide the link between work and livelihood in the context of a consumer economy. But consumer markets are not the only locus of livelihood. Exchanges of production for livelihood can be structured without the mediation of cash. If I am “working” when

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2. Cf. Iris Marion Young, *Mothers, Citizenship, and Independence: A Critique of Pure Family Values*, 105 *ETHICS* 535, 551 (1995) (asking whether marketing sugary cereal to children or lobbying for the tobacco industry are “real work” that contributes to society compared to the uncompensated work of single parents and others doing dependency work).

3. PHILIPPE BOURGOIS, IN SEARCH OF RESPECT: SELLING CRACK IN EL BARRIO 83-84 (1995); Sudhir Alladi Venkatesh & Steven D. Levitt, “Are We a Family or a Business?” *History and Disjuncture in the Urban American Street Gang*, 29 *THEORY & SOC’Y* 427, 454 (2000).

4. MELINDA CHATEAUVERT, SEX WORKERS UNITE: A HISTORY OF THE MOVEMENT FROM STONEWALL TO SLUTWALK 2, 15-16 (2013); Noah D. Zatz, *Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution*, 22 *SIGNS* 277, 300 (1997).

you pay me for painting your house (which enables me to buy groceries), surely that remains true when you give me a bag of groceries for doing the same painting. But if that is right, then how could it not also be the case that painting my own house, or growing my own food, is work as well? Either way, I get something of value out of it.

This route from market employment to nonmarket production can put pressure on the notion of livelihood itself. It is easy to subscribe to the fiction that wages are always allocated, or allocated first, to certain “necessities” of life. Yet people also pay for entertainment, diversion, and cultural exploration, things arguably necessary for a rich or full life. Not just bread, but roses and circuses, too. But if earning the money to buy roses, or circus tickets, is work, then by the same logic that worked for food, does it not follow that growing the rose oneself, playing charades with friends, or even amusing oneself with solitaire all constitute work? Perhaps they do.

Similar difficulties arise when the linkages between “work” and livelihood become more subtle and indirect. A family member or friend devotedly cares for an ailing elder who writes the caregiver into her will for a substantial bequest, something the elder does and is expected to do because of the caregiving but not exactly as part of a deal.<sup>5</sup> Or a religious figure devotes herself to prayer or other religious practice; her religious community supports her in doing so with donations. When the relationships and institutions that organize these exchanges seem so distant from “the market” and so infused with considerations apart from “economic” ones, do these differences call into question the existence of work, or testify to work’s diversity?

Even when direct payments are at issue, the activity that yields them may not fit the market mold. Public benefits recipients must work at qualifying for those benefits, and not just by performing nominally unpaid workfare. For those who must satisfy bureaucracies by generating documentation, waiting in line, and submitting to interviews, establishing and maintaining welfare eligibility becomes an activity that yields the money to live on and thus might be considered a form of work.

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5. See HENDRIK HARTOG, *SOMEDAY ALL THIS WILL BE YOURS: A HISTORY OF INHERITANCE AND OLD AGE* 104-06, 230-31 (2012).

### B. Work Produces

Turning to production, similar questions emerge. That is no coincidence because the worker's pay and her product are the two sides of the economic bargain envisioned by the standard employment relationship. Indeed, examples involving nonmarket production for one's own consumption collapse these two parties into one. If I am working as a farmhand or child-care provider when I do something valuable to others and get paid for it, how can that change when I produce the same thing of value (care, or food) but for my own use? Indeed, perhaps the most powerful conceptual competitor to the equation of work with production for market exchange is the equation of work with production and nothing more.<sup>6</sup>

A focus on production alone, however, puts great pressure on a theory of value. A materialist focus on some notion of "usefulness" may appeal but is unlikely to survive. The intangibility of many services is no barrier to recognizing work when one hires a teacher, entertainer, counselor, or nurse. Perhaps the same is true for a "motivator" who encourages awkward teenagers to dance at a party, or a "surrogate mother" who performs the invaluable labor of pregnancy and childbirth. But if what they do is work by virtue of its value to others, we may be committed to saying that it is work to comfort a grieving neighbor or to introduce two friends who become lovers, even if we are not paid as a matchmaker though match.com might be. What about writing holiday cards, sometimes known as kin work?<sup>7</sup>

Calling these all work seems to risk obscuring distinctive features arising precisely from an activity's *not* being linked to livelihood and, for that reason, possessing a "volunteer" character that connotes an absence of production discipline and an excess of "noneconomic" motivations. By splitting production from livelihood, these examples are like the sinecure, where the one-directional nature of the economic relationship proves troublesome for conceptions of work built around exchange. But now note how this point can extend to conventional employment, too. After all, people routinely experience their jobs as far more than a way to make a living. Is paid employment no longer work if you love it or are committed to it or

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6. Andrew Abbott, *Sociology of Work and Occupations*, in THE HANDBOOK OF ECONOMIC SOCIOLOGY 307, 307-08 (Neil J. Smelser & Richard Swedberg eds., 2005).

7. Micaela di Leonardo, *The Female World of Cards and Holidays: Women, Families, and the Work of Kinship*, 12 SIGNS 448 (1987).

would be willing to do it without pay if you could afford it (as some can, some of the time)? Here is a point at which the distinction between market and nonmarket labor may be overdrawn insofar as “markets” are structured by much wider and complex relationships and motivations than often imagined.

### *C. Work as Discipline*

The other face of production without livelihood is exploitation and abuse, production organized through coercion or deception. The production remains constant, and indeed slavery and forced labor have long competed with or substituted for conventional labor markets. It would seem only to add insult to injury to deny the label “work,” and yet one might hesitate at “worker.” Does labeling a slave a worker threaten a false equivalency with those who labor under very different conditions and elide the specific circumstances that demand attention and outrage?

Here again, however, one must caution against accepting market ideology as description. A long tradition disputes any equation of markets with freedom and thus asks whether particular conditions can produce “wage slavery” or lesser forms of coercion or exploitation. These muddy any line between markets and forced labor.<sup>8</sup> Contemporary prison labor raises these questions acutely, whether inmates are making license plates or staffing a call center. Coerced as a form of rehabilitation and demanded as an adjunct to punishment, prison labor often mimics market forms through payment, supervisory structures, and ultimate sale in competition with or substitution for consumer goods. Does the acute power imbalance and pervasive legal constraint negate its market character, or exemplify it?<sup>9</sup>

The disciplinary interpretation of work makes its relationship to coercion particularly salient. Work often is associated with effort elicited by obligation and constraint. It is hard; it is structured; it is mandatory; it is not leisure. It is involuntary, not necessarily at the moment of entry into employment (as the liberal notion of free contract would require) but in the substance of a relationship defined by subjection to another’s control and direction.

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8. AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION 84-97 (1998).

9. Noah D. Zatz, *Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships*, 61 VAND. L. REV. 857, 868, 902 (2008).

These disciplinary features often are marshaled to draw noneconomic distinctions between employment and other forms of production, and then to valorize employment. In his influential book *When Work Disappears*, William Julius Wilson lauded employment for providing “not only a place in which to work and the receipt of regular income but also a coherent organization of the present – that is, a system of concrete expectations and goals.”<sup>10</sup> He thereby distinguishes nonmarket caregiving and informal paid work as “far less governed by norms or expectations that place a premium on discipline and regularity.”<sup>11</sup> Although Wilson’s project is explicitly anti-racist, this approach to allocating the privileged title of worker nonetheless echoes a working-class discourse of what Michèle Lamont calls “disciplined selves,” one that white men in particular mobilize to assert racialized superiority vis-à-vis the passivity, incompetence, and self-indulgence they attribute to people of color.<sup>12</sup> Here we can see how designations of “work” and “worker,” while nominally denoting particular economic practices, become bound up in broader forms of social differentiation and subordination. A similar stickiness, to borrow philosopher Sara Ahmed’s term for the attachment of affects to objects, appears in our reaction to the prostitute and the housewife, dismissed as non-workers by some definitions, embodying desire or taken-for-grantedness, bringing gender inequality into the affect that blocks their recognition as workers.<sup>13</sup>

Taking discipline seriously, however, also threatens employment’s claim as paradigmatic work. Many institutions inculcate “discipline and regularity,” as well as the coordinated social action closely associated with them. Schoolwork is the most obvious case, but consider also various serious and intense forms of amateurism, from athletics to orchestras.

These examples invite an exploration of the *sources* of constraint. Perhaps the key is a connection back to livelihood, to the need to “make a living.” Yet, as discussed above, conventional employment hardly monopolizes the sources of livelihood. A family member may be subject to discipline, including that rooted in economic reliance, which structures and motivates nonmarket housework or unpaid

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10. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS* 73 (1996).

11. *Id.* at 75.

12. MICHÈLE LAMONT, *THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS, AND IMMIGRATION* 22-29 (2000).

13. Sara Ahmed, *Affective Economies*, *SOC. TEXT*, Summer 2004, at 117, 125.

contribution to a family business. And of course the self-employed can face a kind of market discipline from economic pressure that does not take the form of ongoing subordination to a specific individual or organization.

The disciplinary characterization of work also undercuts some forms of employment. Privileged or powerful employees – including successful performers or tenured academics – are sometimes said not to have “real” jobs precisely because of their relative autonomy. If a job is not experienced as seriously constraining but rather as an opportunity to get paid for what one loves or feels vocationally compelled to do, is it no longer work? Such a categorization as non-work would share little in common with the nominally similar designation of someone deemed not to “work for a living” but instead to be “dependent” on others, as family caregivers and inmate workers both have been described.

#### *D. Work as Status*

At first glance, the status associated with being a “worker” comes from work itself. But there is ample cause for skepticism. “Worker” status may persist even for those who are not working. These are the mainstays of social insurance, the involuntarily unemployed and the deserving retiree.<sup>14</sup> Their retained worker status relies upon a certain narrative about *why* they no longer work, a narrative that establishes that, despite not working, they still are the working kind of person. And here again we see the floodgates open to having claims to worker status mediated by attributions of character bound up with race, gender, and all manner of social locations.<sup>15</sup> Feminists long have wrestled with ambivalence about caregiving in this respect, between treating it as an independent form of work or as a legitimate basis for temporary labor market withdrawal. The latter strategy always has been plagued by the tendency to treat family roles as primary for women, such that time out of the labor market is a reversion to type rather than a pause between jobs.

The opposite dynamics may strip worker status from those who, on the face of it, are employed. U.S. employment and social insurance

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14. See generally CHAD ALAN GOLDBERG, *CITIZENS AND PAUPERS: RELIEF, RIGHTS, AND RACE FROM THE FREEDMEN'S BUREAU TO WORKFARE* (2007).

15. See generally MICHELE LANDIS DAUBER, *THE SYMPATHETIC STATE: DISASTER RELIEF AND THE ORIGINS OF THE AMERICAN WELFARE STATE* (2012).

protections, despite their supposed basis in the dignity of work and in workers' claims to economic security, have long been marked by exclusions *within* the category of employment. Although there are complications, these exclusions often are tightly connected to race, gender, and immigration status. These connections can arise through the demographics of the excluded and included types of employment under conditions of labor market segregation.<sup>16</sup> Also at work are broader cultural associations between forms of employment and particular classes. Subordinated social status not only means that "worker" status fades quickly during periods of unemployment but also that employment itself may be insufficient to support making claims as workers.

The most notorious examples involve agricultural and domestic employment's exclusion from New Deal labor and social welfare policies. Their legacy today includes a legal ambivalence about the protection of unauthorized immigrant workers and home care workers.<sup>17</sup> Particularly revealing is the justification the U.S. Department of Labor used in 2005 to limit employment rights for home care workers by labeling them "companions": economic pressure on "working families" who might need to hire care for an elderly or disabled family member provided a reason not to pay overtime to those hired caregivers,<sup>18</sup> a workforce consisting heavily of women of color.<sup>19</sup> Notably, the protagonists of social protection remain "workers," but in a farcical manner that privileges *employers* (who are themselves "working" for others) as "working families"; their low-wage employees are blocked from making claims as workers. This interpretation draws further support from the tendency to treat the home as a domestic space apart from economic life and thus one in which work does not occur.<sup>20</sup>

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16. See generally SUZANNE METTLER, *DIVIDING CITIZENS: GENDER AND FEDERALISM IN NEW DEAL SOCIAL POLICY* (1998).

17. See generally EILEEN BORIS & JENNIFER KLEIN, *CARING FOR AMERICA: HOME HEALTH WORKERS IN THE SHADOW OF THE WELFARE STATE* (2012); Noah D. Zatz, *The Impossibility of Work Law*, in *THE IDEA OF LABOUR LAW* 234 (Guy Davidov & Brian Langille eds., 2011).

18. U.S. DEP'T OF LABOR, WAGE AND HOUR ADVISORY MEMORANDUM NO. 2005-1 (December 1, 2005). The Supreme Court subsequently upheld the Department's position on administrative law grounds, without directly addressing the policy rationale. *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007). *But see* Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,453 (Oct. 1, 2013) (substantially revising the regulations at issue in *Coke*).

19. BORIS & KLEIN, *supra* note 17, at 7.

20. See generally EILEEN BORIS, *HOME TO WORK: MOTHERHOOD AND THE POLITICS OF INDUSTRIAL HOMEWORK IN THE UNITED STATES* (1994); BORIS & KLEIN *supra* note 17.

Similar dynamics operate at the boundary between “employment” and other forms of work. In a series of controversies involving prisoners, institutionalized or severely disabled patients, detained immigrants, welfare recipients, and graduate students, institutions have asserted (and courts often have agreed) that paid, productive, disciplined work is not employment and thus does not trigger social protection.<sup>21</sup> Formally, the claim is that this work is excluded because of its organization through institutions structured by non-market logics; these fall outside the labor market that is employment’s domain. Again, this distinction relies on an inaccurately asocial understanding of paradigmatic work. Moreover, the ascription of *nonmarket* status ineluctably draws on the notion that these are the wrong kinds of people living the wrong kinds of lives (at least at the instant – in the case of students it is a life-cycle claim) to merit recognition as workers.

### III. EGALITARIAN DILEMMAS OF WORK AND SOCIAL CITIZENSHIP

The interplay between work and status makes plain the politics of designating people as workers. Obtaining livelihood is not simply *definitional* of work. Instead, being designated a worker gives rise to claims to livelihood. Unpaid work reeks of exploitation; uncompensated love does not. If housekeeping is work, then “wages for housework” becomes an intelligible claim – and resistance to it predictably will be articulated as skepticism that it should be called work at all; that skepticism incorporates doubts about the competence and diligence of those claiming inclusion as workers.<sup>22</sup> Claims to livelihood also implicate the *amount* of pay and underwrite demands for “living” wages. Work, in other words, provides for social and economic inclusion.

An important ambiguity haunts this connection between work and social citizenship. On one view, workers’ claims to livelihood are purely “private” ones, addressed to the balance of power and resources between workers and employers. For instance, claims to minimum wages simply are claims to a fair share (relative to the employer’s) of the value created through production. Such claims are assertive against employers yet also privatizing, neglecting claims

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21. Zatz, *supra* note 9, at 864.

22. Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 YALE L.J. 1563, 1568-69 (1996).

against the state and fellow citizens. A different approach treats workers' claims to livelihood as social and political ones, claims on fellow citizens that call on the welfare state's regulatory and distributive powers. This approach is most visible in "social insurance" programs designed to preserve workers' access to livelihood when they are unable to work in the labor market due to mass unemployment, old age, or disability. In each case, having previously established worker status is a prerequisite to accessing programs self-consciously designed to maintain dignity and social inclusion, as opposed to being cast into stigmatizing "dependence." Policy design disputes manifest this tension when confronting whether minimum income during employment should be structured through a "living wage" paid directly by employers or through combining wages with public supplements like the Earned Income Tax Credit.

These different ways to connect work and livelihood can vary in their reliance on the traditional employer-employee form as the locus of citizenship-conferring work.<sup>23</sup> The self- or precariously employed do not have a stable employer from whom to demand adequacy and stability of income, but they can readily be incorporated into social insurance regimes. For instance, precisely because paid family leave in California is structured through the public disability benefits system, not as a claim against employers, it incorporates participation by the self-employed. An alternative inclusive strategy is to restructure work to facilitate employer-based claims. An impressive exemplar is the creation of public employer entities for the primary purpose of enabling collective bargaining by home health workers and family child-care providers, workers who otherwise would have been treated as independent contractors.

These difficulties multiply as one moves toward work less readily positioned within labor and consumer markets. "Wages for housework" seems to issue an invitation to identify an employer and also to run aground at exactly that point, at least when it breaks out of a gendered breadwinner/caretaker household division of labor. Unsurprisingly, more recent feminist iterations look to the state, asserting that care is a "public good."<sup>24</sup>

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23. Noah D. Zatz, *Working Beyond the Reach or Grasp of Employment Law*, in *THE GLOVES-OFF ECONOMY: WORKPLACE STANDARDS AT THE BOTTOM OF AMERICA'S LABOR MARKET* 31 (Annette Bernhardt et al. eds., 2008).

24. ANNE L. ALSTOTT, *NO EXIT: WHAT PARENTS OWE THEIR CHILDREN AND WHAT SOCIETY OWES PARENTS* (2004); Nancy Folbre, *Children as Public Goods*, *AM. ECON. REV.*,

The status conferred by designation as a “worker” prompts an egalitarian strategy of throwing open the gates to worker status, to see and to value the often invisible work that pervades social life. Yet doing so creates a dilemma familiar from debates over sameness and difference in aspirations to equality.<sup>25</sup> One horn of the dilemma offers inclusion by incorporating more people into recognized forms of work, breaking down barriers to employment and restructuring work as employment. This assimilationist move must domesticate critiques that challenge what Kathi Weeks terms “the work society.”<sup>26</sup> The basic structural role of the labor market remains intact even as a wider swath of people is invited to participate in that role. The second horn of the dilemma pursues inclusion by expanding the net of “work” to capture more of what people already do. This imperative to “value difference” highlights the incompleteness of an egalitarian project that faces constant pressure to expand the net of “work” in order to avoid residual exclusions. But that process drains work of much substance that can be held in common. Blunting one horn tends to sharpen the other because the activities furthest afield from conventional market employment may be the most resistant to, or most distorted by, assimilation into conventional work structures.

This dilemma is visible in struggles over what qualifies as “work” for the purpose of satisfying “work requirements” in the US welfare system. Taking conventional employment as paradigmatic of work, they require a specific number of hours at work per week at a level consistent with “full-time” work. Efforts to expand what may count as “work” immediately confront the challenge of accommodating the structure of conventional employment’s time discipline. Including self-employment or community service requires commensurating these activities with measurement techniques built around a sharp distinction between “work time” and “personal time.”<sup>27</sup> Doing so also invites new disciplinary structures to ensure that “workers” are working hard, fast, and well enough. Some limited efforts at incorporating carework have, unsurprisingly, been accompanied by mandatory classes aimed at ensuring “quality” parenting, thus

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May 1994, at 86.

25. MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990).

26. KATHI WEEKS, *THE PROBLEM WITH WORK: FEMINISM, MARXISM, ANTIWORK POLITICS, AND POSTWORK IMAGINARIES* 5-6 (2011).

27. Noah D. Zatz, *Supporting Workers by Accounting for Care*, 5 *HARV. L. & POL’Y REV.* 45, 63-64 (2011).

reflecting a logic of accountability consistent with claims to be working “for” the public good.

Yet even these efforts to move beyond standard employment may seem rather limited as gestures toward full inclusion. Pushing against the boundaries of “work” set by conventionally economic notions of production, advocates have sought and sometimes succeeded in treating medical treatment or rehabilitation, among other things, as forms of work. More generally, calls for substituting “participation” for “work” as a broader basis for social inclusion highlight the risk that even quite expansive understandings of work may remain troublingly exclusive. Even after aggressive efforts to restructure market work, severe disability may confound attempts to render production a universal basis for citizenship. Related difficulties arise with students, especially when education is not understood reductively as preparation for wage labor.

Of course, one can respond by pushing the boundaries of “work” ever further. One strategy is to emphasize discipline over production; the focus turns to the time and effort devoted to self-care or study, analogizing them to work time in opposition to personal time. This reimposition of the time structure of capitalist labor markets also creates an opening for its disciplinary apparatus. Characterizing rehabilitation as work and education as work typically bring new accountability structures that monitor activity and penalize poor “performance” in missed appointments, disregarded therapeutic regimens, or mediocre grades.<sup>28</sup>

An alternative inclusionary move presses the limits of notions of production and social contribution. Seana Shiffrin, for instance, has argued that people with disabilities who cannot contribute in conventional economic terms nonetheless “still make contributions to the culture and to our social and emotional lives, in part through their participation in social and personal relationships of care-giving and care-receiving.”<sup>29</sup> Such an analysis captures something important, and yet we wonder whether notions of contribution really are driving the argument anymore. Instead, such capacious designations of “work” may better reflect a basic commitment to universal human worth than a technique for identifying the worthy.

Rather than relying on an inclusionary politics of work, Weeks

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28. Noah D. Zatz, *Welfare to What?*, 57 HASTINGS L.J. 1131, 1153-58 (2006).

29. Seana Valentine Shiffrin, *Race, Labor, and the Fair Equality of Opportunity Principle*, 72 FORDHAM L. REV. 1643, 1664 (2004).

endorses an “anti-work” politics that contests “both labor’s misrecognition and devaluation on the one hand, and its metaphysics and moralism on the other hand.” She especially focuses on struggling for “the time and money necessary to have a life outside work.”<sup>30</sup> Perhaps the clearest manifestation of such a politics is a demand for a universal basic income, an explicit rejection of the link between work and livelihood. At a theoretical level, this “anti-work” conception appears to rely on a narrower-than-necessary notion of work. After all, many of the particular activities that might constitute “life outside work” – from cultivating intimacies to political activism to religious practices and so on – could themselves be articulated as “work.” Weeks would argue, however, that by labeling these practices and non-waged activities as “work” we remain trapped by the work ethic and lose the emancipatory and utopian promise of framing them as living. Weeks is concerned less with the pragmatics of her demand than with its provocative capacity to disrupt naturalized understandings of what counts as work and who does work. Nonetheless, a robust strategy of displacing market labor as paradigmatic work might seem at least as promising as anti-work to disrupt conventional politics that keeps basic structures of power and authority intact.

A similar analytical structure is present in the commodification critique that the work designation leads to restructuring relationships on the model of market exchange.<sup>31</sup> What might have been done to further or express a relationship based on love, solidarity, or political commitment becomes reinterpreted and reinstitutionalized as something done for money. Again, market labor is seen as the black hole that eventually captures even the most adventurous forms of work. And again, one can resist, as Viviana Zelizer has shown, by seeing how work and money already are woven into and indeed productive of a vast array of relational forms, not merely marketized ones.<sup>32</sup>

Countering the anti-work or commodification critiques by insisting on the diversity of work, however, may simply throw us back

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30. WEEKS, *supra* note 26, at 13.

31. MARGARET JANE RADIN, *CONTESTED COMMODITIES* (1996).

32. VIVIANA A. ZELIZER, *THE PURCHASE OF INTIMACY* (2005). On another theoretical plane, Marxist Feminist theorists like Leopoldina Fortunati claim that no realm exists apart from the creation of labor power or extraction of surplus value. The housewife who is tending to her husband and family works for capital. There are no separate spheres. LEOPOLDINA FORTUNATI, *THE ARCANE OF REPRODUCTION: HOUSEWORK, PROSTITUTION, LABOR AND CAPITAL* (1995).

onto the other horn of the dilemma. For recall that the political impulse was to make the work designation a basis for egalitarian social claims that both derive substance from work and also include us all as workers. Having insisted on the diversity of work, however, what is the sense in which work renders all of us the same as equal citizens? Can we give that substance without doing violence to all the important differences among forms of work? Consider what is perhaps the most elemental claim from work, the one most closely linked to livelihood, namely the claim to a just share of the product of one's labor. How can we make such a claim without normalizing a quite specific conception of work as not simply economic production but economic exchange? Try as we might, work may be doomed to remain in the shadow of the market.